

**EXHIBIT 2**

**(Blackline of Disclosure Statement)**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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	:	
In re:	:	Chapter 11
	:	
BETSEY JOHNSON LLC,	:	Case No. 12-11732 (JMP)
	:	
Debtor.	:	
	:	
-----	X	

**DISCLOSURE STATEMENT FOR THE FIRST AMENDED CHAPTER 11 PLAN  
OF LIQUIDATION OF BETSEY JOHNSON LLC**

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Dated: ~~December 20, 2013~~ January 28, 2014  
New York, New York

**THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING "ADEQUATE INFORMATION" WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. THIS DISCLOSURE STATEMENT IS BEING FILED WITH, BUT HAS NOT YET BEEN APPROVED BY, THE BANKRUPTCY COURT.**

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**THIS DISCLOSURE STATEMENT (HEREINAFTER REFERRED TO AS THE “DISCLOSURE STATEMENT”), THE PLAN (ATTACHED HERETO AS EXHIBIT A) AND THEIR RELATED DOCUMENTS AND EXHIBITS ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES. THE BANKRUPTCY COURT’S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A RECOMMENDATION AS TO THE MERITS OF THE PLAN.**

**PLEASE READ THIS DISCLOSURE STATEMENT CAREFULLY. THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN. THE DEBTOR AND THE CREDITORS’ COMMITTEE BELIEVE THAT THE PLAN IS IN THE BEST INTERESTS OF THE CREDITORS AND IS FAIR AND EQUITABLE, AND URGE YOU TO VOTE TO ACCEPT THE PLAN.**

**THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN, AND IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN, BUT RATHER IS INTENDED TO AID AND SUPPLEMENT SUCH REVIEW. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED PROVISIONS SET FORTH IN THE PLAN. ALL HOLDERS OF CLAIMS AND INTERESTS SHOULD REVIEW THE FULL TEXT OF THE PLAN AND READ CAREFULLY THIS ENTIRE DISCLOSURE STATEMENT BEFORE DECIDING WHETHER TO VOTE TO ACCEPT THE PLAN.**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT DOES NOT IMPLY THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME SUBSEQUENT TO THE DATE HEREOF.**

**THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE IN FAVOR OF OR AGAINST THE PLAN. CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS, BY ITS NATURE, FORWARD-LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. THERE CAN BE NO ASSURANCE THAT ANY FORECASTED OR PROJECTED RESULTS CONTAINED HEREIN WILL BE REALIZED, AND ACTUAL RESULTS MAY VARY FROM THOSE SHOWN, POSSIBLY BY MATERIAL AMOUNTS.**

**HOLDERS OF CLAIMS AND INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH SUCH HOLDER SHOULD, THEREFORE, CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE PLAN SOLICITATION, THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.**

**AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED AS AN ADMISSION OR STIPULATION, BUT RATHER AS AN INADMISSIBLE STATEMENT MADE IN FURTHERANCE OF A SETTLEMENT OF SUCH CLAIMS.**

**ADDITIONAL COPIES OF THE DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED TO THE DISCLOSURE STATEMENT MAY BE OBTAINED FROM DONLIN, RECANO & COMPANY, INC. BY CALLING (212) 771-1128, BY EMAILING [BETSEYBALLOTPROCESSING@DONLINRECANO.COM](mailto:BETSEYBALLOTPROCESSING@DONLINRECANO.COM) OR BY ACCESSING ITS WEBSITE AT [HTTP://WWW.DONLINRECANO.COM/BJ](http://WWW.DONLINRECANO.COM/BJ). COPIES OF PAPERS FILED IN THIS CASE, INCLUDING THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO, MAY ALSO BE INSPECTED DURING REGULAR COURT HOURS IN THE CLERK'S OFFICE OF THE UNITED STATES BANKRUPTCY COURT, ONE BOWLING GREEN, ROOM 534, NEW YORK, NEW YORK.**

**THE DEBTOR RESERVES THE RIGHT TO AMEND THIS DISCLOSURE STATEMENT AND THE ATTACHED PLAN.**

*[Remainder of Page Intentionally Left Blank]*

## I. PRELIMINARY STATEMENT

Betsey Johnson LLC (the “Debtor”) has prepared and filed the [First Amended](#) Chapter 11 Plan of Liquidation of Betsey Johnson LLC (as may be [further](#) amended, the “Plan”) to provide for the wind down and efficient liquidation of the Debtor in a manner designed to maximize the recovery to all creditors. The Plan provides for the transfer of all of the Debtor’s Assets to the Liquidating Trust, including, without limitation, the Debtor’s Cash and Rights of Action, and the distribution of the Liquidating Trust Assets to the Debtor’s creditors holding Allowed Claims against the Debtor, its Estate and the Liquidating Trust. Because the Plan is a plan of liquidation, pursuant to section 1141(d)(3) of the Bankruptcy Code, the Debtor will not receive a discharge, and will not engage in business after a Final Decree has been entered and the Chapter 11 Case is closed. It is not anticipated that there will be sufficient funds to pay Allowed Claims in full. Unless all Allowed Claims are Paid in Full, no Distributions under the Plan will be made to Holders of Interests, and all Interests in the Debtor will be cancelled upon the Final Distribution Date.

This Disclosure Statement is provided pursuant to section 1125 of the Bankruptcy Code to all known Holders of a Claim against, or Interest in, the Debtor. The purpose of this Disclosure Statement is to provide sufficient information to enable creditors who are entitled to vote to make an informed decision on whether to accept or reject the Plan. The Debtor reserves its right to amend this Disclosure Statement.

This Disclosure Statement describes, among other things:

- the former business of the Debtor and the reasons for commencing its Chapter 11 Case;
- significant events that have occurred in the Chapter 11 Case;
- material provisions of the Plan, including a description of the Liquidating Trust, classification, treatment and reconciliation of Claims and Interests and how Distributions will be made under the Plan;
- the procedure and requirements for confirming the Plan; and
- certain federal income tax consequences of the Plan.

Most words or phrases used in this Disclosure Statement shall have their usual and customary meanings or the meanings ascribed to them in the Bankruptcy Code. Except as otherwise provided herein, capitalized terms not otherwise defined in this Disclosure Statement shall have the meanings ascribed to such terms in the Plan. **A copy of the Plan is attached hereto as Exhibit A. FOR A COMPLETE UNDERSTANDING OF THE PLAN, YOU SHOULD READ THE DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY.**

By order dated [\_\_\_\_\_, 2014], the Bankruptcy Court approved this Disclosure Statement as containing “adequate information,” in accordance with section 1125 of the Bankruptcy Code.



## II. BRIEF OVERVIEW OF THE PLAN OF LIQUIDATION

### A. Summary of Chapter 11 Objectives and Plan of Liquidation

A principal goal of a chapter 11 bankruptcy case is to reorganize or liquidate a debtor's business for the benefit of its creditors and interest holders. The plan of reorganization or liquidation is the blueprint for accomplishing these goals. It provides the rules and procedures pursuant to which a debtor's creditors and interest holders will be paid and lists the steps a debtor will take to either reorganize or wind up its business.

The following is a brief overview of the material provisions of the Plan and is qualified in its entirety by reference to the full text of the Plan. In summary, the Plan provides for, among other things: (i) classification and treatment of unclassified and classified Claims and Interests; (ii) the creation of the Liquidating Trust and appointment of the Liquidating Trustee to make Distributions to Holders of Allowed Claims from the proceeds of the liquidation of the Debtor's Assets (most of which have been realized through the Store Closing Sales (defined below) conducted earlier in this Chapter 11 Case, as described below) and oversee the winding down of the Debtor's Estate; and (iii) reconciliation of Claims and prosecution of Rights of Action.

### B. Summary of Classification and Treatment of Claims and Interests

The table below sets forth a brief summary of the unclassified Claims and the Classes of Claims and Interests under the Plan as well as their general treatment, the estimated aggregate amount of Claims (or Interests) in each Class and the estimated range of recoveries by each Class. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (which include Professional Fee Claims) and Priority Tax Claims have not been classified and, subject to the deadlines for filing such Claims and the rights of the Liquidating Trustee to object to, seek subordination of, or offset against such Claims, will be Paid in Full in Cash to the extent such Claims become Allowed Claims. All other Claims and Interests have been classified.

The estimated amount of Claims shown in the table below is based upon the Debtor's preliminary review of its books and records and the Proofs of Claim filed in the Chapter 11 Case and may be revised substantially following further analysis. The amount designated in the table as the "Estimated Recovery" for each Class is the quotient (expressed as a percentage) of the estimated Cash that should be available for distribution to Holders of Allowed Claims in such Class divided by the estimated aggregate amount of Allowed Claims in such Class. **As of the Effective Date of the Plan, the Debtor estimates that Cash to be transferred to the Liquidating Trust for distribution to Holders of Allowed Claims will be approximately \$1.31.5 million.**

CLASS	DESCRIPTION AND AMOUNT OF CLAIMS OR INTERESTS	SUMMARY OF TREATMENT UNDER THE PLAN	ESTIMATED AGGREGATE AMOUNT OF ALLOWED CLAIMS OR INTERESTS	ESTIMATED RECOVERY
N/A	<p><b>Administrative Claims:</b>                      Administrative Claim means any Administrative Expense Claim or Professional Fee Claim. An Administrative Expense Claim is any right to payment constituting a cost or expense of the administration of the Estate Allowed under sections 503(b), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code. A Professional Fee Claim is any Claim of a Professional for compensation or reimbursement of expenses under sections 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code for services rendered to the Debtor or the Creditors' Committee prior to the Effective Date of the Plan.</p> <p>The Debtor has been paying all of its operating expenses in the ordinary course and therefore expects that most, if not all, Administrative Claims, with the exception of Professional Fee Claims, have been satisfied or will be paid in the ordinary course of business prior to the Effective Date of the Plan.</p>	<p>Administrative Claims are not classified under the Plan.</p> <p>Each Holder of an Administrative Claim, to the extent not already satisfied and except to the extent that such Holder agrees to less favorable treatment, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Administrative Claim, Cash in an amount equal to the amount of such Holder's Allowed Administrative Claim, as soon as practicable after the date that such Administrative Claim becomes an Allowed Administrative Claim.</p>	\$282,082	<b>100%</b>
N/A	<p><b>Priority Tax Claims:</b>                      Priority Tax Claim means any Claim by a governmental unit (as that term is defined in section 101(27) of the Bankruptcy Code) against the Debtor to the extent entitled to priority pursuant to section 507(a)(8) or 507(c) of the Bankruptcy Code.</p>	<p>Priority Tax Claims are not classified under the Plan.</p> <p>Each Holder of an Allowed Priority Tax Claim, to the extent not already satisfied and except to the extent that such Holder agrees to less favorable treatment, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Priority Tax Claim, Cash in an amount equal to the amount of such Holder's Allowed Priority Tax Claim, as soon as practicable after the date that such Priority Tax Claim becomes an Allowed Priority Tax Claim.</p>	\$259,122	<b>100%</b>
1	<p><b>Priority Non-Tax Claims:</b>                      Class 1 consists of any Claim</p>	<p>Class 1 is Unimpaired by the Plan. Each Holder of a Priority Non-Tax Claim is</p>	\$14,985	<b>100%</b>

CLASS	DESCRIPTION AND AMOUNT OF CLAIMS OR INTERESTS	SUMMARY OF TREATMENT UNDER THE PLAN	ESTIMATED AGGREGATE AMOUNT OF ALLOWED CLAIMS OR INTERESTS	ESTIMATE RECOVERY
(Unimpaired)	<p>against the Debtor to the extent entitled to priority pursuant to section 507(a)(4), (5), (6), (7) or (9) of the Bankruptcy Code.</p> <p>The Debtor believes that all of these Claims, including Claims filed by the Debtor's former employees, have been paid or satisfied pursuant to various orders entered by the Bankruptcy Court at the beginning of this Chapter 11 Case or are otherwise not entitled to priority treatment, are duplicates, or will be Disallowed by the Bankruptcy Court for other reasons.</p>	<p>presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan and, therefore, will not receive a Ballot.</p> <p>Each Holder of an Allowed Priority Non-Tax Claim, to the extent not already satisfied and except to the extent that such Holder agrees to less favorable treatment, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Priority Non-Tax Claim, Cash in an amount equal to the amount of such Holder's Allowed Priority Non-Tax Claim, on the first Distribution Date that is at least ten (10) Business Days after the date that such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim.</p>		
2 (Impaired)	<p><b>Madden Secured Claim:</b>                      Class 2 consists of the Claim against the Debtor of Steven Madden, Ltd. and/or its affiliates (collectively, "<u>Madden</u>") that is secured by a Lien on substantially all of the Debtor's Assets.</p>	<p>Class 2 is Impaired by the Plan. The Holder of the Madden Secured Claim is entitled to vote to accept or reject the Plan and will receive a Ballot.</p> <p>The Madden Secured Claim will be treated and paid in accordance with the Madden Settlement Agreement (as defined and described in the Plan and below). As is provided in the Madden Settlement Agreement, and for the avoidance of doubt, the "Net Proceeds" (as defined in the Madden Settlement Agreement) of the collateral securing the Madden Secured Claim, or proceeds deriving therefrom, shall be split between the Liquidating Trust and Madden at a ratio of 38:62 (in favor of Madden). Distributions on the Madden Secured Claim shall be made on the first Distribution Date to the extent not already distributed in accordance with the Madden Settlement Agreement.</p>	\$3,400,000	<p><del>46%</del>                      Estimate recovery                      Class 2 include payment made prior the date he as well as Distribution to be made the first Distribution Date.</p>
3 (Unimpaired)	<p><b>Other Secured Claims:</b>                      Class 3 consists of any Claim against the Debtor that is secured by a Lien on Assets of the Debtor to the extent of the value of such Assets, as determined in</p>	<p>Class 3 is Unimpaired by the Plan. Each Holder of an Other Secured Claim is presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan and, therefore, will not receive a Ballot.</p>	\$32,863	100%

CLASS	DESCRIPTION AND AMOUNT OF CLAIMS OR INTERESTS	SUMMARY OF TREATMENT UNDER THE PLAN	ESTIMATED AGGREGATE AMOUNT OF ALLOWED CLAIMS OR INTERESTS	ESTIMATE RECOVER
	<p>accordance with section 506(a) of the Bankruptcy Code.</p> <p>With respect to any Other Secured Claims allegedly secured by a right of offset, the Debtor reserves its right to object to such alleged right of offset.</p>	<p>At the sole option of the Liquidating Trustee, each Holder of an Allowed Other Secured Claim, to the extent not already satisfied and except to the extent that such Holder agrees to less favorable treatment, shall be entitled to receive, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Other Secured Claim, either the collateral securing such Allowed Other Secured Claim or Cash in an amount equal to the amount of such Holder's Allowed Secured Claim, on the first Distribution Date that is at least ten (10) Business Days after the date that such Secured Claim becomes an Allowed Secured Claim.</p>		
<p>4 (Impaired)</p>	<p><b>General Unsecured Claims:</b>                      Class 4 consists of any Claim against the Debtor that is not an Administrative, Priority, Secured, or Non-Compensatory Penalty Claim. Class 4 includes Madden's deficiency claim of up to \$1,000,000.</p>	<p>Class 4 is Impaired by the Plan. Each Holder of a General Unsecured Claim is entitled to vote to accept or reject the Plan.</p> <p>Each Holder of an Allowed General Unsecured Claim shall be entitled to receive, in full satisfaction, settlement and release of and in exchange for such Holder's Allowed Class 4 Claim, (i) Cash in an amount equal to such Holder's Pro Rata share of Distributable Cash, or (ii) such less favorable treatment as the Liquidating Trustee and the Holder of such Allowed Class 4 Claim may agree upon. Distributions to Holders of Allowed General Unsecured Claims shall be made on the Distribution Dates applicable to Allowed General Unsecured Claims.</p>	<p><del>0.000 - \$19,000,000</del>  <del>15.80</del>  <del>0.000 - \$19,000,000</del></p> <p><del>{To be completed prior to hearing on Disclosure Statement}</del></p>	<p><del>+3.4%</del>  <del>4.0%</del></p> <p><del>{To be completed prior to hearing on Disclosure Statement}</del></p>
<p>5 (Impaired)</p>	<p><b>Subordinated Claims:</b>                      Class 5 consists of any Claim against the Debtor that is subordinated to all Allowed Claims, other than to other Class 5 Claims, which Claim is (a) subordinated pursuant to section 510(b) or (c) of the Bankruptcy Code, or (b) a Non-Compensatory Penalty Claim.</p>	<p>Class 5 is Impaired, but is conclusively presumed to have rejected the Plan. Accordingly, Holders of Class 5 Subordinated Claims are not entitled to vote to accept or reject the Plan and will not receive Ballots.</p> <p>If, as of the Final Distribution Date, the value of the Liquidating Trust Assets is insufficient for all Allowed Claims in Class 4 and Liquidation Expenses to be Paid in Full, then Holders of Allowed</p>	<p><del>0.000</del></p>	<p>(</p>

CLASS	DESCRIPTION AND AMOUNT OF CLAIMS OR INTERESTS	SUMMARY OF TREATMENT UNDER THE PLAN	ESTIMATED AGGREGATE AMOUNT OF ALLOWED CLAIMS OR INTERESTS	ESTIMATED RECOVERY
		<p>Subordinated Claims shall not receive any Distributions on account of such Claims. If, however, all Allowed Claims and Liquidation Expenses are Paid in Full, then each Holder of an Allowed Subordinated Claim shall be entitled to a Pro Rata Distribution from any excess Cash, in full satisfaction, settlement and release of and in exchange for each such Holder's Allowed Subordinated Claim. Distributions to Holders of Allowed Subordinated Claims shall be made, if at all, as soon as practicable after the later of (i) the date that is thirty (30) days after the date that the Liquidating Trustee determines that all Liquidation Expenses and Allowed Class 4 Claims have been Paid in Full, and (ii) the first Distribution Date that is at least ten (10) Business Days after the date that a Subordinated Claim becomes an Allowed Subordinated Claim.</p>		
6	<p><b>Interests:</b>                      Class 6 consists of any "equity security," as such term is defined in section 101(16) of the Bankruptcy Code, in the Debtor. Interests shall also include all shares, partnership, membership or other ownership rights or interests in the Debtor, units, unit appreciation rights, warrants, options, or other rights to purchase, acquire or sell shares or partnership, membership or other ownership interests in the Debtor.</p>	<p>Class 6 is Impaired, but is conclusively presumed to have rejected the Plan. Accordingly, Holders of Class 6 Interests are not entitled to vote to accept or reject the Plan and will not receive Ballots.</p> <p>It is anticipated that the value of the Liquidating Trust Assets will be less than the total amount of Allowed Claims against the Estate. Accordingly, Holders of Interests shall not receive any Distributions on account of such Interests.</p>	<p><del>†\$0.00†</del></p>	<p>(</p>

The information set forth in the above table is for convenience of reference only. The Debtor's estimates for recoveries by each Class, in particular Class 4, are based on, among other things, the Debtor's current view of the likely amount of Allowed Administrative Claims incurred by the Debtor through confirmation of the Plan and the costs of administering and winding down the Liquidating Trust. Each Holder of a Claim or Interest should refer to the Plan for a full description of the classification and treatment of Claims and Interests provided under the Plan.

**THE ACTUAL RECOVERIES UNDER THE PLAN BY CREDITORS WILL DEPEND UPON A VARIETY OF FACTORS INCLUDING, BUT NOT LIMITED TO, WHETHER, AND IN WHAT AMOUNT, CONTINGENT, DISPUTED AND UNLIQUIDATED CLAIMS AGAINST THE DEBTOR BECOME ALLOWED AND TO WHAT EXTENT RECOVERIES, IF ANY, ARE OBTAINED FROM RIGHTS OF ACTION, IF ANY, AND OTHER LIQUIDATING TRUST ASSETS. THERE CAN BE NO GUARANTY THAT THE DEBTOR'S ESTIMATES WILL PROVE TO BE ACCURATE.**

### **III. INSTRUCTIONS REGARDING VOTING AND CONFIRMATION**

#### **A. Voting**

With respect to Claims in Classes that are Impaired under, but not deemed to have rejected, the Plan, each Holder of a Claim in such Classes will receive a copy of this Disclosure Statement, a Ballot for the acceptance or rejection of the Plan, and other related voting materials. As more fully defined in section 1124 of the Bankruptcy Code, any Holder of a Claim or Interest whose legal, contractual or equitable rights are altered, modified or changed by the proposed treatment under a plan of reorganization or liquidation is considered "Impaired."

Under the Plan, the Class 2 Claim and Class 4 Claims are Impaired and Holders of such Claims are entitled to vote on the Plan unless such Claims are Disallowed for voting purposes. Claims in Class 1 (Priority Non-Tax Claims) and Class 3 (Other Secured Claims) are Unimpaired under the Plan and Holders of such Claims will be deemed to accept the Plan and are not entitled to vote on the Plan. Holders of Claims in Class 5 (Subordinated Claims) are not likely to receive distributions under the Plan. Holders of Interests in Class 6 will not receive Distributions under the Plan. Holders of Claims in Class 5 and Interests in Class 6 are deemed to reject the Plan and, therefore, are not entitled to vote on the Plan.

The Bankruptcy Court has fixed [\_\_\_\_\_, 2014] as the "Voting Record Date." Only certain Holders of Claims on the Voting Record Date and certain other parties specified by the Bankruptcy Court are entitled to receive a copy of this Disclosure Statement and related materials.

A form of Ballot is being provided to Holders of the Class 2 Claim and Class 4 Claims, specifically designed for the purpose of soliciting votes on the Plan. To vote on the Plan, after carefully reviewing the Plan and this Disclosure Statement, please complete the Ballot, as indicated thereon, (1) by indicating on the enclosed Ballot that (a) you accept the Plan or (b) reject the Plan and (2) by signing your name and mailing the Ballot in the envelope provided for this purpose to Donlin, Recano & Company, Inc. (the "Balloting Agent"). **Because the Plan provides for certain releases of Released Parties (described in Section 12.2 of the Plan), subject to an opt-out right for Holders of Class 4 Claims, if you do not want to release such Released Parties, you must vote on the Plan and check the appropriate box on the Ballot.**

**ALL PROPERLY COMPLETED BALLOTS RECEIVED BY THE BALLOTING AGENT PRIOR TO [\_\_\_\_\_, 2014] AT 5:00 P.M. (PREVAILING EASTERN TIME) (THE "VOTING DEADLINE") WILL BE COUNTED FOR PURPOSES OF DETERMINING WHETHER CLASS 2 AND/OR CLASS 4 HAVE ACCEPTED THE PLAN. ANY BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE**



**COUNTED UNLESS OTHERWISE ORDERED BY THE BANKRUPTCY COURT. ANY BALLOTS RECEIVED BY FACSIMILE OR EMAIL WILL NOT BE ACCEPTED, UNLESS OTHERWISE ORDERED BY THE BANKRUPTCY COURT. The Balloting Agent will prepare and file with the Bankruptcy Court a certification of the results of the balloting with respect to the Plan.**

**B. Objections to Confirmation**

Any objection to confirmation of the Plan must be in writing, filed with the Bankruptcy Court and served in a manner so as to be received on or before [\_\_\_\_\_, 2014] at 5:00 p.m. (Prevailing Eastern Time) (the "**Plan Objection Deadline**") by: (1) co-counsel to the Debtor, Goulston & Storrs, P.C., 400 Atlantic Avenue, Boston, Massachusetts 02110-3333, Attn: Douglas B. Rosner, Esq., and Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119, Attn: Frank A. Oswald, Esq.; (2) counsel to the Official Committee of Unsecured Creditors, Hahn & Hessen LLP, 488 Madison Avenue, New York, New York 10022, Attn: Mark S. Indelicato, Esq.; and (3) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Susan Golden, Esq.

**C. Confirmation Hearing**

The Bankruptcy Court will hold the Confirmation Hearing on [\_\_\_\_\_, 2014, at \_\_: \_\_ [a.m./p.m.] (Prevailing Eastern Time), at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Customs House, Room 604, [\_\_\_\_\_, One Bowling Green, New York, New York 10004, before the Honorable ~~James M. Peek~~ [\_\_\_\_\_, United States Bankruptcy Judge. The Confirmation Hearing may be adjourned from time to time without further notice. At the Confirmation Hearing, the Bankruptcy Court will (i) determine whether the requisite vote has been obtained for Class 2 or Class 4, (ii) hear and determine objections, if any, to the Plan and to confirmation of the Plan that have not been previously disposed of, (iii) determine whether the Plan meets the confirmation requirements of the Bankruptcy Code, and (iv) determine whether to confirm the Plan.

**D. Importance of a Creditor's Vote to Confirmation of Plan**

The Plan represents a proposed, legally-binding agreement among the Debtor and its creditors, and should be read together with this Disclosure Statement so an informed judgment concerning the Plan can be made. **CREDITORS ARE URGED TO READ THE PLAN IN FULL.**

**YOUR VOTE ON THE PLAN IS IMPORTANT.** To confirm the Plan, there must be at least one Impaired Class of Claims that votes to accept the Plan. Under section 1126 of the Bankruptcy Code, a class of claims has accepted a plan if such plan has been accepted by voting creditors that hold at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the allowed claims of such class held by such voting creditors. Under the Plan, it is expected that there will be only two Impaired Classes of Claims that will receive Distributions, Class 2 and Class 4, meaning that there are two voting Classes under the Plan. The Debtor recommends that each Holder of a Claim in Class 2 or Class 4 vote to accept the Plan. A Holder of a Claim in Class 2 or

Class 4 who does not vote for the acceptance or rejection of the Plan will not be considered in the tabulation of votes for or against the Plan.

Assuming that either Class 2 or Class 4 accepts the Plan (within the meaning of section 1126 of the Bankruptcy Code), the Debtor may seek to satisfy the requirements for confirmation of the Plan under the “cram down” provisions of section 1129(b) of the Bankruptcy Code with respect to the Classes of Impaired Claims and Interests that are deemed not to, or vote not to, as the case may be, accept the Plan. Without acceptance by either Class 2 or Class 4, the Plan cannot be confirmed, and the Debtor’s Chapter 11 Case may be converted to a chapter 7 case. In a liquidation case under chapter 7 of the Bankruptcy Code, a trustee would be appointed to liquidate the remaining Assets of the Debtor and distribute proceeds to creditors. The proceeds of the liquidation would be distributed to the creditors of the Debtor in accordance with the priorities established by chapter 7 of the Bankruptcy Code. The Debtor believes that confirmation and consummation of the Plan is preferable to a conversion of this Chapter 11 Case to chapter 7.

#### **IV. HISTORICAL INFORMATION**

##### **A. Prepetition General Business Description**

Founded in 1978 by its namesake, iconic fashion designer Betsey Johnson (“Betsey”), in partnership with former model Chantal Bacon (“Chantal”), the Debtor was a world-renowned designer, marketer, retailer and wholesaler of premier women’s contemporary apparel, accessories and related products (the “Betsey Johnson Fashions”). Prior to the Petition Date, the Debtor had an in-house design team that was responsible for the conception of the Betsey Johnson Fashions that appealed to a wide cross-section of consumers. Fashion designers and consumers alike highly regarded Betsey Johnson Fashions for their trendsetting and cutting edge style, which styles were showcased through the Debtor’s active participation in the domestic fashion and trade show circuit, including semi-annual runway presentations during the highly touted New York Fashion Week.

As of the Petition Date, the Debtor’s headquarters, design center and principal showroom were all located in New York City, the city in which its first retail location opened in 1980. Throughout the 1980’s and 1990’s, the Debtor steadily expanded its geographical presence. As of the Petition Date, the Debtor operated 63 corporate retail stores and outlets in the United States, and also sold its products in department and specialty stores worldwide, including Macy’s and Lord & Taylor, and online at [www.betseyjohnson.com](http://www.betseyjohnson.com). In addition, the Debtor maintained a warehouse in Secaucus, New Jersey. The Debtor leased the 65 above locations, and its average monthly rent obligations were approximately \$890,000 in the aggregate. Non-debtor subsidiaries operated five stores in Canada and one store in England.

As of the Petition Date, the Debtor employed approximately 400 individuals (the “Employees”), of whom approximately 35 were employed at the corporate office and warehouses. The remaining 365 employees were employed in retail store operations, of whom approximately half were part-time employees. Immediately prior to the filing, the Debtor laid off approximately 46 corporate employees and, in accordance with applicable nonbankruptcy law, paid them accrued wages, salary, and paid time-off.



For the fiscal year ending December 31, 2011, the Debtor generated sales revenues of nearly \$60 million, but had an EBITDA of negative \$5.7 million, approximately. Of its revenues, \$57.6 million were attributable to the Debtor's retail and online business and \$2.4 million were attributable to the Debtor's wholesale business.

## **B. Capital Structure**

### **i. The Castanea Acquisition**

The Debtor originally operated as an entity called BJ Vines, Inc. ("BJV"), a privately held S-corporation owned by Betsey and Chantal, which they founded in 1978. On August 20, 2007, certain funds managed by Castanea Partners (collectively with its managed funds, "Castanea"), a Boston-based private equity firm, purchased the majority of the voting equity interests of BJV (the "Castanea Acquisition"), though Betsey and Chantal retained shares. It was at this time that the Debtor entity (Betsey Johnson LLC) was formed and, until October 5, 2010, the ownership of the Debtor consisted of three Castanea-managed funds (the "Castanea Entities"), BJV, Betsey and Chantal (both individually and through BJV).

In addition to the Castanea Acquisition and as part of a series of transactions that formed a part of the Castanea Acquisition, Castanea arranged a \$50 million term loan (the "2007 Loan") made pursuant to the terms of that certain Loan and Security Agreement by and among the Debtor, as borrower, and various lenders (the "2007 Lenders"), dated as of August 20, 2007 (the "2007 Loan Agreement") for the benefit of the Debtor. The 2007 Loan was set to mature on August 20, 2012 and the Debtor's obligations to the 2007 Lenders under the 2007 Loan Agreement were secured by substantially all of the Debtor's assets. Upon receipt of the 2007 Loan, the Debtor remitted a special distribution to BJV, Betsey and Chantal.

### **ii. The 2010 Restructuring**

In July 2009, the Debtor breached certain covenants under the 2007 Loan Agreement. Subsequently, in August 2010, Steven Madden, Ltd. ("Steven Madden"), through two wholly-owned subsidiaries, BJ Acquisition, LLC ("Madden Lender") and BJ Agent LLC ("Madden Agent") and, together with Steven Madden and Madden Lender, ("Madden"), purchased from the 2007 Lenders the debt under the 2007 Loan Agreement. Shortly thereafter, the Debtor, two of its wholly-owned subsidiaries (Betsey Johnson (UK) Limited and Betsey Johnson Canada Ltd.), BJV, Betsey, Chantal, the Castanea Entities, and Madden entered into a Restructuring Agreement, dated as of October 5, 2010 (the "Restructuring Agreement," and generally, with all other arrangements between the Debtor and Madden, the "2010 Restructuring").

As part of the 2010 Restructuring, all outstanding indebtedness under the 2007 Loan was deemed satisfied, Madden acquired all of the Debtor's intellectual property, the membership interests in the Debtor were extinguished and the Castanea Entities and Madden became the sole new members of the Debtor. Specifically, Madden's purchase of the Debtor's intellectual property was in exchange for a purchase price of \$48.75 million, which amount was credited against, and fully satisfied, the Debtor's outstanding obligations under the 2007 Loan Agreement. Betsey, Chantal and BJV withdrew as members of the Debtor and all securities that existed up until that time were cancelled. New Class A securities were issued to the Castanea Members, and Madden

was issued new Class B securities. Currently, the Castanea Entities hold a majority (90%) ownership interest in the Debtor and Madden holds a minority (10%) ownership interest.

Also on October 5, 2010, Madden granted the Debtor a term loan in the original principal amount of \$3 million (the "Madden Term Loan"), which is evidenced by a promissory note (the "Madden Note") and is secured by substantially all of the Debtor's assets. The Debtor's obligations under the Madden Note were scheduled to mature on December 31, 2015. The balance under the Madden Note as of the Petition Date was \$3.4 million, including principal and accrued interest. Also at or about the time of the 2010 Restructuring, Castanea provided a \$3 million cash infusion to the Debtor. In sum, the 2010 Restructuring reduced the Debtor's long-term debt from \$50 million to \$3 million and allowed for an additional \$3 million infusion of capital from the Castanea Entities. The Madden Term Loan was modified by the Global Settlement Agreement (as defined below) as more fully set forth in Section V.D.4., *infra*.

Contemporaneously with their execution of the Restructuring Agreement, Madden, as licensor, and the Debtor, as licensee, entered into two license agreements, each dated as of October 5, 2010 (each a "License Agreement" and, collectively, the "License Agreements"). The first was a limited exclusive license for retail and e-commerce sales of branded products in the United States, Canada and London. The other License Agreement was a limited exclusive license for the wholesale distribution of branded apparel. As of the Petition Date, the Debtor owed approximately \$50,000 in royalties under the wholesale License Agreement. While the License Agreements provide certain rights to Madden, including the right to approve the Debtor's designs and to coordinate the advertisement of Betsey Johnson Brand Products, their collective terms enabled the Debtor to operate in a manner substantially unchanged from its pre-2010 Restructuring business operations.

iii. The Senior Secured Loan

Despite the 2010 Restructuring and the resulting reduction of the Debtor's debt, the Debtor's cash flow remained tight. In the fall of 2011, the Debtor sought a revolving line of credit from First Niagara Commercial Finance, Inc. (the "Senior Lender" and, together with Madden, the "Prepetition Lenders"), a wholly-owned subsidiary of First Niagara Bank, N.A., to use as an additional source of working capital. As a result, on or about October 26, 2011, the Debtor and the Senior Lender entered into that certain Credit and Security Agreement (the "Existing Credit Agreement"), pursuant to which the Senior Lender agreed to provide the Debtor with a revolving credit line up to \$3 million (the "Senior Revolver"). The Debtor's obligations under the Existing Credit Agreement were evidenced by a Secured Revolving Note, dated October 26, 2011 (the "Senior Note"), and were secured by substantially all of the Debtor's assets. As of the Petition Date, the Debtor owed approximately \$2.1 million under the Existing Credit Agreement.

To induce the Senior Lender to enter into the Existing Credit Agreement, Madden agreed to subordinate the Madden Term Loan and the liens securing such loan to the Senior Revolver, pursuant to that certain Intercreditor and Subordination Agreement, dated as of October 26, 2011, by and among Madden, the Senior Lender and the Debtor.

The Debtor's obligations under the Existing Credit Agreement were satisfied in full from proceeds of the Store Closing Sales (see *infra* at Section V.D.3).

iv. General Unsecured Creditors

In addition to its obligations under the Senior Note and the Madden Note, the Debtor has unsecured obligations to various other creditors, including, without limitation, vendors, manufacturers and landlords. The current amount of the Debtor's general unsecured debt is approximately ~~[\$19.2 million]~~ \$19.0 million (excluding obviously duplicate claims that remain on the Claims Register), which includes both Scheduled Claims and filed Proofs of Claim. All of the General Unsecured Claims are subject to the Debtor's and the Liquidating Trustee's review.

**C. Events Leading to the Chapter 11 Filing**

While the 2010 Restructuring improved the Debtor's balance sheet, it did not restore the business to profitability. From 2007 until the Petition Date, sales at the retail stores experienced declines by over 20% and profitability declined by more than 50%. In addition, the economic recession had a devastating impact on higher-end fashion apparel brands, including Betsey Johnson Fashions. The effect on the Debtor's business was further compounded by certain merchandising decisions that negatively impaired dress and handbag sales. During the year prior to the Petition Date, the Debtor hired new senior merchandisers, designers and wholesalers, who were successful in consummating the first steps of the Debtor's recovery. Notably, in 2011, sales for the first time in several years were up by 8% over the prior year. However, continued cash constraints continued to be an obstacle to the Debtor's complete turnaround.

In mid-February 2012, the Debtor engaged Morpheus Capital + Advisors LLC ("Morpheus") to assist the Debtor with finding new equity investors or selling the business enterprise as a going concern. Morpheus immediately commenced an extensive sale process. On or about March 10, 2012, one of the potential buyers (the "Potential Buyer") provided a serious expression of interest in purchasing the Debtor's business and negotiations between the Potential Buyer and the Debtor ensued. Madden, as licensor under the License Agreements, also participated in these negotiations. As of April 3, 2012, there appeared to be an agreement in principal between the parties, which would have resulted in the satisfaction or assumption of all of the Debtor's liabilities. The parties moved forward to consummate the transaction. However, on or about April 10, 2012, the Potential Buyer abruptly announced that it had decided not to go forward with the acquisition. Efforts to consummate a going-concern sale transaction continued until the week of the Petition Date, when another party that had expressed initial interest in the Debtor's business similarly decided not to pursue a transaction with the Debtor.

Without the prospect of a going-concern sale, with the Debtor suffering continued cash constraints, Morpheus immediately contacted some of the other parties that had been approached earlier in the process, but was not able to garner serious interest. Accordingly, the Debtor determined to file for protection under chapter 11 of the Bankruptcy Code in an effort to maximize the value of its assets for the benefit of creditors. The Debtor has used its Chapter 11 Case, as described in more detail below, to effectuate an orderly liquidation of its Assets using a joint venture of two nationally recognized liquidators.

**V. THE CHAPTER 11 CASE**

**A. Overview**

On April 26, 2012 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). The Debtor continues to hold its remaining Assets as a debtor-in-possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, subject to the supervision of the Bankruptcy Court.

The Debtor commenced this Chapter 11 Case believing it to be in the best interests of its creditors and other parties in interest. This Chapter 11 Case has enabled the Debtor to complete the Store Closing Sales, which served to significantly enhance the value of the Debtor’s Assets and Estate for the benefit of its creditors.

## **B. Employment of the Debtor’s Professionals**

The Debtor retained and has been represented and advised in the Chapter 11 Case by (i) the law firms of Goulston & Storrs, P.C., located at 400 Atlantic Avenue, Boston, Massachusetts 02110-3333, and Togut, Segal & Segal LLP, located at One Penn Plaza, Suite 3335, New York, New York 10119, as bankruptcy counsel; (ii) Richter Consulting, Inc., located at 200 South Wacker Drive, Suite 3100, Chicago, Illinois 60606, as its financial advisor; (iii) DJM Realty Services LLC, located at 445 Broad Hollow Road, Suite 225, Melville, New York 11747, as its special real estate advisor, and (iv) Marcum LLP, located at 10 Melville Park Road, Melville, New York 11747, as its accountant.

## **C. Appointment of the Official Committee of Unsecured Creditors and Employment of Committee Professionals**

On May 3, 2012, the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Creditors’ Committee”). The Creditors’ Committee is comprised of the following entities: MCM Enterprise (vendor), CIT Group Commercial Services, Inc. (vendor), Chinamine Trading Ltd. (vendor), American Express (vendor), Intertex U.S.A. Inc. d/b/a BC America (vendor), Simon Property Group, Inc. (lessor), and GGP Limited Partnership (lessor).

The Creditors’ Committee retained and has been represented and advised in the Chapter 11 Case by (i) the law firm of Hahn & Hessen LLP, located at 488 Madison Avenue, New York, New York 10022, as bankruptcy counsel and (ii) Capstone Advisory Group, LLC, located at 250 Pehle Avenue, Suite 105, Saddle Brooke, New Jersey 07663, as financial advisor.

## **D. Significant Events During the Chapter 11 Case**

### **1. First Day Orders**

At the first day hearing held in this Chapter 11 Case on April 27, 2012, the Debtor sought approval of numerous motions seeking immediate relief intended to facilitate the transition, and avoid interruption, of the Debtor’s ordinary business operations in Chapter 11. The Bankruptcy Court entered first day orders, which authorized on an interim basis, among other things:

- a) payment to employees of accrued prepetition wages, salaries and benefits;

- b) payment of certain prepetition tax obligations;
- c) maintenance, renewal, cancellation or replacement of existing insurance programs and payment of all premiums, fees and insurance premium financing obligations in connection with such insurance programs;
- d) continuation of utility services during the first months of the Chapter 11 Case and procedures for utility providers to request additional adequate assurance of payment;
- e) maintenance of the Debtor's bank accounts and operation of its existing cash management system;
- f) continuation of certain prepetition customer programs; and
- g) retention of Donlin Recano & Company, Inc. as the Debtor's Claims Agent and Balloting Agent in this Chapter 11 Case.

The first day motions were later approved by the Bankruptcy Court on a final basis.

## **2. The Debtor's DIP Facility**

At the first day hearing, the Debtor also requested interim approval of a post-petition financing arrangement with its Senior Lender. After extensive negotiations, the Debtor entered into a debtor-in-possession credit agreement (the "DIP Credit Agreement") with the Senior Lender on April 26, 2012, pursuant to which the Senior Lender agreed to provide post-petition financing (the "DIP Facility"). The DIP Credit Agreement was approved on an interim basis by the Bankruptcy Court on April 30, 2012, and was further approved on an interim basis on May 4, 2012 (collectively, the "Interim DIP Orders"). The Interim DIP Orders authorized the Debtor to borrow funds under the DIP Facility up to an aggregate amount of \$3.5 million, inclusive of the Debtor's outstanding prepetition obligations to the Senior Lender under the Existing Credit Agreement, to fund the Debtor's ordinary working capital and capital expenditure needs and administrative expenses, incurred in the first few weeks of the Chapter 11 Case. In addition, the Interim DIP Order amended and ratified the Existing Credit Agreement. A final order approving the foregoing and the Debtor's continued use of cash collateral of the Senior Lender and Madden was entered on May 31, 2012 (the "Final DIP Order"). The amounts outstanding under the DIP Credit Agreement, including the Debtor's prepetition obligations under the Existing Credit Agreement, were paid in full on or about May 11, 2012. The Debtor continued to use cash collateral of Madden during the Chapter 11 Case.

## **3. Store Closing Sales**

Immediately prior to the commencement of the Chapter 11 Case, the Debtor and Hilco Merchant Resources, LLC ("Hilco"), as the stalking horse bidder, entered into an agency agreement (as amended, the "Agency Agreement") pursuant to which Hilco would have been authorized to sell substantially all of the Debtor's assets by conducting store closing sales (the "Store Closing Sales") at all of the Debtor's retail locations in the U.S., as well as at the Debtor's foreign subsidiaries' stores in Canada and the United Kingdom. At the first day hearing, the Debtor sought approval of procedures (the "Auction Procedures") for the auction of the right to conduct the Store Closing Sales as the Debtor's agent under the Agency Agreement (the "Auction"). On April 27, 2012, the Bankruptcy Court approved the Auction Procedures.



On May 8, 2012, the Debtor conducted the Auction. Four bidders, including Hilco, participated. The Auction opened with Hilco's stalking horse bid of a Guaranteed Percentage of 92% of the Cost Value of the Merchandise to be sold at the Store Closing Sales (capitalized terms used in this paragraph, and not otherwise defined in this Disclosure Statement, shall have the meanings ascribed to them in the Agency Agreement). Hilco's stalking horse bid included a Cost Factor (the relationship between the Cost Value of the Merchandise and the lowest retail price at which the Merchandise is sold) of 25.5%. As a result of this Cost Factor, the effective opening bid, in terms of the Guaranteed Percentage of Cost Value to be paid to the Debtor, was 89%. After multiple rounds of robust bidding, the winning bidder was determined by the Debtor to be a joint venture consisting of Hilco and Gordon Brothers Retail Partners, LLC ("Gordon Brothers") and, collectively with Hilco, the "Liquidators". The terms of the winning bid included: (i) a Guaranteed Percentage of 102% of the Cost Value of the Merchandise to be sold, (ii) an improved Cost Factor of 26.35%, and (iii) the Estate's entitlement to share in the proceeds of the Store Closing Sales in excess of 109% of the Cost Value of the Merchandise sold (the "Sharing Threshold") on a 30:70 basis with the Liquidators (in favor of the Liquidators).

On May 10, 2012, the Bankruptcy Court approved the Agency Agreement between the Debtor and the Liquidators. Pursuant to the terms of the Agency Agreement, the Liquidators paid to the Debtor a total of \$5,994,547 (the "Transaction Payment").<sup>1</sup> Ultimately, the Estate netted approximately \$800,000 more from the Liquidators winning bid than it would have realized under the terms of Hilco's stalking horse bid. The first installment of the Transaction Payment, in the amount of approximately \$4.9 million was paid to the Debtor on May 11, 2012. It was from the proceeds of this initial installment payment that the Debtor paid in full its pre- and post-petition obligations to the Senior Lender.

The Store Closing Sales commenced on May 11, 2012 and, at certain locations, lasted into July 2012. As a result of the Store Closing Sales, the Debtor was able to sell substantially all of its primary Assets – its inventory, furniture, fixtures and equipment. As a result of the highly successful results of the Store Closing Sales, the Sharing Threshold was reached. This generated proceeds of \$135,000 in excess of the Transaction Payment that were paid to the Debtor's Estate. The Assets available for Distribution to Holders of Allowed General Unsecured Claims (the "Beneficiaries") under the Plan constitute, in large part, the Estate's share of proceeds of the Store Closing Sales.

#### **4. Global Settlement Among the Debtor, the Creditors' Committee and Madden**

After the Senior Lender was paid in full out of the proceeds of the transaction contemplated by the Agency Agreement, Madden remained as the Debtor's only secured lender, with a first priority Lien on substantially all of the Debtor's Assets. The value of Debtor's Assets, however, is insufficient to fully satisfy the Debtor's obligations under the Madden Term Note. Accordingly, pursuant to the fundamental distribution scheme set forth under the Bankruptcy Code, Madden would have been entitled to payment under the Madden Term Note before Holders of Allowed

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<sup>1</sup> Additional funds were paid directly to the Debtor's Canadian subsidiary, Betsey Johnson Canada LLC, because it had purchased its own inventory. The Transaction Payment represents those funds that were actually paid to the Debtor in connection with the Store Closing Sales.

General Unsecured Claims received any Distribution. Because Madden was undersecured, absent a compromise with Madden, such Holders would not have received anything in this Chapter 11 Case.

Meanwhile, the Creditors' Committee conducted an investigation of the validity, perfection and priority of the Liens asserted by Madden to determine if any viable causes of action of the Estate existed against Madden arising out of the 2010 Restructuring, the Madden Note, the License Agreements and Madden's involvement with the Debtor prior to the Petition Date (collectively, the "Potential Madden Causes of Action"). The Debtor, the Creditors' Committee and Madden commenced negotiations to resolve without litigation the Potential Madden Causes of Action. As a result of these efforts, on or about June 28, 2012, the parties executed a settlement agreement (the "Global Settlement Agreement"), pursuant to which Madden agreed, *inter alia*, (i) to share the net proceeds of Madden's collateral with the Debtor's Estate, such that the Estate would receive 38% and Madden 62% of such net proceeds (net of budgeted expenses, subject to the Permissible Margins of Error (as defined in the Final DIP Order)); (ii) to cap its general unsecured deficiency claim at \$1,000,000. The Global Settlement Agreement also included mutual releases. On July 24, 2012, the Bankruptcy Court approved the terms of the Global Settlement Agreement.

In accordance with the Global Settlement Agreement, the Debtor paid Madden approximately \$1,522,000 in December 2012, representing Madden's 62% share of net proceeds of its collateral through August 2012. The Debtor expects to pay Madden an additional sum, estimated to be approximately \$43,000, on or about the Effective Date. The two payments shall be deemed to satisfy in full Madden's Class 2 secured claim. Madden's deficiency claim of up to \$1,000,000 will be paid at the same time as other Class 4 General Unsecured Claims.

Related to the Global Settlement Agreement, the Debtor and Madden negotiated the following: (a) Madden's purchase of certain purchase orders and other of the Debtor's assets that were relevant to its wholesale business, for a purchase price of \$125,000, and (b) the assumption by the Debtor and assignment to Madden of three of its unexpired leases, in exchange for a payment by Madden to the Debtor of \$25,000 (plus cure costs). Madden agreed that its Liens would not attach to the cash proceeds of the foregoing transactions, in the total amount of \$150,000 (the "Unencumbered Cash"). Accordingly, the full amount of the Unencumbered Cash will be available for distribution to Holders of Allowed Claims, other than Madden, on account of its deficiency claim.

#### **5. Settlement Among the Debtor, the Creditors' Committee, Castanea, BJV, Betsey and Chantal**

The Creditors' Committee has been investigating transactions, claims and causes of action related to the Castanea Acquisition, distributions made to members of the Debtor, the 2010 Restructuring, and events leading up to the Chapter 11 Case. Such investigation led to multi-party negotiations by and among the Creditors' Committee, the Debtor, Castanea, BJV, Betsey and Chantal (Castanea, BJV, Betsey and Chantal, collectively, the "Settling Parties"). The Settling Parties have at all times denied any wrongdoing or actionable conduct in connection with their participation in such transactions.

After several months, the Settling Parties, the Creditors' Committee and the Debtor reached an agreement to compromise any potential claims or causes of action that might otherwise have been pursued against the Settling Parties by the Creditors' Committee or the Debtor (the "Estate Causes of Action"). The parties ultimately executed a settlement agreement (the "Equity Settlement Agreement") resolving the Estate Causes of Action on November 20, 2013. Pursuant to the Equity Settlement Agreement, the Settling Parties agreed to pay the estate a total of \$1,400,000 and the parties exchanged mutual releases. In addition, under the Equity Settlement Agreement, the Debtor agreed to pay the priority portion of New York State sales and use taxes as determined by an audit conducted by New York State and as authorized by the Court's Final Order Authorizing, but not Directing, the Debtor to Pay Prepetition Sales and Use Taxes and Related Tax Obligations dated May 10, 2012 [Docket No. 103]. The Debtor filed a motion seeking Court approval of the Equity Settlement Agreement on December 13, 2013 [Docket No. 490].

## **E. Other Material Relief Obtained During the Chapter 11 Case**

### **1. Sale of Certain Customer Assets**

In July 2012, the Debtor commenced discussions with several parties, including Madden, which it believed might have an interest in purchasing certain of its customer information (including names and email addresses). The Debtor, in consultation with the Creditors' Committee, decided to conduct a private auction for the sale of such customer information. On July 30, 2012, the Debtor conducted a telephonic auction (the "Telephonic Auction"). Initially as many as four entities had expressed an interest in purchasing the Debtor's customer information, but ultimately only two participated in the Auction – Madden and one other party. The Telephonic Auction opened with a minimum bid set at \$40,000 (which was higher than Madden's initial offer). However, the bidding between the two suitors substantially increased the ultimate purchase price. Bidding proceeded upward in increments of \$5,000 and, after several rounds of bidding, Madden was determined to be the winning bidder with its offer of \$105,000 for the customer information. The \$105,000 purchase price is subject to the terms of the Global Settlement Agreement such that Madden shall receive 62% of the net proceeds, after accounting for dilution as a result of payment of budgeted expenses (subject to the Permissible Margins of Error, as defined in the Final DIP Order), and the Debtor shall retain 38% of such net proceeds. On August 27, 2012, the Debtor and Madden entered into an Asset Purchase Agreement and the Debtor filed a motion in the Bankruptcy Court for approval of the sale of its customer information to Madden. On September 25, 2012, the Bankruptcy Court approved the sale of the Debtor's customer information to Madden.

### **2. Rejection, Termination or Assumption/Assignment of Unexpired Leases of Non-Residential Real Property and Executory Contracts**

As Store Closing Sales concluded at each of the Debtor's retail stores and outlet locations, the Debtor minimized potential Administrative Expense Claims for postpetition rent by terminating, assuming and assigning, or rejecting, as applicable, its leases. To streamline the lease rejection process, the Debtor filed a motion seeking approval of procedures for the rejection of unexpired leases, which the Bankruptcy Court approved by order dated May 30, 2012. On June 19, 2012, the Bankruptcy Court approved the retention and employment, nunc pro tunc to May 11, 2012, of DJM Realty Services LLC ("DJM") as the Debtor's special real estate advisor, to assist



with the disposition and termination of the Debtor's leases and with negotiations regarding the reduction or waiver of prepetition cure claims. The combined efforts of DJM and the Debtor generated value equal to approximately \$351,565 for the benefit of the Debtor's creditors. Of this amount, approximately \$192,000 is attributable to payments received from third parties in exchange for the Debtor's assumption and subsequent assignment to such third parties of three unexpired leases (excluding and in addition to those leases assumed and assigned to Madden); approximately \$62,803 is attributable to such third parties' payment of prepetition cure claims and postpetition rent owed under those leases; \$40,000 was received in connection with two lease termination agreements entered into with certain of the Debtor's landlords, which agreements covered four leases; and approximately \$56,797 was attributable to such landlords' waiver of prepetition cure claims. In addition, ten of the Debtor's leases simply expired by their terms during the Chapter 11 Case without further transactions or agreements with the respective landlords. The Debtor rejected the remainder of its original 65 leases.

### **3. The Debtor's Foreign Subsidiaries**

Contemporaneously with the Chapter 11 Case, the Debtor's subsidiary in the United Kingdom, Betsey Johnson UK, Ltd. ("BJ UK") commenced an out-of-court liquidation of the inventory at its single retail store, which Store Closing Sale was conducted by the Liquidators. On July 9, 2012, the Debtor and BJ UK entered into a stipulation whereby BJ UK agreed to pay to the Debtor, whose intercompany claim against BJ UK was the largest claim against that entity, surplus cash remaining from the proceeds of its Store Closing Sale, after the payment of all other claims against BJ UK and certain administrative expenses. On August 7, 2012, the Bankruptcy Court approved that stipulation. The Debtor recovered approximately \$145,000 on account of its general unsecured intercompany claim against BJ UK.

On July 27, 2012, the Debtor's subsidiary in Canada, Betsey Johnson Canada Ltd. ("BJ Canada") filed a proposal (the "Proposal") in the Superior Court of the Province of Quebec (the "Canadian Court"), pursuant to the Canadian Bankruptcy and Insolvency Act. The Debtor is, by far, the largest creditor of BJ Canada, holding an intercompany claim in excess of \$6 million. The Proposal sets forth an arrangement between BJ Canada and its creditors with respect to its debts. The Proposal was accepted by BJ Canada's creditors on August 16, 2012, and was approved by the Canadian Court on September 18, 2012. The Debtor recovered approximately \$385,000 on account of its general unsecured intercompany claim against BJ Canada.

### **4. Key Employee Incentive Plan**

On May 25, 2012, the Debtor filed a motion to approve a Key Employee Incentive and Retention Plan (the "KEIRP"), which was designed for the dual purpose of (a) motivating Jonathan Friedman, the Executive Vice President and Chief Financial and Operating Officer as of the Petition Date, to continue driving performance of the business and at the same time to participate actively in the Store Closing Sales and other wind-down processes, and (b) retaining key employees, who otherwise would likely have sought alternative employment opportunities, throughout the duration of the Store Closing Sales and, in a few cases, the initial month of the wind-down period. The KEIRP was approved by Order of the Bankruptcy Court dated June 28, 2012. Mr. Friedman earned a bonus under the KEIRP tied to the amount of the Debtor's book cash as of July 31, 2012, which bonus was capped at \$200,000, while the other key employees subject

to the KEIRP were entitled to a bonus equal to a percentage of their respective salaries for each week worked, with a maximum aggregate bonus amount (not including Mr. Friedman's bonus) of \$64,000. Ultimately, Mr. Friedman and the key employees earned KEIRP bonuses in the aggregate amount of \$259,000. However, Madden agreed to pay the first \$45,000 of Mr. Friedman's incentive bonus.

## **5. Summary of the Bar Dates and Scheduled and Filed Claims**

The Debtor filed Schedules of Assets and Liabilities and a Statement of Financial Affairs (collectively, the "Schedules") with the Bankruptcy Court on June 11, 2012. Among other things, the Schedules set forth the Claims of known creditors against the Debtor as of the Petition Date, based upon the Debtor's books and records.

By Order dated July 24, 2012 (the "Bar Date Order"), the Bankruptcy Court established September 10, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for filing non-governmental Proofs of Claim, against the Debtor, including administrative expense requests pursuant to section 503(b)(9) of the Bankruptcy Code (the "General Bar Date") and October 23, 2012 at 5:00 p.m. (Prevailing Eastern Time) as the deadline for governmental units to file Proofs of Claim against the Debtor (the "Governmental Units Bar Date"). Notice of the General Bar Date and the Governmental Units Bar Date was mailed to creditors on July 27, 2012 and published in the National Edition of the New York Times on July 31, 2012.

By Order dated February 27, 2013 (the "Administrative Bar Date Order") the Bankruptcy Court established April 1, 2013 as the deadline for filing Administrative Claims arising on or prior to January 31, 2013 (the "Initial Administrative Bar Date," and, collectively with the General Bar Date and the Governmental Units Bar Date, the "Bar Dates"). Notice of the Initial Administrative Bar Date was mailed to creditors on February 28, 2013.

Under the Bar Date Order and the Administrative Bar Date Order, unless otherwise ordered by the Bankruptcy Court, any Holder of a Claim against the Debtor who is required, but fails, to file proof of such Claim in accordance with the Bar Date Order or the Administrative Bar Date Order, as applicable, on or before the applicable Bar Date shall not be treated as a creditor with respect to such Claim for the purposes of voting and distribution. As of the date of this Disclosure Statement, over 400 Claims have been scheduled or filed, including section 503(b)(9) administrative expense requests, in the Chapter 11 Case (including duplicates).

The Debtor and the Creditors' Committee are continuing the process of reviewing Proofs of Claim filed in this Chapter 11 Case. The Debtor has filed several objections to certain Claims, and, after the Effective Date, the Liquidating Trustee may file additional objections to certain Claims. Consequently, the Debtor anticipates that the figures set forth above will be reduced following completion of the Claims reconciliation process.

## **6. Substantially Improved Cash Position**

During the Chapter 11 Case, the Debtor realized substantially greater recoveries than was projected at the onset of the case. As a result of the collaborative efforts of the Debtor, Madden, the Creditors' Committee and their respective Professionals early in the Chapter 11 Case, in

addition to the Equity Settlement Agreement, the Debtor was able to generate sufficient cash to fund a distribution to holders of General Unsecured Claims.

## **VI. SUMMARY OF THE PLAN OF LIQUIDATION**

The Plan provides for, among other things: (i) classification and treatment of unclassified and classified Claims and Interests; (ii) the creation of the Liquidating Trust and appointment of the Liquidating Trustee to make Distributions to Holders of Allowed Claims from the proceeds from the liquidation of the Debtor's Assets and oversee the winding down of the Debtor's Estate; and (iii) reconciliation of Claims and prosecution of Rights of Action. The summary of the Plan, which is provided below, is qualified in its entirety by reference to the Plan and the Exhibits to this Disclosure Statement. It is the Plan and orders entered by the Bankruptcy Court and not this Disclosure Statement that govern the rights and obligations of the parties.

### **A. Payment of Administrative and Priority Tax Claims**

#### **1. Administrative Claims**

Except to the extent that the Holder of an Allowed Administrative Claim agrees to less favorable treatment and only to the extent that such Claim has not already been satisfied, each Holder of an Allowed Administrative Claim shall be entitled to receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Administrative Claim, Cash in an amount equal to the amount of its Allowed Administrative Claim. Distributions to Holders of Allowed Administrative Claims shall be made as soon as practicable after the date that a Holder's Claim becomes an Allowed Administrative Claim; provided, however, that Allowed Administrative Claims representing obligations incurred in the ordinary course of business of the Debtor after the Petition Date shall be Paid in Full in accordance with the terms and conditions of the particular transactions and any applicable agreements. Holders of Administrative Claims are not entitled to vote to accept or reject the Plan.

#### **2. Priority Tax Claims**

Except to the extent that the Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, and only to the extent that such Claim has not already been satisfied, each Holder of an Allowed Priority Tax Claim shall be entitled to receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Priority Tax Claim, Cash in an amount equal to the amount of its Allowed Priority Tax Claim. Distributions to Holders of Allowed Priority Tax Claims shall be made as soon as practicable after the date that a Holder's Claim becomes an Allowed Priority Tax Claim. Holders of Priority Tax Claims are not entitled to vote to accept or reject the Plan.

### **B. Classification and Treatment of Claims and Interests**

The Plan provides for the classification and treatment of six Classes of Claims and Interests described below. A Claim or Interest will be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class.

#### **(a) Class 1: Priority Non-Tax Claims (Unimpaired).**

Except to the extent that the Holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, and only to the extent that such Claim has not already been satisfied, each Holder of an Allowed Priority Non-Tax Claim shall receive, in full satisfaction, settlement and release of and in exchange for such Claim, Cash in an amount equal to the amount of such Allowed Priority Non-Tax Claim on the first Distribution Date that is at least ten (10) Business Days after the date that such Claim becomes an Allowed Priority Non-Tax Claim. Class 1 Claims are Unimpaired. Class 1 is deemed to have accepted the Plan and, therefore, Holders of Priority Non-Tax Claims are not entitled to vote to accept or reject the Plan.

(b) Class 2: Madden Secured Claim (Impaired).

Class 2 consists of the Madden Secured Claim. The Madden Secured Claim will be treated and paid in accordance with the terms of the Madden Settlement Agreement in full satisfaction, settlement and release of the Madden Secured Claim. As is provided in the Madden Settlement Agreement, and for the avoidance of doubt, the “Net Proceeds” (as defined in the Madden Settlement Agreement) of the collateral securing the Madden Secured Claim, or proceeds deriving therefrom, shall be split between the Liquidating Trust and Madden at a ratio of 38:62 (in favor of Madden). Distributions on the Madden Secured Claim shall be made on the first Distribution Date to the extent not already distributed. The Class 2 Claim is Impaired. Madden is entitled to vote its Class 2 Claim to accept or reject the Plan.

(c) Class 3: Other Secured Claims (Unimpaired).

Class 3 consists of all Other Secured Claims. At the sole option of the Liquidating Trustee, each Holder of an Allowed Other Secured Claim shall be entitled to receive, to the extent that such Claim is not already satisfied, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Other Secured Claim, either (a) the collateral securing such Holder’s Allowed Other Secured Claim, (b) Cash in an amount equal to the amount of such Holder’s Allowed Other Secured Claim, or (c) any other less favorable treatment as may be agreed upon by the Liquidating Trustee and such Holder. Distributions to Holders of Allowed Other Secured Claims shall be made on the first Distribution Date that is at least ten (10) Business Days after the date that such Holder’s Claim becomes an Allowed Other Secured Claim. Class 3 Claims are Unimpaired. Class 3 is deemed to have accepted the Plan and, therefore, Holders of Other Secured Claims are not entitled to vote to accept or reject the Plan.

(d) Class 4: General Unsecured Claims (Impaired).

Class 4 consists of all General Unsecured Claims. Each Holder of an Allowed General Unsecured Claim of record as of the Distribution Record Date shall be entitled to receive, in full satisfaction, settlement and release of and in exchange for such Holder’s Allowed General Unsecured Claim, (i) Cash in an amount equal to such Holder’s Pro Rata share of Distributable Cash, or (ii) any less favorable treatment as the Holder of such Allowed General Unsecured Claim may agree. Distributions to Holders of Allowed General Unsecured Claims shall be made on the Distribution Dates applicable to Allowed General Unsecured Claims. Class 4 Claims are Impaired. Holders of Class 4 Claims are entitled to vote to accept or reject the Plan.

(e) Class 5: Subordinated Claims (Impaired).

Class 5 consists of all Subordinated Claims. Holders of Subordinated Claims shall not receive or retain any property or interest in property on account of such Claims unless and until all Allowed Class 4 Claims and Liquidation Expenses have been Paid in Full. If all Allowed Class 4 Claims and Liquidation Expenses are Paid in Full, then any excess Cash in the Liquidating Trust shall be distributed Pro Rata to Holders of Allowed Subordinated Claims of record as of the Distribution Record Date, in full satisfaction, settlement and release of and in exchange for such Holders' Allowed Subordinated Claims. Distributions to Holders of Allowed Subordinated Claims shall be made, if at all, as soon as practicable after the later of (i) the date that is thirty (30) days after the date that the Liquidating Trustee determines that all Allowed Class 4 Claims and Liquidation Expenses have been Paid in Full, and (ii) the first Distribution Date that is at least ten (10) Business Days after the date such a Holder's Subordinated Claim becomes an Allowed Claim. Class 5 Claims are Impaired. Class 5 is deemed to have rejected the Plan and, therefore, Holders of Subordinated Claims are not entitled to vote to accept or reject the Plan.

(f) Class 6: Interests (Impaired).

Class 6 consists of all Interests. It is anticipated that the value of the Liquidating Trust Assets will be less than the total amount of Allowed Claims against the Estate. Accordingly, Holders of Interests shall not receive any Distributions on account of such Interests. Class 6 Interests are Impaired. Class 6 is deemed to have rejected the Plan and, therefore, Holders of Interests are not entitled to vote to accept or reject the Plan.

**C. Treatment of Officers and Managers**

On the Effective Date, the authority, power and incumbency of the persons then acting as officers and managers of the Debtor shall be terminated and such officers and managers shall be deemed to have resigned, without further action by the Debtor. The Plan will be administered and actions will be taken in the name of the Debtor through the Liquidating Trustee, subject to the Liquidating Trust Oversight Committee (discussed in more detail below).

**D. The Liquidating Trust<sup>2</sup>**

**1. Establishment of Liquidating Trust**

On the Effective Date, the Liquidating Trust shall be created pursuant to the Liquidating Trust Agreement to provide Distributions to Holders of Allowed Claims. The Liquidating Trust shall be established as a "liquidating trust" within the meaning of Treasury Regulation § 301.7701-4(d) and as a "grantor trust" within the meaning of 26 U.S.C. §§ 671-679, for the sole purpose of liquidating the Estate and making Distributions to Holders of Allowed Claims in accordance with the Plan and Treasury Regulation ~~section~~§ 301.7701-4(d), and with no objective to continue or engage in the conduct of a trade or business. The Liquidating Trust shall consist of all Assets of the Debtor including, but not limited to, Rights of Action and Cash. As of the Effective Date, the Debtor shall have no further obligations to fund any amounts into the Liquidating Trust and shall bear no further financial obligation of any kind to the Liquidating

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<sup>2</sup> The following contains only a summary of certain provisions governing the Liquidating Trust and Liquidating Trustee. For a full description of the provisions governing the Liquidating Trust and Liquidating Trustee, please see the Plan and the Liquidating Trust Agreement.



Trustee. The Liquidating Trust Agreement shall be filed with the Bankruptcy Court prior to the Confirmation Hearing as part of the Plan Supplement.

## **2. Transfer of Powers**

### **(a) Debtor's Professionals**

Upon the Effective Date, the Debtor's Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms; (ii) applications for and/or objections to Professional Fee Claims; and (iii) motions or other actions seeking enforcement or implementation of the provisions of the Plan or the Confirmation Order. The Professionals retained by the Debtor shall not be entitled to compensation and reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in connection with Fee Applications pending on the Effective Date or filed after the Effective Date. The Liquidating Trustee, in its discretion, may retain and compensate former Professionals of the Debtor.

### **(b) Dissolution of the Creditors' Committee**

Upon the Effective Date, the Creditors' Committee shall automatically dissolve, whereupon its members, Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms; (ii) applications for and/or objections to Professional Fee Claims; (iii) requests for compensation and reimbursement of expenses pursuant to section 503(b) of the Bankruptcy Code for making a substantial contribution to the Chapter 11 Case; and (iv) motions or other actions seeking enforcement or implementation of the provisions of the Plan or the Confirmation Order. The Professionals retained by the Creditors' Committee and the respective members thereof shall not be entitled to compensation and reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in connection with Fee Applications pending on the Effective Date or filed after the Effective Date. The Liquidating Trustee, in its discretion, may retain and compensate former Professionals of the Creditors' Committee.

### **(c) Succession by Liquidating Trustee**

The Creditors' Committee shall appoint the Liquidating Trustee and on the Effective Date, the Liquidating Trustee shall succeed to such powers and responsibilities as would have been applicable to the Debtor's officers, managers and Holders of Interests, and the Debtor shall be authorized to be dissolved without further action by its Holders of Interests, managers, or officers. All property of the Debtor not previously distributed to the Holders of Allowed Claims on the Effective Date, including, without limitation, title to any moneys held in escrow or separate segregated accounts during the pendency of the Chapter 11 Case, shall be transferred to the Liquidating Trust and managed by the Liquidating Trustee. The Liquidating Trustee shall make the Distributions required under the Plan in accordance with the terms thereof. The Liquidating

Trustee shall be deemed to be a judicial substitute for the Debtor and/or the Creditors' Committee as the party-in-interest in this Chapter 11 Case, under the Plan or in any judicial or administrative proceeding or appeal to which the Debtor or the Creditors' Committee is a party, consistent with section 1123(b)(3)(B) of the Bankruptcy Code and applicable non-bankruptcy law. In all outstanding adversary proceedings commenced by the Debtor or the Creditors' Committee and existing as of the Effective Date, the Liquidating Trustee shall be deemed to be automatically substituted as the Plaintiff.

### **3. Appointment of Liquidating Trustee**

The Liquidating Trustee shall be appointed by the Creditors' Committee and identified in the Plan Supplement. The Liquidating Trustee shall have the rights, powers and duties that are set forth in Section 7.3 of the Plan and in the Liquidating Trust Agreement. The terms of the Liquidating Trustee's employment, including the Liquidating Trustee's duties and compensation, to the extent not set forth in the Plan or the Liquidating Trust Agreement, may be set forth in an agreement to be executed between the Liquidating Trustee, the Debtor and Creditors' Committee, and any such agreement shall be filed with the Bankruptcy Court prior to the Confirmation Hearing. In general, the Liquidating Trustee shall serve as trustee of the Liquidating Trust in a fiduciary capacity. The primary duties of the Liquidating Trustee shall be to manage the Liquidating Trust and the Liquidating Trust Assets, to reconcile Claims asserted against the Debtor's Estate, to pursue and, where appropriate, settle Rights of Action held by the Debtor, and to make Distributions to Holders of Allowed Claims. The rights, powers and duties of the Liquidating Trustee are designed to further the ultimate goal of maximizing Distributions to Beneficiaries of the Liquidating Trust under the Plan.

### **4. Liquidating Trust Oversight Committee**

The Creditors' Committee shall designate up to three Holders of General Unsecured Claims (to be identified in the Plan Supplement) as the members of the Liquidating Trust Oversight Committee, effective as of the Effective Date. The Liquidating Trust Oversight Committee shall have the specific rights and duties set forth in Section 7.4 of the Plan and in the Liquidating Trust Agreement and shall generally oversee the actions taken by the Liquidating Trustee.

### **5. Limitation of Liability**

None of the members of the Liquidating Trust Oversight Committee or the Liquidating Trustee, professionals engaged by or on behalf of such parties, or any duly designated agent or representative of the Liquidating Trust Oversight Committee or the Liquidating Trustee (each solely in his or her capacity as such), shall be liable for the act or omission of any other member, agent or representative of the Liquidating Trust Oversight Committee or the Liquidating Trustee, nor shall members of the Liquidating Trust Oversight Committee or the Liquidating Trustee be liable for any action taken, suffered or omitted to be taken in their representative capacity or in reliance on any provision of the Plan or the Liquidating Trust Agreement, as applicable, other than acts or omissions resulting from willful misconduct or gross negligence (which gross negligence or willful misconduct must be determined by a Final Order of a court of competent jurisdiction) by the members of the Liquidating Trust Oversight Committee, the Liquidating Trustee, or their

respective professionals, agents or representatives (each solely in his or her capacity as such). In no event shall the Liquidating Trust Oversight Committee or the Liquidating Trustee be liable or responsible for special, punitive, indirect, consequential or incidental loss or damages of any kind whatsoever to any Person (including without limitation lost profits), even if the Liquidating Trust Oversight Committee or the Liquidating Trustee has been advised of the likelihood of such loss or damage. The Liquidating Trust Oversight Committee and the Liquidating Trustee each may consult with professionals, and the advice or opinion of such professional(s) will be full and complete authorization and protection to the Liquidating Trust Oversight Committee and/or the Liquidating Trustee, and the Liquidating Trust Oversight Committee or the Liquidating Trustee, as applicable, shall incur no liability. The Liquidating Trust shall indemnify any action taken, suffered or omitted by the Liquidating Trust Oversight Committee or the Liquidating Trustee in accordance with such advice or opinion as provided for under Section 7.6 of the Plan.

## **6. Indemnification**

The Liquidating Trust shall indemnify the Indemnified Parties for, and shall hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable fees and expenses of their respective professionals), incurred without gross negligence or willful misconduct on the part of the Indemnified Parties (which gross negligence or willful misconduct, if any, must be determined by a Final Order of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Indemnified Parties in connection with the acceptance, administration, exercise and performance of their duties under the Plan or Liquidating Trust Agreement, as applicable. The costs and expenses incurred in enforcing the right of indemnification in the Plan shall be paid by the Liquidating Trust. The provisions of Sections 7.5 and 7.6 of the Plan shall survive the termination of the Liquidating Trust Agreement, and the resignation, replacement or removal of the Liquidating Trustee or the dissolution of the Liquidating Trust Oversight Committee.

## **7. No Security; Insurance**

The Liquidating Trustee shall be required to give a bond for the performance of his/her duties and all costs and expenses of procuring any such bond or surety shall be borne by the Liquidating Trust.

The Liquidating Trustee shall be authorized under the Plan to obtain all reasonably necessary insurance coverage for itself and its respective agents, and members of the Liquidating Trust Oversight Committee, including, but not limited to, coverage with respect to the liabilities, duties, obligations, errors and omissions of the Liquidating Trustee, which insurance coverage may, at the sole option of the Liquidating Trustee, be extended for a reasonable period after the closing of the Chapter 11 Case and termination of the Liquidating Trust Agreement, as applicable.

## **8. Liquidation Expense Reserve**

The Liquidating Trustee may, but shall not be obligated to, physically segregate and maintain separate accounts for the Liquidation Expense Reserve. The Liquidation Expense Reserve may be merely bookkeeping entries or accounting methodologies, which may be revised



from time to time, to enable the Liquidating Trustee to determine reserves and amounts to be paid to Holders of Allowed Claims.

#### **9. Resignation, Death or Removal of the Liquidating Trustee**

The Liquidating Trustee may resign at any time upon not less than thirty (30) days' written notice to the Bankruptcy Court and the Liquidating Trust Oversight Committee. Any party in interest may apply to the Bankruptcy Court at any time to remove the Liquidating Trustee upon a showing of cause. In the event of the death, resignation, or removal of the Liquidating Trustee, the Liquidating Trust Oversight Committee shall appoint a successor Liquidating Trustee or, in the event the Liquidating Trust Oversight Committee has been dissolved or is not able to obtain approval of a successor Liquidating Trustee, any party in interest (including, in the case of resignation, the Liquidating Trustee) may file a motion in the Bankruptcy Court to appoint a successor Liquidating Trustee. Counsel to the Liquidating Trustee shall file a notice with the Bankruptcy Court identifying any successor Liquidating Trustee. Any successor Liquidating Trustee shall not have any liability or responsibility for the acts or omissions of any of its predecessors.

#### **10. Termination of the Liquidating Trust**

Notwithstanding anything to the contrary in the Plan or the Liquidating Trust Agreement, the Liquidating Trust will terminate on or before the fifth (5th) anniversary of the Effective Date; provided, however, that, at any time within six (6) months of such termination, the Bankruptcy Court, upon motion by the Liquidating Trustee or any Beneficiary, may extend the term of the Liquidating Trust if such extension is determined to be in the best interests of the Beneficiaries; provided, further, that such extension or extensions shall not exceed three (3) years after the initial termination date, unless the Liquidating Trustee receives a favorable ruling from the IRS, or an opinion of counsel, that such extension will not adversely affect the status of the trust as a liquidating trust.

#### **11. Governance Action**

Any action under the Plan to be taken by or required of the Liquidating Trustee, including, as may be appropriate, dissolution of the Debtor and the amendment of organizational documents of the Debtor, as applicable, shall be authorized and approved in all respects, without any requirement of further action by the managers of or Holders of Interests in the Debtor.

#### **12. Effectuating Documents and Further Transfers**

The Debtor and, subsequently, the Liquidating Trustee, with approval of the Liquidating Trust Oversight Committee, if required, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan and the Liquidating Trust Agreement.

#### **13. Preservation of Rights**

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, OR IN ANY DOCUMENT, INSTRUMENT, RELEASE OR OTHER AGREEMENT ENTERED INTO BY THE DEBTOR INCLUDING IN CONNECTION WITH THE PLAN, THE CONFIRMATION ORDER OR ANY OTHER ORDERS OF THIS BANKRUPTCY COURT, IN ACCORDANCE WITH SECTION 1123(b) OF THE BANKRUPTCY CODE, ALL RIGHTS OF ACTION ARE PRESERVED NOTWITHSTANDING THE OCCURRENCE OF THE EFFECTIVE DATE OF THE PLAN. THE LIQUIDATING TRUSTEE MAY INVESTIGATE, ENFORCE, SUE ON, SETTLE OR COMPROMISE (OR DECLINE TO DO ANY OF THE FOREGOING) ANY OR ALL RIGHTS OF ACTION. THE LIQUIDATING TRUSTEE SHALL BE VESTED WITH THE RIGHTS, POWERS AND BENEFITS AFFORDED TO A "TRUSTEE" UNDER SECTIONS 704 AND 1106 OF THE BANKRUPTCY CODE.

The Plan and Liquidating Trust Agreement will effectuate the transfer of all Rights of Action to the Liquidating Trust. Such transferred Rights of Action may include, without limitation, the following:

- Any and all Rights of Action of any kind or character whatsoever, whether arising prior to, on or after the Petition Date, in contract or tort, at law or in equity, or under any other theory of law, held by the Debtor or its Estate, against any Person;
- Any and all Rights of Action arising out of breaches of duties imposed by law including, without limitation, breach of fiduciary duty by any Person owing such a duty to the Debtor, the Debtor in Possession and/or the Estate;
- Any and all Rights of Action relating to fraud, duress, mistake and usury;
- Rights of setoff, counterclaim or recoupment;
- Any and all Rights of Action for quantum meruit or unjust enrichment;
- Any and all Rights of Action against any Person related to its sale or possession of fabric or other goods owned by the Debtor;
- Rights to recharacterize and/or subordinate (under section 510 of the Bankruptcy Code) any Claim or Interest; and
- Rights and defenses relating to any Claim or Interest asserted against the Debtor and the Estate, including the right to object or seek estimation of any such Claim or Interest.
- Rights of Action and claims of the Debtor related to credit card interchange fees in that certain class action (or related actions) captioned *In re: Payment Card Interchange Fee and Merchant-Discount Antitrust Litigation*, Case No. 1:05-md-01720-JG-JO filed in the United States District Court for the Eastern District of New York.

For clarity, any Rights of Action related to or waived under the Plan, the Global Settlement Agreement or the Equity Settlement Agreement shall not be transferred to the Liquidating Trust.

In addition to the Rights of Action described above, the Debtor may possess other Rights of Action, including, but not limited to, breach of contract Claims, insurance adjustments or refunds, tax refunds, bank account surpluses, deposits and prepayments, unused retainers currently held by professionals, accounts receivable, escrows and other miscellaneous Assets.

#### **14. No Revesting of Assets**

Except as otherwise provided in the Plan, on the Effective Date, all Assets comprising the Estate of the Debtor shall vest in the Liquidating Trust, free and clear of all Claims, Liens, charges, encumbrances and interests of Holders of Claims or interests (except to the extent that such Claims, Liens, charges, encumbrances and/or interests have been reinstated, or as otherwise expressly provided in the Plan), which will become the Liquidating Trust Assets, to be held for the benefit of the Beneficiaries. Upon the transfer of the Assets to the Liquidating Trust, the Debtor shall have no further interest in or with respect to Claims, the Liquidating Trust Assets or the Liquidating Trust.

#### **15. Tax Treatment of Transfers to Liquidating Trust**

Unless the IRS requires otherwise, and except to the extent properly allocable to disputed claims (as discussed more fully below), any transfer of Assets to the Liquidating Trust for the benefit of the Beneficiaries, including, but not limited to, any transfer under Article VII of the Plan, is required by the Liquidating Trust to be treated for all federal income tax purposes by all parties involved as a deemed transfer of such Assets to the Beneficiaries followed by a deemed transfer by such Beneficiaries of such Assets to the Liquidating Trust. The Liquidating Trust requires that the Assets so transferred shall be valued consistently by the Liquidating Trustee and the Beneficiaries, including all valuations used for federal income tax purposes, and such Beneficiaries shall be treated as the grantors and deemed owners of the Liquidating Trust in accordance with 26 U.S.C. §§ 671-679.

#### **16. Exemption from Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under the Plan, including, without limitation, any transfer by the Debtor to the Liquidating Trust, transfer of Liquidating Trust Assets by the Liquidating Trustee to any entity, or any transfer pursuant to merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or transfers of tangible property, will not be subject to any stamp tax, recording tax, personal property tax, real estate transfer tax, sales or use tax or other similar tax. Unless the Bankruptcy Court orders otherwise, all sales, transfers and assignments of owned and leased property by the Debtor, its Estate, or the Liquidating Trust on or after the Effective Date, shall be deemed to have been in furtherance of, or in connection with, the Plan.

#### **17. Compensation of Liquidating Trustee and Professionals**

The fees and expenses of the Liquidating Trustee and its retained professionals shall be paid from the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement and payment of such fees and expenses shall not be subject to the approval of the Bankruptcy Court.

## **E. Reconciliation of Claims**

### **1. Resolution of Disputed Claims**

After the Effective Date, the Liquidating Trustee shall have the right to file objections to Claims and Interests, whether evidenced by a Proof of Claim or Proof of Interest, and to settle or withdraw such objections. The Liquidating Trustee shall also have the right to seek estimation of Claims and Interests. Further, the Liquidating Trustee shall have the right to amend the Debtor's Schedules, if necessary, to reduce a Claim or Interest. The Liquidating Trustee shall file and serve all objections to, or pleadings seeking estimation of, Claims and Interests upon the Holder of such Claims or Interests no later than 180 days after the later of the Effective Date or the date on which a Proof of Claim, Proof of Interest or request for payment is filed with the Bankruptcy Court (the "Claim Objection Deadline"). The Claim Objection Deadline may be extended by an Order of the Bankruptcy Court at the request of the Liquidating Trustee. The Claim Objection Deadline shall not apply to requests to reduce Claims as a result of mitigation, or objections under section 502(d) of the Bankruptcy Code or to the Liquidating Trustee's right to amend the Debtor's Schedules.

### **2. Rights of Subordination Preserved**

All rights of any Holder of a Claim or Interest (or the Liquidating Trustee) to seek or obtain subordination of another Claim or Interest based on contractual subordination or, only in the case of the Liquidating Trustee (or its designee or assignee), equitable subordination or subordination under section 510(b) of the Bankruptcy Code, is expressly preserved and may be asserted at any time prior to the Final Distribution Date. The right of the Liquidating Trustee (or its designee or assignee) to seek to recharacterize a Claim as an Interest, based on the true substance of the Claim, is also expressly preserved and may be asserted at any time prior to the Final Distribution Date.

### **3. Rights of Offset and Recoupment Preserved**

Except as otherwise provided in the Plan or the Confirmation Order, the Liquidating Trustee may, pursuant to applicable law, offset or recoup against any Claim or Interest (including for purposes of determining the Allowed amount of such Claim or Interest), any and all of the Claims and Rights of Action of any nature that the Liquidating Trust may hold against the Holder of such Claim or Interest; provided, however, that neither the failure of the Liquidating Trustee to do so nor the allowance of any such Claim or Interest that may be subject to setoff or recoupment shall constitute a waiver or release by the Liquidating Trustee of any setoff, recoupment or other Right of Action that he may have against such Holder. Confirmation of the Plan shall bar any right of setoff claimed by a Creditor unless such Creditor filed, prior to the Confirmation Date, a motion for relief from the automatic stay seeking the authority to effectuate such a setoff right. All defenses of any of the Debtors or the Plan Administrator, as the successor to the Debtors or otherwise with respect to any such motion, are hereby preserved. Section 8.14 of the Plan shall not apply to the application of any security deposits held by any of the Debtor's former/existing

landlords to secure the Debtor's obligations under a lease of non-residential real property between the Debtor and any such landlord.

## **F. General Rules Regarding Distributions Under The Plan**

### **1. Distribution Record Date**

As of the close of business on the Distribution Record Date, the Claims Register as maintained by the Claims Agent, the Debtor and/or the Liquidating Trustee shall be deemed closed. The Liquidating Trustee shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date. The Liquidating Trustee shall be required to recognize and deal for all purposes hereunder only with those record Holders of timely filed Claims identified on the Claims Register as of the close of business on the Distribution Record Date, to the extent applicable.

### **2. Funding of Distributions**

Except as otherwise provided in the Liquidating Trust Agreement, all Distributions to Holders of Allowed Claims shall be made by the Liquidating Trustee and funded by Cash that the Liquidating Trustee, in its sole discretion, determines is available for Distributions to Holders of Allowed Claims in accordance with the Plan.

### **3. No Distributions Pending Allowance**

Except as expressly provided in the Plan, no Distributions provided under the Plan shall be made on account of any Claim or Interest unless and until such Claim or Interest becomes an Allowed Claim or Allowed Interest.

### **4. Establishment of Disputed Claims Reserve**

For the purpose of maintaining adequate reserves for Disputed Claims, at the time of the first Distribution Date, the Liquidating Trustee shall establish, on the books and records of the Liquidating Trust, reserves equal to the Distribution(s) that would have been made to each Holder of a Disputed Claim or, if applicable, a Disputed Interest, if such Disputed Claim or Disputed Interest were an Allowed Claim or an Allowed Interest, respectively, in the asserted amount of the Disputed Claim or Disputed Interest, except as otherwise agreed by the Holder of such Disputed Claim or Disputed Interest, or as otherwise ordered by the Bankruptcy Court. The Disputed Claims Reserve may consist of book entries only and does not need to be a physically separate or segregated account. After a Disputed Claim is resolved, the Liquidating Trustee shall no longer account for such Claim in the Disputed Claims Reserve and the amount attributable to the Disallowed portion of the Disputed Claim, if any, shall be deemed to be Cash available for Pro Rata Distribution to Holders of Allowed Claims, in accordance with the Plan.

### **5. Distributions After Allowance**

Subject to the occurrence of the Effective Date, Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the Class of Claims in which such Claim is

classified. On the next Distribution Date (or earlier, in the discretion of the Liquidating Trustee) that is not less than ten (10) Business Days after the date that the order of the Bankruptcy Court allowing any Disputed Claim or Interest or holding that such Claim or Interest is otherwise Allowed becomes a Final Order, the Liquidating Trustee shall distribute to the Holder of such Claim or Interest any Distribution(s) that would have otherwise been made to such Holder if the Claim or Interest had been Allowed on the Effective Date, without any interest thereon. The Liquidating Trustee shall have the discretion to make Distributions from the Liquidating Trust, including with respect to amount, timing, reserves and other holdbacks. Pursuant to section 502(d) of the Bankruptcy Code, to the extent that a Holder of a Claim has received an avoidable transfer, such Holder shall not be entitled to receive any Distributions until such time as such Holder has returned the avoidable transfer (including in accordance with settlement arrangements or a Final Order).

#### **6. Waiver of Right to Bring Chapter 5 Avoidance Action**

Except as otherwise set forth herein, all Avoidance Actions shall be waived and released as of the Effective Date.

#### **7. Interest on Claims**

Postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim, other than to the extent payable under section 726(a)(5) of the Bankruptcy Code.

#### **8. Delivery of Distributions**

Subject to Rule 9010 of the Bankruptcy Rules, and except as otherwise provided in the Plan, Distributions to Holders of Allowed Claims shall be sent to the address of each of such Holders as set forth in the Schedules filed with the Bankruptcy Court, unless superseded by the address set forth on such Holder's Proof of Claim or Proof of Interest, or in a written notice delivered to the Liquidating Trustee and its counsel and filed on the docket of the Chapter 11 Case, to the extent that such notice is provided at least ten (10) Business Days before the applicable Distribution Date, by such Holders (or at the last known address of such Holders if no Proof of Claim or Proof of Interest is filed and there is no address in the Schedules, and the Liquidating Trustee has not been notified in writing of the address). If any Distribution to any Holder is returned as undeliverable, the Liquidating Trustee may, but shall not be required to, use reasonable efforts to determine the current address of such Holder, but no subsequent Distribution to any such Holder shall be made unless and until the Liquidating Trustee has determined the then current address of such Holder, at which time such Distribution shall be made to such Holder without interest. The Liquidating Trustee shall retain all amounts in respect of any undeliverable Distributions made by the Liquidating Trustee until such Distributions are claimed, subject to Section 8.8 of the Plan.

#### **9. Unclaimed Distributions**

If any Distribution is not claimed, or remains undeliverable under Section 8.7 of the Plan, by the Unclaimed Distribution Date applicable to such Distribution, such Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code, the respective Claim



shall be deemed expunged and such unclaimed Distribution(s) shall be available for Distribution to other Holders of Allowed Claims as part of the next Distribution, in accordance with the terms of the Plan. The Holder of any Claim or Interest for which a Distribution is deemed unclaimed property hereunder shall not be entitled to receive any future Distributions and shall be deemed to have relinquished all rights to any future Distributions and all such future Distributions shall be available for Distribution to other Holders of Allowed Claims under the Plan.

#### **10. Manner of Payment Under the Plan**

At the option of the Liquidating Trustee, any Distribution of Cash to be made pursuant to the Plan may be made by a check or wire transfer.

#### **11. Withholding and Reporting Requirements**

In connection with the Distributions made under the Plan, the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by any federal, state or local taxing authority. As a condition to the Holder of an Allowed Claim or Allowed Interest receiving any Distribution under the Plan, the Liquidating Trustee may serve notice on the Holder of a Claim or Interest requesting that such Holder provide its taxpayer identification number and such other information and certification as the Liquidating Trustee may deem necessary to comply with applicable tax reporting and withholding laws. The failure of a Holder of a Claim or Interest to provide the Liquidating Trustee with its tax withholding or reporting information within 90 days of the Liquidating Trustee's notice, will result in the Holder being treated in the same manner as the Holder of a Claim or Interest for which a Distribution is undeliverable or unclaimed, as described in Sections 8.7 and 8.8 of the Plan.

#### **12. Allocation of Plan or Liquidating Trust Distributions Between Principal and Interest**

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

#### **13. Special Provisions Regarding Insured Claims**

Distributions under the Plan shall not be made on account of Allowed Claims to the extent satisfied or to be satisfied from proceeds payable under any pertinent insurance policies.

##### **G. Executory Contracts and Unexpired Leases**

###### **1. Treatment of Executory Contracts and Unexpired Leases**

Under the Plan, all executory contracts and unexpired leases to which the Debtor is a party, except for any executory contract or unexpired lease that (a) has been assumed, assigned or rejected by the Debtor prior to the Effective Date, or (b) is the subject of a separate motion filed under section 365 of the Bankruptcy Code and pending on the Effective Date, shall be deemed

rejected within the meaning of section 365 of the Bankruptcy Code without further action of the Bankruptcy Court. Rejection of a contract or lease pursuant to Section 9.1 of the Plan shall not constitute an admission by the Debtor or the Liquidating Trustee that any such contract or lease is, in fact, an executory contract or unexpired lease or that the Debtor or Liquidating Trust has any liability thereunder.

Notwithstanding the foregoing, any agreements, documents or instruments relating thereto that are postpetition contracts shall continue to operate unaffected by the Plan, including, without limitation, the Liquidating Trust Agreement. Further, notwithstanding the foregoing, all Insurance Policies shall remain in full force and effect unless otherwise validly terminated, and issuers of such Insurance Policies shall remain responsible for Claims, in accordance with the terms and provisions of such Insurance Policies. The Debtor does not consider Insurance Policies that have expired as of the Effective Date (whether entered into prior or subsequent to the Petition Date) to be executory contracts subject to assumption or rejection. However, the issuers of Insurance Policies shall be responsible for continuing coverage obligations thereunder, regardless of the payment status of any retrospective or other insurance premiums.

Nothing in the Plan shall constitute or be deemed to be a waiver of any Right of Action that the Debtor may hold against any Persons, including, without limitation, any issuer under any Insurance Policy of the Debtor.

## **2. Deadline for Asserting Claims Arising from Rejection of Executory Contracts and Unexpired Leases under the Plan**

If the rejection of any executory contract or unexpired lease under the Plan results in damages to the other party or parties to such contract or lease, a Proof of Claim for such damages must be filed with the Claims Agent **on or before the date which is forty-five (45) days after the date on which notice of the Effective Date is served**. Unless otherwise ordered by the Bankruptcy Court, any Holder of a Claim for rejection damages against the Debtor who fails to timely file proof of such Claim shall not be treated as a Holder with respect to such Claim for purposes of voting and Distributions, and tardily filed Claims shall be subject to disallowance under section 502(b)(9) of the Bankruptcy Code. Moreover, such Holder shall not receive further notices regarding such Claim.

### **H. Retiree Benefits**

The Debtor has not funded or maintained any retiree benefit plans, funds or programs, as defined in section 1114 of the Bankruptcy Code, for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents for medical, surgical, or hospital care benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise). To the extent that any such retiree benefit plans, funds, or programs are found by the Bankruptcy Court to have existed, such plans, funds, or programs are hereby terminated and shall be deemed null and void effective immediately prior to the Petition Date. Accordingly, no such payments will be, or are required to be, made pursuant to section 1129(a)(13) of the Bankruptcy Code.

### **I. Releases, Exculpation and Injunction**



As part of the Plan, the Debtor seeks the following releases and injunctions, which, if approved, will be incorporated into the Confirmation Order.

### 1. Releases by the Debtor

As of the Effective Date, the Debtor, the Estate and their respective successors and assigns, including the Liquidating Trustee, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released the Released Parties from any and all Rights of Action whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon any act or omission, transaction, agreement, event or occurrence, taking place on or prior to the Effective Date in any way relating to the Debtor or the Chapter 11 Case, including, but not limited to the formulation, preparation, negotiation, dissemination, implementation, administration, confirmation or consummation of any version of the Plan, or the property to be distributed under the Plan, the Disclosure Statement concerning the Plan, any contract, employee pension, retirement or other benefit plan, instrument, release or other agreement or document created, modified, amended, terminated or entered into in connection with either the Plan or any agreement between the Debtor and any Released Party, or any other act taken or omitted to be taken in connection with the Debtor's Chapter 11 Case, except for Rights of Action against any Released Party resulting from the willful misconduct or gross negligence of such Released Party as determined by Final Order of a court of competent jurisdiction; provided, however, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies.

### 2. Releases by Holders of Claims

As of the Effective Date, to the fullest extent permitted by applicable law, each Holder of a Claim who does not opt out of the releases provided by Section 12.2 of the Plan shall be deemed to conclusively, absolutely, unconditionally, irrevocably and forever release, waive, and discharge the Released Parties from any and all Claims, demands, rights, defenses, actions, causes of action, suits, contracts, agreements, obligations, accounts, defenses, offsets, powers and privileges of any kind or character whatsoever, suspected or unsuspected, whether arising on or prior to the Effective Date, in contract or in tort, at law or in equity, or under any other theory of law, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, based in whole or in part upon any act or omission, transaction, agreement, event or occurrence, taking place on or prior to the Effective Date relating to the Debtor or the Chapter 11 Case, including, but not limited to any contract, employee pension, retirement or other benefit plan, or any other act taken or omitted to be taken in connection with the Debtor's business operations, Assets, liabilities or employees, or the Chapter 11 Case, except for Claims and causes of action against any Released Party resulting from the willful misconduct or gross negligence of such Released Party, as determined by Final Order of a court of competent jurisdiction; provided, however, that the foregoing shall not be a waiver of the right of any Holder of an Allowed Claim to receive Distributions in accordance with the Plan; provided, further, that nothing in Section 12.2 of the Plan shall prejudice the standing of the Liquidating Trustee to commence any derivative Rights of Action that existed as of the

**Petition Date; and provided, further, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies.**

**Holders of Class 4 Claims may opt-out of releasing Released Parties under Section 12.2 of the Plan, whether or not such Holders vote to reject the Plan, by checking the appropriate box on the Ballot. Each Holder of a Claim granting a release under Section 12.2 of the Plan shall be deemed to have accepted as its sole recourse on account of such released Claims and causes of action its right to receive Distributions on its Allowed Claim pursuant to the Plan.**

### **3. Exculpation**

**From and after the Effective Date, the Released Parties, the Indemnified Parties, the Liquidating Trust, and any property of such parties, or direct or indirect predecessor in interest to any of such parties, shall not have or incur any liability to any Person for any action taken, suffered or omitted to be taken in connection with or related to the Debtor, the Estate, the Liquidating Trust or the Chapter 11 Case, including, but not limited to formulating, preparing, disseminating, implementing, confirming, consummating or administering (a) the Plan (including soliciting acceptances or rejections thereof), (b) the Disclosure Statement or any contract, instrument, release or other agreement or document entered into or any action taken or omitted to be taken in connection with the Plan, and (c) any Distributions made pursuant to the Plan, except, in all cases, for acts or omissions constituting willful misconduct or gross negligence as determined by Final Order of a court of competent jurisdiction, and in all respects such parties shall be entitled to rely upon the advice of professionals with respect to their duties and responsibilities under the Plan, and such reliance shall form an absolute defense to any Claim, cause of action, or liability; provided, however, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies. Without limiting the generality of the foregoing, each of the Released Parties, the Indemnified Parties, and the Liquidating Trust shall be entitled to and granted protections of section 1125(e) of the Bankruptcy Code.**

### **4. Injunction**

**The Confirmation Order shall provide, among other things, that all Persons who have held, hold or may hold Claims against or interests in any of the Released Parties are, with respect to any such Claims or interests, permanently enjoined from and after the Confirmation Date from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or any of its property; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtor or any of its property; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor or any of its property; (d) asserting any right of setoff, directly or**

indirectly, against any obligation due by the Debtor or any of its property, except as contemplated or allowed by the Plan; (e) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan; and (f) prosecuting or otherwise asserting any right, Claim or cause of action released pursuant to the Plan; provided, however, that nothing in Section 12.4 of the Plan shall be construed to enjoin any of the Debtor's Rights of Action, whether commenced by the Debtor, the Liquidating Trust or the Liquidating Trustee, that may exist in connection with any Insurance Policy of the Debtor; provided, further, that nothing in Section 12.4 of the Plan shall prejudice the standing of the Liquidating Trustee to commence any derivative Rights of Action that existed as of the Petition Date; and provided, further, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies.

## **J. Certain Other Plan Provisions**

### **1. Payment of United States Trustee Fees**

All outstanding quarterly fees due to the United States Trustee, pursuant to 28 U.S.C. § 1930 that have not been paid shall be paid by the Debtor on or before the Effective Date. Thereafter, the Liquidating Trust shall be responsible for the payment of quarterly fees to the United States Trustee until such time as the Debtor's case is closed.

### **2. Establishment of Bar Date for Administrative Expense Claims Arising after January 31, 2013.**

The deadline for filing requests for allowance of Administrative Expense Claims arising after January 31, 2013, other than for statutory fees of the United States Trustee, shall be the date that is forty-five (45) days after the date on which notice of the Effective Date is served (the "Final Administrative Claims Bar Date"). This shall also be the deadline by which Professionals must file final Fee Applications or other requests for payment of Professional Fee Claims incurred through the Effective Date (to the extent not already Allowed). Administrative Expense Claims arising on or before January 31, 2013 were subject to the Initial Administrative Claims Bar Date of April 1, 2013. Administrative Expense Claims arising under Section 503(b)(9) of the Bankruptcy Code were subject to the General Bar Date of September 10, 2012.

### **3. Amendments to Claims; Filing of Claims after Effective Date**

Except as expressly permitted by the Plan or order of the Bankruptcy Court, a Claim may not be filed or increased by amendment or supplement without the authorization of the Bankruptcy Court or consent of the Liquidating Trustee, and any such Claim or amendment shall, unless the Bankruptcy Court otherwise directs, be Disallowed in full and expunged without further order of the Bankruptcy Court; provided, however, that a Claim may be decreased by amendment, supplement or withdrawal.

### **4. Post-Confirmation Jurisdiction of the Bankruptcy Court**

Notwithstanding confirmation of the Plan or the occurrence of the Effective Date, the Bankruptcy Court will retain such jurisdiction as is legally permissible, as described in more particular detail in Article XIII of the Plan.

## **VII. CONFIRMATION OF THE PLAN**

### **A. Introduction**

The Bankruptcy Code requires the Bankruptcy Court to determine whether a plan of reorganization complies with the technical requirements of chapter 11 of the Bankruptcy Code. It requires further that a plan proponent's disclosures concerning such plan have been adequate and have included information concerning all payments made or promised by the debtor in connection with the plan.

To confirm the Plan, the Bankruptcy Court must find that all of these and certain other requirements have been met. Thus, even if the requisite vote is achieved for Class 2 and/or Class 4, the Bankruptcy Court must make independent findings respecting the Plan's conformity with the requirements of the Bankruptcy Code before it may confirm the Plan. Some of these statutory requirements are discussed below.

### **B. Conditions Precedent to the Effective Date**

The Effective Date may not occur, and thus the Plan will not become effective, unless (a) the Confirmation Order, in form and substance satisfactory to the Debtor (with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld) shall have been entered (if the Confirmation Order is appealed, such appeal shall be deemed moot as of the Effective Date); (b) the provisions of the Confirmation Order are nonseverable and mutually dependent; (c) the appointment of the Liquidating Trustee shall have been confirmed by the Confirmation Order or order of the Bankruptcy Court; and (d) all actions, documents and agreements necessary to implement the provisions of the Plan, including, without limitation, the Liquidating Trust Agreement, shall have been effected or executed and delivered.

The Debtor (with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld) may at any time, without leave or order of the Bankruptcy Court and without any other formal action, waive or modify condition (d) above.

If the Plan is confirmed, the Debtor expects the Effective Date to occur not later than thirty (30) days after the Confirmation Date.

### **C. Acceptance**

The Plan is predicated on either Class 2 or Class 4 voting to accept the Plan. Provided Class 2 or Class 4 accepts the Plan and the Plan otherwise complies with the statutory requirements of section 1129(a) of the Bankruptcy Code, the Debtor will have the right to request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code as to those Classes deemed to reject the Plan. Section 1129(b) permits confirmation of a plan notwithstanding rejection by one or more classes of impaired claims or impaired interests if a bankruptcy court finds that the plan does not discriminate unfairly and is "fair and equitable" with respect to the rejecting class or

classes. This procedure is commonly referred to in bankruptcy parlance as “cram down.” Because certain Impaired Classes will be deemed to have rejected the Plan by virtue of receiving no Distributions thereunder, the Debtor will seek a cram down of such Classes at the Confirmation Hearing.

#### **D. Plan Confirmation**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129(a) of the Bankruptcy Code have been satisfied with respect to the Plan. Section 1129(a) of the Bankruptcy Code requires that, among other things, for a plan to be confirmed:

- The plan complies with the applicable provisions of the Bankruptcy Code.
- The proponents of the plan have complied with the applicable provisions of the Bankruptcy Code.
- The plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the proponents under the plan for services or for costs and expenses in, or in connection with, the debtor’s chapter 11 case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.
- The proponents have disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a manager, officer, or voting trustee of the debtor, an affiliate of the debtor participating in the plan with the debtor, or a successor to the debtor under the plan. The appointment to, or continuance in, such office of such individual, must be consistent with the interests of creditors and equity security holders and with public policy and the proponents must have disclosed the identity of any insider that the reorganized debtors will employ or retain, and the nature of any compensation for such insider.
- With respect to each class of impaired claims or interests, either each holder of a claim or interest of such class has accepted the plan, or will receive or retain under the plan on account of such claim or interest, property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated on such date under chapter 7 of the Bankruptcy Code.
- Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that allowed administrative expenses and priority claims (other than tax claims) will be paid in full on the effective date and that priority tax claims will receive on account of such claims regular installment cash payments, over a period ending not later than five years after the date the order for relief was entered in the bankruptcy case, of a total value, as of the effective date, equal to the allowed amount of such claim.

- If a class of claims is impaired, at least one (1) impaired class of claims has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim in such class.
- Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan (unless, as here, such liquidation is proposed in the plan).

Subject to receiving the requisite acceptance of the Plan by either Class 2 or Class 4, and the “cram down” of Classes not receiving any Distribution under the Plan, the Debtor believes that (i) the Plan satisfies all of the statutory requirements of chapter 11 of the Bankruptcy Code, (ii) the Debtor has complied or will have complied with all of the requirements of chapter 11, and (iii) the Plan has been proposed in good faith.

Set forth below is a more detailed summary of the relevant statutory confirmation requirements.

### **1. Best Interests of Holders of Claims and Interests; Liquidation Analysis**

The “best interests of creditors” test requires that a bankruptcy court find either that all members of each impaired class have accepted a plan or that each holder of an allowed claim or interest of each impaired class of claims or interests will receive or retain under a plan on account of such claim or interest property of a value, as of the effective date of such plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date.

To estimate what Holders of Claims would receive if the Debtor was hypothetically liquidated under chapter 7 of the Bankruptcy Code, the Bankruptcy Court must first determine the aggregate dollar amount that would be available if the Debtor’s Chapter 11 Case was converted to a chapter 7 case and the Debtor’s Assets were liquidated by a chapter 7 trustee. The proceeds available for satisfaction of Allowed Claims would consist of the Cash held by the Debtor, as well as any remaining Assets reducible to Cash, at the time of the conversion to chapter 7. Any such Cash amount would then be reduced by the amount of any Allowed Secured Claims, the costs and expenses of the chapter 7 case and additional Allowed Administrative Claims, and other priority Claims that may result from the use of chapter 7 for the purposes of liquidation. The costs of liquidation under chapter 7 would include fees payable to a trustee in bankruptcy, as well as those that might be payable to his or her attorneys and to other professionals that such trustee may engage, plus any unpaid expenses incurred by the Debtor during the Chapter 11 Case that would be allowed in the chapter 7 case, such as compensation for the Debtor’s and Creditors’ Committee’s Professionals. These Claims would be paid in full out of the Debtor’s Cash before the balance of the Cash would be made available to Holders of General Unsecured Claims. In addition, other Claims might arise upon conversion to a chapter 7 case that might dilute the Cash available to Holders of Allowed General Unsecured Claims. Moreover, additional Claims against the Debtor’s Estate might arise as the result of the establishment of a new bar date for the filing of Claims in the chapter 7 case of the Debtor.



The liquidation analysis attached hereto as Exhibit B provides a summary of the proceeds from a liquidation of the Debtor's Assets available to Holders of Allowed Claims and Allowed Interests, assuming a chapter 7 liquidation in which one or more trustees appointed by the Bankruptcy Court would liquidate the Debtor's Estate. In summary, the Debtor believes that Holders of Allowed Claims and Allowed Interests would receive under the Plan not less than what they would receive in a chapter 7 liquidation. That belief is based upon, among other factors: (a) the additional administrative expenses involved in the appointment of a trustee and a new set of attorneys, accountants and other chapter 7 professionals not familiar with the Debtor or the Claims against and Interests in the Debtor; (b) the substantial time which would elapse before creditors would receive any distribution in respect of their Claims due to a trustee's need to become familiar with the Chapter 11 Case and the Debtor's books and records, and the trustee's duty to conduct independent investigations; and (c) any additional General Unsecured Claims, or other Claims, that may be asserted against the Debtor after conversion to chapter 7.

## **2. Financial Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation should not be likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor unless such liquidation or further reorganization is proposed in the plan. The Plan is a liquidating plan. Accordingly, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

## **3. Acceptance by Impaired Classes**

Under section 1124 of the Bankruptcy Code, a class is "impaired" under a plan unless, with respect to each claim or interest in such class, such plan: (i) leaves unaltered the legal, equitable and contractual rights to which the claim or interest entitles the holder of such claim or interest; or (ii) notwithstanding any contractual provision or applicable law which entitles the holder of such claim or interest to demand or receive accelerated payment on account of a default, cures any default, reinstates the original maturity of the obligation, compensates the holder for any damages incurred as a result of reasonable reliance on such provision or law and does not otherwise alter the legal, equitable or contractual rights of such holder based upon such claim or interest. A class that is not impaired under a plan of reorganization is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. Under the Plan, Classes 1 (Priority Non-Tax Claims) and 3 (Other Secured Claims) are Unimpaired and Classes 2 (Madden Secured Claim), 4 (General Unsecured Claims), 5 (Subordinated Claims) and 6 (Interests) are Impaired. Under the Plan, it is not expected that Holders of Class 5 Claims (Subordinated Claims, respectively) or Holders of Class 7 Interests will receive any Distributions.

## **4. Cram Down**

**PROVIDED THAT CLASS 2 OR CLASS 4 HAS VOTED TO ACCEPT THE PLAN, THE DEBTOR WILL SEEK TO CRAM DOWN THE PLAN AGAINST CLASSES OF HOLDERS OF CLAIMS OR INTERESTS THAT HAVE OR ARE DEEMED TO HAVE VOTED TO REJECT THE PLAN.**

If all the applicable requirements for confirmation of a plan are met as set forth in sections 1129(a)(1) through (16) of the Bankruptcy Code, except that one or more of classes of impaired claims or interests have failed to accept such plan pursuant to section 1129(a)(8) of the Bankruptcy Code, a debtor may nevertheless request that the bankruptcy court confirm the plan over the dissenting class or classes in accordance with section 1129(b) of the Bankruptcy Code, a process referred to as “cram down.” Because certain Impaired Classes will be deemed to have voted to reject the Plan by virtue of receiving no Distributions thereunder, the Debtor will seek a “cram down” of such Classes at the Confirmation Hearing (the Debtor will similarly seek a “cram down” of either Class 2 or Class 4 should one of these voting Classes vote to reject the Plan). Under the “cram down” provisions of the Bankruptcy Code set forth in section 1129(b) of the Bankruptcy Code, the Debtor must demonstrate to the Bankruptcy Court that (i) the Plan does not discriminate unfairly with respect to each non-accepting Impaired Class, (ii) the Plan is fair and equitable with respect to each non-accepting Impaired Class, and (iii) at least one Impaired Class has accepted the Plan.

As used by the Bankruptcy Code, the phrases “discriminate unfairly” and “fair and equitable” have narrow and specific meanings unique to bankruptcy law. A plan does not discriminate unfairly if claims or interests in different classes but with similar priorities and characteristics receive or retain property of similar value under a plan. By establishing separate Classes for the Holders of each type of Claim and by treating each Holder of a Claim in each Class identically, the Plan has been structured so as to meet the “unfair discrimination” test of section 1129(b) of the Bankruptcy Code.

The Bankruptcy Code sets forth different standards for establishing that a plan is “fair and equitable” with respect to a dissenting class, depending on whether the class is comprised of secured or unsecured claims or interests. In general, section 1129(b) of the Bankruptcy Code permits confirmation notwithstanding non-acceptance by an impaired class if that class and all junior classes are treated in accordance with the “absolute priority” rule, which requires that the dissenting class be paid in full before any junior class may receive anything under the plan.

The Debtor believes that the Plan satisfies the “cram down” requirements of the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court will determine that the Plan meets the requirements of section 1129(b) of the Bankruptcy Code.

## **VIII. EFFECT OF CONFIRMATION**

### **A. Discharge**

Pursuant to section 1141(d)(3) of the Bankruptcy Code, because the Plan is a liquidating plan, occurrence of the Effective Date will not discharge the Claims against the Debtor; provided, however, that no Holder of an Allowed Claim or Interest may, on account of such Claim or Interest, seek or receive any payment from, or seek recourse against, the Debtor, the Liquidating Trust, the Liquidating Trustee, the Released Parties, their respective property, successors and assigns, except as expressly provided in the Plan.

### **B. Binding Effect**

On and after the Effective Date, the provisions of the Plan shall bind all present and former Holders of Claims against, or Interests in, the Debtor and such Holders' successors and assigns, whether the Claim or Interest of such Holder is Impaired under the Plan and whether such Holder has filed a Proof of Claim or Interest or accepted the Plan. 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 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 case under the Bankruptcy Code.

## **IX. CERTAIN RISK FACTORS TO BE CONSIDERED**

**HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HEREWITH AND/OR INCORPORATED HEREIN BY REFERENCE), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.**

### **A. Allowance of Claims**

Distributions to Beneficiaries will be affected by the pool of Allowed Claims and the amount of Liquidation Expenses, in particular, the costs associated with the investigation and prosecution of Rights of Action and reconciliation of Disputed Claims. However, the Debtor has not yet fully analyzed the Claims filed against its Estate. Upon the completion of further analyses of the Proofs of Claim, which will likely lead to further Claims objection litigation and related matters, the total amount of Claims that ultimately become Allowed claims in this Chapter 11 Case may differ from the Debtor's estimates, which are reflected in this Disclosure Statement, and such difference could be material. With respect to Class 4 Claims in particular, the actual ultimate aggregate amount of Allowed General Unsecured Claims in such Class may differ significantly from the estimate set forth herein. Accordingly, the amount of Pro Rata Distributions that may be received by a particular Holder of an Allowed General Unsecured Claim may be either adversely or favorably affected by the aggregate amount of Claims ultimately allowed in Class 4.

### **B. Post-Confirmation Date Administrative Expense Claims**

Because the bar date for filing Administrative Expense Claims arising after January 31, 2013 will occur after the Confirmation Date, there is a risk that Administrative Expense Claims that are, to date, unknown to the Debtor or the Creditors' Committee could be filed and, subsequently, Allowed, which could adversely affect Distributions to Beneficiaries.

### **C. Litigation Risks**

Other than as set forth herein, the Debtor does not believe that there are any risks respecting pending or threatened litigation against it that would significantly or materially negatively affect confirmation of the Plan.

#### **D. Tax Audits**

The States of New York and California and the City of New York, among other governmental units, have each audited tax returns filed by the Debtor for one or more tax years from 2007 through 2012, and the Debtor has been involved in negotiations with the applicable governmental units known to have conducted such audits. The known audits have been completed and as a result the Debtor believes that it has been able to reasonably estimate the aggregate amount of Priority Tax Claims. However, other governmental units may file Priority Tax Claims or Administrative Expense Claims that the Debtor has not accounted for in its estimates. The Debtor would likely object to any new claims, including tax-based claims, filed after the date hereof as untimely given the passage of the applicable bar dates with respect to such claims. However, if such unknown Priority Tax Claims or Administrative Expense Claims are Allowed, it could have a detrimental effect on Distributions to Beneficiaries.

#### **E. Objection to Classifications**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. The Debtor believes that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Notwithstanding anything to the contrary herein, the Debtor and the Liquidating Trustee expressly reserve the right to object to the amount, priority or classification of any Claim.

#### **F. Non-Confirmation of the Plan**

Even if Class 2 and/or Class 4 (the voting Classes) accept the Plan, there is a risk that the Bankruptcy Court may not confirm the Plan if the cram down requirements discussed above are not met. The Debtor believes that the Plan satisfies all the requirements for confirmation of a liquidating plan under the Bankruptcy Code. There can be no assurance, however, that the Bankruptcy Court will also conclude that the requirements for confirmation of the Plan have been satisfied.

#### **G. Delays of Confirmation and/or Effective Date**

Any delay in confirmation and effectiveness of the Plan could result in, among other things, increased Administrative Claims. These or any other negative effects of delays in confirmation or effectiveness of the Plan could endanger the ultimate approval of the Plan by the Bankruptcy Court and reduce recoveries to Beneficiaries.

### **X. CERTAIN FEDERAL INCOME TAX CONSEQUENCES**

**IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that to the extent that this Article X and attachments are considered to be U.S. federal tax advice, such advice is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.**

## **A. General**

A DESCRIPTION OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN IS PROVIDED BELOW SOLELY FOR THE PURPOSE OF COMPLIANCE WITH SECTION 1125(a) OF THE BANKRUPTCY CODE. THE DESCRIPTION IS BASED ON THE INTERNAL REVENUE CODE, TREASURY REGULATIONS, JUDICIAL DECISIONS AND ADMINISTRATIVE DETERMINATIONS, ALL AS IN EFFECT ON THE DATE OF THIS DISCLOSURE STATEMENT. CHANGES IN ANY OF THESE AUTHORITIES OR IN THEIR INTERPRETATION MAY HAVE RETROACTIVE EFFECT, WHICH MAY CAUSE THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO DIFFER MATERIALLY FROM THE CONSEQUENCES DESCRIBED BELOW. NO RULING HAS BEEN REQUESTED FROM THE IRS AND NO LEGAL OPINION HAS BEEN REQUESTED FROM COUNSEL CONCERNING ANY TAX CONSEQUENCE OF THE PLAN, AND NO TAX OPINION OR ADVICE IS GIVEN BY THIS DISCLOSURE STATEMENT.

THIS DESCRIPTION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTOR OR HOLDERS OF CLAIMS AND INTERESTS. FOR EXAMPLE, THE DESCRIPTION DOES NOT ADDRESS ISSUES OF SPECIAL CONCERN TO CERTAIN TYPES OF TAXPAYERS, SUCH AS DEALERS IN SECURITIES, LIFE INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, TAX EXEMPT ORGANIZATIONS AND FOREIGN TAXPAYERS, NOR DOES IT ADDRESS TAX CONSEQUENCES TO HOLDERS OF INTERESTS IN THE DEBTOR. THIS DESCRIPTION DOES NOT DISCUSS THE POSSIBLE STATE TAX OR NON-U.S. TAX CONSEQUENCES THAT MIGHT APPLY TO THE DEBTOR OR TO HOLDERS OF CLAIMS AND INTERESTS.

FOR THESE REASONS, THE DESCRIPTION THAT FOLLOWS IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND PROFESSIONAL TAX ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR INTEREST. HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT WITH THEIR OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

## **B. Tax Consequences of Payment of Allowed Claims Pursuant to Plan Generally**

The federal income tax consequences of the implementation of the Plan to the Holders of Allowed Claims and Interests will depend, among other things, on the consideration to be received by the Holder, whether the Holder reports income on the accrual or cash method, whether the Holder receives Distributions under the Plan in more than one taxable year, whether the Holder's Claim is Allowed or Disputed on the Effective Date, and whether the Holder has taken a bad debt deduction or a worthless security deduction with respect to its Claim or Interest.

### **1. Recognition of Gain or Loss**

In general, a Holder of an Allowed Claim or Interest should recognize gain or loss equal to the amount realized under the Plan in respect of its Claim or Interest less the Holder's tax basis in the Claim or Interest. Any gain or loss recognized in the exchange may be long term or short term

capital gain or loss or ordinary income or loss, depending upon the nature of the Allowed Claim and the Holder, the length of time the Holder held the Claim and whether the Claim was acquired at a market discount. If the Holder realizes a capital loss, the Holder's deduction of the loss may be subject to limitation. The Holder's tax basis for any property received under the Plan generally will equal the amount realized. The Holder's amount realized generally will equal the sum of the Cash and the fair market value of any other property received by the Holder under the Plan on the Effective Date or a subsequent Distribution Date, less the amount (if any) treated as interest, as discussed below.

## **2. Post-Effective Date Distributions**

Because certain Holders of Allowed Claims, including Disputed Claims, that ultimately become Allowed Claims, may receive Distributions after the Effective Date, the imputed interest provisions of the Internal Revenue Code may apply and cause a portion of the subsequent Distributions to be treated as interest. Additionally, because Holders may receive Distributions with respect to an Allowed Claim in a taxable year or years following the year of the initial Distribution, any loss and a portion of any gain realized by the Holder may be deferred. All Holders of Allowed Claims are urged to consult their tax advisors regarding the possible application of (or ability to elect out of) the "installment method" of reporting with respect to their Claims.

## **3. Receipt of Interest**

Holders of Allowed Claims will recognize ordinary income to the extent that they receive Cash or property, including interests in the Liquidating Trust, that is allocable to accrued but unpaid interest which the Holder has not yet included in its income. The Holder may take the position that, consistent with Section 8.16 of the Plan, the amounts received pursuant to the Plan are allocable first to principal, up to the full amount of principal, and only then to interest. However, the proper allocation of Plan consideration between principal and interest is unclear and Holders of Allowed Claims should consult their own tax advisors in this regard.

## **4. Bad Debt or Worthless Securities Deduction**

A Holder who receives in respect of an Allowed Claim or Allowed Interest an amount less than the Holder's tax basis in the Claim or Interest may be entitled in the year of receipt (or in an earlier or later year) to a bad debt deduction in some amount under section 166(a) of the Internal Revenue Code or a worthless securities deduction under section 165(g) of the Internal Revenue Code. The rules governing the character, timing and amount of bad debt and worthless securities deductions place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims and Allowed Interests, therefore, are urged to consult their tax advisors with respect to their ability to take such a deduction.

### **C. Treatment of the Liquidating Trust and its Beneficial Owners**

Except to the extent allocable to disputed claims (as discussed more fully below), consistent with the principles of Revenue Procedure 94-45, 1994-2 C.B. 684, as of the Effective Date, there will be a deemed transfer of the Debtor's Assets from the Debtor to the Beneficiaries,



and then from the Beneficiaries to the Liquidating Trust. The Liquidating Trustee will have the obligation to make Distributions to the Beneficiaries (including Holders of Disputed Claims, once resolved) from the Liquidating Trust in accordance with the Plan. The Debtor believes that the Liquidating Trust will qualify as a liquidating trust, as defined in Treasury Regulation [section](#) § 301.7701-4(d), and as a “grantor trust” within the meaning of 26 U.S.C. §§ 671-679 and would, therefore, be taxed as a grantor trust, of which the Beneficiaries will be treated as the grantors. The Liquidating Trust shall make a timely election pursuant to Treasury Regulation § 1.468B-9(c)(2)(ii) pursuant to which any portion of the Liquidating Trust<sup>2</sup>~~s-assets~~ [Assets](#) that are properly allocable to disputed claims shall be treated as a disputed ownership fund.

Except to the extent that that income of the Liquidating Trust is properly allocated to disputed claims (as discussed more fully below), no federal income tax should be imposed on the Liquidating Trust itself on the income earned or gain recognized by the Liquidating Trust and, instead, the Beneficiaries would be taxed for federal income tax purposes on their allocable shares of such income and gain in each taxable year, whether or not they received any Distributions from the Liquidating Trust in such taxable year.

Consistent with the requirements of its election pursuant to Treasury Regulation § 1.468B-9(c)(3)(ii), the Liquidating Trust would pay federal tax, computed at corporate federal tax rates, on the taxable income and gain allocable to Holders of Disputed Claims on behalf of such Holders and, when such Disputed Claims were ultimately resolved, Holders whose Disputed Claims were determined to be Allowed Claims would receive Distributions from the Liquidating Trust net of taxes which the Liquidating Trust had previously paid on their behalf.

If the Internal Revenue Service successfully seeks to require a different characterization of the Liquidating Trust, the Liquidating Trust could be subject to tax on all of its net income and gains, with the result that the amounts distributable to the Beneficiaries could be reduced.

Each Beneficiary will be required to include in income the Beneficiary’s allocable share, if any, of any income, gain, loss, deduction or credit recognized by the Liquidating Trust, including interest or dividend income earned on bank accounts and other investments. If the Liquidating Trust sells or otherwise disposes of a Liquidating Trust Asset in a transaction in which gain or loss is recognized, each Beneficiary will be required to include in income gain or loss equal to the difference between (i) the Beneficiary's pro rata share of the Cash or property received in exchange for the asset sold or otherwise disposed of, and (ii) the Beneficiary's adjusted basis in the Beneficiary's pro rata share of the asset. The character and amount of any gain or loss will be determined by reference to the character of the asset sold or otherwise disposed of. Beneficiaries will be required to report any income or gain recognized on the sale or other disposition of a Liquidating Trust Asset whether or not the Liquidating Trust distributes the sales proceeds currently and may, as a result, incur a tax liability before the Holder receives a Distribution from the Liquidating Trust. The Liquidating Trustee will distribute annually IRS Form 1041s (Schedule K-1s) with the Beneficiary’s income or gain/loss allocation.

#### **D. Information Reporting and Withholding**

Under the Internal Revenue Code's backup withholding rules, the Holder of an Allowed Claim may be subject to backup withholding with respect to Distributions or payments made

pursuant to the Plan unless the Holder comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact, or provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of tax. Holders of Allowed Claims may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

## **XI. ALTERNATIVES TO LIQUIDATING PLAN**

The Debtor has ceased all business operations and has sold substantially all of its Assets. There is no alternative to the Plan that would envision a continuation of the Debtor as an ongoing business. Since there is no alternative to liquidation, the Plan embodies what the Debtor considers to be the best and most cost-effective method of completing the orderly liquidation and distribution of its Assets to Holders of Allowed Claims. If the Plan is not confirmed, then the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code. In that event, the Debtor would cease its liquidation and distribution efforts and a trustee would be appointed to liquidate and distribute the remaining Assets of the Estate. As more fully described in the discussion of the best interest test above, and as set forth in the Liquidation Analysis attached as Exhibit B hereto, the Debtor believes that each Holder of an Allowed Claim or Allowed Interest will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would so receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. The Debtor further believes that a liquidation under chapter 7 would significantly delay distributions.

## **XII. CONCLUSION AND RECOMMENDATION**

The Debtor believes that confirmation and implementation of the Plan will entitle each Holder of an Allowed Claim or Allowed Interest to receive not less than it would receive if the Debtor were to liquidate and distribute its Assets under chapter 7 of the Bankruptcy Code, in which case there would likely be a delay in making distributions and creditors would likely receive smaller distributions. As indicated in its letter to Holders of Claims enclosed herewith, the Creditors' Committee supports the Plan. Thus, the Debtor and the Creditors' Committee recommend confirmation and implementation of the Plan as the best possible outcome for creditors.

The Debtor urges Holders of Class 2 and Class 4 Claims to vote to accept the Plan and to evidence such acceptance by returning their Ballots so they will be received by the Balloting Agent not later than [\_\_\_\_\_, 2014] at 5:00 p.m. (Prevailing Eastern Time).

Respectfully submitted,

**BETSEY JOHNSON LLC**

By: /s/ Aron Arias  
Aron Arias  
Chief Financial Officer

**EXHIBIT A**

**(The Plan)**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	x	
	:	
In re:	:	Chapter 11
	:	
BETSEY JOHNSON LLC,	:	Case No. 12-11732 (JMP)
	:	
Debtor.	:	
	:	
-----	x	

**FIRST AMENDED CHAPTER 11 PLAN OF LIQUIDATION  
OF BETSEY JOHNSON LLC**

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Dated: ~~December 20, 2013~~ January 28, 2014  
New York, New York

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The Debtor proposes the following [First Amended](#) Chapter 11 Plan of Liquidation, pursuant to the provisions of chapter 11 of the Bankruptcy Code:

## ARTICLE I

### DEFINITIONS

For purposes of the Plan, except as otherwise expressly provided or unless the context otherwise requires, all capitalized terms have the meanings ascribed to them in Article I of the Plan. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or Bankruptcy Rules, as applicable.

1.1 “Administrative Budget” means the initial budget and any subsequent budget, each for a six-month period commencing on the Effective Date, setting forth in reasonable detail the anticipated Post-Confirmation Expenses of the Liquidating Trust, together with any amendments or modifications thereto, as prepared by the Liquidating Trustee.

1.2 “Administrative Claim” means any Administrative Expense Claim or Professional Fee Claim.

1.3 “Administrative Expense Claim” means any right to payment constituting a cost or expense of administration of the Estate allowed under sections 503(b), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code; provided, however, Administrative Expense Claims do not include Professional Fee Claims.

1.4 “Allowed” means, with reference to any Claim or Interest, (a) any Claim or Interest against the Debtor in a liquidated amount, proof of which was filed within the applicable period of limitation fixed by the Bankruptcy Court in accordance with Rule 3003(c)(3) of the Bankruptcy Rules, (b) if no Proof of Claim or Proof of Interest was so filed, any Claim or Interest against the Debtor which has been listed by the Debtor in its Schedules, as such Schedules may be amended from time to time in accordance with Rule 1009 of the Bankruptcy Rules, as liquidated in amount and not disputed or contingent, (c) any Claim arising from the recovery of property under sections 550 or 553 of the Bankruptcy Code, filed within the applicable period of limitations fixed in accordance with Bankruptcy Rule 3002(c)(3) or as otherwise ordered by the Bankruptcy Court, and allowed in accordance with section 502(h) of the Bankruptcy Code or (d) any Claim deemed as Allowed by the Plan or a separate agreement with the Debtor or Liquidating Trustee approved by Final Order of the Bankruptcy Court; provided, however, that as to each of (a), (b) and (c) of the foregoing, either (i) no objection to the allowance thereof has been interposed within the applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules or a Final Order, or (ii) an objection has been interposed, in which case such Claim or Interest is Allowed only to the extent it has been allowed (whether in whole or in part) by a Final Order.

1.5 “Assets” means all assets (and any proceeds thereof) of the Debtor, of any nature whatsoever, including, without limitation, all property of the Estate under and pursuant to section

541 of the Bankruptcy Code, Cash, Rights of Action, and the Debtor's rights, interests and property, real and personal, tangible and intangible.

1.6 "Avoidance Action(s)" means all claims and causes of action arising under chapter 5 of the Bankruptcy Code or under applicable non-bankruptcy law to the extent made applicable under chapter 5 of the Bankruptcy Code.

1.7 "Ballot" means each of the ballot forms distributed to Holders of Class 2 or Class 4 Claims on which such Holders are to indicate acceptance or rejection of the Plan.

1.8 "Balloting Agent" means Donlin, Recano & Company, Inc., 419 Park Avenue South, Suite 1206, New York, New York 10016.

1.9 "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§101 et seq., as now in effect or hereafter amended.

1.10 "Bankruptcy Court" means the United States District Court for the Southern District of New York with jurisdiction over this Chapter 11 Case and, to the extent of any reference made pursuant to section 157 of title 28 of the United States Code, the United States Bankruptcy Court for the Southern District of New York, or any court having competent jurisdiction to enter the Confirmation Order.

1.11 "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, and the Local Rules of the Bankruptcy Court.

1.12 "Beneficiaries" means all Holders of Allowed General Unsecured Claims entitled to receive Distributions from the Liquidating Trust pursuant to the Plan and the Liquidating Trust Agreement.

1.13 "Business Day" means any day (i) other than Saturday, Sunday, a legal holiday or other day on which commercial banks in the State of New York are authorized or required by law to close, and (ii) as further defined in Bankruptcy Rule 9006(a).

1.14 "Cash" means legal tender of the United States of America.

1.15 "Chapter 11 Case" means the case filed in the Bankruptcy Court by the Debtor on the Petition Date under chapter 11 of the Bankruptcy Code, styled In re Betsey Johnson LLC, Case No. 12-11732 (JMP).

1.16 "Claim" has the meaning set forth in section 101(5) of the Bankruptcy Code, including any Secured Claim, Administrative Claim, Priority Claim, General Unsecured Claim and Subordinated Claim.

1.17 "Claim Objection Deadline" means the date that is 180 days after the later of (i) the Effective Date, or (ii) the date on which a Proof of Claim, Proof of Interest or request for payment is filed with the Bankruptcy Court. The Claim Objection Deadline may be extended for cause by an order of the Bankruptcy Court at the request of the Liquidating Trustee.



1.18 “Claims Agent” means Donlin, Recano & Company, Inc., 419 Park Avenue South, Suite 1206, New York, New York 10016.

1.19 “Claims Register” means the list maintained by the Claims Agent listing all Claims filed, or Scheduled in this Chapter 11 Case, as may be amended from time to time or superseded by a new claims register to be maintained by the Liquidating Trustee or its agent.

1.20 “Class” means a group of Claims or Interests classified by the Plan pursuant to section 1122(a)(1) of the Bankruptcy Code.

1.21 “Class [ ]” means a Claim or Interest in the particular Class of Claims or Class of Interests identified and described in Article V of the Plan.

1.22 “Confirmation Date” means the date on which the Confirmation Order is entered on the docket of this Chapter 11 Case by the Bankruptcy Court.

1.23 “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider confirmation of this Plan pursuant to sections 1128 and 1129 of the Bankruptcy Code.

1.24 “Confirmation Order” means the order of the Bankruptcy Court confirming this Plan and approving the transactions contemplated therein, together with subsequent orders, if any, approving modifications to the Plan.

1.25 “Creditors’ Committee” means the statutory committee of unsecured creditors appointed in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code.

1.26 “Debtor” means Betsey Johnson LLC.

1.27 “Debtor in Possession” means the Debtor in its capacity as debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

1.28 “Disallowed” means a Claim or Interest, or any portion thereof, that (i) has been disallowed by a Final Order; (ii) is (x) not Scheduled or is Scheduled as zero or as contingent, disputed or unliquidated, and (y) as to which no Proof of Claim or Proof of Interest has been timely filed or deemed timely filed by the Bankruptcy Court; (iii) has been withdrawn by agreement of the Debtor, the Creditors’ Committee or the Liquidating Trustee and the Holder thereof; (iv) has been withdrawn by the Holder thereof; or (v) any Claim or Interest that is not Allowed as of the Final Distribution Date.

1.29 “Disclosure Statement” means the disclosure statement relating to this Plan, including the exhibits and schedules thereto, as the same may be amended, modified or supplemented from time to time.

1.30 “Disputed” means a Claim or Interest that (a) is the subject of an objection or a motion to estimate or request to subordinate, (b) is subject to the review of the Liquidating Trustee, or (c) has been filed as unliquidated or contingent, in whole or in part.

1.31 “Disputed Claims Reserve” means the reserve established by the Liquidating Trustee, on the books and records of the Liquidating Trust, equal to the Distribution(s) that would have been made to each Holder of a Disputed Claim or, if applicable, a Disputed Interest, if such Disputed Claim or Disputed Interest were an Allowed Claim or Allowed Interest, respectively, in the amount asserted on the Proof of Claim or Proof of Interest or in any pleading requesting payment of an Administrative Claim, except as otherwise agreed by the Holder of a Disputed Claim or Disputed Interest, or as otherwise ordered by the Bankruptcy Court; however, the Disputed Claims Reserve may consist of book entries only and does not need to be a physically separate or segregated account.

1.32 “Distributable Cash” means all Liquidating Trust Assets in the form of Cash, as of any Distribution Date, that the Liquidating Trustee, in its sole discretion, determines is available for Distribution to Holders of Allowed Claims after (i) all Allowed Claims entitled to higher priority and Liquidation Expenses have been Paid in Full, and (ii) accounting for the Liquidation Expense Reserve and the Disputed Claims Reserve.

1.33 “Distribution” means a payment and/or distribution of Cash or other consideration to be made to Holders of Allowed Claims in accordance with the terms and conditions of this Plan.

1.34 “Distribution Date” means any date on which a Distribution is made under the Plan to Holders of Allowed Claims by the Liquidating Trustee or its designee, which date(s) shall occur as determined to be appropriate by the Liquidating Trustee in its sole discretion.

1.35 “Distribution Record Date” means the date fixed by Final Order of the Bankruptcy Court for determining the Holders of Claims that are entitled to receive a Distribution under this Plan, or if the Bankruptcy Court does not fix such date, the Voting Record Date.

1.36 “Effective Date” means a Business Day as soon as practicable after the Confirmation Date, as specified by the Debtor, in consultation with the Creditors’ Committee, on which (i) no stay of the Confirmation Order is in effect, and (ii) the conditions to the effectiveness of the Plan specified in Article X hereof have been satisfied or waived.

1.37 “Estate” means the postpetition estate of the Debtor created by section 541 of the Bankruptcy Code.

1.38 “Equity Settlement Agreement” means that certain Settlement Agreement by and among the Debtor, the Creditors’ Committee, Betsey Johnson, Chantal Bacon, BJ Vines, Inc., Castanea Family Holdings LLC, Castanea Family Investments LLC and Castanea Partners Fund III, LP executed on November 20, 2013 compromising any potential claims or causes of action that might otherwise have been pursued by the Debtor or the Creditors’ Committee against Betsey Johnson, Chantal Bacon, BJ Vines, Inc., Castanea Family Holdings LLC, Castanea Family Investments LLC and Castanea Partners Fund III, LP.

1.39 “Fee Application” means an application of a Professional, pursuant to sections 328, 330, 331 and/or 503 of the Bankruptcy Code, for allowance of compensation and reimbursement of expenses in the Chapter 11 Case.

1.40 “Final Administrative Claims Bar Date” means the date that is forty-five days after the date on which notice of the Effective Date is served, and shall be the deadline for filing requests for allowance of Administrative Expense Claims arising after January 31, 2013 (other than for statutory fees of the United States Trustee), which shall be the date that is forty-five (45) days after the date on which notice of the Effective Date is served.

1.41 “Final Decree” means the decree contemplated under Bankruptcy Rule 3022 closing the Chapter 11 Case. “Final Distribution Date” means the date on which a final Distribution is made to Holders of Allowed Claims, as the case may be, which date shall be determined by the Liquidating Trustee after (i) the liquidation into Cash or abandonment of all Liquidating Trust Assets, and (ii) collection of other sums due or otherwise remitted or returned to the Liquidating Trust.

1.43 “Final Order” means an order, ruling or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket of such court, (i) which has not been reversed, modified or amended; (ii) which is not stayed; (iii) the time to appeal from or to seek review of, rehearing, reconsideration or petition for certiorari has expired; and (iv) which is no longer subject to review, reversal, modification or amendment due to the expiration of time or mootness; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule, may be filed relating to such order, ruling or judgment shall not cause such order, ruling or judgment to not be a “Final Order.”

1.44 “General Bar Date” means September 10, 2012, the deadline for filing non-governmental Proofs of Claim against the Debtor, including administrative expense requests pursuant to section 503(b)(9) of the Bankruptcy Code. “General Unsecured Claim” means any unsecured Claim against a Debtor that is not an Administrative Claim, a Priority Claim, a Secured Claim or a Non-Compensatory Penalty Claim.

1.46 “Holder” means the beneficial owner of any Claim or Interest.

1.47 “Holders of Class C Shares” means all present and former Holders of Class C Shares of Betsey Johnson LLC, other than Jonathan Friedman.

1.48 “Impaired” has the meaning ascribed thereto in section 1124 of the Bankruptcy Code.

1.49 “Initial Administrative Claims Bar Date” means April 1, 2013.

1.50 “Indemnified Parties” means the Liquidating Trust Oversight Committee and each of its members in their capacity as such, the Liquidating Trustee, and their respective heirs, beneficiaries, estates, agents, employees, officers, directors, principals, professionals and other representatives, each in his or her capacity as such; provided however, Betsey Johnson, Chantal Bacon, BJ Vines, Inc., Castanea Family Holdings LLC, Castanea Family Investments LLC and Castanea Partners Fund III, LP and all parents, subsidiaries, or affiliates of any such entities are not Indemnified Parties.

1.51 “Insurance Policy” means any policy of insurance and any agreements relating thereto covering the Debtor or its Assets, officers, members, managers, employees and

fiduciaries, or that may be available to provide coverage for Claims against the Debtor or any of the foregoing, including, without limitation, any general liability, property, casualty, umbrella or excess liability policy(ies), errors and omissions, director and officer or similar executive, fiduciary and organization liability policy(ies) (A, B or C coverage), and any tail with respect thereto.

1.52 “Interest” means any “equity security,” as such term is defined in section 101(16) of the Bankruptcy Code, in the Debtor, in addition to all shares, partnership, membership or other ownership rights or interests, units, unit appreciation rights, warrants, options, or any other rights to purchase, acquire or sell shares or partnership, membership or other ownership interests, each of the foregoing as to the Debtor.

1.53 “IRS” means the Internal Revenue Service.

1.54 “Lien” has the meaning assigned to such term in section 101(37) of the Bankruptcy Code (but a lien that has been avoided under chapter 5 of the Bankruptcy Code shall not constitute a Lien).

1.55 “Liquidating Trust” means the grantor trust established pursuant to the terms of this Plan and the Liquidating Trust Agreement, to which the Debtor’s Assets will be transferred on the Effective Date.

1.56 “Liquidating Trust Agreement” means the trust agreement for the Liquidating Trust, to be included in the Plan Supplement.

1.57 “Liquidating Trust Assets” means the Debtor’s Assets after being transferred to the Liquidating Trust on the Effective Date, pursuant to the Plan and in accordance with the Liquidating Trust Agreement.

1.58 “Liquidating Trust Oversight Committee” means a committee comprised of not more than three (3) Holders of General Unsecured Claims, to be designated by the Creditors’ Committee in the Plan Supplement, to succeed to the interests of the Creditors’ Committee as of the Effective Date for the purposes of overseeing the expenditures by and conduct of the Liquidating Trustee in administering the Liquidating Trust and the Liquidating Trust Assets, as more fully set forth in the Liquidating Trust Agreement.

1.59 “Liquidating Trustee” means the trustee of the Liquidating Trust, appointed pursuant to the terms of the Liquidating Trust Agreement and Article VII of the Plan, and any successor trustee(s) that may be appointed. The initial Liquidating Trustee will be selected by the Creditors’ Committee and identified in the Plan Supplement.

1.60 “Liquidation Expense Reserve” means the reserve established by the Liquidating Trustee on the books of the Liquidating Trust for all reasonable costs, expenses and fees incurred, or estimated to be incurred, in connection with administering the Liquidating Trust and the Liquidating Trust Assets.

1.61 “Liquidation Expenses” means any fees, costs and expenses associated with the preservation, maintenance or disposition of the Liquidating Trust Assets (including without

limitation, fees owed to the United States Trustee, Liquidating Trustee fees, indemnity reserves, attorneys' fees, the fees of professionals and other Persons retained by the Liquidating Trustee, occupancy costs, personnel-related expenses, and any taxes imposed on the Liquidating Trust or in respect of the Liquidating Trust Assets), and any other expenses determined by the Liquidating Trustee, in its sole discretion, to be necessary to complete the liquidation and winding down of the Debtor, its Estate and the Liquidating Trust after the Effective Date.

1.62 “Local Rules” means the Local Bankruptcy Rules for the Southern District of New York.

1.63 “Madden” means, any of the following entities, both individually and collectively, as may be applicable: Steven Madden, Ltd. and two of its wholly-owned subsidiaries, BJ Acquisition, LLC and BJ Agent LLC.

1.64 “Madden Secured Claim” means the Secured Claim held by Madden as set forth in the Madden Settlement Agreement.

1.65 “Madden Settlement Agreement” means the Settlement Agreement by and among the Debtor, the Creditors' Committee, Steven Madden, Ltd. and BJ Acquisition, LLC, dated June 28, 2012, which was approved by the Bankruptcy Court by order dated July 24, 2012.

1.66 “Non-Compensatory Penalty Claim” means a Claim, secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary or punitive damages, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the Holder of such Claim.

1.67 “Non-Debtor Released Parties” means Jonathan Friedman, Susan Falk, Aron Arias, Juan Marcos Hill and Steven Berg, each of whom was an officer and/or manager of the Debtor at some point during the period from and after the Petition Date; provided however, Betsey Johnson, Chantal Bacon, BJ Vines, Inc., Castanea Family Holdings LLC, Castanea Family Investments LLC and Castanea Partners Fund III, LP and all parents, subsidiaries, or affiliates of any such entities are not Non-Debtor Released Parties, provided further however that such parties are being released in connection with the Equity Settlement Agreement.

1.68 “Official Bankruptcy Forms” means the Official Bankruptcy Forms, prescribed by the Judicial Conference of the United States, the observance and use of which is required pursuant to Bankruptcy Rule 9009, as such forms may be amended, revised or supplemented from time to time.

1.69 “Other Secured Claims” means a Secured Claim held by a creditor other than Madden.

1.70 “Paid in Full” means the payment of the entire amount of (i) a Liquidation Expense, including the establishment of any Liquidation Expense Reserve, or (ii) an Allowed Claim or Allowed Interest, including the payment of post-petition interest at the Plan Rate to the extent entitled to interest under the Bankruptcy Code.

1.71 “Person” means an individual, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, association, joint venture, trust, estate, unincorporated organization, or a governmental unit or any agency or political subdivision thereof.

1.72 “Petition Date” means April 26, 2012, the date on which the Debtor filed its petition under chapter 11 of the Bankruptcy Code, commencing this Chapter 11 Case.

1.73 “Plan” means this chapter 11 plan of liquidation, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof.

1.74 “Plan Rate” means the federal judgment rate of interest specified in 28 U.S.C. § 1961(a) in effect on the Effective Date.

1.75 “Plan Supplement” means the supplemental appendix to the Plan, to be filed with the Bankruptcy Court prior to the Confirmation Hearing, that will contain, among other things, the Liquidating Trust Agreement and any other material agreements as may be necessary or appropriate to implement or effectuate the Plan, which shall, in each case, be in form and substance reasonably satisfactory to the Creditors’ Committee.

1.76 “Priority Claim” means any Priority Non-Tax Claim or Priority Tax Claim.

1.77 “Priority Non-Tax Claim” means any Claim of a kind specified in sections 507(a)(4), (5), (6), (7) or (9) of the Bankruptcy Code.

1.78 “Priority Tax Claim” means any Claim of a governmental unit of the kind specified in section 507(a)(8) or 507(c) of the Bankruptcy Code. All such Allowed Priority Tax Claims shall exclude all claimed (i) penalties not for actual pecuniary loss, and (ii) interest accruing after the Petition Date.

1.79 “Pro Rata” means with respect to any Distribution to a Holder of an Allowed Claim entitled to Distribution from the Liquidating Trust, a proportionate share, so that the ratio of (a) the amount of property to be distributed on account of such Allowed Claim or Allowed Interest in the same Class to (b) the amount to be distributed on account of all Allowed Claims in the same Class is the same as the ratio of (A) the amount of such Allowed Claim to (B) the aggregate amount of all Allowed Claims in the same Class.

1.80 “Professional” means any professional or other Person employed in the Chapter 11 Case pursuant to section 327, 328 or 1103 of the Bankruptcy Code or otherwise, and seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to sections 328, 330, 331 and 503(b) of the Bankruptcy Code or in accordance with the terms of this Plan.

1.81 “Professional Fee Claim” means a Claim for compensation and/or reimbursement of expenses under sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code for services rendered to the Debtor or the Creditors’ Committee prior to the Effective Date.



1.82 “Proof of Claim or Proof of Interest” means a proof of Claim or Interest filed in the Chapter 11 Case pursuant to section 501 of the Bankruptcy Code and/or any order of the Bankruptcy Court, together with supporting documents.

1.83 “Released Parties” means (a) the Debtor, (b) the Non-Debtor Released Parties, (c) Professionals, (d) the Estate, (e) the Creditors’ Committee, and (f) the members of the Creditors’ Committee serving in such capacity.

1.84 “Rights of Action” means any and all claims (as used in this definition, within the meaning of section 101(5) of the Bankruptcy Code), demands, rights, defenses, actions, causes of action, third-party claims, counterclaims, crossclaims, suits, contracts, agreements, obligations, accounts, defenses, offsets, powers and privileges of any kind or character whatsoever, known or unknown, suspected or unsuspected, whether arising prior to, on or after the Petition Date, in contract or in tort, at law or in equity, or under any other theory of law, held by the Debtor, Debtor in Possession or Estate against any Person, including, but not limited to: (i) rights of setoff, counterclaim or recoupment; (ii) claims on contracts for breaches of duties imposed by law; (iii) the right to object to Claims; (iv) such claims and defenses as fraud, mistake, duress and usury; (v) claims for quantum meruit or unjust enrichment; (vi) claims against any parties related to their sale or possession of fabric or other goods owned by the Debtor; and (vii) all Avoidance Actions.

1.85 “Scheduled” with respect to any Claim, means a Claim listed on the Schedules.

1.86 “Schedules” means the schedules of Assets, liabilities and executory contracts, and the statements of financial affairs filed on the Official Bankruptcy Forms by the Debtor pursuant to section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules and statements have been or may be supplemented or amended from time to time in accordance with Bankruptcy Rule 1009.

1.87 “Secretary of State” means the Office of the Secretary of State for the state of Delaware, the state in which the Debtor was formed.

1.88 “Secured Claim” means a Claim secured by an enforceable Lien on Assets of the Debtor to the extent of the value of such Assets, as determined in accordance with section 506(a) of the Bankruptcy Code.

1.89 “Subordinated Claim” means a Claim against the Debtor that is subordinated to all Allowed Claims, other than to a Class 5 Claim, which Claim is (a) subordinated pursuant to section 510(b) or (c) of the Bankruptcy Code, or (b) a Non-Compensatory Penalty Claim.

1.90 “Unclaimed Distribution Date” means 90 days after the actual date that a Distribution, or request for information under Section 8.15 of the Plan, is made.

1.91 “Unimpaired” means, when used in reference to a Claim, a Claim that is not “impaired” within the meaning of section 1124 of the Bankruptcy Code.

1.92 “United States Trustee” means the Office of the United States Trustee for the Southern District of New York (Region 2).

1.93 “Voting Record Date” means [\_\_\_\_\_], 2014.

## ARTICLE II

### INTERPRETATION; APPLICATION OF DEFINITIONS AND RULES OF CONSTRUCTION

#### 2.1 Rules of Interpretation.

For purposes of the Plan, unless otherwise specified herein: (a) all Article or Section references in this Plan are to the respective Article or Section of this Plan; (b) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar meaning refer to this Plan as a whole and not to any particular Article, Section, Subsection or Clause contained in this Plan; (c) any reference to a Person as a Holder of a Claim or Interest includes that Person’s successors and assigns; (d) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; and (e) the rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of this Plan.

#### 2.2 Computation of Time.

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

## ARTICLE III

### PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS

#### 3.1 Administrative Claims.

Except to the extent that the Holder of an Allowed Administrative Claim agrees to less favorable treatment and only to the extent that such Claim has not already been satisfied, each Holder of an Allowed Administrative Claim shall be entitled to receive, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Administrative Claim, Cash in an amount equal to the amount of its Allowed Administrative Claim. Distributions to Holders of Allowed Administrative Claims shall be made as soon as practicable after the date that a Holder’s Claim becomes an Allowed Administrative Claim; provided, however, that Allowed Administrative Claims representing obligations incurred in the ordinary course of business of the Debtor after the Petition Date shall be Paid in Full in accordance with the terms and conditions of the particular transactions and any applicable agreements. Holders of Administrative Claims are not entitled to vote to accept or reject the Plan.

#### 3.2 Priority Tax Claims.

Except to the extent that the Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, and only to the extent that such Claim has not already been satisfied, each Holder of an Allowed Priority Tax Claim shall be entitled to receive, in full satisfaction,

settlement, release and discharge of and in exchange for its Allowed Priority Tax Claim, Cash in an amount equal to the amount of its Allowed Priority Tax Claim. Distributions to Holders of Allowed Priority Tax Claims shall be made as soon as practicable after the date that a Holder's Claim becomes an Allowed Priority Tax Claim. Holders of Priority Tax Claims are not entitled to vote to accept or reject the Plan.

#### ARTICLE IV

##### CLASSIFICATION OF CLAIMS AND INTERESTS

Pursuant to section 1122 of the Bankruptcy Code, all Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below.

- (a) Class 1 (Unimpaired): Priority Non-Tax Claims. Class 1 consists of all Priority Non-Tax Claims.
- (b) Class 2 (Impaired): Madden Secured Claim. Class 2 consists of the Madden Secured Claim.
- (c) Class 3 (Unimpaired): Other Secured Claims. Class 3 consists of all Other Secured Claims.
- (d) Class 4 (Impaired): General Unsecured Claims. Class 4 consists of all General Unsecured Claims.
- (e) Class 5 (Impaired): Subordinated Claims. Class 5 consists of all Subordinated Claims.
- (f) Class 6 (Impaired): Interests. Class 6 consists of all Interests

#### ARTICLE V

##### TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS UNDER THE PLAN

###### 5.1 Designation of Treatment.

The treatment set forth in this Article V shall be accorded to, in full final and complete satisfaction thereof, Claims against, and Interests in, the Debtor designated by Class. No Claim or Interest shall entitle the Holder thereof to any Distribution pursuant to this Plan unless, and only to the extent that, such Claim or Interest is Allowed, and has not already been paid, released or otherwise settled prior to the Effective Date. The treatment of Claims and Interests provided for in Article V shall be without prejudice to the subordination of any Claim or Interest under section 510 of the Bankruptcy Code, by agreement or under applicable non-bankruptcy law.

5.2 Classes of Claims or Interests.

(a) Class 1: Priority Non-Tax Claims.

Except to the extent that the Holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, and only to the extent that such Claim has not already been satisfied, each Holder of an Allowed Priority Non-Tax Claim shall receive, in full satisfaction, settlement and release of and in exchange for such Claim, Cash in an amount equal to the amount of such Allowed Priority Non-Tax Claim on the first Distribution Date that is at least ten (10) Business Days after the date that such Claim becomes an Allowed Priority Non-Tax Claim. Class 1 Claims are Unimpaired. Class 1 is deemed to have accepted the Plan and, therefore, Holders of Priority Non-Tax Claims are not entitled to vote to accept or reject the Plan.

(b) Class 2: Madden Secured Claim.

Class 2 consists of the Madden Secured Claim. The Madden Secured Claim will be treated and paid in accordance with the terms of the Madden Settlement Agreement in full satisfaction, settlement and release of the Madden Secured Claim. As is provided in the Madden Settlement Agreement, and for the avoidance of doubt, the "Net Proceeds" (as defined in the Madden Settlement Agreement) of the collateral securing the Madden Secured Claim, or proceeds deriving therefrom, shall be split between the Liquidating Trust and Madden at a ratio of 38:62 (in favor of Madden). Distributions on the Madden Secured Claim shall be made on the first Distribution Date to the extent not already distributed. The Class 2 Claim is Impaired. Madden is entitled to vote its Class 2 Claim to accept or reject the Plan.

(c) Class 3: Other Secured Claims.

Class 3 consists of all Other Secured Claims. At the sole option of the Liquidating Trustee, each Holder of an Allowed Other Secured Claim shall be entitled to receive, to the extent that such Claim is not already satisfied, in full satisfaction, settlement, release and discharge of and in exchange for its Allowed Other Secured Claim, either (a) the collateral securing such Holder's Allowed Other Secured Claim, (b) Cash in an amount equal to the amount of such Holder's Allowed Other Secured Claim, or (c) any other less favorable treatment as may be agreed upon by the Liquidating Trustee and such Holder. Distributions to Holders of Allowed Other Secured Claims shall be made on the first Distribution Date that is at least ten (10) Business Days after the date that such Holder's Claim becomes an Allowed Other Secured Claim. Class 3 Claims are Unimpaired. Class 3 is deemed to have accepted the Plan and, therefore, Holders of Other Secured Claims are not entitled to vote to accept or reject the Plan.

(d) Class 4: General Unsecured Claims.

Class 4 consists of all General Unsecured Claims. Each Holder of an Allowed General Unsecured Claim of record as of the Distribution Record Date shall be entitled to receive, in full satisfaction, settlement and release of and in exchange for such Holder's Allowed General Unsecured Claim, (i) Cash in an amount equal to such Holder's Pro Rata share of Distributable Cash, or (ii) any less favorable treatment as the Holder of such Allowed General Unsecured Claim may agree. Distributions to Holders of Allowed General Unsecured Claims shall be made on the Distribution Dates applicable to Allowed General Unsecured Claims. Class

4 Claims are Impaired. Holders of Class 4 Claims are entitled to vote to accept or reject the Plan.

(e) Class 5: Subordinated Claims.

Class 5 consists of all Subordinated Claims. Holders of Subordinated Claims shall not receive or retain any property or interest in property on account of such Claims unless and until all Allowed Class 4 Claims and Liquidation Expenses have been Paid in Full. If all Allowed Class 4 Claims and Liquidation Expenses are Paid in Full, then any excess Cash in the Liquidating Trust shall be distributed Pro Rata to Holders of Allowed Subordinated Claims of record as of the Distribution Record Date, in full satisfaction, settlement and release of and in exchange for such Holders' Allowed Subordinated Claims. Distributions to Holders of Allowed Subordinated Claims shall be made, if at all, as soon as practicable after the later of (i) the date that is thirty (30) days after the date that the Liquidating Trustee determines that all Allowed Class 4 Claims and Liquidation Expenses have been Paid in Full, and (ii) the first Distribution Date that is at least ten (10) Business Days after the date such a Holder's Subordinated Claim becomes an Allowed Claim. Class 5 Claims are Impaired. Class 5 is deemed to have rejected the Plan and, therefore, Holders of Subordinated Claims are not entitled to vote to accept or reject the Plan.

(f) Class 6: Interests.

Class 6 consists of all Interests. It is anticipated that the value of the Liquidating Trust Assets will be less than the total amount of Allowed Claims against the Estate. Accordingly, Holders of Interests shall not receive any Distributions on account of such Interests. Class 6 Interests are Impaired. Class 6 is deemed to have rejected the Plan and, therefore, Holders of Interests are not entitled to vote to accept or reject the Plan.

ARTICLE VI

ACCEPTANCE OR REJECTION OF THE PLAN

6.1 Classes Entitled to Vote.

Each Holder of a Class 2 or Class 4 Claim is entitled to vote to accept or reject the Plan as provided for in the order entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan. For purposes of calculating the number of Class 4 Claims that have voted to accept or reject the Plan under section 1126(c) of the Bankruptcy Code, all Claims in Class 4 held by one Holder or any affiliate thereof (as defined in the Securities Act of 1933 and the rules and regulations promulgated thereunder) shall be aggregated and treated as one Class 4 Claim. There is only one Class 2 Claim, the Madden Secured Claim.

6.2 Classes Not Entitled to Vote.

(a) Presumed Acceptance of the Plan.

Holders of Class 1 or Class 3 Claims are conclusively presumed to accept the Plan and, therefore, are not entitled to vote to accept or reject the Plan on account of Claims held in such Classes. Holders of Class 1 and Class 3 Claims will not receive Ballots.

(b) Presumed Rejection of the Plan.

Holders of Class 5 Claims or Class 6 Interests are conclusively presumed to have rejected the Plan. Accordingly, Holders of Claims or Interests in Classes 5 or 6, respectively, are not entitled to vote to accept or reject the Plan on account of Claims or Interests held in such Classes and will not receive Ballots.

6.3 Acceptance by a Class Entitled to Vote.

In accordance with section 1126(c) of the Bankruptcy Code, and except as provided for in section 1126(e) of the Bankruptcy Code, a Class shall have accepted the Plan if the Plan has been accepted by Holders in such Class representing (i) at least two-thirds in dollar amount of the total dollar amount of asserted Claims in such Class, and (ii) more than one-half in number of the total number of Holders of asserted Claims in such Class, in each case that have timely and properly voted to accept or reject the Plan.

6.4 Elimination of Classes.

Any Class of Claims that is not occupied by an Allowed Claim, or a Claim temporarily Allowed under Bankruptcy Rule 3018, as of the Distribution Record Date shall be deemed deleted from this Plan for purposes of voting on acceptance or rejection of this Plan, and for purposes of determining acceptance or rejection of this Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

6.5 Cram Down.

Because certain Impaired Classes will be deemed to have voted to reject the Plan by virtue of receiving no Distributions hereunder, the Debtor will seek a cram down of such Classes at the Confirmation Hearing.

ARTICLE VII

THE LIQUIDATING TRUST

7.1 Establishment of the Liquidating Trust.

On the Effective Date, the Liquidating Trust shall be created pursuant to the Liquidating Trust Agreement to provide Distributions to Holders of Allowed Claims. The Liquidating Trust shall be established as a “liquidating trust” within the meaning of Treasury Regulation § 301.7701-4(d) and as a “grantor trust” within the meaning of 26 U.S.C. §§ 671-679, for the sole



purpose of liquidating the Estate and making Distributions to Holders of Allowed Claims in accordance with this Plan and Treasury Regulation ~~section~~§ 301.7701-4(d), and with no objective to continue or engage in the conduct of a trade or business. The Liquidating Trust shall consist of all Assets of the Debtor including, but not limited to, Rights of Action and Cash. As of the Effective Date, the Debtor shall have no further obligations to fund any amounts into the Liquidating Trust and shall bear no further financial obligation of any kind to the Liquidating Trustee. The Liquidating Trust Agreement shall be filed with the Bankruptcy Court prior to the Confirmation Hearing as part of the Plan Supplement.

7.2 Transfer of Powers.

(a) Managers and Officers.

On the Effective Date, the authority, power and incumbency of the persons then acting as officers and managers of the Debtor shall be terminated and such officers and managers shall be deemed to have resigned, without further action by the Debtor. The Plan will be administered and actions will be taken in the name of the Debtor through the Liquidating Trustee, subject to the Liquidating Trust Oversight Committee.

(b) Debtor's Professionals.

Upon the Effective Date, the Debtor's Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms; (ii) applications for and/or objections to Professional Fee Claims; and (iii) motions or other actions seeking enforcement or implementation of the provisions of this Plan or the Confirmation Order. The Professionals retained by the Debtor shall not be entitled to compensation and reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in connection with Fee Applications pending on the Effective Date or filed after the Effective Date. The Liquidating Trustee, in its discretion, may retain and compensate former Professionals of the Debtor.

(c) Dissolution of the Creditors' Committee.

Upon the Effective Date, the Creditors' Committee shall automatically dissolve, whereupon its members, Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to any: (i) obligations arising under confidentiality agreements, joint interest agreements, and protective orders entered during the Chapter 11 Case, which shall remain in full force and effect according to their terms; (ii) applications for and/or objections to Professional Fee Claims; (iii) requests for compensation and reimbursement of expenses pursuant to section 503(b) of the Bankruptcy Code for making a substantial contribution to the Chapter 11 Case; and (iv) motions or other actions seeking enforcement or implementation of the provisions of this Plan or the Confirmation Order. The Professionals retained by the Creditors' Committee and the respective members thereof shall not be entitled to compensation and reimbursement of expenses for services rendered in that capacity after the Effective Date, except for services rendered in

connection with Fee Applications pending on the Effective Date or filed after the Effective Date. The Liquidating Trustee, in its discretion, may retain and compensate former Professionals of the Creditors' Committee.

(d) Succession by Liquidating Trustee

The Creditors' Committee shall appoint the Liquidating Trustee and on the Effective Date, the Liquidating Trustee shall succeed to such powers and responsibilities as would have been applicable to the Debtor's officers, managers and Holders of Interests, and the Debtor shall be authorized to be dissolved without further action by its Holders of Interests, managers, or officers. All property of the Debtor not previously distributed to the Holders of Allowed Claims on the Effective Date, including, without limitation, title to any moneys held in escrow or separate segregated accounts during the pendency of the Chapter 11 Case, shall be transferred to the Liquidating Trust and managed by the Liquidating Trustee. The Liquidating Trustee shall make the Distributions required under the Plan in accordance with the terms hereof. The Liquidating Trustee shall be deemed to be a judicial substitute for the Debtor and/or the Creditors' Committee as the party-in-interest in this Chapter 11 Case, under this Plan or in any judicial or administrative proceeding or appeal to which the Debtor or the Creditors' Committee is a party, consistent with section 1123(b)(3)(B) of the Bankruptcy Code and applicable non-bankruptcy law. In all outstanding adversary proceedings commenced by the Debtor or the Creditors' Committee and existing as of the Effective Date, the Liquidating Trustee shall be deemed to be automatically substituted as the Plaintiff.

7.3 Powers of the Liquidating Trustee.

The Liquidating Trustee shall have the rights and powers set forth in the Liquidating Trust Agreement, without supervision, application to, or approval of the Bankruptcy Court, which rights and powers include, but are not limited to, the following:

- (a) To exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced and take all actions that may be or could have been taken by any officer or manager of or Holder of Interests in the Debtor with like effect as if authorized, exercised and taken by unanimous action of such officers, managers and Holders of Interests;
- (b) To establish and maintain accounts, invest Cash, make Distributions and take other actions consistent with the Plan and the implementation hereof, including the establishment, re-evaluation, adjustment and maintenance of appropriate reserves, in the name of the Liquidating Trust or the Liquidating Trustee;
- (c) Subject to the applicable provisions of this Plan, to liquidate the Liquidating Trust Assets;
- (d) To object to any Claims and Interests (Disputed or otherwise) and to compromise or settle any Claims prior to and after objection, without

further Bankruptcy Court approval and subject only to those restrictions expressly imposed by the Plan or the Confirmation Order;

- (e) To seek estimation of any Claim or Interest;
- (f) To seek to recharacterize and/or subordinate (under section 510 of the Bankruptcy Code) any Claim or Interest;
- (g) To make decisions regarding the retention or engagement of professionals, employees and consultants by the Liquidating Trustee and to pay the reasonable fees and charges incurred by the Liquidating Trustee on or after the Effective Date for reasonable fees of professionals, disbursements, expenses or related support services relating to the winding down of the Debtor and implementation of the Plan, all without Bankruptcy Court approval;
- (h) To pay Liquidation Expenses, including, without limitation, the costs of holding, maintaining, preserving and liquidating any non-Cash Liquidating Trust Assets, rent, wages and professionals' fees;
- (i) To seek a determination of tax liability under sections 346, 505 and 1146 of the Bankruptcy Code and to prepare, sign and file tax returns and pay taxes, if any;
- (j) To file with the Secretary of State a certificate of dissolution for the Debtor, and taking any and other action necessary to dissolve the Debtor;
- (k) To make Distributions to Holders of Allowed Claims provided for or contemplated by the Plan;
- (l) To enter into any agreement or execute any document required by or consistent with the Plan;
- (m) To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of the Liquidating Trustee's choice, any Liquidating Trust Assets if such assets are burdensome or of inconsequential value;
- (n) To purchase or create and carry all insurance policies and pay all insurance premiums and costs it deems necessary or advisable;
- (o) To pursue and/or settle the Rights of Action without further Bankruptcy Court approval;
- (p) To implement and/or enforce all provisions of this Plan;
- (q) To seek entry of a Final Decree closing the Chapter 11 Case;

- (r) To take all other actions not inconsistent with the provisions of the Plan that the Liquidating Trustee deems reasonably necessary or desirable with respect to administering the Plan; and
- (s) To maintain records of the Chapter 11 Case and the Liquidating Trust.

#### 7.4 Liquidating Trust Oversight Committee.

The Creditors' Committee shall designate up to three Holders of General Unsecured Claims (to be identified in the Plan Supplement) as the members of the Liquidating Trust Oversight Committee, effective as of the Effective Date. The bylaws previously adopted by the Creditors' Committee shall continue to govern the actions of the Liquidating Trust Oversight Committee, and the fiduciary duties that applied to the Creditors' Committee prior to the Effective Date shall apply to the Liquidating Trust Oversight Committee. The Liquidating Trust Oversight Committee shall have the duties set forth herein in order to maximize Distributions to Holders of Allowed Claims. The bylaws may be amended from time to time by the Liquidating Trust Oversight Committee in its discretion; provided that the bylaws shall at all times provide that each member of the Liquidating Trust Oversight Committee shall disclose any actual and potential conflict with another member of the Liquidating Trust Oversight Committee and recuse itself from participation in meetings regarding, or from voting on, any such actual or potential conflict of interest.

The Liquidating Trust Oversight Committee shall have the duty to take actions in accordance with the provisions of the Plan and in furtherance of the execution of the Plan, if applicable. Additionally, the Liquidating Trust Oversight Committee shall have the following rights and duties:

- (a) To terminate the Liquidating Trustee for cause and upon such termination, or upon the resignation, death, incapacity or removal of the Liquidating Trustee, to appoint a successor Liquidating Trustee;
- (b) To approve any release or indemnity in favor of any third party granted or agreed to by the Liquidating Trustee, but only if the Liquidating Trustee requests such approval;
- (c) To authorize the Liquidating Trustee to commence or prosecute any Rights of Action;
- (d) To approve the settlement of any Rights of Action if the amount in dispute (as determined by the Liquidating Trustee in its sole discretion) in the complaint or other document initiating such Rights of Action exceeds \$200,000.00;
- (e) To approve the allowance of any Disputed Claims if the proposed final Allowed amount of (i) an Administrative or Priority Claim exceeds \$50,000, and (ii) a General Unsecured Claim exceeds \$500,000.00;

- (f) To approve an Administrative Budget prepared by the Liquidating Trustee with respect to each six-month period following the Effective Date and any amendments or modifications thereto;
- (g) To ratify or approve in advance the Liquidating Trustee's retention or termination of any professionals or a disbursing agent other than the Liquidating Trustee;
- (h) To approve the Liquidating Trustee's establishment, re-evaluation, adjustment and maintenance of the Disputed Claims Reserve (see also Section 8.5 of this Plan);
- (i) To review any financial information relating to the Chapter 11 Case or the Liquidating Trust, which shall be promptly provided by the Liquidating Trustee upon request by a member of the Liquidating Trust Oversight Committee;
- (j) To approve the making of any Distributions by the Liquidating Trustee;
- (k) To approve the investment of any of the Liquidating Trust Assets pending Distribution to Holders of Allowed Claims; and
- (l) To be compensated for any reasonable and necessary out of pocket expenses incurred as members of the Liquidating Trust Oversight Committee.

The Liquidating Trust Oversight Committee shall have the right to retain counsel of its choice in the event of a dispute or conflict with the Liquidating Trustee, and the reasonable fees and expenses of such counsel shall be paid by the Liquidating Trust in accordance with the following procedures or such other procedures set forth in the Liquidating Trust Agreement or as agreed by the Liquidating Trustee and the Liquidating Trust Oversight Committee: upon the submission of a fee statement to the Liquidating Trustee and its counsel, the Liquidating Trustee shall have ten (10) days from receipt of a fee statement to give notice of an objection to the fee statement to the professional seeking compensation or reimbursement. For an objection to be valid, it shall be in writing and set forth in detail the specific fees objected to and the basis for the objection. Any objection that remains unresolved fifteen (15) days after it is made shall be submitted to the Bankruptcy Court for resolution. The uncontested portion of each invoice shall be paid within thirty (30) days after its delivery to the Liquidating Trust Oversight Committee and the Liquidating Trustee.

#### 7.5 Limitation of Liability.

None of the members of the Liquidating Trust Oversight Committee or the Liquidating Trustee, professionals engaged by or on behalf of such parties, or any duly designated agent or representative of the Liquidating Trust Oversight Committee or the Liquidating Trustee (each solely in his or her capacity as such) shall be liable for the act or omission of any other member, agent or representative of the Liquidating Trust Oversight Committee or the Liquidating Trustee, nor shall members of the Liquidating Trust Oversight Committee or the Liquidating Trustee be

liable for any action taken, suffered or omitted to be taken in their representative capacity or in reliance on any provision of the Plan or the Liquidating Trust Agreement, as applicable, other than acts or omissions resulting from willful misconduct or gross negligence (which gross negligence or willful misconduct must be determined by a Final Order of a court of competent jurisdiction) by the members of the Liquidating Trust Oversight Committee, the Liquidating Trustee, or their respective professionals, agents, or representatives (each solely in his or her capacity as such). In no event shall the Liquidating Trust Oversight Committee or the Liquidating Trustee be liable or responsible for special, punitive, indirect, consequential or incidental loss or damages of any kind whatsoever to any Person (including without limitation lost profits), even if the Liquidating Trust Oversight Committee or the Liquidating Trustee has been advised of the likelihood of such loss or damage. The Liquidating Trust Oversight Committee and the Liquidating Trustee each may consult with professionals, and the advice or opinion of such professional(s) will be full and complete authorization and protection to the Liquidating Trust Oversight Committee and/or the Liquidating Trustee, and the Liquidating Trust Oversight Committee or the Liquidating Trustee, as applicable, shall incur no liability. The Liquidating Trust shall fully indemnify any action taken, suffered or omitted by the Liquidating Trust Oversight Committee or the Liquidating Trustee in accordance with such advice or opinion as provided for under Section 7.6 of this Plan.

7.6 Indemnification.

The Liquidating Trust shall indemnify the Indemnified Parties for, and shall hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including, without limitation, the reasonable fees and expenses of their respective professionals), incurred without gross negligence or willful misconduct on the part of the Indemnified Parties (which gross negligence or willful misconduct, if any, must be determined by a Final Order of a court of competent jurisdiction), for any action taken, suffered or omitted to be taken by the Indemnified Parties in connection with the acceptance, administration, exercise and performance of their duties under the Plan or Liquidating Trust Agreement, as applicable. The costs and expenses incurred in enforcing the right of indemnification in this Section shall be paid by the Liquidating Trust. The provisions of Sections 7.5 and 7.6 hereof shall survive the termination of the Liquidating Trust Agreement, and the resignation, replacement or removal of the Liquidating Trustee or the dissolution of the Liquidating Trust Oversight Committee.

7.7 No Security; Insurance.

The Liquidating Trustee shall be required to give a bond for the performance of his/her duties and all costs and expenses of procuring any such bond or surety shall be borne by the Liquidating Trust.

The Liquidating Trustee shall be authorized under the Plan to obtain all reasonably necessary insurance coverage for itself and its respective agents, and members of the Liquidating Trust Oversight Committee, including, but not limited to, coverage with respect to the liabilities, duties, obligations, errors and omissions of the Liquidating Trustee, which insurance coverage may, at the sole option of the Liquidating Trustee, be extended for a reasonable period after the



closing of the Chapter 11 Case and termination of the Liquidating Trust Agreement, as applicable.

7.8 Liquidation Expense Reserve.

The Liquidating Trustee may, but shall not be obligated to, physically segregate and maintain separate accounts for the Liquidation Expense Reserve. The Liquidation Expense Reserve may be merely bookkeeping entries or accounting methodologies, which may be revised from time to time, to enable the Liquidating Trustee to determine reserves and amounts to be paid to Holders of Allowed Claims.

7.9 Resignation, Death or Removal of the Liquidating Trustee.

The Liquidating Trustee may resign at any time upon not less than thirty (30) days' written notice to the Bankruptcy Court and the Liquidating Trust Oversight Committee. Any party in interest may apply to the Bankruptcy Court at any time to remove the Liquidating Trustee upon a showing of cause. In the event of the death, resignation, or removal of the Liquidating Trustee, the Liquidating Trust Oversight Committee shall appoint a successor Liquidating Trustee or, in the event the Liquidating Trust Oversight Committee has been dissolved or is not able to obtain approval of a successor Liquidating Trustee, any party in interest (including, in the case of resignation, the Liquidating Trustee) may file a motion in the Bankruptcy Court to appoint a successor Liquidating Trustee. Counsel to the Liquidating Trustee shall file a notice with the Bankruptcy Court identifying any successor Liquidating Trustee. Any successor Liquidating Trustee shall not have any liability or responsibility for the acts or omissions of any of its predecessors.

7.10 Termination of Liquidating Trust.

Notwithstanding anything to the contrary herein or in the Liquidating Trust Agreement, the Liquidating Trust will terminate on or before the fifth (5th) anniversary of the Effective Date; provided, however, that, at any time within six (6) months of such termination, the Bankruptcy Court, upon motion by the Liquidating Trustee or any Beneficiary, may extend the term of the Liquidating Trust if such extension is determined to be in the best interests of the Beneficiaries; provided, further, that such extension or extensions shall not exceed three (3) years after the initial termination date, unless the Liquidating Trustee receives a favorable ruling from the IRS, or an opinion of counsel, that such extension will not adversely affect the status of the trust as a liquidating trust.

7.11 Governance Action.

Any action under this Plan to be taken by or required of the Liquidating Trustee, including, as may be appropriate, dissolution of the Debtor and the amendment of organizational documents of the Debtor, as applicable, shall be authorized and approved in all respects, without any requirement of further action by the managers of or Holders of Interests in the Debtor.

7.12 Effectuating Documents and Further Transactions.

The Debtor and, subsequently, the Liquidating Trustee, with approval of the Liquidating Trust Oversight Committee, if required, shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan and the Liquidating Trust Agreement.

7.13 Preservation of Rights of Action.

Except as otherwise provided in this Plan, or in any document, instrument, release or other agreement entered into in connection with the Plan, the Confirmation Order or any other orders of this Bankruptcy Court, in accordance with section 1123(b) of the Bankruptcy Code, all Rights of Action are preserved notwithstanding the occurrence of the Effective Date of the Plan. The Liquidating Trustee may investigate, enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all Rights of Action. The Liquidating Trustee shall be vested with the rights, powers and benefits afforded to a "trustee" under sections 704 and 1106 of the Bankruptcy Code.

7.14 No Revesting of Assets.

Except as otherwise provided in this Plan, on the Effective Date, all Assets comprising the Estate of the Debtor shall vest in the Liquidating Trust, free and clear of all Claims, Liens, charges, encumbrances and interests of Holders of Claims or interests (except to the extent that such Claims, Liens, charges, encumbrances and/or interests have been reinstated, or as otherwise expressly provided herein), which will become the Liquidating Trust Assets, to be held for the benefit of the Beneficiaries. Upon the transfer of the Assets to the Liquidating Trust, the Debtor shall have no further interest in or with respect to Claims, the Liquidating Trust Assets or the Liquidating Trust.

7.15 ~~7.15~~ Tax Treatment of Transfers to Liquidating Trust.

Unless the IRS requires otherwise, and except to the extent properly allocated to disputed claims, any transfer of Assets to the Liquidating Trust for the benefit of the Beneficiaries, including, but not limited to, any transfer under this Article VII, is required by the Liquidating Trust to be treated for all federal income tax purposes by all parties involved as a deemed transfer of such Assets to the Beneficiaries followed by a deemed transfer by such Beneficiaries of such Assets to the Liquidating Trust. The Liquidating Trust requires that the Assets so transferred be valued consistently by the Liquidating Trustee and the Beneficiaries, including all valuations used for federal income tax purposes, and such Beneficiaries shall be treated as the grantors and deemed owners of the Liquidating Trust in accordance with 26 U.S.C. §§ 671-679.

7.16 ~~7.15~~ Exemption from Transfer Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under this Plan, including, without limitation, any transfer by the Debtor to the Liquidating Trust, transfer of Liquidating Trust Assets by the Liquidating Trustee to any entity, or any transfer pursuant to merger

agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or transfers of tangible property, will not be subject to any stamp tax, recording tax, personal property tax, real estate transfer tax, sales or use tax or other similar tax. Unless the Bankruptcy Court orders otherwise, all sales, transfers and assignments of owned and leased property by the Debtor, its Estate, or the Liquidating Trust on or after the Effective Date, shall be deemed to have been in furtherance of, or in connection with, the Plan.

7.17 ~~7.16~~ Compensation of the Liquidating Trustee and Professionals.

The fees and expenses of the Liquidating Trustee and its retained professionals shall be paid from the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement and payment of such fees and expenses shall not be subject to the approval of the Bankruptcy Court.

7.18 ~~7.17~~ Privilege.

On the Effective Date, any attorney-client privilege, work-product privilege or other privilege or immunity that the Debtor, the Estate or the Creditors' Committee are entitled to assert shall transfer to and vest in the Liquidating Trustee (and its attorneys and agents) and the Liquidating Trustee shall be entitled to assert or waive such privilege or immunity to the same extent that the Debtor and Creditors' Committee were entitled to do so prior to the Effective Date. Communications by counsel to the Liquidating Trustee with members of the Liquidating Trust Oversight Committee shall be entitled to the same privilege or immunity as if such communications were between counsel to the Liquidating Trustee and the Liquidating Trustee.

ARTICLE VIII

GENERAL RULES REGARDING DISTRIBUTIONS UNDER THE PLAN

8.1 Distribution Record Date.

As of the close of business on the Distribution Record Date, the Claims Register as maintained by the Claims Agent, the Debtor and/or the Liquidating Trustee shall be deemed closed. The Liquidating Trustee shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date. The Liquidating Trustee shall be required to recognize and deal for all purposes hereunder only with those record Holders of timely filed Claims identified on the Claims Register as of the close of business on the Distribution Record Date, to the extent applicable.

8.2 Funding of Distributions.

Except as otherwise provided in the Liquidating Trust Agreement, all Distributions to Holders of Allowed Claims shall be made by the Liquidating Trustee and funded by Cash that the Liquidating Trustee, in its sole discretion, determines is available for Distributions to Holders of Allowed Claims in accordance with the Plan.

8.3 No Distributions Pending Allowance.

Except as expressly provided in this Plan, no Distributions provided under the Plan shall be made on account of any Claim or Interest unless and until such Claim or Interest becomes an Allowed Claim or Allowed Interest.

8.4 Claim Objection Deadline.

After the Effective Date, the Liquidating Trustee shall have the right to file objections to Claims and Interests, whether evidenced by a Proof of Claim or Proof of Interest, amend the Schedules, and to settle or withdraw any objections. The Liquidating Trustee shall also have the right to seek estimation of Claims and Interests. The Liquidating Trustee shall file and serve all objections to, or pleadings seeking estimation of, Claims and Interests upon the Holder of such Claims or Interests no later than the Claim Objection Deadline. The Claim Objection Deadline shall not apply to requests to reduce Claims as a result of mitigation, or objections under section 502(d) of the Bankruptcy Code.

8.5 Establishment of Disputed Claims Reserve.

At the time of the first Distribution Date, the Liquidating Trustee shall establish the Disputed Claims Reserve. A Distribution on account of an Allowed Claim that is held back by the Liquidating Trustee by agreement or to determine the extent of any mitigation shall be reserved for and paid in the same manner as a Disputed Claim. After a Disputed Claim is resolved, the Liquidating Trustee shall no longer account for such Claim in the Disputed Claims Reserve and the amount attributable to the Disallowed portion of the Disputed Claim, if any, shall be deemed to be Cash available for Pro Rata Distribution to Holders of Allowed Claims, in accordance with the Plan.

8.6 Distributions After Allowance.

Subject to the occurrence of the Effective Date, Distributions to each Holder of a Disputed Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the Class of Claims in which such Claim is classified. On the next Distribution Date (or earlier, in the discretion of the Liquidating Trustee) that is not less than ten (10) Business Days after the date that the order of the Bankruptcy Court allowing any Disputed Claim or Interest or holding that such Claim or Interest is otherwise Allowed becomes a Final Order, the Liquidating Trustee shall distribute to the Holder of such Claim or Interest any Distribution(s) that would have otherwise been made to such Holder if the Claim or Interest had been Allowed on the Effective Date, without any interest thereon. The Liquidating Trustee shall have the discretion to make Distributions from the Liquidating Trust, including with respect to amount, timing, reserves and other holdbacks. Pursuant to section 502(d) of the Bankruptcy Code, to the extent that a Holder of a Claim has received an avoidable transfer, such Holder shall not be entitled to receive any Distributions until such time as such Holder has returned the avoidable transfer (including in accordance with settlement arrangements or a Final Order).

#### 8.7 Delivery of Distributions.

Subject to Rule 9010 of the Bankruptcy Rules, and except as otherwise provided herein, Distributions to Holders of Allowed Claims shall be sent to the address of each of such Holders as set forth in the Schedules filed with the Bankruptcy Court, unless superseded by the address set forth on such Holder's Proof of Claim or Proof of Interest, or in a written notice delivered to the Liquidating Trustee and its counsel and filed on the docket of the Chapter 11 Case, to the extent that such notice is provided at least ten (10) Business Days before the applicable Distribution Date, by such Holders (or at the last known address of such Holders if no Proof of Claim or Proof of Interest is filed and there is no address in the Schedules, and the Liquidating Trustee has not been notified in writing of the address). If any Distribution to any Holder is returned as undeliverable, the Liquidating Trustee may, but shall not be required to, use reasonable efforts to determine the current address of such Holder, but no subsequent Distribution to any such Holder shall be made unless and until the Liquidating Trustee has determined the then current address of such Holder, at which time such Distribution shall be made to such Holder without interest. The Liquidating Trustee shall retain all amounts in respect of any undeliverable Distributions made by the Liquidating Trustee until such Distributions are claimed, subject to Section 8.8 herein.

#### 8.8 Unclaimed Distributions.

If any Distribution is not claimed, or remains undeliverable under Section 8.7 of the Plan, by the Unclaimed Distribution Date applicable to such Distribution, such Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code, the respective Claim shall be deemed expunged and such unclaimed Distribution(s) shall be available for Distribution to other Holders of Allowed Claims as part of the next Distribution, in accordance with the terms of this Plan. The Holder of any Claim or Interest for which a Distribution is deemed unclaimed property hereunder shall not be entitled to receive any future Distributions and shall be deemed to have relinquished all rights to any future Distributions and all such future Distributions shall be available for Distribution to other Holders of Allowed Claims under the Plan.

#### 8.9 Interest on Claims.

Postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim, other than to the extent payable under section 726(a)(5) of the Bankruptcy Code.

#### 8.10 Distributions on Insured Claims.

No Distribution provided under the Plan shall be made on account of any Allowed Claim that is or will be Paid in Full from proceeds payable under any pertinent insurance policy or policies.

#### 8.11 Manner of Payment Under the Plan.

At the option of the Liquidating Trustee, any Distribution of Cash to be made pursuant to this Plan may be made by a check or wire transfer.

8.12 Waiver of Avoidance Actions.

Except as otherwise set forth herein, all Avoidance Actions shall be waived and released as of the Effective Date.

8.13 Subordination.

All rights of any Holder of a Claim or Interest, or of the Liquidating Trustee, to seek or obtain subordination of another Claim or Interest based on contractual or, only in the case of the Liquidating Trustee (or his designee), equitable subordination, or subordination under section 510(b) of the Bankruptcy Code, will be preserved under the Plan and may be asserted with respect to any Distribution to be made under the Plan on account of such other Claim or Interest.

8.14 Setoff and Recoupment.

Except as otherwise provided herein or in the Confirmation Order, the Liquidating Trustee may, pursuant to applicable law, setoff or recoup against any Claim or Interest (including for purposes of determining the Allowed amount of such Claim or Interest), any and all of the Rights of Action of any nature that the Liquidating Trust may hold against the Holder of such Claim or Interest; provided, however, that neither the failure of the Liquidating Trustee to do so nor the allowance of any such Claim or Interest that may be subject to setoff or recoupment shall constitute a waiver or release by the Liquidating Trustee of any setoff or recoupment Right of Action that he or she may have against such Holder. Confirmation of this Plan shall bar any right of setoff claimed by a Creditor unless such Creditor filed, prior to the Confirmation Date, a motion for relief from the automatic stay seeking the authority to effectuate such a setoff right. All defenses of any of the Debtors or the Plan Administrator, as the successor to the Debtors or otherwise with respect to any such motion, are hereby preserved. This Section 8.14 shall not apply to the application of any security deposits held by any of the Debtor's former/existing landlords to secure the Debtor's obligations under a lease of non-residential real property between the Debtor and any such landlord.

8.15 Withholding and Reporting Requirements.

In connection with the Distributions made under the Plan, the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by any federal, state or local taxing authority. As a condition to the Holder of an Allowed Claim or Allowed Interest receiving any Distribution under this Plan, the Liquidating Trustee may require that the Holder provide such Holder's taxpayer identification number and such other information and certification as the Liquidating Trustee may deem necessary to comply with applicable tax reporting and withholding laws. The failure of a Holder of a Claim or Interest to provide the Liquidating Trustee with its tax withholding or reporting information within 90 days of the Liquidating Trustee's notice will result in the Holder being treated in the same manner as the Holder of a Claim or Interest for which a Distribution is undeliverable or unclaimed, as described in Sections 8.7 and 8.8 of this Plan.



8.16 Allocation of Plan or Liquidating Trust Distributions Between Principal and Interest.

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

8.17 Fractional Dollars.

Notwithstanding any other provision of this Plan or the Liquidating Trust Agreement, the Liquidating Trustee shall not be required to make Distributions of fractions of dollars, and whenever any Distribution of a fraction of a dollar may be called for, the actual Distribution may be rounded to the nearest whole dollar (up or down), with half dollars being rounded

8.18 De Minimis Distributions.

The Liquidating Trustee shall have no obligation to make a Distribution if the aggregate amount to be distributed to a Holder of an Allowed Claim or Allowed Interest would be less than \$50.00. To the extent the Liquidating Trustee makes multiple Distributions and the amount to be distributed on account of a particular Allowed Claim or Allowed Interest does not amount to \$50.00, the Liquidating Trustee shall establish a reserve on the books and records of the Liquidating Trustee, equal to the Distribution(s) that otherwise would have been distributed to such Holder until such Holder is entitled to receive an aggregate Distribution of \$50.00. To the extent the Holder is not ultimately entitled to receive an aggregate distribution of \$50.00, the Claim will be deemed expunged for Distribution purposes and the applicable reserved funds, as reflected on the books and records of the Liquidating Trustee, shall be distributed to Beneficiaries in accordance with the terms of this Plan.

ARTICLE IX

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.1 General Treatment of Executory Contracts and Unexpired Leases; Insurance Policies.

As of the Effective Date, all executory contracts and unexpired leases to which the Debtor is a party, except for any executory contract or unexpired lease that (a) has been assumed, assigned or rejected by the Debtor prior to the Effective Date, or (b) is the subject of a separate motion filed under section 365 of the Bankruptcy Code and pending on the Effective Date, shall be deemed rejected within the meaning of section 365 of the Bankruptcy Code without further action of the Bankruptcy Court. Rejection of a contract or lease pursuant to this Section 9.1 shall not constitute an admission by the Debtor or the Liquidating Trustee that any such contract or lease is, in fact, an executory contract or unexpired lease or that the Debtor or Liquidating Trust has any liability thereunder.

Notwithstanding the foregoing, any agreements, documents or instruments relating thereto that are postpetition contracts shall continue to operate unaffected by the Plan, including, without limitation, the Liquidating Trust Agreement. Further, notwithstanding the foregoing, all Insurance Policies shall remain in full force and effect unless otherwise validly terminated, and issuers of such Insurance Policies shall remain responsible for Claims, in accordance with the terms and provisions of such Insurance Policies. The Debtor does not consider Insurance Policies that have expired as of the Effective Date (whether entered into prior or subsequent to the Petition Date) to be executory contracts subject to assumption or rejection. However, the issuers of Insurance Policies shall be responsible for continuing coverage obligations thereunder, regardless of the payment status of any retrospective or other insurance premiums.

Nothing in the Plan shall constitute or be deemed to be a waiver of any Right of Action that the Debtor may hold against any Persons, including, without limitation, any issuer under any Insurance Policy of the Debtor.

9.2 Deadline for Asserting Claims Arising from Rejection of Executory Contracts and Unexpired Leases.

If the rejection of any executory contract or unexpired lease under this Plan results in damages to the other party or parties to such contract or lease, a Proof of Claim for such damages must be filed with the Claims Agent on or before the date which is forty-five (45) days after the date on which notice of the Effective Date is served. Unless otherwise ordered by the Bankruptcy Court, any Holder of a Claim for rejection damages against the Debtor who fails to timely file proof of such Claim shall not be treated as a Holder with respect to such Claim for purposes of voting and Distributions, and tardily filed Claims shall be subject to disallowance under section 502(b)(9) of the Bankruptcy Code. Moreover, such Holder shall not receive further notices regarding such Claim.

ARTICLE X

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

10.1 Conditions to Confirmation of the Plan.

It shall be a condition to Confirmation hereof that all provisions, terms and conditions of the Plan and Disclosure Statement are approved in the Confirmation Order.

10.2 Conditions to Effective Date of the Plan.

The Effective Date for this Plan may not occur unless each of the conditions set forth below is satisfied:

- (a) The Confirmation Order, in form and substance satisfactory to the Debtor (with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld) shall have been entered (if the Confirmation Order is appealed, such appeal shall be deemed moot as of the Effective Date);

- (b) The provisions of the Confirmation Order are nonseverable and mutually dependent;
- (c) The appointment of the Liquidating Trustee shall have been confirmed by the Confirmation Order or order of the Bankruptcy Court; and
- (d) All actions, documents and agreements necessary to implement the provisions of this Plan, including, without limitation, the Liquidating Trust Agreement, shall have been effected or executed and delivered.

### 10.3 Waiver of Conditions Precedent.

The Debtor (with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld) may at any time, without leave or order of the Bankruptcy Court and without any other formal action, waive or modify Section 10.2(d) hereof.

## ARTICLE XI

### EFFECT OF CONFIRMATION

#### 11.1 Discharge.

Pursuant to section 1141(d)(3) of the Bankruptcy Code, occurrence of the Effective Date will not discharge the Claims against the Debtor; provided, however, that no Holder of an Allowed Claim or Interest may, on account of such Claim or Interest, seek or receive any payment from, or seek recourse against, the Debtor, the Liquidating Trust, the Liquidating Trustee, the Released Parties, their respective property, successors and assigns, except as expressly provided in this Plan.

#### 11.2 Binding Effect.

On and after the Effective Date, the provisions of this Plan shall bind all present and former Holders of Claims against, or Interests in, the Debtor and such Holders' successors and assigns, whether the Claim or Interest of such Holder is Impaired under the Plan and whether such Holder has filed a Proof of Claim or Proof of Interest or has accepted the Plan. The Confirmation Order shall provide that the terms and provisions of this Plan and the Confirmation Order shall survive and remain effective after entry of any order converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, and the terms and provisions of this Plan shall continue to be effective in this or any superseding case under the Bankruptcy Code.

## ARTICLE XII

### RELEASES, EXCULPATION AND INJUNCTIONS

#### 12.1 Releases by the Debtor.

As of the Effective Date, the Debtor, the Estate and their respective successors and assigns, including the Liquidating Trustee, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever released the Released Parties from any and all Rights of

Action whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon any act or omission, transaction, agreement, event or occurrence, taking place on or prior to the Effective Date relating to the Debtor or the Chapter 11 Case, including, but not limited to the formulation, preparation, negotiation, dissemination, implementation, administration, confirmation or consummation of any version of the Plan, or the property to be distributed under the Plan, the Disclosure Statement concerning the Plan, any contract, employee pension, retirement or other benefit plan, instrument, release or other agreement or document created, modified, amended, terminated or entered into in connection with either the Plan or any agreement between the Debtor and any Released Party, or any other act taken or omitted to be taken in connection with the Debtor's Chapter 11 Case, except for Rights of Action against any Released Party resulting from the willful misconduct or gross negligence of such Released Party as determined by Final Order of a court of competent jurisdiction; provided, however, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies.

## 12.2 Releases by Holders of Claims.

As of the Effective Date, to the fullest extent permitted by applicable law, each Holder of a Claim who does not opt out of the releases provided by this Section 12.2 shall be deemed to conclusively, absolutely, unconditionally, irrevocably and forever release, waive, and discharge the Released Parties from any and all Claims, demands, rights, defenses, actions, causes of action, suits, contracts, agreements, obligations, accounts, defenses, offsets, powers and privileges of any kind or character whatsoever, suspected or unsuspected, whether arising on or prior to the Effective Date, in contract or in tort, at law or in equity, or under any other theory of law, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, based in whole or in part upon any act or omission, transaction, agreement, event or occurrence, taking place on or prior to the Effective Date relating to the Debtor or the Chapter 11 Case, including, but not limited to any contract, employee pension, retirement or other benefit plan, or any other act taken or omitted to be taken in connection with the Debtor's business operations, Assets, liabilities or employees, or the Chapter 11 Case, except for Claims and causes of action against any Released Party resulting from the willful misconduct or gross negligence of such Released Party, as determined by Final Order of a court of competent jurisdiction; provided, however, that the foregoing shall not be a waiver of the right of any Holder of an Allowed Claim to receive Distributions in accordance with this Plan; provided, further, that nothing in this Section 12.2 shall prejudice the standing of the Liquidating Trustee to commence any derivative Rights of Action that existed as of the Petition Date—; and provided, further, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies.

Holders of Class 4 Claims may opt out of releasing Released Parties under this Section 12.2, whether or not such Holders vote to reject the Plan, by checking the appropriate box on the Ballot. Each Holder of a Claim granting a release under this Section 12.2 shall be deemed to have accepted as its sole recourse on account of such released Claims and causes of action its right to receive Distributions on its Allowed Claim pursuant to the Plan.

### 12.3 Exculpation.

From and after the Effective Date, the Released Parties, the Indemnified Parties, the Liquidating Trust, and any property of such parties, or direct or indirect predecessor in interest to any of such parties, shall not have or incur any liability to any Person for any action taken, suffered or omitted to be taken in connection with or related to the Debtor, the Estate, the Liquidating Trust or the Chapter 11 Case, including, but not limited to formulating, preparing, disseminating, implementing, confirming, consummating or administering (a) the Plan (including soliciting acceptances or rejections thereof), (b) the Disclosure Statement or any contract, instrument, release or other agreement or document entered into or any action taken or omitted to be taken in connection with the Plan, and (c) any Distributions made pursuant to the Plan, except, in all cases, for acts or omissions constituting willful misconduct or gross negligence as determined by Final Order of a court of competent jurisdiction, and in all respects such parties shall be entitled to rely upon the advice of professionals with respect to their duties and responsibilities under the Plan, and such reliance shall form an absolute defense to any Claim, cause of action, or liability; provided, however, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies. Without limiting the generality of the foregoing, each of the Released Parties, the Indemnified Parties, and the Liquidating Trust shall be entitled to and granted protections of section 1125(e) of the Bankruptcy Code.

### 12.4 Injunction.

The Confirmation Order shall provide, among other things, that all Persons who have held, hold or may hold Claims against or interests in any of the Released Parties are, with respect to any such Claims or interests, permanently enjoined from and after the Confirmation Date from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor or any of its property; (b) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtor or any of its property; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor or any of its property; (d) asserting any right of setoff, directly or indirectly, against any obligation due by the Debtor or any of its property, except as contemplated or allowed by the Plan; (e) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan; and (f) prosecuting or otherwise asserting any right, Claim or cause of action released pursuant to the Plan; provided, however, that nothing in this Section 12.4 shall be construed to enjoin any of the Debtor's Rights of Action, whether commenced by the Debtor, the Liquidating Trust or the Liquidating Trustee, that may exist in connection with any Insurance Policy of the Debtor; provided, further, that nothing in this Section 12.4 shall prejudice the standing of the Liquidating Trustee to commence any derivative Rights of Action that existed as of the Petition Date; and provided, further, that Professionals remain subject to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8, Rule 1.8(h)(1) (2009), if and to the extent that such rule applies.

12.5 Term of Bankruptcy Injunction or Stays.

All injunctions or stays provided for in the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until all property of the Liquidating Trust has been distributed, the Liquidating Trust has been terminated and this Chapter 11 Case has been closed pursuant to section 350 of the Bankruptcy Code.

ARTICLE XIII

RETENTION OF JURISDICTION

This Plan shall not in any way limit the Bankruptcy Court's post-confirmation jurisdiction, as provided under the Bankruptcy Code. As of the Effective Date, the Bankruptcy Court shall retain jurisdiction, and if the Bankruptcy Court exercises its retained jurisdiction, shall have exclusive jurisdiction, of all matters arising out of, and relating to, the Chapter 11 Case and this Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (a) To hear and determine pending applications for the assumption or rejection of executory contracts or unexpired leases, if any are pending, and the allowance of Claims resulting therefrom;
- (b) To determine any and all adversary proceedings, applications and contested matters;
- (c) To ensure that Distributions to Holders of Allowed Claims are accomplished as provided herein;
- (d) To hear and determine any timely objections to Claims or Interests, and to allow, disallow or estimate any Disputed Claim or Interest, in whole or in part;
- (e) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed on appeal or vacated;
- (f) To issue such orders in aid of execution of this Plan, including in accordance with section 1142 of the Bankruptcy Code;
- (g) To consider any modifications of this Plan, if applicable; to cure any defect or omission; or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;
- (h) To hear and determine all applications of Professionals for awards of compensation for services rendered and reimbursement of expenses relating to the postpetition, pre-Effective Date period;



- (i) To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of this Plan, the Confirmation Order, and the Liquidating Trust Agreement;
- (j) To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (k) To compel the transfer of property and other performance contemplated under this Plan and documents executed in connection herewith;
- (l) To enforce remedies upon any default under the Plan;
- (m) To enforce all orders, judgments and rulings entered in connection with the Chapter 11 Case;
- (n) To hear and determine all Rights of Action;
- (o) To hear and determine all motions of the Liquidating Trustee to settle, compromise, sell, transfer, abandon or otherwise dispose of Liquidating Trust Assets to the extent the Liquidating Trustee requests such Bankruptcy Court approval;
- (p) To issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with the enforcement or administration of this Plan;
- (q) To determine all matters and disputes arising out of, or relating to, the conduct of the Liquidating Trustee and/or the administration and operation of the Liquidating Trust; and
- (r) To enter the Final Decree closing the Chapter 11 Case.

#### ARTICLE XIV

##### MISCELLANEOUS PROVISIONS

###### 14.1 Payment of Statutory Fees.

All fees payable pursuant to section 1930, title 28, United States Code, shall be paid by the Debtor on or before the Effective Date to the extent due prior to the Effective Date. Thereafter, the Liquidating Trustee shall pay all such fees. The Liquidating Trust shall remain responsible for the payment of quarterly fees to the United States Trustee, pursuant to 28 U.S.C. § 1930, until such time as the Debtor's case is closed.

###### 14.2 Bar Date for Certain Postpetition Claims.

The Final Administrative Claims Bar Date, which is the deadline for filing requests for allowance of Administrative Expense Claims arising after January 31, 2013 (other than for

statutory fees of the United States Trustee), shall be the date that is forty-five (45) days after the date on which notice of the Effective Date is served. The Final Administrative Claims Bar Date shall also be the deadline by which Professionals must file final Fee Applications or other requests for payment of Professional Fee Claims incurred through the Effective Date (to the extent not already Allowed). Administrative Expense Claims arising on or before January 31, 2013 were subject to the Initial Administrative Claims Bar Date of April 1, 2013. Administrative Claims arising under Section 503(b)(9) of the Bankruptcy Code were subject to the General Bar Date of September 10, 2012.

#### 14.3 Amendments to Claims; Filing of Claims after Effective Date.

Except as expressly permitted by the Plan or order of the Bankruptcy Court, a Claim may not be filed or increased by amendment or supplement without the authorization of the Bankruptcy Court or consent of the Liquidating Trustee, and any such Claim or amendment shall, unless the Bankruptcy Court otherwise directs, be Disallowed in full and expunged without further order of the Bankruptcy Court; provided however, that a Claim may be decreased by amendment, supplement or withdrawal.

#### 14.4 Retiree Benefits.

The Debtor has not funded or maintained any retiree benefit plans, funds or programs, as defined in section 1114 of the Bankruptcy Code, for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents for medical, surgical, or hospital care benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise). To the extent that any such retiree benefit plans, funds, or programs are found by the Bankruptcy Court to have existed, such plans, funds, or programs are hereby terminated and shall be deemed null and void effective immediately prior to the Petition Date. Accordingly, no such payments will be, or are required to be, made pursuant to section 1129(a)(13) of the Bankruptcy Code.

#### 14.5 Corporate or Limited Liability Company Action.

Prior to, on or after the Effective Date, all matters provided for under the Plan that would otherwise require approval of the Holders of Interests in or the managers of the Debtor shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date without any further action by the Holders of Interests in or managers of the Debtor.

#### 14.6 Cancellation of Securities, Instruments and Agreements Evidencing Claims and Interests.

Except as otherwise provided in the Plan and in any contract, instrument or other agreement or document created in connection with the Plan, on the Final Distribution Date, the promissory notes, share or membership interest certificates (including treasury stock), other instruments evidencing Claims or Interests, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Interests shall be deemed cancelled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtor under such notes, share certificates and other agreements and instruments governing such Claims and

Interests shall be discharged. From and after the Effective Date, the Holder of or parties to such Claims or Interests, cancelled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such Claims or Interests, notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

14.7 United States Trustee Reports.

From the Effective Date until the Final Decree is entered by the Bankruptcy Court, the Liquidating Trustee shall submit for each quarter a quarterly report for the Debtor to the United States Trustee, setting forth all receipts and disbursements of the Liquidating Trust, as required by its guidelines.

14.8 Revocation of the Plan.

The Debtor reserves the right to revoke and withdraw this Plan at any time prior to entry of the Confirmation Order. If this Plan is so revoked or withdrawn, then it shall be deemed null and void.

14.9 Modification of the Plan.

At any time prior to the Effective Date, the Plan may be modified by the Debtor (with the consent of the Creditors' Committee, which consent shall not be unreasonably withheld), subject only to Bankruptcy Court approval after notice to parties in interest; provided, however, nonmaterial modifications, including modifications that do not adversely change the treatment of Claims under the Plan, shall not require Bankruptcy Court approval, further notice to parties in interest or a re-solicitation of votes for or against the Plan (as modified). A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the modification does not materially and adversely change the treatment of the Claim of such Holder.

14.10 Severability of Plan Provisions.

If any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, with the consent of the Debtor and the Creditors' Committee, shall have the power to interpret, modify or delete such term or provision (or portions thereof) to make it valid, enforceable or confirmable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as interpreted, modified or deleted. Notwithstanding any such interpretation, modification or deletion, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such interpretation, modification or deletion. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision, as it may have been interpreted, modified or deleted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

14.11 Governing Law.

Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights, duties and obligations arising under this Plan, and the instruments, agreements and other documents executed in connection with the Plan, shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York.

14.12 Notices.

All notices, requests and demands to be effective shall be in writing (including by facsimile transmission or electronic mail) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made and deemed received on (i) in the case of mail delivery, the earlier of actual receipt and three Business Days after deposit in the mail when actually delivered; (ii) in the case of notice by facsimile transmission, when received and telephonically confirmed; or (iii) in the case of electronic mail, the date sent. Notices, requests and demands shall be addressed as follows:

If to the Debtor:

Douglas B. Rosner, Esq.  
Goulston & Storrs PC  
400 Atlantic Avenue  
Boston, Massachusetts 02110  
Fax: 617.574.7627  
Email: drosner@goulsonstorrs.com

If to the Liquidating Trustee:

[NAME]  
[COMPANY]  
[STREET ADDRESS]  
[CITY, STATE ZIP]  
[FAX NUMBER]  
[EMAIL ADDRESS]

with copies to:

[ATTORNEY]  
[FIRM]  
[STREET ADDRESS]  
[CITY, STATE ZIP]  
[FAX NUMBER]  
[EMAIL ADDRESS]

14.13 Controlling Documents.

To the extent this Plan is inconsistent with the Disclosure Statement, the Plan shall control. To the extent that this Plan is inconsistent with the terms of the Liquidating Trust

Agreement, the Plan shall control. To the extent that the Plan is inconsistent with the Confirmation Order, the Confirmation Order shall control.

14.14 Reservation of Rights.

If this Plan is not confirmed by the Bankruptcy Court or any other court of competent jurisdiction for any reason, or if confirmed and if the Effective Date does not occur, the rights and defenses of all parties in interest in the Chapter 11 Case are and will be reserved in full. Any concession, compromise or settlement reflected herein, if any, are made for purposes of this Plan only, and if the Plan is not confirmed or the Effective Date does not occur, no party in interest in the Chapter 11 Case shall be bound or deemed prejudiced by any such concession, compromise or settlement.

14.15 Integration.

The Plan Supplement and all documents included therein are incorporated and are a part of the Plan as if set forth in full herein.

*[Signature on Following Page]*

Respectfully submitted,

BETSEY JOHNSON LLC

By: /s/ Aron Arias

Aron Arias  
Chief Financial Officer



Document comparison by Workshare Compare on Tuesday, January 28, 2014  
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**EXHIBIT B**

**(Liquidation Analysis)**

**Betsey Johnson LLC - Liquidation  
 Analysis  
 (\$000's)**

<b>Gross Liquidation Proceeds</b>
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Asset Category	Notes	Est. Value as of 10/31/13	Estimated Recoveries			
			% Recovery		\$ Recovery	
			Lower	Higher	Lower	Higher
Cash	A	\$ 744	100%	100%	\$ 744	\$ 744
Settlement with Equity	B	1,400	100%	100%	1,400	1,400
Misc. Recoveries	C	10	0%	100%	-	10
<b>Gross Liquidation Proceeds</b>					<b>2,144</b>	<b>2,154</b>

<b>Liquidation Costs</b>
--------------------------

	Notes	Lower		Higher		
		\$	\$	\$	\$	
Administrative & Other Costs	D	105	90	88	88	
Chapter 7 Trustee Fees	E	120	60	725	725	
Chapter 7 Trustee Expenses	E	25	20	(189)	(189)	
Accrued Professional Fees	F	(189)	(189)	874	794	
Wind-down costs	G	874	794	\$1,270	\$1,360	
Less: Carve-Out	H	(189)	(189)	\$1,270	\$1,360	
<b>Total Liquidation Costs</b>					<b>874</b>	<b>794</b>
<b>Net Proceeds Available for Distribution</b>					<b>\$1,270</b>	<b>\$1,360</b>

<b>Distribution of Proceeds</b>
---------------------------------

	Notes	Amount	% Recovery		\$ Recovery	
			Lower	Higher	Lower	Higher
Madden Parties	I	\$ 43	100%	100%	\$ 43	\$ 43
503(b)(9) Claims	J	245	100%	100%	245	245
Allowed Administrative	J	37	100%	100%	37	37
Priority Tax Claims	J	457	100%	100%	457	457
Secured Tax Claims	J	33	100%	100%	33	33

General Unsecured (Estimated) Equity	K L	<del>19,200</del> <u>19,000</u>	2.4% N/A	<del>2.8</del> <u>2.9</u> %	455 -	545 -
<b>Total Claims</b>		<u>\$ <del>20,015</del> <u>19,815</u></u>			<u>\$1,270</u>	<u>\$1,360</u>

**FOOTNOTES TO LIQUIDATION ANALYSIS**

**Note A – Cash**

The Debtor is estimated to have cash on hand of approximately \$744,000 as of October 31, 2013. It is assumed that all cash would be recovered at 100% of book value.

**Note B – Settlement with Equity**

The equity owners of Betsey Johnson LLC have agreed to pay \$1.4 million in full and final settlement of any avoidance action claims that the ~~Chapter~~chapter 11 Debtor may have against the equity owners.

**Note C – Miscellaneous Recoveries**

Miscellaneous recoveries are comprised of various refunds/deposits that which are believed to still be recoverable.

**Note D – Administrative & Other Costs**

Administrative and other costs are comprised of the operating expenses estimated to be incurred through the remaining wind-down to January 31, 2014. Such costs include salary and IT related costs.

**Note E – Trustee Fees**

Chapter 7 Trustee fees have been calculated based upon all moneys disbursed or turned over in the case by the trustee to parties of interest, excluding the debtor, but including holders of secured claims in accordance with Section 326 of the Bankruptcy Code. The Debtor estimates that the chapter 7 trustee would incur additional expenses and professional fees in a chapter 7 liquidation compared to the Chapter 11 Case because the chapter 7 trustee would need to familiarize itself with the Debtor's assets and the Chapter 11 Case.

**Note F – Accrued Professional Fees**

Accrued Professional Fees are projected to be \$725,000, which represents an estimate of the post-petition administrative costs related to professional fees incurred to date as well as such costs to wind down the Debtor's estate through to January 31, 2014.

**Note G – Wind-Down Costs**

Represents estimated costs to be incurred by a ~~Chapter~~chapter 7 Trustee in respect of storage/destruction of books and records, tax filings, etc.

**Note H – Carve-outs**

Consists of retainers and carve-outs to be applied against accrued professional fees subject to court approval.

**Note I - Madden**

Consists of the balance due to Madden on account of ~~its~~ secured claim pursuant to the sharing agreement with the Debtor and Committee

**Note J - 503(b)(9), Admin, Priority & Secured Tax Claims**

Based on the Debtor's claims reconciliation analysis and the results of claims objections to date.

**Note K – General Unsecured**

The gross amount of claims filed (after reducing to account for obviously duplicate claims that remain on the Debtor's Claims Register). The reader should note that the range of general unsecured claims set forth in the table in Article II, Section (B) of the Disclosure Statement assumes (for the lower end of the range) a more extensive claims reconciliation process. The costs of such a reconciliation process were considered in determining the estimated recovery rate in the Debtor's Chapter 11 Case.

**Note K – General Unsecured**

~~The gross amount of claims filed without any reductions.~~

**Note L - Equity**

General unsecured claims will not be paid in full. Accordingly, equity will not be entitled to any distribution in a ~~Chapter 7~~ chapter 7 case.

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Description	#8002093v2<gsdocs> - Betsey - Liquidation Analysis (Word)
Rendering set	standard




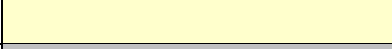

<b>Legend:</b>	
<a href="#">Insertion</a>	
<del>Deletion</del>	
<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	11
Deletions	11
Moved from	0
Moved to	0
Style change	0
Format changed	0
<b>Total changes</b>	<b>22</b>



Document comparison by Workshare Compare on Tuesday, January 28, 2014  
 11:03:18 AM

<b>Input:</b>	
Document 1 ID	file://C:\Users\cart2276\Desktop\Betsey - Disclosure Statement (12.20 FILED VERSION).DOC
Description	Betsey - Disclosure Statement (12.20 FILED VERSION)
Document 2 ID	interwovenSite://BOS-DMS1/gsdocs/2295289/4
Description	#2295289v4<gsdocs> - Betsey - Disclosure Statement for First Amended Plan (to be filed 1-28-14)
Rendering set	standard

<b>Legend:</b>	
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<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	79
Deletions	78
Moved from	0
Moved to	0
Style change	0
Format changed	0
<b>Total changes</b>	<b>157</b>