

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

In re:	:	CASE NO. 13-31943
DESIGNLINE CORPORATION,	:	CHAPTER 11
Debtor.	:	
In re:	:	CASE NO. 13-31944
DESIGNLINE USA, LLC,	:	CHAPTER 11
Debtor. <sup>1</sup>	:	(Jointly Administered)

**DISCLOSURE STATEMENT IN CONNECTION WITH LIQUIDATING PLAN  
OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF  
DESIGNLINE CORPORATION AND DESIGNLINE USA, LLC PURSUANT TO  
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

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December 31, 2013

**THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE  
BANKRUPTCY COURT AND CANNOT AND SHOULD NOT BE RELIED UPON  
FOR ANY REASON UNTIL SUCH APPROVAL IS OBTAINED**

<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are as follows: DesignLine Corporation (3294) (Case No. 13-31943) and DesignLine USA, LLC (3957) (Case No. 13-31944). The Debtors’ corporate headquarters and mailing address are 2309 Nevada Boulevard, Charlotte, NC 28273. In the last eight (8) years, DesignLine Corporation also used the following names: (i) DesignLine International Holdings, LLC; (ii) DesignLine International Corporation; (iii) Jasper Merger Sub Inc., (iv) Jasper Ventures Inc., and (v) DesignLine Corporation.

**THIS DISCLOSURE STATEMENT SUMMARIZES CERTAIN PROVISIONS OF THE LIQUIDATING PLAN OF DESIGNLINE CORPORATION AND DESIGNLINE USA, LLC PURSUANT TO CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE (AS AMENDED FROM TIME TO TIME, THE "PLAN"), A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A, AS WELL AS CERTAIN OTHER DOCUMENTS AND FINANCIAL INFORMATION. THE COMMITTEE BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE. THE FINANCIAL INFORMATION SUMMARIES AND OTHER DOCUMENTS ATTACHED HERETO OR INCORPORATED BY REFERENCE HEREIN ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THOSE DOCUMENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN, OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION INCORPORATED HEREIN BY REFERENCE, THE PLAN OR THE OTHER DOCUMENTS AND FINANCIAL INFORMATION, AS THE CASE MAY BE, SHALL GOVERN FOR ALL PURPOSES.**

**MOREOVER, THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION OR WAIVER BUT RATHER SHOULD BE CONSTRUED AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS.**

**THE COMMITTEE MAKES THE STATEMENTS AND PROVIDES THE FINANCIAL INFORMATION CONTAINED HEREIN AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE DATE HEREOF UNLESS SO SPECIFIED. EACH HOLDER OF AN IMPAIRED CLAIM ENTITLED TO VOTE THEREFORE SHOULD CAREFULLY REVIEW THE PLAN, THIS DISCLOSURE STATEMENT AND THE EXHIBITS TO BOTH DOCUMENTS IN THEIR ENTIRETY BEFORE CASTING A BALLOT. THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. ANY PERSONS DESIRING ANY SUCH ADVICE OR ANY OTHER ADVICE SHOULD CONSULT WITH THEIR OWN ADVISORS.**

**NO PARTY IS AUTHORIZED TO PROVIDE TO ANY OTHER PARTY ANY INFORMATION CONCERNING THE PLAN OTHER THAN THE CONTENTS OF THIS DISCLOSURE STATEMENT. THE COMMITTEE HAS NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY OTHER THAN THOSE SET FORTH IN THIS DISCLOSURE STATEMENT. HOLDERS OF CLAIMS SHOULD NOT RELY ON ANY INFORMATION, REPRESENTATIONS OR**

**INDUCEMENTS MADE TO OBTAIN YOUR ACCEPTANCE OF THE PLAN THAT ARE OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN AND IN THE PLAN.**

**THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT, EXCEPT WHERE SPECIFICALLY NOTED, HAS NOT BEEN AUDITED.**

**THE COMMITTEE BELIEVES THAT THE PLAN IS IN THE BEST INTERESTS OF ALL OF THE DEBTORS' CREDITORS AND REPRESENTS THE BEST POSSIBLE OUTCOME FOR THE CREDITORS AND THE DEBTORS' ESTATES. THE COMMITTEE THEREFORE RECOMMENDS THAT ALL HOLDERS OF CLAIMS SUBMIT BALLOTS TO ACCEPT THE PLAN. WHEN EVALUATING THE PLAN, PLEASE SEE ARTICLE VIII OF THIS DISCLOSURE STATEMENT FOR A DISCUSSION OF DIFFERENT "RISK FACTORS" WHICH SHOULD BE CONSIDERED IN CONNECTION WITH A DECISION BY A HOLDER OF AN IMPAIRED CLAIM TO ACCEPT THE PLAN.**

## I. INTRODUCTION

On August 15, 2013, DesignLine Corporation and DesignLine USA, LLC (collectively, the “Debtors”) each filed a petition under chapter 11 of title 11 of the United States Code §§ 101, *et seq.* (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware. On or around September 4, 2013, a hearing on a request to transfer venue of the bankruptcy cases to the United States Bankruptcy Court for the Western District of North Carolina, Charlotte Division (the “Bankruptcy Court”) was held and an Order approving the request to transfer venue was granted.

Chapter 11 of the Bankruptcy Code allows a party-in-interest to sponsor a plan of reorganization that proposes how to dispose of a debtor’s assets and treat claims (*i.e.*, debts) against, and interests in, such a debtor. A chapter 11 plan typically allows a debtor to reorganize by continuing to operate, to liquidate by selling assets of the debtor’s estate, or to implement a combination of both. The Committee proposes to liquidate the Debtors’ remaining assets and distribute the proceeds to creditors in accordance with the terms of the Plan.

The Bankruptcy Code requires that the party proposing a chapter 11 plan prepare and file with the Bankruptcy Court a document called a “disclosure statement.” **THIS DOCUMENT IS THE DISCLOSURE STATEMENT (THE “DISCLOSURE STATEMENT”) FOR THE PLAN. THE DISCLOSURE STATEMENT INCLUDES CERTAIN EXHIBITS, EACH OF WHICH ARE INCORPORATED HEREIN BY REFERENCE.**

*Please note that any terms not specifically defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan and any conflict arising therefrom shall be governed by the Plan.*

This Disclosure Statement summarizes the Plan’s content and provides information relating to the Plan and the process the Bankruptcy Court will follow in determining whether to confirm the Plan. This Disclosure Statement also discusses the events leading to the Debtors’ filing of their chapter 11 cases (the “Chapter 11 Cases”), describes certain events expected to occur in the Chapter 11 Cases, and, summarizes the Plan. The Disclosure Statement also describes voting procedures and the confirmation process.

The Bankruptcy Code requires a disclosure statement to contain “adequate information” concerning the Plan. A disclosure statement must contain sufficient information to enable parties who are affected by the Plan to vote intelligently for or against the Plan or object to the Plan, as the case may be. The Bankruptcy Court has reviewed this Disclosure Statement, and has determined that it contains adequate information and may be sent to you to solicit your vote on the Plan.

All Holders of Claims should carefully review both the Disclosure Statement and the Plan before voting to accept or reject the Plan. Indeed, Holders of Claims should not rely solely on the Disclosure Statement but should also read the Plan. Moreover, the Plan provisions will govern if there are any inconsistencies between the Plan and the Disclosure Statement.

**THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 5:00 P.M. (PREVAILING CHARLOTTE, NORTH CAROLINA TIME) ON FEBRUARY \_\_\_\_\_, 2013, UNLESS THE COURT OR THE COMMITTEE, EXTEND THE PERIOD DURING WHICH VOTES WILL BE ACCEPTED BY THE COMMITTEE, IN WHICH CASE THE VOTING DEADLINE FOR SUCH SOLICITATION SHALL MEAN THE LAST TIME AND DATE TO WHICH SUCH SOLICITATION IS EXTENDED.**

A. PLAN OVERVIEW/ EXECUTIVE SUMMARY

**THE FOLLOWING SUMMARIZES CERTAIN KEY INFORMATION CONTAINED ELSEWHERE IN THIS DISCLOSURE STATEMENT. REFERENCE IS MADE TO, AND THIS SUMMARY IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO, THE MORE DETAILED INFORMATION CONTAINED ELSEWHERE IN THIS DISCLOSURE STATEMENT AND IN THE PLAN. THE PLAN WILL CONTROL IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS SUMMARY AND THE PLAN. FOR A MORE DETAILED SUMMARY OF THE PLAN, PLEASE SEE ARTICLE IV OF THIS DISCLOSURE STATEMENT.**

1. Solicitation

Solicitation materials, including this Disclosure Statement, Ballots to be used for voting on the Plan, and a transmittal letter are being distributed to all known Holders of Claims entitled to vote on the Plan. The only Classes of Claims entitled to vote on the Plan are Classes 1, 2, 3, and 4. The purpose of this solicitation, among other things, is to obtain acceptances of the Plan, as required under the Bankruptcy Code, from certain of the Classes of Claims entitled to vote (the statutory requirements for Confirmation of the Plan are described in Articles IV.I and V herein). Assuming the requisite acceptances are obtained, the Committee intends to seek Confirmation of the Plan and approval of the terms contained in the Disclosure Statement at the Confirmation Hearing commencing on \_\_\_\_\_ at \_\_\_\_\_.

2. Purpose of the Plan

The Plan provides for the transfer of certain property of the estate and the creation of a Liquidating Trust to allow, subject to oversight by the Liquidating Trust Committee, the Liquidating Trustee to pursue litigation and the orderly distribution of proceeds therefrom.

3. Support by DIP Lender

The DIP Lender supports the Plan.

4. Substantive Consolidation

Subject to the occurrence of the Effective Date, the Debtors and their Estates will be deemed substantively consolidated for voting and distribution purposes only. No distributions will be made under the Plan on account of Intercompany Claims. The assets and liabilities of the Debtors shall be pooled and all Claims shall be satisfied from the assets of a single consolidated estate. Any Claims against one or more of the Debtors (including, but not

limited to: Claims based upon a guaranty, indemnity, co-signature, surety or otherwise, or Claims against another Debtor) shall be treated as a single Claim against the consolidated estate of the Debtors and shall be entitled to distributions under the Plan only with respect to such single Claim.

5. Establishment of the Liquidating Trust

On the Effective Date or immediately prior thereto, a Liquidating Trust shall be created and vested with the Liquidating Trust Assets and the Liquidating Trust shall reduce to Cash or otherwise liquidate the Liquidating Trust Assets and distribute in accordance with and subject to the terms and provisions of the Plan and Liquidating Trust.

6. Summary of Projected Distributions to Creditors

The Plan provides for the classification and treatment of Claims against and Equity Interests in the Debtors. The following chart summarizes the treatment of Allowed Claims and Equity Interests under the Plan. This chart is only a summary of the classification and treatment of Claims and Equity Interests under the Plan. Reference should be made to the entire Disclosure Statement and the Plan for a complete description of the classification and treatment of Claims and Equity Interests. Moreover, the column entitled, "Projected Recovery," is merely a good faith estimate as of the date hereof based on available information of the total amount of Allowed Claims in the Debtors' Chapter 11 Cases. These estimates should not be deemed to be an admission, binding or otherwise, as to the amount of total Allowed Claims. The Committee reserves the right to change their estimates and object to any Claim, unless previously Allowed by Final Order or otherwise.

<u>Class</u>	<u>Description</u>	<u>Treatment</u>	<u>Estimated Amount of Claims</u>	<u>Projected Recovery</u> <u><u>2</u></u>
1	Prepetition Secured Claims	Holders of Allowed Prepetition Secured Claims shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Prepetition Secured Claims, the Prepetition Collateral or Prepetition Collateral Proceeds except to the extent of any deficiency, which deficiency shall be treated in accordance with Class 3.	\$28,021,467	<u>0%</u>
2	Other Priority Claims	Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, on, or as soon as reasonably practicable after, the later of the Effective Date or the date such Other Priority Claim becomes an Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Other Priority Claim, (i) Cash from the Debtors cash on hand equal to the unpaid portion of such Allowed Other Priority Claim, or (ii) such other treatment as to which the Debtors or the Liquidating Trustee and such Holder have agreed upon in writing.	\$250,184.15	<u>100%</u> <sup>3</sup>
3	Prepetition Deficiency Claims	Holders of Allowed Prepetition Deficiency Claims in Class 3 shall receive a Pro Rata share of the Liquidating Trust Assets (or the proceeds thereof), pari passu with Holders of Allowed Unsecured Claims in Class 4, remaining after payment of the Allowed DIP Deficiency Claim, Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Liquidating Trustee Fees, and Liquidating Trustee Professionals Fees.	\$28,021,467	<u>4%</u>

<sup>2</sup> It is anticipated that the sole Liquidating Trust Assets will consist of fully encumbered property and unasserted claims and cause of action of unascertainable or zero value and thus the Liquidating Trustee anticipates ascribing zero value to such Liquidating Trust Assets as of the date of transfer.

<sup>3</sup> Some or all of these amounts may have been paid or otherwise satisfied through order of the Bankruptcy Court.

<u>Class</u>	<u>Description</u>	<u>Treatment</u>	<u>Estimated Amount of Claims</u>	<u>Projected Recovery</u> <u>2</u>
4	Unsecured Claims	Holders of Allowed Unsecured Claims in Class 4 shall receive a Pro Rata share of the Liquidating Trust Assets (or the proceeds thereof), pari passu with Holders of Allowed Unsecured Claims in Class 3, remaining after payment of the Allowed DIP Deficiency Claim, Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Liquidating Trustee Fees, and Liquidating Trustee Professionals Fees.	\$3,713,922.74	<u>4%</u>
5	Intercompany Claims	On the Effective Date, all Intercompany Claims shall be deemed waived and cancelled and Holders of Intercompany Claims shall not receive any distribution on account of such Intercompany Claim under the Plan.	Unknown	<u>0%</u>
6	Preferred Stock Equity Interests	On the Effective Date, all Preferred Stock Equity Interests shall be deemed cancelled and Holders of Preferred Stock Equity Interests shall not receive any distribution on account of such Preferred Stock Equity Interests under the Plan.	Unknown	<u>0%</u>
7	Common Stock Equity Interests	On the Effective Date, all Common Stock Equity Interests shall be deemed cancelled and Holders of Common Stock Equity Interests shall not receive any distribution on account of such Common Stock Equity Interests under the Plan.	Unknown	<u>0%</u>

The distributions projected in the table above represent only a range of possible recoveries that the Committee believes is reasonable based upon all information reasonably available to them as of the date hereof. See Article VIII for a detailed discussion of the many factors which may impact upon the distributions that will ultimately be available to creditors.



**THE BANKRUPTCY COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT YET BINDING ON ANYONE OR ANY PARTY. HOWEVER, IF THE BANKRUPTCY COURT LATER CONFIRMS THE PLAN, THEN THE PLAN WILL BIND ALL CLAIM AND EQUITY INTEREST HOLDERS. THE COMMITTEE HAS RECEIVED CONDITIONAL APPROVAL OF THE DISCLOSURE STATEMENT (D.I. \_\_\_) AND INTENDS TO SEEK APPROVAL OF THIS DISCLOSURE STATEMENT AND THE PLAN ON \_\_\_\_\_.**

**7. Voting and Confirmation**

Each Holder of a Claim in Classes 1, 2, 3, and 4 will be entitled to vote either to accept or reject the Plan. Classes 1, 2, 3, and 4 shall have accepted the Plan if: (i) the Holders of at least two-thirds in amount of the Allowed Claims actually voting in each such Class have voted to accept the Plan and (ii) the Holders of more than one-half in number of the Allowed Claims actually voting in each such Class have voted to accept the Plan. Assuming the requisite acceptances are obtained, the Committee intends to seek confirmation of the Plan at a hearing (the "Confirmation Hearing") scheduled to commence on \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ (prevailing Charlotte, North Carolina time), before the Bankruptcy Court. **Notwithstanding the foregoing, provided that at least one Impaired Class accepts the Plan, the Committee will seek Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to the Impaired Classes presumed to reject the Plan, and reserves the right to do so with respect to any other rejecting Class or to modify the Plan in accordance with Article XIII of the Plan.**

This Disclosure Statement specifies the deadlines, procedures and instructions for voting to accept or reject the Plan and the applicable standards for tabulating Ballots. The Bankruptcy Court has established \_\_\_\_\_, 20\_\_ (the "Voting Record Date"), as the date for determining which Holders of Claims are eligible to vote on the Plan. Ballots will be mailed to all registered Holders of Claims as of the Voting Record Date who are entitled to vote to accept or reject the Plan. An appropriate return envelope will be included with your Ballot, if necessary.

**TO BE COUNTED, YOUR BALLOT INDICATING AN ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED BY NO LATER THAN 5:00 P.M. (PREVAILING CHARLOTTE, NORTH CAROLINA TIME) ON \_\_\_\_\_, 20\_\_ (THE "VOTING DEADLINE") UNLESS THE COURT OR THE COMMITTEE EXTENDS THE PERIOD DURING WHICH VOTES WILL BE ACCEPTED BY THE COMMITTEE, IN WHICH CASE THE VOTING DEADLINE FOR SUCH SOLICITATION SHALL MEAN THE LAST TIME AND DATE TO WHICH SUCH SOLICITATION IS EXTENDED.**

**THE COMMITTEE BELIEVES THAT THE PLAN IS IN THE BEST INTEREST OF ALL CREDITORS AND EQUITY INTERESTS AS A WHOLE. THE COMMITTEE THEREFORE RECOMMENDS THAT ALL HOLDERS OF CLAIMS SUBMIT BALLOTS TO ACCEPT THE PLAN.**

Objections to confirmation of the Plan must be filed and served on or before **4:00 p.m. prevailing Charlotte, North Carolina time on \_\_\_\_\_, 20\_\_**. **UNLESS OBJECTIONS TO CONFIRMATION ARE TIMELY SERVED AND FILED, THEY MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

8. Liquidation Analysis and Waterfall

The Committee believes that the Plan will produce a greater recovery for Holders of Allowed Claims in Classes 1, 2, 3, and 4 than would be achieved in a chapter 7 liquidation because, as discussed further herein, the Plan contemplates the creation of a Liquidating Trust that will seek to recover value from all assets transferred to it, including but not limited to Causes of Action, Avoidance Actions, and Transferred Causes of Action. The Committee believes there will be less likelihood of a recovery if liquidated in a chapter 7 (or otherwise). However, through prosecution of the Causes of Action, Avoidance Actions, and Transferred Causes of Action there is potential for a recovery that, if obtained, would result in Holders of Allowed Claims possibly being paid something on account of their Claims, as described in the Waterfall (*see* Section IV.D.9 herein). A Liquidation Analysis under chapter 7 is also attached hereto as Exhibit B.

9. Risk Factors

There are a variety of factors that each Holder of a Claim should consider prior to voting to accept or reject the Plan. Some of these factors, which are described in more detail in Article VIII of this Disclosure Statement, are as follows and may impact the recoveries under the Plan:

- The financial information disclosed in this Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and Disclosure Statement. The Liquidation Analysis attached hereto as Exhibit B is qualified by the assumptions and limitations attached thereto.
- Article IX of this Disclosure Statement discusses certain possible federal tax consequences of the transactions that are described herein and in the Plan that may affect the Debtors and others.  **Holders of Claims and Equity Interests are urged to consult with their own tax advisors regarding the federal, state, local and other tax consequences of the Plan, as the Committee is providing no tax advice herein.**
- Although the Liquidating Trust has been structured with the intention of complying with guidelines established by the IRS in Rev. Proc. 94-45, 1994-2 C.B. 684, for the formation of liquidating trusts, it is possible that the IRS could require a different characterization of the Liquidating Trust, which could result in different and possibly greater tax liability to the Liquidating Trust and/or the Holders of Allowed Claims and Equity Interests. If there is a greater tax liability to the Liquidating Trust, that will have the impact of reducing the sums available to pay Claims.

- Although the Committee believes that the Plan complies with all applicable standards of the Bankruptcy Code, the Committee can provide no assurance that the Plan will comply with section 1129 of the Bankruptcy Code or that the Bankruptcy Court will confirm the Plan.
- The Committee may be required to request Confirmation of the Plan without the acceptance of all Impaired Classes entitled to vote in accordance with section 1129(b) of the Bankruptcy Code.
- Any delays of either Confirmation or the Effective Date of the Plan could result in, among other things, increased Claims of Professionals.

10. Injunction

**As set forth herein and except as otherwise expressly provided in the Plan, all Entities, excluding the Liquidation Trustee and the Liquidation Trust, that have held, hold, or may hold Claims against or Equity Interests in the Debtors are permanently enjoined, from and after the Effective Date, from taking any of the following actions against any of the Debtors, the Debtors' Estates, the Liquidating Trust, or the Liquidating Trustee, or any of their respective property on account of any Claims or causes of action arising from events prior to the Effective Date including, without limitation, (i) commencing or continuing in any manner any action or other proceeding of any kind; (ii) enforcing, attaching, collecting, or recovering by any manner or in any place or means any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind; and (iv) asserting any defense or right of setoff, subrogation, or recoupment of any kind against any obligation, debt, or liability due to the Debtors.**

B. RECOMMENDATION

The Committee believes that the Plan provides the best and most feasible recovery for Holders of Allowed Claims against the Debtors and that accepting the Plan is in the best interests of the Holders of Allowed Claims against the Debtors. The Committee therefore recommends that you vote to accept the Plan.

C. DISCLAIMER

In formulating the Plan, the Committee relied on financial data derived from the best information available to it as of the date hereof. The Committee therefore represents that everything stated in the Disclosure Statement is true to the best of its knowledge. The Committee nonetheless cannot, and does not, confirm the current accuracy of all statements appearing in this Disclosure Statement.

The discussion in the Disclosure Statement regarding the Debtors may contain "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as "may," "expect,"

“anticipate,” “estimate” or “continue” or the negative thereof or other variations thereon or comparable terminology. The reader is cautioned that all forward looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward looking statements. The distribution projections and other information are estimates only, and the timing and amount of actual distributions to Holders of Claims may be affected by many factors that cannot be predicted. Therefore, any analyses, estimates or recovery projections may or may not turn out to be accurate.

**NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT IS, OR SHALL BE DEEMED TO BE, AN ADMISSION OR STATEMENT AGAINST INTEREST BY THE COMMITTEE FOR PURPOSES OF ANY PENDING OR FUTURE LITIGATION MATTER OR PROCEEDING.**

**ALTHOUGH THE ATTORNEYS, ADVISORS AND OTHER PROFESSIONALS EMPLOYED BY THE COMMITTEE HAVE ASSISTED IN PREPARING THIS DISCLOSURE STATEMENT BASED UPON FACTUAL INFORMATION AND ASSUMPTIONS RESPECTING FINANCIAL, BUSINESS, AND ACCOUNTING DATA FOUND IN THE BOOKS AND RECORDS OF THE DEBTORS, THEY HAVE NOT INDEPENDENTLY VERIFIED SUCH INFORMATION AND MAKE NO REPRESENTATIONS AS TO THE ACCURACY THEREOF. THE ATTORNEYS, ADVISORS AND OTHER PROFESSIONALS EMPLOYED BY THE COMMITTEE SHALL HAVE NO LIABILITY FOR THE INFORMATION IN THE DISCLOSURE STATEMENT.**

## II. GENERAL INFORMATION

### A. DESCRIPTION OF THE DEBTORS' BUSINESSES

Prior to the commencement of these bankruptcy cases, the Debtors were a leading designer and manufacturer of electric, electric range extended, diesel and alternative fuel transit buses. The Debtors are a twenty-five-year old company founded in New Zealand. In 2006, a small group of U.S. investors acquired the assets of the New Zealand predecessors and began to leverage the company's core technology into market share. Since 2006, the Debtors' then-new management instituted a growth strategy that increased revenues to over \$30 million in 2009. The company consistently incurred losses and never attained profitability prior to the bankruptcy filing.

In July 2013, after a potential new investor withdrew from a letter of intent that — according to the Debtors — would have provided the Debtors with necessary financing, the Debtors terminated nearly its entire workforce, ceased active production operations, and appointed Katie Goodman of GGG Partners, LLC as its Chief Restructuring Officer.

On August 15, 2013, the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors, through November 15, 2013, operated their businesses and managed their properties as debtors-in-possession.

On August 27, 2013, the Office of the United States Trustee for Region III appointed the Committee pursuant to section 1102 of the Bankruptcy Code. The Committee consists of the following five (5) members: (i) Princess Cathcart & Frank Thompson; (ii) Cameron Harris; (iii) The Punaro Group LLC; (iv) Carnes-Miller Gear Co., Inc.; and (v) TriMark Corporation. The Committee subsequently retained Benesch, Friedlander, Coplan & Aronoff, LLP as counsel to the Committee, by order dated August 27, 2013. [D.I.17].

On August 28, 2013, a creditor of the Debtors filed a Motion to Transfer Venue of the Bankruptcy Cases to the United States Bankruptcy Court for the Western District of North Carolina, Charlotte, Division [D.I. 20]. The Debtors, the Committee, and the DIP Lender filed objections to the request to transfer venue. On or around September 4, 2013, a hearing on the request to transfer venue of the bankruptcy cases was held and an Order approving the request to transfer venue to the Bankruptcy Court was entered [D.I. 59].

On September 25, 2013, the Debtors filed their Motion for Order (i) Approving Auction and Bidding Procedures in Connection With the Sale of Substantially All of the Debtors' Assets, (ii) Authorizing, But Not Requiring, Entry Into A Stalking Horse Agreement and Approving Stalking Horse Protections, (iii) Approving Procedures Related to the Assumption and Assignment of Executory Contracts and Unexpired Leases, (iv) Scheduling Auction and Sale Approval, and (v) Approving the Form and Manner of the Sale Notice (the "Bid Procedures Motion") [D.I. 127] and Motion of Debtors for Entry of an Order Approving (A) the Proposed Sale of Substantially All Assets of the Debtors Free and Clear of All Liens, Claims, Encumbrances and Other Interests and (B) Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases (the "Sale Motion") [D.I. 135].

On October 7, 2013, this Court entered an order approving the Bid Procedures Motion [D.I. 149] providing for the sale of substantially all of the Debtors' assets and authorizing — but not requiring — the Debtors to enter into a stalking horse purchase agreement and approving certain stalking horse protections. The Debtors were unable to identify a stalking horse bid prior to the deadline provided in the Order granting the Bid Procedures Motion. The Debtors subsequently received several offers for the purchase of all or substantially all of the Debtors' assets and an auction of the Debtors' assets occurred on October 28, 2013 in Charlotte, North Carolina at the offices of Nelson Mullins Riley & Scarborough, LLP, counsel for the Debtors.

At the aforementioned auction, the Debtors identified Wonderland Investment Group Inc. as holding the highest and best bid in the amount of \$1.6 million for substantially all of the Debtors' assets. After a hearing, and the resolution of several objections to the sale, the sale of substantially all of the Debtors' assets was confirmed by order of this Court dated November 1, 2013 [D.I. 192]. The sale closed shortly thereafter. The sale of the Debtors' assets failed to satisfy all of the outstanding obligations under the DIP Loan or provide any benefit to the Debtors' unsecured creditors.

Subsequently, on November 5, 2013, the Committee, through its counsel, filed a Motion to Appoint a Chapter 11 Trustee (the "Trustee Motion") pursuant to section 1104(a)(2) of the Bankruptcy Code. A hearing was held on November 13, 2013 on the Trustee Motion and an

order was subsequently entered on November 15, 2013, granting the relief requested and appointing Elaine T. Rudisill as Chapter 11 Trustee (the “Trustee”) [D.I. 203].

## B. THE DEBTORS’ CORPORATE HISTORY AND EQUITY STRUCTURE

### 1. Company History

DesignLine is a 25-year old company found in New Zealand. It started development of hybrid buses in the early 1990’s. In August 2006, a small group of U.S. investors acquired the assets of the New Zealand predecessor and began to leverage the company’s core technology into market share. Prior to 2006, the average annual revenue for the New Zealand predecessor was between \$4 and \$5 million USD and was based primarily on diesel bus sales in New Zealand. Following the acquisition, the new management team instituted a growth strategy that substantially increased annual revenues to over \$30 million USD in 2009. Nonetheless, the Company incurred losses from Operations of \$25.8 million USD in 2010 and \$24.1 million USD in 2011.

### 2. Stockholders

A listing of any Entity holding more than five percent (5%) of the securities of DesignLine Corporation will be included in the Plan Supplement.

As of the Petition Date, DesignLine Corporation owned 100% of the membership interests of DesignLine USA LLC.

As of the Petition Date, the board of directors of DesignLine Corporation consisted of those Persons identified within the DesignLine Corporation’s statement of financial affairs.

## C. DEBT STRUCTURE

Prior to the Petition Date, the Debtors entered into various credit facilities, including:

A Prepetition First Lien Credit Facility in the original principal face amount of \$8,546,910 (the “Prepetition First Lien Indebtedness”) made to Debtors, as borrower, by Orix Venture Finance, LLC, Cyan PI Investments, LP, Cyan Partners, LP, GVP Grown Investments I, LP, GVP Growth Investments III, LP, Cyrus Opportunities Master Fund II, Ltd., Cyrus Select Opportunities Master Fund, Ltd., and Crescent 1, LP, as lenders, as evidenced by that certain Credit Agreement dated as of November 3, 2011.

A Prepetition Specified Vehicle Lien Credit Facility in the aggregate amount of \$19,474,557 million (the “Specified Vehicle Lien Indebtedness”) made to the Debtors, as borrower, by Cyan Investments, LP, GVP, Cyrus Opportunities Master Fund II, Ltd., Cyrus Select Opportunities Master Fund, Ltd., Crescent 1, LP, as lenders, as evidenced by those certain Security Agreements and Master Secured Promissory Notes dated as of February 20, 2013 (as amended, restated, supplemented or otherwise modified prior to the Petition Date), and which was funded in installments on or about January 24, 2013, February 6, 2013, February 20, 2013,

March 6, 2013, March 21, 2013, April 3, 2013, April 17, 2013, May 1, 2013, May 15, 2013, May 29, 2013, June 13, 2013, June 20, 2013, and June 27, 2013. The Specified Vehicle Lien Indebtedness is secured by a \$3,000,000 duly perfected and first lien security interest on the Specified Vehicle Lien Collateral (as defined in the DIP Orders), with seniority over and above the priority of the Prepetition First Lien Indebtedness, and a duly perfected and valid second lien and security interest on the collateral security described in the Prepetition First Lien Credit Facility.

#### D. EVENTS LEADING TO THE CHAPTER 11 CASES

The Debtors had a substantial backlog of buses to be delivered under its contract with the State of New Jersey and is owed substantial amounts under that contract. During 2012 and 2013, the Debtors had been operating on a budget that was dependent on continued borrowing to sustain operations. In July of 2013, the Debtors entered into a letter of intent with a prospective investors that would have provided cash necessary to meet the Debtors' borrowing needs. On July 27, 2013, the investor unexpectedly and for reasons unknown to the Committee terminated that letter of intent. The Company was not able to locate additional financing. Given the Debtors' inability to obtain financing, they lacked liquidity to continue operations and terminated existing staff and factory workers in the beginning of August, 2013.

### III. THE CHAPTER 11 CASES

The commencement of these Bankruptcy Cases acted as an automatic stay against the commencement and/or continuation of all actions and proceedings against the Debtors and all acts to obtain property from the Debtors under section 362 of the Bankruptcy Code. In addition to the motions described above that relate to the venue of these Bankruptcy Cases, the DIP Financing, and the sale of substantially all of the Debtors' assets, the Debtors also made significant other filings with the Bankruptcy Court. The following summarizes such other filings. You may view each of these filings, and other filed documents, by accessing the Bankruptcy Court's website at <http://www.ncbw.uscourts.gov>.

On August 15, 2013, the Debtors filed a motion seeking to consolidate the Debtors' Chapter 11 Cases for administrative purposes only (the "Consolidation Motion"). The Debtors' Chapter 11 Cases are currently administered under the single case name *In re DesignLine Corporation, et al.*, for administrative purposes only. The Delaware Bankruptcy Court entered an order on August 29, 2013 granting the Consolidation Motion for procedural purposes only and identifying the chapter 11 case of DesignLine Corporation, Case No. 13-12089, as the primary docket to be consulted for all matters affecting the Debtors' bankruptcy cases. Subsequent to the transfer of venue to the North Carolina Bankruptcy Court, Case No. 13-31943 is the docket to be consulted regarding the bankruptcy cases.

On August 30, 2013, the Debtors filed a motion for an order pursuant to 11 U.S.C. §§ 105(a), 363(b), 363(c), 507(a), 541, 1107(a) and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing Payment of Certain Prepetition Compensation and (II) Authorizing Payment of Withholding and Payroll Related Taxes (the "Wage Motion"). Through the Wage Motion, the Debtors sought court approval to compensate certain employees for their pre-petition earned wages and to pay certain taxes relating to such employee wages earned prior to the Petition date. An order was

entered on September 25, 2013 granting the relief requested in the Wage Motion and authorizing, among other things, the payment of approximately \$26,000 in pre-petition compensation to certain employees.

On September 12, 2013, each Debtor filed its schedules of assets and liabilities (collectively, the “Schedules”) and a Statement of Financial Affairs (collectively, the “SOFAs”). The Schedules and SOFAs identify the assets and liabilities of the Debtors, as reflected in the Debtors’ books and records, and identify other pertinent financial information relating to the Debtors and their businesses. The Debtor filed Amended Schedules and SOFA for Designline Corporation were filed on October 9, 2013. Any person may review the Schedules and the SOFAs by accessing the Bankruptcy Court’s website at <http://www.ncwb.uscourts.gov>.

As discussed above, on August 27, 2013, the Debtors filed a Motion for (I) Interim and Final Orders Authorizing Debtors to Obtain Post-Petition Secured Financing Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b) and (c) [D.I. 15], which was approved on an interim basis by order of Court on September 13, 2013 [D.I. 111] (the “Interim DIP Order”), and approved on a final basis on October 10, 2013 [D.I. 153] (the “Final DIP Order”), which authorized the Debtor to obtain a credit facility (the “DIP Facility”) of up to \$1.5 million in aggregate principal amount pursuant to the terms of the Interim DIP Order and Final DIP Order.

As set forth above, on November 1, 2013, this Court approved a sale of substantially all of the Debtors’ assets, and subsequently on or about November 15, 2013, entered an order appointing the Trustee.

On December 18, 2013, the Committee filed a motion seeking to establish the last date by which proofs of Claims must be filed with the Bankruptcy Court. On January \_\_\_, 2014, the Bankruptcy Court entered an Order fixing February \_\_\_, 2014 as the last day for all persons or entities to file prepetition Claims in these Chapter 11 Cases. Any person or entity that is required to file a proof of Claim in these Chapter 11 Cases but fails to do so in a timely manner by the above deadline may be forever barred, estopped and enjoined from: (a) asserting any Claim against the Debtors that such person or entity has that (i) is in an amount that exceeds the amount, if any, that may be set forth in the Schedules, or (ii) is of a different nature or in a different classification than what may be set forth in the Schedules, and (b) voting upon or receiving distributions under the Plan.

#### IV. SUMMARY OF THE LIQUIDATING PLAN

##### A. OVERVIEW OF CHAPTER 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. It authorizes a debtor to reorganize its business for the benefit of itself, its creditors and its interest holders. Another chapter 11 goal is to promote equality of treatment for similarly situated creditors and similarly situated interest holders with respect to the distribution of a debtor’s assets.

The commencement of a chapter 11 case creates an estate that comprises all of a debtor’s legal and equitable interests as of the filing date. The Bankruptcy Code provides that



the debtor may continue to operate its business and remain in possession of its property as a “debtor in possession.”

The principal objective of a chapter 11 case is to consummate a chapter 11 plan. The chapter 11 plan sets forth the means for satisfying claims against, and interests in, a debtor. Confirmation of a chapter 11 plan by the Bankruptcy Court makes the plan binding upon the debtor, any issuer of securities under the plan, any person or entity acquiring property under the plan and any creditor of or equity holder in the debtor, whether or not such creditor or equity holder (a) is impaired under or has accepted the plan or (b) receives or retains any property under the plan. Subject to certain limited exceptions and other than as provided in the plan itself or the confirmation order, the confirmation order discharges the debtor from any debt that arose prior to the date of confirmation of the plan and substitutes therefore the obligations specified under the confirmed plan.

A chapter 11 plan may specify that the legal, contractual and equitable right of the Holders of Claims or Equity Interests in classes are to remain unaltered by the reorganization to be effectuated by the plan. Such Classes are referred to as “unimpaired” and, because of such favorable treatment, are deemed to accept the plan. Accordingly, it is not necessary to solicit votes from the Holders of Claims or Equity Interests in such Classes. A chapter 11 plan also may specify that certain classes will not receive any distribution of property or retain any claim against a debtor. Such Classes are deemed not to accept the plan and, therefore, need not be solicited to vote to accept or reject the Plan. Any Classes that are receiving a distribution of property of the Estates under the Plan but are not “unimpaired” will be solicited to vote to accept or reject the Plan.

**THE REMAINDER OF THIS SECTION SUMMARIZES THE STRUCTURE AND MEANS FOR IMPLEMENTING THE PLAN AND HOW THE PLAN CLASSIFIES AND TREATS CLAIMS AND EQUITY INTERESTS, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN (AS WELL AS THE EXHIBITS THERETO AND DEFINITIONS THEREIN).**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN THE DOCUMENTS REFERRED TO THEREIN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN, AND HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD REFER TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENT OF SUCH TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN.**

**THE PLAN ITSELF AND THE DOCUMENTS THEREIN CONTROL THE ACTUAL TREATMENT OF CLAIMS AGAINST, AND EQUITY INTERESTS IN, THE DEBTORS UNDER THE PLAN AND WILL, UPON THE OCCURRENCE OF THE EFFECTIVE DATE, BIND ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTORS, THE DEBTORS’ ESTATES, ALL PARTIES RECEIVING PROPERTY UNDER THE PLAN, AND OTHER PARTIES-IN-INTEREST. IN THE EVENT OF ANY**

**CONFLICT BETWEEN THIS DISCLOSURE STATEMENT, ON THE ONE HAND, AND THE PLAN OR ANY OTHER OPERATIVE DOCUMENT, ON THE OTHER HAND, THE TERMS OF THE PLAN AND/OR SUCH OTHER OPERATIVE DOCUMENT SHALL GOVERN.**

**HOLDERS OF CLAIMS OR EQUITY INTERESTS AND OTHER INTERESTED PARTIES ARE THEREFORE URGED TO READ THE PLAN AND THE EXHIBITS THERETO IN THEIR ENTIRETY SO THAT THEY MAY MAKE AN INFORMED JUDGMENT CONCERNING THE PLAN.**

**B. GENERALLY**

**1. Liquidating Plan of Reorganization**

The Plan is a liquidating chapter 11 plan of reorganization that provides for the orderly liquidation of all of the Debtors' remaining assets, the determination of all Claims and the distribution of the proceeds of any assets including, but not limited to, any funds obtained through the prosecution of Causes of Action, Avoidance Actions, and the Transferred Causes of Action. On the Effective Date, the Debtors shall transfer and shall be deemed to have irrevocably transferred to the Liquidating Trust, for and on behalf of the beneficiaries of the Liquidating Trust, with no reversionary interest in the Debtors, the Liquidating Trust Assets and the Prepetition Collateral. The Liquidating Trust Assets shall be held by the Litigation Trust and liquidated for distribution to Holders of Allowed Claims in accordance with the Plan.

**2. The Liquidating Trust**

The Liquidating Trust shall be established for the primary purpose of liquidating its assets and is intended to qualify as a liquidating trust as defined in accordance with Treas. Reg. § 301.7701-4(d)), with no objective to continue or engage in the conduct of a trade or business. The Committee will seek a ruling from the Court in the confirmation order that the Liquidating Trust shall not be deemed a successor-in-interest of the Debtors for any purposes, other than as specifically set forth in the Plan. As further described below, the Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes with the beneficiaries treated as grantors and owners of the trust. As of the Effective Date, the Liquidating Trust shall be responsible for (i) the winding up of the Debtors' Estates, (ii) liquidating or otherwise reducing to Cash the Liquidating Trust Assets, (iii) filing, prosecuting and settling Causes of Action, Avoidance Actions and Transferred Causes of Action, (iv) making distributions to Holders of Allowed Claims and Equity Interests, (v) overseeing the continued liquidation to Cash of all other Liquidating Trust Assets, and (vi) settling, resolving and objecting to Claims.

**C. CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including voting, Confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or

Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified, but the treatment for such unclassified claims are set forth in Article II of the Plan and Article IV.C. herein.

The Committee believes that the Plan has classified all Claims and Equity Interests in compliance with the provisions of section 1122 of the Bankruptcy Code, but it is possible that a Holder of a Claim or Equity Interest may challenge the classification of Claims and Equity Interests and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed.

Subject to the occurrence of the Effective Date, the Debtors and their Estates will be deemed substantively consolidated for voting and distribution purposes only. No distributions will be made under the Plan on account of Intercompany Claims. The assets and liabilities of the Debtors shall be pooled and all Claims shall be satisfied from the assets of a single consolidated estate. Any Claims against one or more of the Debtors (including Claims based upon a guaranty, indemnity, co-signature, surety or otherwise, of Claims against another Debtor) shall be treated as a single Claim against the consolidated estate of the Debtors and shall be entitled to distributions under the Plan only with respect to such single Claim.

The classification of Claims and Equity Interests and the nature of Distributions to members of each Class are summarized below. The Committee believes that the consideration, if any, provided under the Plan to Holders of Claims and Equity Interests reflects an appropriate resolution of their Claims and Equity Interests, taking into account the differing nature and priority (including applicable contractual subordination) of Claims and Equity Interests. The Bankruptcy Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of Holders of Claims or Equity Interests who are not entitled to vote on the Plan, or do not vote to accept the Plan, but who will be bound by the provisions of the Plan if it is confirmed by the Bankruptcy Court. The “cramdown” provisions of section 1129(b) of the Bankruptcy Code, for example, permit confirmation of a chapter 11 plan in certain circumstances even if the Plan has not been accepted by all Impaired Classes of Claims and Equity Interests. The Committee will seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code, to the extent applicable. Although the Committee believe that the Plan could be confirmed under section 1129(b) even if the Plan has not been accepted by all of the Impaired Classes, there can be no assurance that the requirements of such section would be satisfied.

1. Schedule of Treatment of Claims and Equity Interests

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Right</u>
1	Prepetition Secured Claims	Impaired	Entitled to vote
2	Other Priority Claims	Impaired	Entitled to vote
3	Prepetition Deficiency Claims	Impaired	Entitled to vote

4	General Unsecured Claims	Impaired	Entitled to vote
5	Intercompany Claims	Impaired	Deemed to reject
6	Preferred Equity Interests	Impaired	Deemed to reject
7	Common Stock Equity Interests	Impaired	Deemed to reject

2. Treatment of Unclassified Claims

(a) Non-Professional Fee Administrative Claims. Each Allowed Administrative Claim shall be either (i) paid by the Debtors in full, in Cash, in such amounts as such Administrative Claim is Allowed by the Bankruptcy Court upon the date upon which such Administrative Claim is Allowed, (ii) paid by the Liquidating Trustee from the proceeds of the Liquidating Trust Assets as practical, in accordance with the Order allowing such Allowed Administrative Claims, and in accordance with the distribution waterfall set forth in the Plan. Any application for the payment of any Administrative Claims (other than Professional Fee Claims) shall be Filed with the Bankruptcy Court no later than thirty (30) days after the Effective Date.

(b) Professional Fee Claims. Unless otherwise expressly provided in the Plan, a Professional Fee Claim will be Allowed only if: (i) on or before forty-five (45) days after the Effective Date (the “Professional Fee Bar Date”), the entity holding such Professional Fee Claim files with the Court a final fee application and serves the application on counsel to the DIP Lender, the Liquidating Trustee, and the Bankruptcy Administrator; and (ii) the Court enters an order allowing the Claim. The Debtors shall pay any Allowed Professional Fee Claims within three (3) Business Days of entry of the respective Final Order allowing such Professional Fee Claim, or the Liquidating Trustee shall pay any Allowed Professional Fee Claim from the proceeds of the Liquidating Trust Assets in accordance with any order allowing such Allowed Professional Fee Claim, as practical. Notwithstanding the foregoing, any entity holding a Professional Fee Claim that is a Liquidating Trustee Professional shall not be required to file a final fee application by the Professional Fee Bar Date.

Any party in interest may file an objection to such application within the time provided by the Bankruptcy Rules or within any other period that the Bankruptcy Court establishes. Entities holding Professional Fee Claims that do not timely file and serve a fee application by the Professional Fee Bar Date will be forever barred from asserting such Professional Fee Claim against the Debtors, the Estates, the Liquidating Trust, or their respective property. Notwithstanding any releases provided for in the Plan, all Professional Fee Claims shall be subject to potential objections at the hearing on the respective Professional Fee Claim in accordance with the Plan on grounds that a Professional Fee Claim is not allowable under section 330 of the Bankruptcy Code.

(c) DIP Facility Claim. Notwithstanding anything to the contrary in the Plan, in full and final satisfaction, settlement, release and discharge of and in exchange for release of the DIP Facility Claim, in accordance with section 1129(a)(9) of the Bankruptcy Code, the DIP Lender shall receive the treatment afforded by the Plan.

(d) Priority Tax Claims. On, or as soon as reasonably practicable after, the latest of the Effective Date or the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim, (i) Cash from the Liquidating Trust Assets (or the proceeds thereof) equal to the unpaid portion of such Allowed Priority Tax Claim or (ii) such other treatment as to which the Liquidating Trustee and such Holder have agreed upon in writing.

3. Classification and Treatment of Classified Claims

Classified Claims and Equity Interest shall be treated as follows:

1. Class 1 — Prepetition Secured Claims

(a) Classification: Class 1 consists of all Prepetition Secured Claims.

(b) Treatment: Holders of Allowed Prepetition Secured Claims shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Prepetition Secured Claims, the Prepetition Collateral or Prepetition Collateral Proceeds except to the extent of any deficiency, which deficiency shall be treated in accordance with Class 3.

(c) Voting: Class 1 is impaired. Subject to the respective reservations of rights set forth in this Disclosure Statement and the Plan, Holders of Prepetition Secured Claims in Class 1 are entitled to vote to accept or reject the Plan.

2. Class 2 — Other Priority Claims

(a) Classification: Class 2 consists of all Other Priority Claims.

(b) Treatment: Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, on, or as soon as reasonably practicable after, the later of the Effective Date or the date such Other Priority Claim becomes an Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Other Priority Claim, (i) Cash from the Debtors or Liquidating Trustee, as the case may be, cash on equal to the unpaid portion of such Allowed Other Priority Claim, or (ii) such other treatment as to which the Debtors or the Liquidating Trustee and such Holder have agreed upon in writing.

(c) Voting: Class 2 is impaired. Holders of Other Priority Claims in Class 2 are entitled to vote to accept or reject the Plan.

3. Class 3 — Prepetition Deficiency Claims

(a) Classification: Class 3 consists of all Prepetition Deficiency Claims.

(b) Treatment: Holders of Allowed Prepetition Deficiency Claims in Class 3 shall receive a Pro Rata share of the Liquidating Trust Assets (or the proceeds thereof), *pari passu* with Holders of Allowed Unsecured Claims in Class 4, remaining after payment of the Allowed DIP Deficiency Claim, Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Liquidating Trustee Fees, and Liquidating Trustee Professionals Fees.

(c) Voting: Class 3 is impaired. Holders of Allowed Unsecured Claims in Class 3 are entitled to vote to accept or reject the Plan.

4. Class 4 — Unsecured Claims

(a) Classification: Class 4 consists of all Unsecured Claims.

(b) Treatment: Holders of Allowed Unsecured Claims in Class 4 shall receive a Pro Rata share of the Liquidating Trust Assets (or the proceeds thereof), *pari passu* with Holders of Allowed Unsecured Claims in Class 3, remaining after payment of the Allowed DIP Deficiency Claim, Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Liquidating Trustee Fees, and Liquidating Trustee Professionals Fees.

(c) Voting: Class 4 is impaired. Holders of Allowed Unsecured Claims in Class 3 are entitled to vote to accept or reject the Plan.

5. Class 5 — Intercompany Claims

(a) Classification: Class 5 consists of all Intercompany Claims.

(b) Treatment: On the Effective Date, all Intercompany Claims shall be deemed waived and cancelled and Holders of Intercompany Claims shall not receive any distribution on account of such Intercompany Claim under the Plan.

(c) Voting: Class 5 is impaired. Because Holders of Intercompany Claims will receive no distributions under the Plan, Class 5 will be deemed to have voted to reject the Plan.

6. Class 6 — Preferred Stock Equity Interests

(a) Classification: Class 6 consists of all Preferred Stock Equity Interests.

(b) Treatment: On the Effective Date, all Preferred Stock Equity Interests shall be deemed cancelled and Holders of Preferred Stock Equity Interests shall not receive any distribution on account of such Preferred Stock Equity Interests under the Plan.

(c) Voting: Class 6 is impaired. Because Holders of Preferred Stock Equity Interests will receive no distributions under the Plan, Class 6 will be deemed to have voted to reject the Plan.

7. Class 7 — Common Stock Equity Interests

(a) Classification: Class 7 consists of all Common Stock Equity Interests.

(b) Treatment: On the Effective Date, all Common Stock Equity Interests shall be deemed cancelled and Holders of Common Stock Equity Interests shall not receive any distribution on account of such Common Stock Equity Interests under the Plan.

(c) Voting: Class 7 is impaired. Because Holders of Common Stock Equity Interests will receive no distributions under the Plan, Class 7 will be deemed to have voted to reject the Plan.

V. IMPLEMENTATION OF THE PLAN AND THE LIQUIDATING TRUST

A. FUNDING OF THE LIQUIDATING TRUST AND TRANSFER OF LIQUIDATING TRUST ASSETS

The Liquidating Trust will be funded by the Liquidating Trust Assets. On the Effective Date, the Debtors shall transfer and shall be deemed to have irrevocably transferred to the Liquidating Trust, for and on behalf of the beneficiaries of the Liquidating Trust, with no reversionary interest in the Debtors, the Liquidating Trust Assets and the Prepetition Collateral.

B. THE LIQUIDATING TRUST

1. Creation of the Liquidating Trust

(a) On the Effective Date or immediately prior thereto, (i) the Liquidating Trust shall be created and established by the execution and delivery of the Liquidating Trust Agreement and any other necessary action, subject to the provisions of the Plan; (ii) all Liquidating Trust Assets shall be transferred to the Liquidating Trust free of all Claims, Liens and interests for the benefit of Holders of Claims in Classes 1, 2, 3 and 4; and (iii) all of the Prepetition Collateral shall be transferred to the Liquidating Trust subject to the Liens created under the Prepetition Loan Documents to the extent that such Liens existed on the Petition Date, but free of all other Claims, Liens and interest. The Liquidating Trust shall reduce to Cash or otherwise liquidate the Liquidating Trust Assets and the Prepetition Collateral and distribute such liquidated assets in accordance with and subject to the terms and provisions of the Plan and the Liquidating Trust Agreement.

(b) As of the Effective Date, the Liquidating Trust shall be responsible for (i) the winding up of the Debtors' Estates, (ii) liquidating or otherwise reducing to Cash the Liquidating Trust Assets and the Prepetition Collateral in accordance with the Liquidating Trust Agreement, (iii) filing, prosecuting and settling Causes of Action, Avoidance Actions, Transferred Causes of Action, (iv) making distributions to Holders of Allowed Claims, (v) overseeing the continued liquidation to Cash of all other Liquidating Trust Assets, and (vi) settling, resolving and objecting to Claims that have not, as of the Effective Date, been resolved.

(c) Effective as of the Effective Date, the Liquidating Trustee shall be deemed to have retained the Liquidating Trustee Professionals and such other, accounting firms, experts, advisors, consultants, investigators, appraiser, auctioneers, or other professionals as necessary, in the Liquidating Trustee's discretion, and at the sole expense of the Liquidating Trust, to aid in the performance of the Liquidating Trustee's responsibilities pursuant to the terms of this Plan including, without limitation, the liquidation and distribution of Liquidating Trust Assets and the Prepetition Collateral.

(d) All costs and expenses associated with the administration of the Liquidating Trust shall be the responsibility of and paid by the Liquidating Trust in accordance with the Liquidating Trust Agreement. The costs and expenses incurred by the Liquidating Trustee in administering, maintaining or liquidating the Liquidating Trust Assets and the Prepetition Collateral, including the fees and expenses of the Liquidating Trustee's Professionals, consultants and agents incurred in connection with the Liquidating Trust Assets and the Prepetition Collateral, and taxes, levies and assessments related to the Liquidating Trust Assets and the Prepetition Collateral, shall be paid from the Liquidating Trust Assets.

(e) All fees for professional services rendered and expenses incurred by the Liquidating Trustee and the Liquidating Professionals shall be subject to approval by the Bankruptcy Court in accordance with the process provided for in Article IV.E of the Plan.

(f) For federal income tax purposes, it is intended that the Liquidating Trust be classified as grantor trust and a liquidating trust under Treasury Regulation section 301.7701-4 and that such trust be owned by its beneficiaries. Accordingly, for federal income tax purposes, it is intended that the beneficiaries be treated as if there was a deemed transfer of the Liquidating Trust Assets to the beneficiaries followed by the deemed transfer of such Liquidating Trust Assets by the beneficiaries to the Liquidating Trust. Accordingly, the beneficiaries will be treated, for federal income tax purposes, as grantors and owners of their respective share of the Liquidating Trust Assets. It is anticipated that the sole Liquidating Trust Assets will consist of fully encumbered property and unasserted claims and cause of action of unascertainable or zero value and thus the Liquidating Trustee anticipates ascribing zero value to such Liquidating Trust Assets as of the date of transfer. The valuation ascribed to the Liquidating Trust Assets shall be used consistently by the Liquidating Trust and the beneficiaries of the Liquidating Trust for all federal income tax purposes. The Liquidating Trust Agreement shall (i) state that the primary purpose of the Liquidating Trust is to liquidate the Liquidating Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, its liquidating purpose and (ii) contain a fixed or determinable termination date that is not more than five (5) years from the date of creation of the Liquidating Trust, which termination date may be extended for one or more finite terms subject to the approval of the Bankruptcy Court upon a finding that the extension is necessary to its liquidating purpose. Each such extension must be approved by the Bankruptcy Court within six (6) months before the beginning of the extended term.

(g) The Liquidating Trustee shall be responsible for filing all federal, state and local tax returns for the Liquidating Trust. The Liquidating Trustee shall file all federal tax returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4. The Liquidating Trustee also will annually send to each beneficiary of the Liquidating



Trust a separate statement regarding the receipts and expenditures of the Liquidating Trust as relevant for U.S. federal income tax purposes and will instruct all such holders to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such holder's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. The Liquidating Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Liquidating Trust that is required by any governmental unit.

(h) The Debtors shall cause the beneficial interests of the Liquidating Trust to be nontransferable and any such transfer shall be disregarded by the Liquidating Trustee except with respect to a transfer by will or under laws of descent and distribution; provided, however, such transfer will not be effective until and unless the Liquidating Trustee receives written notice of such transfer under the law of descent and distribution.

## 2. The Liquidating Trustee

(a) On the Effective Date, the proposed Liquidating Trustee shall execute the Liquidating Trust Agreement and any other documents necessary to be appointed the Liquidating Trustee. The Liquidating Trustee, once appointed, shall act as trustee on behalf of the Liquidating Trust to carry out its obligations and exercise its rights in accordance with, and subject to, the Plan, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee's authority and power shall be subject to the oversight of the Liquidating Trust Committee on the terms proscribed in the Liquidating Trust Agreement. The Liquidating Trustee and the Liquidating Trustee Professionals shall be compensated as set forth in the Plan and the Liquidating Trust Agreement. Any objection to the designation of the Liquidating Trustee shall be raised at the Confirmation Hearing. The Confirmation Order shall state that without the permission of the Bankruptcy Court, no judicial, administrative, arbitration or other action or proceeding shall be commenced against the Liquidating Trustee in its official capacity, with respect to its status, duties, powers, acts or omissions as Liquidating Trustee in any forum other than the Bankruptcy Court. The Liquidating Trustee shall be vested with the rights, powers and benefits set forth in the Liquidating Trust Agreement, which shall include, without limitation, all rights, powers, and benefits afforded to a "trustee" under sections 704 and 1106 of the Bankruptcy Code. Subject to the provisions of the Plan and the Liquidating Trust Agreement, the Liquidating Trustee shall be entitled to hire such professionals as it deems necessary to assist it in carrying out its duties.

(b) The investment powers of the Liquidating Trustee, other than those reasonably necessary to maintain the value of the Liquidating Trust Assets and to further the liquidating purpose of the Liquidating Trust, are limited to investing in demand and time deposits.

(c) Subject to the provisions of the Liquidating Trust Agreement, the Liquidating Trustee shall be authorized and empowered to pursue and prosecute, to settle, or to decline to pursue, all Causes of Action, Transferred Causes of Action and Avoidance Actions, whether or not such causes of action have been commenced prior to the Effective Date, and shall be substituted as the real party in interest in any such action, commenced by or against the Debtors, the Committee, or the Debtors' Estates. The Liquidating Trustee may pursue or decline

to pursue all Causes of Action, Transferred Causes of Action and Avoidance Actions, and may settle, release, sell, assign, otherwise transfer or compromise such Causes of Action, Transferred Causes of Action and Avoidance Actions in the Liquidating Trustee's business judgment, subject to the provisions of the Liquidating Trust Agreement and Bankruptcy Court approval.

(d) The Liquidating Trustee may be removed and replaced as provided under the Liquidating Trust Agreement.

(e) Upon the Effective Date and execution of the Liquidating Trust Agreement, the Liquidating Trustee as trustee of the Liquidating Trust, and not personally, shall be vested in all right, title and interest in all Liquidating Trust Assets and the Prepetition Collateral, and all rights to enforce orders of the Bankruptcy Court entered in this Bankruptcy Proceeding. The Liquidating Trustee shall liquidate the Liquidating Trust Assets and the Prepetition Collateral and distribute the proceeds thereof in accordance with this Plan and the Liquidating Trust Agreement.

#### C. FINAL ADMINISTRATION OF LIQUIDATING TRUST

Upon full administration of the Liquidating Trust Assets and the Prepetition Collateral vested in the Liquidating Trust, and the satisfaction as far as possible of all remaining liabilities of the Liquidating Trust, in accordance with the Plan, the Liquidating Trustee shall file a motion seeking approval of all distributions made and entry of a Final Decree with respect to the remaining Chapter 11 Cases in compliance with the Bankruptcy Code, the Bankruptcy Rules and the local rules of the Bankruptcy Court. The Liquidating Trust shall be deemed terminated without further notice, and the Liquidating Trustee shall thereupon be forever discharged of and released from all power, duties and responsibilities under the Liquidating Trust Agreement and the Plan, on the later of the following to occur: (i) the ninetieth (90<sup>th</sup>) day following entry of the Final Decree, (ii) the filing of the final tax returns of the Liquidating Trust, and (iii) such date set by Order of the Bankruptcy Court. Every effort shall be made to effectuate such termination no later than the time reasonably necessary to accomplish the Liquidating Trust's purpose of liquidating the Liquidating Trust Assets and the Prepetition Collateral and distributing the proceeds thereof to the beneficiaries in accordance with the Liquidating Trust Agreement and the Plan, and in no event shall the Liquidating Trust continue for more than five (5) years after the Effective Date without further order of the Bankruptcy Court.

#### D. CORPORATE ACTION

Upon the entry of the Confirmation Order by the Bankruptcy Court, all matters provided under the Plan involving the corporate structure of the Debtors shall be deemed authorized and approved without any requirement of further action by the Debtors, the Debtors' shareholders or the Debtors' boards of directors. The Debtors (and their boards of directors) shall dissolve or otherwise terminate their existence upon the Effective Date.

#### E. PRESERVATION OF RIGHTS

The Committee currently is investigating whether to pursue potential Causes of Action, Transferred Causes of Action and Avoidance Actions against parties or Entities. The Liquidating Trustee retains all rights of and on behalf of the Estates, the Committee, and the

Liquidating Trust to commence and pursue any and all Causes of Action, Transferred Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Debtors' Chapter 11 Cases) and Avoidance Actions discovered in such investigation to the extent the Liquidating Trustee deems appropriate. Potential Causes of Action, Transferred Causes of Action and Avoidance Actions may but need not (if at all) be pursued by the Chapter 11 Trustee prior to the Effective Date and by the Liquidating Trustee after the Effective Date, to the extent warranted.

Except as provided in Article X of the Plan, potential Causes of Action, Transferred Causes of Action and Avoidance Actions that may be pursued by the Chapter 11 Trustee or the Committee prior to the Effective Date and by the Liquidating Trust and the Liquidating Trustee after the Effective Date also include, without limitation, any other Causes of Action and Transferred Causes of Action, whether legal, equitable, or statutory in nature, arising out of, or in connection with, the Debtors' businesses or operations, and any and all Avoidance Actions pursuant to any applicable section of the Bankruptcy Code arising from any transaction involving or concerning the Debtors.

Unless a claim against a Creditor or other Entity or Cause of Action or Transferred Cause of Action or Avoidance Action is expressly waived, relinquished, released, compromised or settled in the Plan, or any Final Order, the Chapter 11 Trustee on behalf of the Debtors expressly reserves such claim or Transferred Cause of Action or Avoidance Action for later enforcement by the Liquidating Trust (including, without limitation, claims and Transferred Causes of Action or Avoidance Actions that may be set forth in the Plan Supplement or not specifically identified or which the Chapter 11 Trustee or the Committee may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Chapter 11 Trustee or the Committee at this time or facts or circumstances which may change or be different from those which the Chapter 11 Trustee or the Committee now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such claims or Transferred Causes of Action or Avoidance Action upon or after the confirmation or consummation of this Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such claims or Transferred Causes of Action or Avoidance Action have been expressly released in this Plan or other Final Order. In addition, the Liquidating Trust expressly reserves the right to pursue or adopt any claim, crossclaim or counterclaims alleged in any lawsuit in which the Debtors or the Estates are a defendant or an interested party, against any person or entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, subject to the provisions of the Plan or any Final Order.

The Chapter 11 Trustee, the Committee, and the Liquidating Trustee do not intend, and it should not be assumed that because any existing or potential Transferred Causes of Action or Avoidance Actions have not yet been pursued by the Chapter 11 Trustee or the Committee or are not set forth herein, that any such Transferred Causes of Action or Avoidance Actions have been waived.

## F. TREATMENT OF DISPUTED CLAIMS

### 1. Objections to Claims and Prosecution of Disputed Claims

After the Effective Date, the Liquidating Trustee may object (and shall take over, and continue prosecuting and settling or otherwise resolving, any outstanding objections by the Debtors, the Committee or the Chapter 11 Trustee) to the allowance of Disputed Claims filed with the Bankruptcy Court. All objections shall be litigated to Final Order; provided, however, that, as set forth above in Article IV.D of the Plan and in the Liquidating Trust Agreement, the Liquidating Trustee shall have the authority and sole discretion to file, settle, compromise, or withdraw any objections to Claims, subject to approval of the Bankruptcy Court where required under the Bankruptcy Code, the Bankruptcy Rules or the local rules of the Bankruptcy Court; provided further, however, that the Liquidating Trustee shall not have the authority or discretion to object to any Claims that have been Allowed by a Final Order of the Bankruptcy Court before the Effective Date.

2. Except as otherwise provided herein or in the DIP Order, there shall be no deadline to object to or investigate and review Claims, and any objections to Claims and settlement thereof shall be dealt with as the Debtors or the Liquidating Trustee, as the case may be, in their sole discretion, deem to be appropriate. Further, the Liquidating Trustee shall have the sole and complete discretion to decide not to review and/or object to proofs of Claim to the extent such review and/or objection would be uneconomical.

The Liquidating Trustee may at any time request that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Liquidating Trustee previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or Disputed Claim, the amount so estimated shall constitute the maximum allowable amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtors or the Liquidating Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

## G. DISTRIBUTIONS

The means of payment and distribution on Claims shall be made in the manner provided in Article IV of the Plan.

## H. WITHHOLDING AND REPORTING REQUIREMENTS

In connection with the Plan and all distributions thereunder, the Liquidating Trustee shall comply with all tax withholding and reporting requirements imposed by any U.S. federal, state, or local, or non-U.S. taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Debtors and the Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such distribution, and (b) the Liquidating Trustee reserves the option, in his or her discretion, to not make a distribution to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee for the payment and satisfaction of such tax obligations or has, to the Liquidating Trustee's satisfaction, established an exemption therefrom. Any distributions to be made pursuant to the Plan shall, pending the implementation of such withholding and reporting requirements, be treated as undeliverable pursuant to Article VI.C.2 of the Plan.

#### I. INTEREST

Unless otherwise required by applicable bankruptcy law or under the DIP Order, post petition 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.

#### J. SET-OFFS

Any Entity claiming a right of setoff against the Debtors, their Estates and/or the Liquidating Trust that has not identified such right in such Entity's timely filed proof of Claim shall be forever barred from asserting such right of setoff in any manner against, and such right shall be unenforceable against, the Debtors, their Estates, the Liquidating Trustee, and the Liquidating Trust.

#### K. EXECUTORY CONTRACTS

##### 1. Rejection of Executory Contracts and Unexpired Leases

Any executory contracts or unexpired leases which have not (i) expired by their own terms on or prior to the Effective Date, or (ii) been assumed, assumed and assigned, or rejected with the approval of the Bankruptcy Court before the Confirmation Date, shall be deemed rejected by the Debtors as of the Confirmation Date, and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of the rejections of such executory contracts and unexpired leases pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

##### 2. Rejection Damages Claim

Each Entity that is a party to an executory contract or unexpired lease that is rejected as of the Confirmation Date pursuant to this Plan and the Confirmation Order will be entitled to file, not later than the later of (i) the Bar Date, or (ii) thirty (30) days following the rejection of such Entity's executory contract (the "Rejection Claim Bar Date"), a proof of Claim

for damages alleged to have been suffered due to such rejection; provided, however, that the opportunity afforded an Entity whose executory contract or unexpired lease is rejected as of the Confirmation Date pursuant to this Plan and the Confirmation Order to file a proof of Claim shall in no way apply to Entities that may assert a claim on account of an executory contract or unexpired lease that was previously rejected by the Debtors for which a prior bar date was established. Any Entity that has a Claim for damages as a result of the rejection of an executory contract or unexpired lease pursuant to this paragraph of the Plan that does not file a proof of Claim in accordance with the terms and provisions of the Plan with the Bankruptcy Court (and serve such proof of Claim upon the Liquidating Trustee) will be forever barred from asserting that Claim against, and such Claim shall be unenforceable against, the Debtors, their Estates, or the Liquidating Trust and the Debtors, their Estates and Liquidating Trust shall have no obligation to pay the same.

#### L. INSURANCE POLICIES

To the extent that any and all insurance policies including any directors and officers liability insurance policies are executory contracts, then notwithstanding anything contained in the Plan to the contrary, the Debtors' rights and interest in such insurance policies shall be deemed assumed and assigned to the Liquidating Trust. Unless otherwise determined by the Bankruptcy Court, pursuant to a Final Order, no payments are required to cure any defaults of the Debtors existing as of the Confirmation Date with respect to each such policy. For the avoidance of any doubt, all of the Debtors' rights and interests under any insurance policy to which the Debtors may be beneficiaries shall vest with the Liquidating Trust.

#### M. CONDITIONS PRECEDENT TO PLAN CONFIRMATION AND CONSUMMATION

The Committee has proposed the Plan, but confirmation and consummation of the Plan is conditioned upon the occurrence or non-occurrence of certain events and conditions. Without the occurrence of these conditions, the Plan cannot be confirmed or consummated. These conditions, and the circumstances under which such conditions may be waived, are discussed immediately below.

##### 1. Acceptance or Rejection of the Plan

A condition to confirmation of the Plan requires that all classes of claims and equity interests designated as an Impaired Class votes to have accepted the Plan. For classes of claims, this requires that the Holders of at least two-thirds in dollar amount and more than one-half in numbers of the Allowed Claims in the Class actually voting will have voted to accept the Plan. Any Allowed Claim that is "designated" under section 1126(e) of the Bankruptcy Code does not count in this calculation. For classes of interests, this requires that Holders of at least two-thirds in amount of the Allowed Equity Interests in the Class actually voting have voted to accept the Plan. Under the Plan, Allowed Equity Interests are not receiving any distribution or retaining any value on account of such Interests. Accordingly, classes of equity interests will be deemed to reject the Plan.

Notwithstanding the deemed rejection by the classes of Equity Interests, or any rejection by an impaired Class of Claims, the Bankruptcy Court may still confirm the Plan over the rejection of all of the requirements for consensual confirmation under subsection 1129(a), other than subsection 1129(a)(8), of the Bankruptcy Code, and for nonconsensual confirmation under subsection 1129(b) of the Bankruptcy Code have been satisfied (as further discussed below). The Committee will request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.

2. Confirmation Order

A condition to Confirmation and the Effective Date occurring following confirmation of the Plan requires that the Confirmation Order be entered by the Bankruptcy Court in form reasonably satisfactory to the Committee, the Liquidation Trustee, and the DIP Lender. All provisions, terms, and conditions of the Plan must be approved in the Confirmation Order (or another Final Order of the Bankruptcy Court). No later than (5) Business Days prior to the Confirmation Hearing, the Committee will file a proposed Confirmation Order with the Bankruptcy Court so that all parties-in-interest will have the opportunity to review the proposed Confirmation Order and present any objections thereto at the Confirmation Hearing.

3. Execution of Documents and Other Actions

The occurrence of the Effective Date under the Plan also requires that all actions, documents, and agreements necessary to implement the Plan to have been effected or executed. This includes that the Liquidating Trust Agreement be executed and the appointment of the Liquidating Trustee be approved by the Bankruptcy Court.

4. Bar Date

The occurrence of the Effective Date under the Plan requires that the Bar Date fixed by the Bankruptcy Court shall have passed.

5. Waiver of Conditions Precedent

To the extent legally permissible, each conditions precedent of the Plan may be waived, in whole or in part, by the Committee. A waiver of a condition precedent may be effected at any time, without notice or leave or order of the Bankruptcy Court and without any formal action other than proceeding as if such condition precedent did not exist.

6. The Confirmation Order

If the Confirmation Order is vacated, the Plan will become null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, any of the Debtors (to the extent such waiver or release is provided in the plan); (ii) prejudice in any manner the rights of the Committee or the Estates; or (iii) constitute an admission, acknowledgment, offer, or undertaking by the Committee or the Estates in any respect.

N. EFFECT OF PLAN CONFIRMATION

1. No Discharge of Claims and Termination of Interests

Confirmation of this Plan will not discharge any Debtor or non-Debtor.

2. Plan Injunction

**The Plan enjoins certain conduct or activities. Specifically, the Plan permanently enjoins certain actions and conduct of Persons or Entities that have held, hold, or may hold Claims against or Equity Interests in the Debtors from and after the Effective Date. The types of action and conduct enjoined include, without limitation, taking any of the following actions against any of the Debtors, the Debtors' Estates, the Liquidating Trust, or the Liquidating Trustee, or any of their respective property on account of any Claims or causes of action arising from events prior to the Effective Date: (i) commencing or continuing in any manner any action or other proceeding of any kind; (ii) enforcing, attaching, collecting, or recovering by any manner or in any place or means any judgment, award, decree, or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind; and (iv) asserting any defense or right of setoff, subrogation, or recoupment of any kind against any obligation, debt, or liability due to the Debtors. Enjoined actions also include the commencement or continuing in any manner any action or proceeding of any kind by any Entity other than the Trustee or Liquidating Trustee, which are claims of the Estate and constitute Causes of Action, Transferred Causes of Action and/or Avoidance Actions. The injunction under the Plan does not apply to the Liquidating Trust, the Liquidating Trustee, or any Person acting on behalf of the Liquidating Trust or the Liquidating Trustee.**

**In addition, unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Cases pursuant to sections 105, 362, or 525 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through the Effective Date until the close of this case. The Confirmation Order will permanently enjoin the commencement or prosecution by any Entity, whether directly, derivatively, or otherwise, of any Claims, Equity Interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action, or liabilities released pursuant to the Plan.**

3. Exculpation

**NEITHER THE ESTATES, THE CHAPTER 11 TRUSTEE, THE COMMITTEE, THE LIQUIDATING TRUST, THE LIQUIDATING TRUSTEE, NOR ANY OF THEIR RESPECTIVE PRESENT OR FORMER OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, EMPLOYEES, ADVISORS, ATTORNEYS, OR AGENTS ACTING IN SUCH CAPACITY OR THEIR RESPECTIVE AFFILIATES, SHALL HAVE OR INCUR ANY LIABILITY TO, OR BE SUBJECT TO ANY RIGHT OF ACTION BY, THE DEBTORS OR ANY HOLDER OF A CLAIM OR AN EQUITY INTEREST, OR ANY OTHER PARTY IN INTEREST, OR ANY OF THEIR RESPECTIVE AGENTS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES,**



**FINANCIAL ADVISORS, ATTORNEYS, OR AFFILIATES, OR ANY OF THEIR SUCCESSORS OR ASSIGNS, FOR ANY ACT OR OMISSION IN CONNECTION WITH, RELATING TO, OR ARISING OUT OF: (A) ANY ACT TAKEN OR OMITTED TO BE TAKEN ON OR AFTER THE PETITION DATE IN CONNECTION WITH THE CHAPTER 11 CASES, (B) THE DISCLOSURE STATEMENT, THE PLAN, AND THE DOCUMENTS NECESSARY TO EFFECTUATE THE PLAN, (C) THE SOLICITATION OF ACCEPTANCES AND REJECTIONS OF THE PLAN, (D) THE RELEASES HEREIN OR THE SOLICITATION THEREOF, (E) THE CHAPTER 11 CASES, (F) THE IMPLEMENTATION, NEGOTIATION, FORMULATION AND ADMINISTRATION OF THE PLAN, (G) THE DISTRIBUTION OF PROPERTY UNDER THE PLAN, (H) ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN OR THE CHAPTER 11 CASES, AND IN ALL RESPECTS SHALL BE ENTITLED TO RELY REASONABLY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN, EXCEPT FOR LIABILITY ARISING FROM CONDUCT CONSTITUTING WILLFUL MISCONDUCT OR GROSS NEGLIGENCE PURSUANT TO A FINAL ORDER. THE FOREGOING PARTIES WILL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL IN ALL RESPECTS REGARDING THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN.**

**O. MISCELLANEOUS PROVISIONS**

Certain additional miscellaneous information regarding the Plan and the Chapter 11 Cases is set forth below.

**1. Exemption from Securities Laws**

To the maximum extent provided by § 1145 of the Bankruptcy Code and applicable non-bankruptcy law, the issuance under the Plan of the beneficial interests in the Liquidating Trust will be exempt from registration under the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder.

**2. Section 1146 Exemption**

Pursuant to section 1146(c) of the Bankruptcy Code, (a) the creation, modification, consolidation, or recording of any mortgage, deed of trust, lien, pledge, or other security interest; (b) the making, recording, or assignment of any lease or sublease; or (c) the making, recording, or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including, without limitation, any merger agreements; agreements of consolidation, restructuring, disposition, liquidation, or dissolution; deeds; bills of sale; and 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. Any transfers from the Debtors to the Liquidating Trust or by the Liquidating Trust to a creditor or other Entity or otherwise pursuant to the Plan shall not be subject to any such taxes, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation

any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Unless the Bankruptcy Court orders otherwise, any of the foregoing transactions taken on or prior to the Effective Date shall be deemed to have been in furtherance of, or in connection with, the Plan.

3. Unclaimed Property

Notwithstanding any local, state, federal, or other laws or regulations regarding unclaimed property or escheatment of property, all funds or other property possessed by the Trustee or the Debtors' Estates on the Effective Date that is unclaimed, subject to escheatment, or potentially subject to escheatment shall be treated as property of such Debtors under this Plan, and shall accordingly be transferred to, vested with, and become the property of the Liquidating Trustee to be held and distributed pursuant to the terms of this Plan free and clear of all such laws or regulations. In the event the Liquidating Trustee deems it not to be cost effective to make a distribution on account of unclaimed funds in his or her business judgment, then the Liquidating Trustee, with consent of the Liquidation Trust Committee, shall donate the sums of such funds to a charity agreed upon by the Liquidating Trustee and the Liquidation Trust Committee.

4. Conflicts

To the extent that any provision of the Disclosure Statement, the Liquidating Trust Agreement, or the Confirmation Order (or any exhibits, schedules, appendices, supplements, or amendments to the foregoing) or any other order referenced in the Plan, conflict with or are in any way inconsistent with the terms of the Plan, the Confirmation Order shall govern and control the Plan and the Plan shall govern and control in all other respects.

5. Deemed Consent

By submitting a Ballot or receiving a distribution under or any benefit pursuant to the Plan and not electing to withhold consent as provided under the Plan prior to the Confirmation Date, each Holder of a Claim or Interest shall be deemed to have specifically consented to the terms of the Plan, including the releases contained herein.

P. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain and have exclusive jurisdiction after the Effective Date over any matter arising under the Bankruptcy Code, arising in or relating to, in any matter whatsoever, the Chapter 11 Cases or the Plan, or relating in any manner whatsoever to the following, in each case to the greatest extent permitted by applicable law:

1. to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan;

2. to determine any and all motions, adversary proceedings, applications, and contested or litigated matters that may be pending on the Effective Date or that, pursuant to the

Plan, may be instituted by the Liquidating Trustee or the Liquidating Trust after the Effective Date, including, but not limited to, the Causes of Action, the Transferred Causes of Action, and the Avoidance Actions; provided, however, that the Liquidating Trustee and the Liquidating Trust shall reserve the right to commence collection actions, actions to recover receivables, and other similar actions in all appropriate jurisdictions;

3. to ensure that distributions to Holders of Allowed Claims are accomplished as provided herein;

4. to hear and determine any timely objections to Administrative Claims, Priority Claims and Unsecured Claims or to proofs of Claim and Equity Interests Filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Equity Interest, and to allow, disallow, determine, liquidate, classify, estimate, or establish the priority of or secured or unsecured status of any Claim, in whole or in part;

5. to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;

6. to issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

7. to consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

8. to hear and determine all applications for awards of compensation for services rendered and reimbursement of expenses incurred prior to and after the Effective Date;

9. to hear and determine disputes arising in connection with or relating to the Plan or the interpretation, implementation, or enforcement of the Plan or the extent of any Entity's obligations incurred in connection with or released or exculpated under the Plan;

10. to issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation or enforcement of the Plan;

11. to determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan or the Disclosure Statement to be executed in connection with the Plan;

12. to hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

13. to hear any other matter or for any purpose specified in the Confirmation Order that is not inconsistent with the Bankruptcy Code; and

14. to enter a Final Decree closing the Chapter 11 Cases.

Q. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

1. Modification of Plan

The Committee reserves the right, as permitted by the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. Upon entry of the Confirmation Order, the Liquidating Trustee may, after notice and a hearing, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such Holder and the votes of each Class for or against the Plan shall be counted and used in connection with the modified plan.

2. Revocation, Withdrawal, or Non-Consummation

The Committee reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of reorganization. If the Committee revokes or withdraws the Plan, or if the Confirmation Order confirming the Plan shall not be entered or become a Final Order, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity Interests), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (1) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors or any other Entity, (2) prejudice in any manner the rights of the Committee or the Chapter 11 Trustee, (3) constitute an admission of any sort by the Debtors, or (4) constitute a release of any Causes of Action possessed or maintained by the Debtors.

VI. ACCEPTANCE OR REJECTION OF THE PLAN

A. CLASSES ENTITLED TO VOTE

Each Impaired Class of Claims that will receive or retain property or any interest in property under the Plan is entitled to vote to accept or reject the Plan. Classes 1, 2, 3, and 4 shall be entitled to vote to accept or reject the Plan.

B. ACCEPTANCE BY IMPAIRED CLASSES

An Impaired Class of Claims shall be deemed to have accepted the Plan if (a) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

C. PRESUMED REJECTION OF THE PLAN

By operation of law, Holders of Impaired Claims and Impaired Equity Interests that are not entitled to receive or retain any property under the Plan are presumed to have rejected the Plan and, therefore, are not entitled to vote. Classes 5, 6, and 7 are Impaired under the Plan and are not entitled to receive or retain any property of the Estates under the Plan and, thus, are presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

D. PROCEDURES FOR VOTING ON THE PLAN

The following is a brief summary regarding the procedures for confirmation of the Plan. Holders of Allowed Claims and Equity Interests in Classes 1, 2, 3, and 4 are encouraged to review the relevant provisions of the Bankruptcy Code and/or to consult their own attorneys. Additional information regarding voting procedures is set forth in the Notices accompanying this Disclosure Statement.

1. Voting Deadline

The Voting Deadline to accept or reject the Plan is **5:00 p.m. (prevailing Charlotte, North Carolina time) on \_\_\_\_\_, 2014**, unless the Bankruptcy Court or the Committee extend the period during which votes will be accepted by the Committee, in which case the Voting Deadline for such solicitation shall mean the last time and date to which such solicitation is extended.

2. Voting Record Date

The Voting Record Date for purposes of determining which Holders of Allowed Claims in Classes 1, 2, 3, and 4 are entitled to vote on the Plan is \_\_\_\_\_, 2014.

3. Voting Instructions

This Disclosure Statement, accompanied by a Ballot to be used for voting on the Plan, is being distributed to Holders of Claims in Classes 1, 2, 3, and 4. Only Holders in these Classes are entitled to vote to accept or reject the Plan and may do so by completing the Ballot and returning it in the envelope provided. ***In light of the benefits of the Plan for each Class of Claim, the Committee recommends that Holders of Claims in each of the Impaired Classes vote to accept the Plan and return the Ballot to the Committee attorneys.***

**BALLOTS ARE ACCOMPANIED BY RETURN ENVELOPES WHENEVER POSSIBLE. ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED.**

*For all Holders:*

By signing and returning a Ballot, each Holder of Claims in Classes 1, 2, 3, and 4 will also be certifying to the Bankruptcy Court and the Committee that, *inter alia*,

- such person or entity is the Holder of the aggregate face amount of the Claims or Equity Interests, as the case may be, set forth in the Ballot and has full power and authority to vote to accept or reject the Plan;
- such Holder has received and reviewed a copy of the Disclosure Statement, the Plan, and related Ballot and acknowledges that the solicitation of votes to accept or reject the Plan is being made pursuant to the terms and conditions set forth therein;
- such Holder has cast the same vote on every Ballot completed by such Holder with respect to holdings of such Class of Claims or Equity Interests;
- no other Ballots with respect to such Class of Claims or Equity Interests have been cast or, if any other Ballots have been cast with respect to such Class of Claims or Equity Interests, such earlier Ballots are thereby revoked;
- except for information provided by the Plan, the Disclosure Statement, or any other written communication approved by the Bankruptcy Court, such Holder has not relied on any statements made or other information received from any person with respect to the Plan; and
- all authority conferred or agreed to be conferred pursuant to the Ballot, and every obligation of the Holder thereunder, shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustee in bankruptcy and legal representatives of the Holder and shall not be affected by, and shall survive, the death or incapacity of the Holder.

#### E. THE CONFIRMATION HEARING

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing for \_\_\_\_\_ **prevailing Charlotte, North Carolina time on \_\_\_\_\_, 2014**, before the Honorable Judge J. Craig Whitley, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Western District of North Carolina. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

Objections to confirmation of the Plan must be filed and served on or before **4:00 p.m. prevailing Charlotte, North Carolina time on \_\_\_\_\_, 2014** (the "Plan Objection Deadline"). All objections to the Plan must be filed with the Bankruptcy Court on or before the Plan Objection Deadline and served in a manner so that they are actually received on or before 4:00 p.m., prevailing Charlotte, North Carolina time, on the Plan Objection Deadline by the following parties (the "Notice Parties"):

<p><b>To the Committee:</b></p> <p>Benesch, Friedlander, Coplan &amp; Aronoff LLP          Attn: Michael J. Barrie, Esquire          222 Delaware Avenue, Suite 801          Wilmington, DE 19801          Telephone: (302) 442-7010          Facsimile: (302) 442-7012</p> <p>with a copy to:</p> <p>Moon Wright &amp; Houston, PLLC          Attn: Travis W. Moon, Esquire          227 West Trade Street, Suite 1800          Charlotte, NC 28202          (704) 944-6565 (Telephone)          (704) 944-0380 (Facsimile)</p>	<p><b>To the DIP Lender:</b></p> <p>Pepper Hamilton LLP          Kay Standridge Kress          4000 Town Center, Suite 1800          Southfield, MI 48075-1505          (248) 359-7365 Direct          (313) 557-0656 Direct fax 666</p>
<p><b>To the Chapter 11 Trustee</b></p> <p>Elaine Rudisill          The Finley Group Inc.:          6100 Fairview Rd, Suite 1220          Charlotte, NC 28210-4267          Telephone: (704) 375-7542          Facsimile: (704) 342-0979</p>	

The Bankruptcy Court shall only consider timely filed and served written objections. All objections must (a) state with particularity the legal and factual grounds for such objection and (b) describe the nature and amount of the objector’s claim. Objections not timely filed and served in accordance with these procedures may be overruled. With regard to any timely-filed objection(s), the Committee shall be allowed to file an omnibus reply before the Confirmation Hearing.

**VII. STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN**

**A. GENERALLY**

At the Confirmation Hearing, the Bankruptcy Court shall determine whether the requirements of section 1129 of the Bankruptcy Code have been satisfied. If so, the Bankruptcy Court shall enter the Confirmation Order. The Committee believes that the Plan satisfies or will satisfy the applicable requirements, as follows:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Committee, as Plan proponent, will 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 promised under the Plan for services or for costs and expenses in, or in connection with, these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment made before the Confirmation of the Plan is reasonable, or if such payment is to be fixed after the Confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.
- With respect to each Class of Impaired Claims or Equity Interests, either each Holder of a Claim or Equity Interest of such Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Equity 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 Debtors were liquidated on such date under chapter 7 of the Bankruptcy Code.
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of such Claim, the Plan provides that Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Other Priority Claims will be paid in full on the Effective Date, or as soon thereafter as practicable.
- At least one Class of Impaired Claims will accept the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of such Class.
- Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtors or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.
- All fees of the type described in 28 U.S.C. § 1930, including the fees of the Bankruptcy Administrator will be paid as of the Effective Date.

The Committee believes that (a) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (b) it has complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code; and (c) the Plan has been proposed in good faith.

## B. FEASIBILITY

The Bankruptcy Code requires that confirmation of a plan is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor. The Plan contemplates that all assets of the Debtors will ultimately be liquidated and that the proceeds will be distributed to the Holders of Claims and Equity Interests pursuant to the terms of the Plan. Since no further financial reorganization of the Debtors will be possible, the Committee believes



that confirmation of the Plan will not be followed by the liquidation of the need for further financial reorganization of the Debtors.

C. “BEST INTERESTS” TEST

With respect to each Impaired Class of Claims and Equity Interests, confirmation of the Plan requires that each such Holder either (a) accepts the Plan or (b) receives or retains under the Plan property of a value, as of the Effective Date of the Plan, that is not less than the value that each such Holder would receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code.

As more fully discussed below, the Committee believes that the Plan meets the “best interests” test of section 1129(a)(7) of the Bankruptcy Code. Notwithstanding the Committee’s belief, there can be no assurance that the Bankruptcy Court will determine that the Plan meets this test. Moreover, although the Committee has estimated that the value Holders of Allowed Claims will receive or retain under the Plan versus the value that such Holders would receive under a hypothetical liquidation under Chapter 7 of the Bankruptcy Code, **THESE ESTIMATES OF VALUE ARE SUBJECT TO A NUMBER OF ASSUMPTIONS AND SIGNIFICANT QUALIFYING CONDITIONS. ACTUAL VALUES AND RECOVERIES COULD VARY MATERIALLY FROM THE COMMITTEE’S ESTIMATES.**

D. ACCEPTANCE BY IMPAIRED CLASSES

The Bankruptcy Code requires, as a condition to Confirmation, that each class of claims or equity interests that is impaired under a plan accept the plan. 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. A class is “impaired” unless the plan (a) leaves unaltered the legal, equitable and contractual rights to which the claim or equity interest entitles the holder of such claim or equity interest; (b) cures any default and reinstates the original terms of the obligation; or (c) provides that on the consummation date, the holder of the claim or interest receives cash equal to the allowed amount of such claim or, with respect to any interest, any fixed liquidation preference to which the interest holder is entitled or any fixed price at which the debtor may redeem the security.

E. NON-CONSENSUAL CONFIRMATION

The Bankruptcy Court may confirm the Plan over the dissent of any Impaired Class if the Plan satisfies all of the requirements for (i) consensual confirmation under section 1129(a), other than section 1129(a)(8), of the Bankruptcy Code and (ii) nonconsensual confirmation under section 1129(b) of the Bankruptcy Code.

To obtain nonconsensual confirmation of the Plan under a procedure commonly known as “cramdown,” it must be demonstrated to the Bankruptcy Court that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each impaired, non-accepting class. A plan does not discriminate unfairly if the legal rights of a dissenting class are treated in a manner consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting class and if no class receives more than it is entitled to for its claims or interests. The Debtors believe that the Plan satisfies this requirement.

The Bankruptcy Code provides a non-exclusive definition of the phrase “fair and equitable.” The Bankruptcy Code establishes tests for determining what is “fair and equitable” for secured creditors, unsecured creditors and equity holders, as follows:

1. Secured Claims

Either (i) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, (ii) each impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim, or (iii) the property securing the claim is sold free and clear of liens, with such liens to attach to the proceeds of the sale and the treatment of such liens with respect to such proceeds as provided in clause (i) or (ii).

2. Unsecured Claims

Either (i) each impaired unsecured creditor receives or retains, under the plan, property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

3. Equity Interests

Either (i) each holder of an equity interest will receive or retain, under the plan, property of value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled, or the value of the interest or (ii) the holder of an interest that is junior to the non-accepting class will not receive or retain any property under the plan. Because unsecured creditors will not receive under the Plan property of a value equal to the amount of their Allowed Claims, Holders of Allowed Equity Interests will not receive any property or retain any interests under the Plan on account of such Allowed Equity Interests.

The Committee reserves the right to pursue confirmation of the Plan without having previously obtained sufficient acceptances of the Plan from all Classes of Impaired Claims and Equity Interests. In such case, the Committee may request confirmation of the Plan under section 1129(b) of the Bankruptcy Code notwithstanding that such Class or Classes did not accept the Plan.

**THE COMMITTEE BELIEVES THAT THE PLAN MAY BE CONFIRMED ON A NONCONSENSUAL BASIS (PROVIDED AT LEAST ONE IMPAIRED CLASS OF CLAIMS VOTES TO ACCEPT THE PLAN). ACCORDINGLY, THE COMMITTEE WILL DEMONSTRATE AT THE CONFIRMATION HEARING THAT THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1129(b) OF THE BANKRUPTCY CODE AS TO ANY NON-ACCEPTING CLASS.**

VIII. PLAN-RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMING AND CONSUMMATING THE PLAN

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

A. FINANCIAL INFORMATION DISCLAIMER

Although the Committee have used their best efforts to ensure the accuracy of the financial information provided in this Disclosure Statement, the financial information contained in this Disclosure Statement has not been audited and is based upon an analysis of data available at the time of the preparation of the Plan and Disclosure Statement. While the Committee believes that such financial information fairly reflects the financial condition of the Debtors, the Committee is unable to warrant or represent that the information contained herein and attached hereto is without inaccuracies.

B. CERTAIN BANKRUPTCY CONSIDERATIONS

1. Classification Risk

Under Section 1123(a)(4) of the Bankruptcy Code, a plan of reorganization must provide the same treatment for each claim or interest of a particular class, unless the holder of the particular claim or interest agrees to a less favorable treatment of such particular claim or interest. The Committee can provide no assurance that the Bankruptcy Court will not approve of the classifications of Claims and Equity Interests contained in the Plan.

2. The Committee May Not be Able to Secure Confirmation of the Plan.

There can be no assurance that the Committee will receive the requisite acceptances to confirm the Plan. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of a Claim or Equity Interest of the Committee might challenge the adequacy of this Disclosure Statement or contend that the balloting procedures and results are not in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it is found that any of the statutory requirements for confirmation had not been met, including that the terms of the Plan are fair and equitable to non-accepting Classes. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that the Plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting Classes, confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial reorganization, and the value of distributions to non-accepting Holders of Allowed Claims and Equity Interests in Classes 5, 6, and 7 will not be less than the value of distributions such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. While there can be no assurance that these requirements will be met, the Committee believes that the Plan will not be followed by a need for further liquidation and that

non-accepting Holders within each Class under the Plan will receive distributions at least as great as they would receive following a liquidation under chapter 7 of the Bankruptcy Code when taking into consideration all administrative claims and costs associated with any such chapter 7 case. The Committee believes that Holders of Allowed Claims and Equity Interests in Classes 5, 6, and 7 would receive no distribution under a liquidation pursuant to chapter 7 of the Bankruptcy Code.

3. The Confirmation and Consummation of the Plan Are Also Subject to Certain Conditions as Described Herein.

If the Plan is not confirmed, it is unclear whether another liquidating plan could be implemented and what distributions Holders of Allowed Claims or Equity Interests ultimately would receive with respect to their Claims or Equity Interests. If an alternative liquidating plan could not be agreed to, it is possible that the Committee would have to liquidate their assets under chapter 7 of the Bankruptcy Code, in which case it is likely Holders of Allowed Claims and Equity Interests would receive substantially less favorable treatment than they would receive under the Plan.

4. The Amount or Classification of a Claim or Equity Interest.

A party-in-interest may file an objection to the amount or classification of a Claim or Equity Interest. In the event that such an objection is sustained by the Bankruptcy Court, the disallowance or reclassification of a Claim or Equity interest may result in: (a) the Committee not receiving the requisite votes to obtain Confirmation of the Plan, or (b) reduced distributions to classes of Holders of Allowed Claims as a result a reclassification.

5. Nonconsensual Confirmation.

Pursuant to the “cramdown” provisions of section 1129(b) of the Bankruptcy Code, the Bankruptcy Court can confirm the Plan at the Committee’s request if at least one Impaired Class has accepted the Plan (with such acceptance being determined without including the acceptance of any “insider” in such Class) and, as to each Impaired Class which has not accepted the Plan, the Bankruptcy Court determines that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to such Impaired Classes. *See* Article IV.E above. Because the Holders of Allowed Equity Interests will not receive or retain any value under the Plan, the Committee intends to proceed under the “cramdown” provisions of the Bankruptcy Code. Although the Committee believes that it will meet all “cramdown” requirements under the Bankruptcy Code, the Bankruptcy Court may not find that the Plan “does not discriminate unfairly” or that the Plan “fair and equitable” with respect to such Impaired Classes.

6. Delays of Confirmation and/or the Effective Date

Any delays of either Confirmation or of the Effective Date could result in, among other things, increased Claims of Professionals. These or any other negative effects of delays of either Confirmation or the Effective Date could endanger the ultimate approval of the Plan by the Bankruptcy Court.

C. LIQUIDATION UNDER CHAPTER 7

The Debtors believe that the Plan affords Holders of Allowed Claims in Classes 1, 2, 3, and 4 the potential for the greatest recovery and, therefore, is in the best interests of such Holders. If, however, the Plan is not confirmed in the Chapter 11 Cases, the Committee may be forced to liquidate under chapter 7 of the Bankruptcy Code pursuant to which a trustee would be elected or appointed to liquidate the Debtors' assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the Holders of Allowed Claims.

As described herein, however, the Committee believes that in a liquidation under chapter 7 of the Bankruptcy Code, before creditors receive any distribution, additional administrative expenses involved in the appointment of a trustee or trustee and attorneys, accountants and other professionals to assist such trustee would cause a substantial diminution in the value of the Debtors' estates.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors, including (a) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in a bankruptcy and professional advisors to such trustee, (b) the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 that would prevail, and (c) substantial increases in claims which would be satisfied on a priority basis, **THE COMMITTEE HAS DETERMINED, THAT CONFIRMATION OF THE PLAN WILL PROVIDE EACH CREDITOR AND EQUITY INTEREST HOLDER WITH A RECOVERY THAT IS NOT LESS THAN IT WOULD RECEIVE PURSUANT TO A LIQUIDATION OF THE DEBTORS UNDER CHAPTER 7 OF THE BANKRUPTCY CODE.**

IX. CERTAIN FEDERAL INCOME TAX CONSEQUENCES

**TO COMPLY WITH INTERNAL REVENUE SERVICE CIRCULAR 230, TAXPAYERS ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY ANY TAXPAYER, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A TAXPAYER UNDER THE INTERNAL REVENUE CODE, (B) ANY SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN, AND (C) TAXPAYERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR AS THE DEBTORS DO NOT INTEND THE DISCUSSION BELOW OR ANYWHERE ELSE IN THIS DISCLOSURE STATEMENT TO BE CONSTRUED AS LEGAL ADVICE OF ANY SORT OR NATURE WHATSOEVER**

The following discussion is a summary of certain possible U.S. federal income tax consequences of the Plan to the Debtors and to Holders of certain Allowed Claims, and is based on the Internal Revenue Code of 1986, as amended (the "IRC"), applicable proposed final and

temporary Treasury Regulations, judicial authority and current administrative rulings and policies, all of which are subject to change, possibly retroactively. Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims, the Holders' status and method of accounting and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are subject to significant uncertainties. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to any of the issues discussed below. Furthermore, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtors and the Holders of Allowed Claims.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or the Holders of Allowed Claims in light of their personal circumstances, or their possible special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, brokers and dealers in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies, regulated investment companies and foreign taxpayers). This discussion does not address the tax consequences to Holders of Allowed Claims in Classes 5, 6, or 7. No aspect of foreign, state, local or estate and gift taxation is addressed.

**THE FOLLOWING SUMMARY IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE PERSONAL CIRCUMSTANCES OF EACH HOLDER. EACH HOLDER IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.**

**A. FEDERAL INCOME TAX CONSEQUENCES TO DEBTORS**

Under the Plan, indebtedness evidenced by Allowed Claims and Disputed Claims will be cancelled. The cancellation of such indebtedness will result in debt discharge income to the Debtors. However, the Debtors will be entitled to exclude such debt discharge income from their gross income since the debt is to be discharged in a title 11 bankruptcy case pursuant to a plan approved by a court. In general, the tax attributes otherwise available to the Debtors will be reduced by an amount equal to the debt discharge income excluded from the Debtors' gross income. This tax attribute reduction is calculated after the tax for the current year is determined.

Pursuant to the Plan, the Debtors will transfer all of their assets to the Liquidating Trust for the benefit of the holders of Allowed Claims in Classes 1, 2, 3, and 4. The Debtors will recognize gain or loss on such transfer of its remaining assets to the Liquidating Trust in an amount equal to the difference, if any, between the fair market value of the assets at the time of the transfer and the Debtors' adjusted tax bases in such assets. The Committee expects that the assets that will comprise the Liquidating Trust will be the Debtors' current interest in litigation, the value of which cannot be determined. Given the expense associated with conducting such litigation and the inherent inability to determine the value of the Debtors' current interest in such litigation, the Committee anticipates ascribing no value to the assets of the Litigation Trust.

Subject to limitations imposed by IRC § 382, the Debtors will retain their net operating losses (which can be used to offset any gain resulting from transfers to the Liquidating Trust) and other tax attributes until the Debtors are liquidated or the tax attributes of the Debtors are eliminated as a result of the exclusion of the Debtors' debt discharge income. It is the understanding of the Committee that Designline USA LLC is a disregarded entity for Federal income tax purposes and thus references to "Debtors" in this section refers only to Designline Corporation, as applicable. If the Liquidating Trust, as intended, qualifies as a liquidating trust, the Debtors' net operating losses and other tax attributes will not be available to the Liquidating Trust.

## B. FEDERAL INCOME TAX TREATMENT OF LIQUIDATING TRUST

### 1. Classification of Liquidating Trust

Pursuant to the Plan, the Debtors will transfer the Liquidating Trust Assets to the Liquidating Trust and the Liquidating Trust will become obligated to make Distributions in accordance with the Plan. The Plan provides, and this discussion assumes, that the Liquidating Trust will be treated for federal income tax purposes as a "liquidating trust," as defined in Treasury Regulation Section 301.7701-4(d), and will therefore be taxed as a grantor trust, of which the beneficiaries will be treated as the owners and grantors thereof (the "Beneficiaries"). Accordingly, because a grantor trust is treated as a pass-through entity for Federal income tax purposes, assuming that the Liquidating Trust is indeed property treated as a "liquidating trust" as defined in Treasury Regulation Section 301.7701-4(d) and will therefore be taxed as a grantor trust then no tax should be imposed on the Liquidating Trust itself with respect to the income earned or gain recognized by the Liquidating Trust. Instead, the Beneficiaries should be taxed on their allocable shares of such net income or gain in each taxable year (determined in accordance with the Liquidating Trust Agreement).

Although the Liquidating Trust has been structured with the intention of classifying as a liquidating trust for Federal income tax purposes, it is possible that the IRS could require a different characterization of the Liquidating Trust, which could result in different and possibly greater tax liability to the Liquidating Trust and/or the Holders of Allowed Claims in Classes 1, 2, 3, and 4. No ruling has been or will be requested from the IRS concerning the tax status of the Liquidating Trust and there can be no assurance the IRS will not require an alternative characterization of the Liquidating Trust.

If a Liquidating Trust does not qualify as a liquidating trust, it should be treated as a partnership for Federal income tax purposes. If a Liquidating Trust is classified as a partnership for Federal income tax purposes, the Liquidating Trust will be treated as a pass-through entity whose income will be subject to only one level of tax at the holder level, unless the Liquidating Trust is categorized as a publicly traded partnership for Federal income tax purposes (in which case the Liquidating Trust would be taxed at the entity level as if it were a domestic corporation). The governing document of the Liquidating Trust will contain provisions designed to minimize the risk that the Liquidating Trust (if it does not qualify as a liquidating trust) would be categorized as a publicly traded partnership.

2. Tax Reporting

The Liquidating Trustee will file tax returns with the IRS for the Liquidating Trust as a grantor trust in accordance with Treasury Regulation Section 1.671-4(a). The Liquidating Trustee will also send to each Beneficiary a separate statement setting forth the Beneficiary's allocable share of items of income, gain, loss, deduction or credit and will instruct the Beneficiary to report such items on such Beneficiary's federal income tax return.

C. CONSEQUENCES TO HOLDERS OF ALLOWED CLAIMS IN CLASSES 1, 2, 3, AND 4

The Federal income tax consequences of the Plan to a Holder of an Allowed Claim will depend upon several factors, including but not limited to: (1) the manner in which a Holder acquired a Claim; (2) the length of time the Claim has been held; (3) whether the Claim was acquired at a discount; (4) whether the Holder has taken a bad debt deduction with respect to the Claim (or any portion thereof) in the current or prior years; (5) whether the Holder has previously included accrued or unpaid interest with respect to the Claim; (6) the method of tax accounting of the Holder; (7) whether the Holder receives distributions under the Plan in more than one taxable year; (8) whether the Holder is a nonresident of the United States for tax purposes or falls into a class of tax payers as to which special rules apply; (9) whether a Claim is considered a "security" for federal tax income purposes; and (10) whether a Claim constitutes a claim for principal or interest. **HOLDERS ARE STRONGLY ADVISED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT UNDER THE PLAN OF THEIR PARTICULAR CLAIMS AS THIS DISCLOSURE STATEMENT IS NOT PROVIDING ANY TAX ADVICE.**

In general, holders of debt who receive cash or other property in exchange for their debt will recognize gain or loss on the receipt of such consideration. The amount of this gain or loss will be the difference between: (i) the sum of (a) the amount of cash received, if any, and (b) the fair market value of non-cash property received; and (ii) the holder's adjusted tax basis in the debt or stock exchanged therefore. Under the Plan, the holders of Allowed Claims in Classes 1, 2, 3, and 4 will receive beneficial interests in the Liquidating Trust in exchange for the cancellation of the indebtedness evidenced by such claims. In connection with the implementation of the Plan, each holder receiving a beneficial interest in the Liquidating Trust will recognize gain or loss equal to the difference between the fair market value of each such holder's beneficial interest in the Liquidating Trust (which fair market value will be based on the fair market value of the assets held by the Liquidating Trust) and each such holder's adjusted tax basis in the indebtedness evidenced by each such holder's Allowed Claim in Classes 1, 2, 3, and 4.

The adjusted tax basis of the indebtedness evidenced by any holder's claim will depend on that particular holder's accounting methods and practices, as well as the circumstances in which the holder acquired the claim. The character (capital versus ordinary) of any gain or loss that is recognized by a holder on the exchange will depend on a number of factors, including, but not limited to, the tax status of the holder, the holder's holding period of the claim, the circumstances under which the holder acquired the claim, the nature of the claim in the



holder's hands, and whether and to what extent the holder has previously claimed a bad debt deduction with respect to the claim.

To the extent that consideration received by a holder is attributable to accrued interest on the holder's claim, the consideration so attributable will be deemed made in payment of such interest. The tax laws are unclear on how much consideration shall be deemed attributable to accrued interest when partial payments are made on a debt instrument on which both principal and interest are owed. To the extent that the holder has not yet included the accrued interest in gross income, the consideration deemed received in payment of such interest will generally be included in the holder's gross income. To the extent the holder has previously included accrued interest in gross income, the consideration deemed received in payment of such interest generally will not be included in gross income. Moreover, the holder may be able to claim a deductible loss if the consideration deemed received is less than the amount the holder has previously accrued in income.

#### D. WITHHOLDING

The Liquidating Trustee and/or the Liquidating Trust are authorized to withhold appropriate employment taxes with respect to payments made to a Holder of an Allowed Claim in Classes 1, 2, 3, and 4 which constitutes a payment for compensation. Payers of interest, dividends, and certain other reportable payments are generally required to backup withholding if the payee fails to furnish such payee's correct taxpayer identification number (social security or employer identification number), to the payor. The Liquidating Trust may be required to withhold a portion of any payments made to a Holder of an Allowed Claim in Classes 1, 2, 3, and 4 if the Holder (i) fails to furnish the correct social security number or other taxpayer identification number ("TIN") of such Holder, (ii) furnishes an incorrect TIN, (iii) has failed to properly report interest or dividends to the IRS in the past, or (iv) under certain circumstances, fails to provide a certified statement signed under penalty of perjury, that the TIN provided is the correct number and that such Holder is not subject to backup withholding. Backup withholding is not an additional tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions. Certain foreign entities may be subject to a 30% withholding tax based on certain facts and circumstances.

**AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY, NOT TAX ADVICE AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER IS URGED TO CONSULT SUCH HOLDER'S TAX ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.**

X. RECOMMENDATION

In the opinion of the Committee, the Plan is preferable to the alternatives described herein because it provides for a larger distribution to the Holders of Allowed Claims in Classes 1, 2, 3, and 4 than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to the Holders of Allowed Claims in Classes 1, 2, 3, and 4. ***Accordingly, the Committee recommends that Holders of Claims entitled to vote on the Plan support confirmation of the Plan and vote to accept the Plan.***