

O'MELVENY & MYERS LLP  
Gerald C. Bender, Esq.  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Telephone: (212) 326-2000  
Facsimile: (212) 326-2061

Attorney for Debtor and Debtor-in-Possession

OTTERBOURG, STEINDLER,  
HOUSTON & ROSEN, P.C.  
William M. Silverman, Esq.  
Scott L. Hazan, Esq.  
Melanie L. Cyganowski, Esq.  
230 Park Avenue  
New York, NY 10169  
T: (212) 661-9100  
F: (212) 682-6104

Counsel to the Official Committee of  
Unsecured Creditors

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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**In re:** : **Chapter 11**  
: :  
**EUSA LIQUIDATION INC.,** : **Case No. 09-15008 (SMB)**  
**(f/k/a Escada (USA) Inc.)** : :  
: :  
**Debtor.** : :  
: :  
----- X

**AMENDED JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11  
OF THE UNITED STATES BANKRUPTCY CODE BY THE DEBTOR AND THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: ~~March 26~~, April 28, 2010  
New York, New York

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## INTRODUCTION

EUSA Liquidation Inc. (f/k/a Escada (USA) Inc.) (the “Debtor”) and the Official Committee of Unsecured Creditors (the “Committee”, and together with the Debtor, the “Plan Proponents”) hereby propose this Chapter 11 Plan of Liquidation pursuant to section 1121 of Bankruptcy Code (as that term is defined herein). Reference is made to the Disclosure Statement (as that term is defined herein), distributed contemporaneously herewith, for a discussion of the Debtor’s history, business operations, risk factors, a summary and analysis of this Plan (as that term is defined herein), and certain related matters. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Rule 3019 of the Bankruptcy Rules (as that term is defined herein), the Plan Proponents reserve the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

1.1 **Rules of Interpretation.** Unless otherwise specified, all Article, Section and Exhibit references in this Plan are to the respective Article of, Section in or Exhibit to this Plan, as the same may be amended, waived or modified from time to time. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Words denoting the singular number shall include the plural number and vice versa, unless the context requires otherwise. Pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. The words “herein”, “hereof”, “hereto”, “hereunder”, and others of similar import refer to this Plan as a whole, and not to any particular section, subsection, or clause contained in the Plan. In construing this Plan, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply. In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

1.2 **Exhibits.** All exhibits to this Plan are incorporated herein by inference as if fully set forth herein.

1.3 **Definitions.** Terms and phrases, whether capitalized or not, that are used and not defined in this Plan, but that are defined in the Bankruptcy Code or Bankruptcy Rules, have the meanings ascribed to them in the Bankruptcy Code or Bankruptcy Rules, as applicable. Unless otherwise provided in this Plan, the following terms have the respective meanings set forth below, and such meanings shall be equally applicable to the singular and plural forms of the terms defined, unless the context otherwise requires.

1.3.1 “Administrative Claims Reserve” means the interest bearing reserve account established by the Debtor or by the Liquidating Trustee, as the case may be, and thereafter administered by the Liquidating Trustee, pursuant to Section 7.5.1 of this Plan, to be used to satisfy Disputed Administrative Expense Claims, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims and all unpaid Professional Fee Claims in accordance with the Plan if and when such Claims become Allowed Claims.

1.3.2 “Administrative Expense Claim” means a Claim for costs and expenses of administration of the Bankruptcy Case allowed under sections 503(b) or 507(a) of the Bankruptcy Code, including without limitation (i) any actual and necessary costs and expenses incurred after the Petition Date for preserving the Debtor’s Estate, (ii) any actual and necessary costs and expenses incurred after the Petition Date of operating the Debtor’s business, (iii) any indebtedness or obligations incurred or assumed by the Debtor during the Bankruptcy Case, and (iv) any compensation for Professional services rendered and reimbursement of expenses incurred to the extent Allowed by Final Order; ~~and all fees and costs assessed against the Estate pursuant to 28 U.S.C. § 1930.~~ Administrative Expense Claims shall include, but are not limited to, Professional Fee Claims and all Allowed Claims, if any, that are entitled to be treated as Administrative Expense Claims pursuant to a Final Order of the Bankruptcy Court under section 546(c)(2) of the Bankruptcy Code and all requests for compensation or expense reimbursement for making a substantial contribution in the Bankruptcy Case pursuant to sections 503(b)(3), (4) and (5) of the Bankruptcy Code.

1.3.3 “Allowed” means, as it relates to any type of Claim, a Claim (i) which has been scheduled as undisputed, noncontingent and liquidated in the Schedules (subject to the Debtor’s right to amend the Schedules) and as to which no objection or request for estimation has been Filed on or before any Claim objection deadline set by the Bankruptcy Court or the expiration of such other period fixed by the Bankruptcy Court, (ii) as to which a Proof of Claim has been properly and timely Filed and either (a) no objection thereto has been timely Filed, or if an objection has been timely Filed, any portion of which is not subject to such objection, or (b) such Claim has been allowed (but only to the extent allowed) by a Final Order of the Bankruptcy Court, (iii) which is compromised, settled, or otherwise resolved pursuant to the authority granted to the Debtor prior to the Effective Date, and thereafter by the Liquidating Trustee, under the Plan or (iv) which has been expressly allowed under the provisions of this Plan. “Allowed Claim” shall not, for purposes of computation of Distributions under this Plan, include interest on such Claim from and after the Petition Date.

1.3.4 “Asset Purchase Agreement” means the Asset Purchase Agreement by and among the Debtor, as seller, and Escada US Subco LLC, as Purchaser, dated as of December 21, 2009, a copy of which appears as an exhibit to the Sale Order, as amended from time to time prior to January 15, 2010, and any waivers or consents thereunder.

1.3.5 “Available Cash” means all Cash of the Estate to be distributed to Holders of Allowed Claims against the Estate pursuant to the provisions of this Plan, as well as all Cash that subsequently becomes a Trust Asset or an asset of the Debtor, including, without limitation, Cash in any Debtor accounts wherever located plus Cash proceeds realized from the sale, disposition, collection, or other realization of value in respect of the Trust Assets (including interest earned thereon if applicable), LESS the Cash or property contained in the Expense Reserve, the Priority Claims Reserve and the Disputed Claims Reserves, and any other similar reserve or escrow accounts established by the Debtor or Liquidating Trustee, as provided for in this Plan, and thereafter maintained by the Liquidating Trustee after the Effective Date pursuant to the provisions of this Plan, and, as applicable, the Liquidating Trust Agreement.

1.3.6 “Ballot” means the ballot, the form of which has been approved by the Bankruptcy Court, accompanying the Disclosure Statement provided to each Holder of an Impaired Claim entitled to vote to accept or reject this Plan, on which such Holder may vote to accept or reject this Plan.

1.3.7 “Bankruptcy Case” means the bankruptcy case Filed by the Debtor in the Bankruptcy Court on August 14, 2009, in the United States Bankruptcy Court for the Southern District of New York, which bankruptcy case is administered under Case No. 09-15008 (SMB).

1.3.8 “Bankruptcy Code” means title 11 of the United States Code, as now in effect or as hereafter amended, as applicable to this Bankruptcy Case.

1.3.9 “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York or any other court with jurisdiction over this Bankruptcy Case.

1.3.10 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time.

1.3.11 “Bar Date” means any date fixed by the Bankruptcy Court by which all persons, including governmental units, must have Filed a Proof of Claim or Filed a request for payment of Administrative Expense Claims pursuant to the Bar Date Orders. The Bar Dates in this Bankruptcy Case are (i) December 24, 2009 for non-governmental units, (ii) February 12, 2010 for governmental units, (iii) March 31, 2010 for holders of Administrative Expense Claims (except Professional Fee Claims) arising on or after the Petition Date through and including January 14, 2010 and (iv) thirty (30) days after the Effective Date for Holders of Administrative Expense Claims (except Professional Fee Claims) arising on or after January 15, 2010. Professional Fee Claims are not subject to a Bar Date and are separately governed by Section 3.1.2 of this Plan.

1.3.12 “Bar Date Orders” means (i) the Superseding Order Establishing Deadline for Filing Proofs of Claim and Approving the Time and Manner of Notice thereof [Docket No. 142], (ii) the Order (A) Establishing an Administrative Expense Claim Bar Date for Filing Certain Administrative Expense Claims and (B) Approving Form and Manner of Notice Thereof [Docket No. 256] and (iii) any other Final Order entered by the Bankruptcy Court fixing a date by which a Claim against the Debtor must be Filed or be forever barred, including the Confirmation Order.

1.3.13 “Beneficial Holder” means a Person or Entity holding a beneficial interest in a Claim or Interest.

1.3.14 “Beneficial Interest” means ~~the beneficial interest in the Liquidating Trust distributed in accordance with this Plan and the Liquidating Trust Agreement to Holders of Class 3 Claims on account of their Allowed Unsecured Claims, representing the right to receive Distributions pursuant to the Liquidating Trust Agreement~~ (i) as to a Beneficial Holder that is a Holder of an Allowed Class 1 or Class 2 Claim, the share of all Cash held



by the Liquidating Trust equal to the amount of such Beneficial Holder's Allowed Claim, and (ii) as to a Beneficial Holder that is a Holder of an Allowed Class 3 Claim, the pro rata share of Trust Assets, less the share of all Cash held by the Liquidating Trust to be paid to Beneficial Holders that are Holders of Class 1 and/or Class 2 Claims.

1.3.15 "Business Day" means any day, other than a Saturday, Sunday, or "legal holiday" as defined in Bankruptcy Rule 9006(a).

1.3.16 "Cash" means lawful currency of the United States and its equivalents; provided, however, that any Distributions by the Liquidating Trustee under this Plan will be deemed to be made in Cash if made by check drawn on any United States bank.

1.3.17 "Claim" means a "claim" as defined in section 101(5) of the Bankruptcy Code and, except as otherwise provided in the context, means a claim against the Debtor or the Estate.

1.3.18 "Class" means any of the categories of Claims or Interests established under this Plan pursuant to sections 1122 and 1123(a) of the Bankruptcy Code.

1.3.19 "Committee" means, as set forth in the Introduction hereto, the Official Committee of Unsecured Creditors appointed by the Office of the United States Trustee for the Southern District of New York on September 3, 2009, in the Bankruptcy Case pursuant to section 1102 of the Bankruptcy Code, as the composition of such Committee has been, or may be, altered from time to time.

1.3.20 "Confirmation Date" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

1.3.21 "Confirmation Hearing" means the hearing held by the Bankruptcy Court pursuant to sections 105 and 1128 of the Bankruptcy Code to consider confirmation of this Plan pursuant to Bankruptcy Rule 3020(b), as such hearing may be adjourned or continued from time to time.

1.3.22 "Confirmation Order" means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code, as such order may be amended, modified, or supplemented.

1.3.23 "Creditor" means any Person or Entity that has a Claim against the Debtor that arose at the time of or before the Petition Date.

1.3.24 "Debtor" means EUSA Liquidation Inc. (f/k/a Escada (USA) Inc.), as set forth in the Introduction hereto.

1.3.25 "Disallowed" means, as it relates to any type of Claim, a Claim or any portion thereof that (i) has been disallowed by Final Order, (ii) is scheduled as zero or as contingent, disputed or unliquidated and as to which no Proof of Claim has been timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Bar Date Order, (iii) is not scheduled and as to which no Proof of Claim has been timely Filed with

the Bankruptcy Court pursuant to either the Bankruptcy Code or any Bar Date Order, (iv) has been withdrawn by agreement of the Holder thereof and the Debtor, prior to the Effective Date, or thereafter has been withdrawn by agreement of the Liquidating Trustee and the Holder thereof, or (v) has been withdrawn by the Holder thereof.

1.3.26 “Disclosure Statement” means the disclosure statement with respect to this Plan, approved by the Bankruptcy Court in accordance with section 1125 of the Bankruptcy Code, as it may be altered, amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

1.3.27 “Disputed” means, with reference to any Claim, any such Claim (i) to the extent neither an Allowed Claim nor a Disallowed Claim under the Plan or a Final Order nor deemed an Allowed Claim under sections 502, 503 or 1111 of the Bankruptcy Code, (ii) which has been or hereafter is listed by a Debtor on its Schedules as unliquidated, disputed or contingent and which has not been resolved by written agreement of the parties or a Final Order or (iii) as to which the Debtor, the Committee or the Liquidating Trustee or any other party in interest has interposed a timely objection and/or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order. Because Holders of Allowed Interests will not receive any Distribution on account of such Interests, it is unnecessary to characterize any Interests, or part thereof, as Disputed.

1.3.28 “Disputed Claims Reserves” means the Administrative Claims Reserve and the Disputed Unsecured Claims Reserve.

1.3.29 “Disputed Unsecured Claims Reserve” means the interest bearing reserve account established by the Debtor or the Liquidating Trustee, as the case may be, pursuant to Section 7.5 of this Plan to be used to satisfy Disputed Unsecured Claims in accordance with the Plan if and when such Claims become Allowed.

1.3.30 “Distribution” shall mean the distribution or distributions by the Liquidating Trustee in accordance with this Plan or the Liquidating Trust Agreement of any Available Cash, or other Trust Assets.

1.3.31 “Effective Date” means a Business Day selected by the Plan Proponents on or after the Confirmation Date, on which the conditions precedent to the effectiveness of the Plan specified in Section 11.1 of the Plan shall have been satisfied or waived in writing by the Plan Proponents; provided, however, if any stay or injunction against enforcement or execution of the Confirmation Order is issued prior to the date that would otherwise be the Effective Date, the Effective Date shall be the first Business Day after all such stays or injunctions are no longer in effect.

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

1.3.33 “Escada AG” means Escada Aktiengesellschaft, direct parent to the Debtor.

1.3.34 “Estate” means the estate created pursuant to section 541 of the Bankruptcy Code upon the commencement of the Bankruptcy Case.

1.3.35 “Estate Actions” means, other than any and all Transferred Actions, all present or future causes of action, suits, claims, counterclaims, defenses, rights of offset or recoupment, and intangible rights of any sort, in law, equity or otherwise, whether arising under the Bankruptcy Code or federal, state, or common law, belonging to, held by or entitled to be asserted by the Debtor or other appropriate party in interest on behalf of the Estate prior to the Effective Date, and thereafter by the Liquidating Trustee on behalf of the Estate, including, but not limited to any claims, causes of action and similar rights arising under sections 510, 522, 544, 545, 547, 548, 549, 550, 551 or 553(b) of the Bankruptcy Code.

1.3.36 “Exculpated Person” means, except as limited and restricted in Section 12.4 of this Plan, the Debtor, the Committee and its members (solely in their capacity as Committee members), the Liquidating Trustee and any of the accountants, advisors, agents, attorneys, consultants, directors, members, employees, officers, representatives, or Professional persons of such Exculpated Persons employed or serving in any such capacity at any time on or after the Petition Date.

1.3.37 “Executory Contract” means, collectively, “executory contracts” and “unexpired leases” of the Debtor as of the Petition Date as such terms are used within section 365 of the Bankruptcy Code; provided, however, that “Executory Contract” excludes the Asset Purchase Agreement.

1.3.38 “Expense Reserve” means the interest bearing reserve account established by the Debtor or the Liquidating Trustee, as the case may be, pursuant to Section 7.5 of this Plan, on the Effective Date to fund the expenses of the Liquidating Trust (not including any amounts owed to Christian D. Marques under the Marques Employment Agreement), and to be utilized by the Liquidating Trustee to pay for Post-Effective Date Costs. The Expense Reserve may be replenished from time to time by the Liquidating Trustee as set forth in the Liquidating Trust Agreement.

1.3.39 “File,” “Filed,” or “Filing” means file, filed, or filing with the Bankruptcy Court or its authorized designee in this Bankruptcy Case.

1.3.40 “Final Decree” means the final decree entered by the Bankruptcy Court after the Effective Date pursuant to Bankruptcy Rule 3022.

1.3.41 “Final Distribution” means the Distribution of Available Cash made to the Holder of an Allowed Claim pursuant to this Plan, which (i) after giving effect to such Distribution, results in remaining Trust Assets with a de minimis value and (ii) is determined or ordered to be the final distribution as set forth in Section 8.2.1 of this Plan.

1.3.42 “Final Distribution Date” means the date of the Final Distribution.

1.3.43 “Final Order” means a judgment, order, ruling, or other decree issued and entered by the Bankruptcy Court or by any state or other federal court or other tribunal

having jurisdiction over the subject matter thereof which judgment, order, ruling, or other decree has not been reversed, stayed, modified, or amended and as to which (i) the time to appeal or petition for review, rehearing or certiorari or move for reargument has expired or shall have been waived in writing in form and substance satisfactory to the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee and as to which no appeal or petition for review, rehearing or certiorari or motion for reargument is pending or (ii) any appeal or petition for review, rehearing, certiorari or reargument has been finally decided and no further appeal or petition for review, rehearing, certiorari or reargument can be taken or granted; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be Filed with respect to such order shall not cause such order not to be a Final Order. Notwithstanding, and in lieu of the foregoing, insofar as the Confirmation Order is concerned, Final Order means such order or judgment which has been entered on the docket of this Bankruptcy Case as to which no stay is in effect.

1.3.44 “Holder” means a Person or an Entity holding a Claim or Interest.

1.3.45 “Impaired” means, when used in reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.3.46 “Indenture” means the Indenture, dated as of March 23, 2005, by and among Escada AG, as issuer, certain subsidiaries of Escada AG, as guarantors, The Bank of New York Mellon, as Indenture Trustee, and AIB BNY Fund Management (Ireland) Limited, for the 7.5% Senior Notes due 2012.

1.3.47 “Indenture Trustee” means The Bank of New York Mellon, as indenture trustee under the Indenture.

1.3.48 “Initial Distribution” means the distribution of Available Cash or other Trust Assets made in accordance with Section 8.1 of this Plan.

1.3.49 “Interest” means any ownership interest, equity or share in the Debtor (including, without limitation, all options, warrants or other rights to obtain such an interest or share in the Debtor) whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security.

1.3.50 “Lien” means a lien as defined in section 101(37) of the Bankruptcy Code.

1.3.51 “Liquidating Trust” means the liquidating trust to be created on the Effective Date, in accordance with Article VII of the Plan and governed by the Plan and the Liquidating Trust Agreement.

1.3.52 “Liquidating Trust Agreement” means the agreement to be dated as of the Effective Date establishing and delineating the terms and conditions of the Liquidating Trust.

1.3.53 “Liquidating Trust Beneficiaries” shall mean the Holders of Class 1, Class 2 and Class 3 Claims receiving Beneficial Interests in the Liquidating Trust pursuant to the Plan.

1.3.54 “Liquidating Trustee” means the Person and its duly appointed successors designated under and in accordance with the Liquidating Trust Agreement and Section 7.2 of this Plan to administer the Liquidating Trust and to control and manage the Debtor after the Effective Date, in addition to other duties, and to act as the disbursing agent for Distributions being made to Creditors and others pursuant to the Plan and the Liquidating Trust Agreement, including the Initial Distribution.

1.3.55 “Local Rules” means the Local Rules for the Bankruptcy Court, as now in effect or as the same may be amended from time to time.

1.3.56 “Miscellaneous Secured Claim” means a Claim that is secured by a valid unavoidable lien on property in which the Estate has an interest, or that is subject to recoupment or setoff under section 553 of the Bankruptcy Code to the extent of the value of the Holder’s interest in the Estate’s interest in such property, or to the extent of the amount subject to recoupment or setoff, as determined by the Bankruptcy Court pursuant to section 506(a), 553 and/or 1129(b)(2)(A)(i)(II), as applicable.

1.3.57 “Note Guarantee Claim” means that certain Claim with respect to the Senior Note Guarantee with the Indenture Trustee on December 18, 2009 in the amount of \$293,662,953.83.

1.3.58 “Payment Date” means the date of the Initial Distribution and all other Distributions thereafter, including the Final Distribution Date.

1.3.59 “Person” means a person as defined in section 101(41) of the Bankruptcy Code including governmental units.

1.3.60 “Petition Date” means August 14, 2009, the date on which the Debtor commenced the Bankruptcy Case by filing its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

1.3.61 “Plan” means this liquidating Chapter 11 plan (including all exhibits, supplements, appendices, and schedules annexed hereto), either in its present form or as it may be altered, amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.

1.3.62 “Plan Proponents” means, collectively, the Debtor and the Committee.

1.3.63 “Plan Supplement” means the supplement or supplements to this Plan containing certain documents relevant to the implementation of this Plan, and shall include, but not be limited to, the form of the Liquidating Trust Agreement.

1.3.64 “Plan Documents” means the documents to be executed, delivered, assumed and/or performed in conjunction with the consummation of the Plan on the Effective Date, including, but not limited to, the Liquidating Trust Agreement.

1.3.65 “Post-Effective Date Costs” means all costs, expenses, liabilities and obligations incurred by the Estate, the Liquidating Trust or the Liquidating Trustee related to administering and conducting the affairs of the Liquidating Trust, including winding down the Debtor’s Estate, prosecuting Estate Actions, reviewing and objecting to Disputed Claims and making Distributions from and after the Effective Date, including without limitation, the fees and expenses of Professionals and other persons employed by the Estate, the Liquidating Trust or Liquidating Trustee or as permitted under Section 9.4 of the Plan.

1.3.66 “Priority Claims Reserve” means the interest-bearing reserve account established by the Debtor or the Liquidating Trustee, as the case may be, pursuant to Section 7.5 of this Plan, on the Effective Date to fund the payment of all Priority Tax Claims and Priority Non-Tax Claims outstanding as of the Effective Date.

1.3.67 “Priority Non-Tax Claim” means any and all Claims given priority in payment pursuant to section 507 of the Bankruptcy Code, but not including Priority Tax Claims, Administrative Expense Claims and Claims under section 507(a)(2) of the Bankruptcy Code.

1.3.68 “Priority Tax Claim” means a Claim entitled to priority in payment under section 502(i) or section 507(a)(8) of the Bankruptcy Code.

1.3.69 “Professional” means any Person employed or to be compensated pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code, or employed pursuant to the terms of this Plan after the Effective Date.

1.3.70 “Professional Fee Claim” means a Claim by a Professional for compensation and/or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code in connection with an application made to the Bankruptcy Court in the Bankruptcy Case.

1.3.71 “Proof of Claim” means any proof of Claim Filed with the Bankruptcy Court with respect to the Debtor pursuant to any Bar Date Order.

1.3.72 “Pro Rata” or “Pro Rata Share” means, with respect to any Distribution to a Class under this Plan, as of any particular Payment Date, proportionate sharing pursuant to which the ratio of the cumulative amount of all funds distributed on account of an Allowed Claim to the amount of such Allowed Claim is the same as the ratio of the cumulative amount distributed to such Class to the total amount of all Allowed Claims and Disputed Claims classified into such Class.

1.3.73 “Purchaser” means Escada US Subco LLC, as purchaser under the Asset Purchase Agreement.

1.3.74 “Record Date” means, for purposes of voting on this Plan, the date on which the Bankruptcy Court approves the Disclosure Statement, and for purposes of making distributions under the Plan, the Confirmation Date.

1.3.75 “Reserves” means, collectively, the Administrative Claims Reserve, the Priority Claims Reserve, the Expense Reserve and the Disputed Unsecured Claims Reserve. For the avoidance of doubt, the Reserves may be held in a single bank account provided that the Liquidating Trustee sets aside the appropriate amounts for each Reserve, as provided for in this Plan, within the single bank account.

1.3.76 “Sale Order” means the Order Pursuant to Sections 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006 (i) Approving the Sale of Substantially All of the Debtor’s Assets, (ii) Authorizing the Debtor to Enter into Agreement in Connection Therewith, (iii) Approving the Assumption and Assignment, or Rejection of Executory Contracts and Unexpired Leases and (iv) Related Relief [Docket No. 200], entered on January 7, 2010, as amended.

1.3.77 “Schedules” means the Schedules of Assets and Liabilities and Statement of Financial Affairs Filed by the Debtor with the clerk of the Bankruptcy Court pursuant to Bankruptcy Rule 1007, as they have been or may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009.

1.3.78 “Senior Note Guarantee” means the Debtor’s joint and several, unconditional and irrevocable guarantee of the full and prompt performance of all of Escada AG’s obligations under the Indenture and the Senior Notes, including the payment of principal, and premium, if any, and interest on the Senior Notes.

1.3.79 “Special Notice List” means a list ~~of~~ comprised of the U.S. Trustee and the names of the Holders of Beneficial ~~Interest~~ Interests who provide the Liquidating Trustee with written notice of their ~~request~~ requests to receive notice of Liquidating Trust activities, which list will be maintained by the Liquidating Trustee for such purposes.

1.3.80 “Transferred Actions” means any and all of the Debtor’s causes of action, which were transferred to the Purchaser in accordance with and pursuant to the Sale Order and the Asset Purchase Agreement.

1.3.81 “Trust Assets” means any and all of the Debtor’s and its Estate’s right, title and interest in all property, as provided in Section 541 of the Bankruptcy Code, including, without limitation, Cash, rights of setoff and recoupment, any and all proceeds, rents, products, offspring, profits arising from or generated by such property before or after the Effective Date and including the Estate Actions, if any, and any other remaining property of the Debtor and its Estate, all of which will be transferred on, or be deemed to be transferred on, the Effective Date to the Liquidating Trust pursuant to the Plan and the Liquidating Trust Agreement.

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

1.3.83 “United States Trustee” or “U.S. Trustee” means the United States Trustee appointed under section 581 of title 28 of the United State Code to serve in Region 2.

1.3.84 “Unsecured Claim” means any Claim that is not an Administrative Expense Claim, a Priority Tax Claim, a Priority Non-Tax Claim, a Miscellaneous Secured Claim or Interest.

1.3.85 “Voting Deadline” means the deadline set by the Bankruptcy Court for parties to submit their Ballots to accept or reject the Plan.

1.3.86 “Voting Record Date” means April 29, 2010.

## ARTICLE II

### CLASSIFICATION OF CLAIMS AND INTERESTS

2.1 **Classification.** The classification of Claims and Interests listed below shall be for all purposes including voting, confirmation, and Distributions pursuant to this Plan. Pursuant to sections 1122 and 1123 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests. Administrative Expense Claims and Priority Tax Claims are excluded from classification in accordance with section 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

#### Summary of Classification

<b>Class Description</b>	<b>Status</b>	<b>Voting Rights</b>
Unclassified - Allowed Administrative Expense Claims and Allowed Priority Tax Claims	Unimpaired	Deemed to accept the Plan; Not entitled to vote
Class 1 - Allowed Priority Non-Tax Claims	Unimpaired	Deemed to accept the Plan; Not entitled to vote
Class 2 - Allowed Miscellaneous Secured Claims	Unimpaired	Deemed to accept the Plan; Not entitled to vote
Class 3 - Allowed Unsecured Claims	Impaired	Entitled to vote
Class 4 - Interests	Impaired	Deemed to reject the Plan; Not entitled to vote

2.2 **Unclassified Claims.** Unclassified Claims include Administrative Expense Claims and Priority Tax Claims. Pursuant to section 1126(f) of the Bankruptcy Code, Holders of



Allowed Administrative Expense Claims and Holders of Allowed Priority Tax Claims are conclusively presumed to accept the Plan and the Debtor will not solicit acceptance of the Plan from such Holders.

2.3 **Classes of Claims.**

2.3.1 Class 1. Class 1 consists of Allowed Priority Non-Tax Claims. Class 1 is Unimpaired.

2.3.2 Class 2. Class 2 consists of Allowed Miscellaneous Secured Claims. Class 2 is Unimpaired.

2.3.3 Class 3. Class 3 consists of Allowed Unsecured Claims. Class 3 is Impaired.

2.3.4 Class 4. Class 4 consists of Interests. Class 4 is Impaired.

2.4 **Impairment Controversies.** If a controversy arises as to whether any Class of Claims or Class of Interests is Impaired under this Plan, such Class shall be treated as specified in this Plan unless a Final Order is entered by the Bankruptcy Court prior to the Confirmation Hearing specifying alternative treatment, in which case such Final Order shall control.

### ARTICLE III

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

3.1 **Treatment of Allowed Administrative Expense Claims.** Each Holder of an Allowed Administrative Expense Claim shall receive, at the Liquidating Trustee's option, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, either (a) Cash in an amount equal to the Allowed amount of such Claim, (b) such other treatment as may exist in the ordinary course of such Debtor's business or (c) such other treatment as may be agreed upon in writing between the Holder of such Administrative Expense Claim and the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee. ~~All outstanding fees payable to the U.S. Trustee under 28 U.S.C. § 1930 that have not been paid as of the Effective Date shall be paid by the Liquidating Trustee no later than thirty (30) days after the Effective Date.~~

3.1.1 **Bar Date for the Filing of Certain Administrative Expense Claims, Excluding Professional Fee Claims.** Each Holder of an Administrative Expense Claim (other than a Professional Fee Claim), including any claim for substantial contribution, is required to File a proof of Administrative Expense Claim by (i) March 31, 2010 for Administrative Expense Claims arising on or after the Petition Date through and including January 14, 2010 and (ii) thirty (30) days after the Effective Date for Administrative Expense Claims arising on or after January 15, 2010. Nothing herein extends any Bar Date established in the Bar Date Orders. Any request for payment of an Administrative Expense Claim (other than a Professional Fee Claim) that is not timely Filed as set forth above will be forever barred, and Holders of such Claims will not be able to assert such Claims in any manner against the Debtor, the Estate, the Liquidating

Trust, the Trust Assets or the Liquidating Trustee or any of the foregoing parties' accountants, advisors, agents, attorneys, consultants, directors, employees, members, officers, representatives, or Professionals.

3.1.2 Bar Date for Filing and Assertion of Professional Fee Claims. Each Holder of a Professional Fee Claim seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date pursuant to sections 330, 331 and 503(b)(2) of the Bankruptcy Code shall (i) File their respective final applications for allowances of compensation for services rendered and reimbursement of expenses incurred through the Confirmation Date by no later than the date that is sixty (60) days after the Effective Date or such other date as may be fixed by the Bankruptcy Court and (ii) if granted such an award by the Bankruptcy Court, be paid in Cash in such amounts as are Allowed by the Bankruptcy Court (A) on the date such Professional Fee Claim becomes an Allowed Professional Fee Claim, or as soon thereafter as is practicable or (B) upon such other terms as may be mutually agreed upon between such Holder of a Professional Fee Claim and the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee. All Professional fees and expenses incurred after the Effective Date of the Plan are not subject to Bankruptcy Court approval and shall be paid in accordance with Section 7.10 of this Plan.

3.1.3 U.S. Trustee Fees. ~~Quarterly fees owed to the Office of the U.S. Trustee shall be paid when due in accordance with applicable law and the Debtor, prior to~~ All fees payable pursuant to section 1930 of title 28 of the United States Code due and payable through the Effective Date, and any interest accruing thereto, shall be paid by the Debtor on or before the Effective Date, and amounts due thereafter shall be paid by the Liquidating Trustee, shall continue to file reports to show the calculation of such fees for the Estates until the Bankruptcy Case is closed under section 350 of the Bankruptcy Code in the ordinary until the entry of a final decree closing the respective Debtor's Chapter 11 Case. Any deadline for filing claims in this Chapter 11 Case shall not apply to fees payable by the Debtor pursuant to section 1930 of title 28 of the United States Code or any interest accruing thereto.

3.2 Treatment of Allowed Priority Tax Claims. Each Holder of an Allowed Priority Tax Claim shall receive, at the Liquidating Trustee's option, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, either (a) Cash in an amount equal to the Allowed amount of such Claim, (b) such other less favorable treatment as to which such Holder and the Debtor or the Liquidating Trustee agree upon in writing or (c) such other treatment such that the Claim will not be Impaired. Any Claim or demand for payment of a penalty shall be Disallowed by confirmation of this Plan and the Holder of the Claim shall not assess or attempt to collect such penalty from the Debtor, the Estate, the Liquidating Trust, the Trust Assets or the Liquidating Trustee. All Allowed Priority Tax Claims which are not due and payable on or before the Effective Date shall be paid in the ordinary course in accordance with the terms thereof.

## ARTICLE IV

### TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

4.1 **Class 1 – Allowed Priority Non-Tax Claims.** Each Holder of an Allowed Priority Non-Tax Claim shall receive, at the Liquidating Trustee's option, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, either (a) Cash in an amount equal to the Allowed amount of such Claim, (b) such other less favorable treatment as to which such Holder and the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee agree upon in writing or (c) such other treatment such that the Claim will not be Impaired. Except to the extent otherwise agreed, each Allowed Priority Non-Tax Claim shall be paid in full on the later of the (x) Effective Date and (y) fifteenth (15th) Business Day of the first month following the month in which such Claim becomes allowed, or as soon after such dates as is practicable.

4.2 **Class 2 – Allowed Miscellaneous Secured Claims.** Each Holder of an Allowed Miscellaneous Secured Claim shall receive, at the ~~Debtor~~Liquidating Trustee's option, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, either (a) Cash in an amount equal to the Allowed amount of such Claim, (b) the property securing such Miscellaneous Secured Claim, with any deficiency to result in an Allowed Unsecured Claim, (c) such other treatment as may be agreed upon in writing by the Holder of such Claim and the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee or (d) such other treatment such that the Claim will not be Impaired.

4.3 **Class 3 – Allowed Unsecured Claims.** Each Holder of an Allowed Unsecured Claim shall receive, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, a Pro Rata Share of Available Cash by the Liquidating Trustee pursuant to the Plan and Liquidating Trust Agreement. Subsequent Distributions shall be made pursuant to the Liquidating Trust Agreement. Any Distributions to Beneficial Holders of the Allowed Note Guarantee Claim shall be made solely to the Indenture Trustee for further distribution by the Indenture Trustee to or for the benefit of the Beneficial Holders of the Allowed Note Guarantee Claim pursuant to the terms of the Indenture .

4.4 **Class 4 – Interests.** On the Effective Date, all Interests of the Debtor shall be deemed canceled, annulled, extinguished and voided, and Holders thereof shall not be entitled to any Distribution whatsoever under this Plan or in the Bankruptcy Case on account of such Interests. Any certificate, share or other document representing any Interests in the Debtor shall be of no force and effect on and after the Effective Date.

## ARTICLE V

### ACCEPTANCE OR REJECTION OF PLAN

5.1 **Classes and Claims Entitled to Vote.** Each Holder of an Allowed Claim in an Impaired Class of Claims as of the Record Date shall be entitled to vote separately to accept or reject this Plan as provided for in the order entered by the Bankruptcy Court establishing certain

procedures with respect to the solicitation and tabulation of votes to accept or reject this Plan (a copy of which was distributed together with the Disclosure Statement). Classes of Claims not Impaired under this Plan shall not be entitled to vote to accept or reject this Plan and shall be presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 1 is Unimpaired and hence is presumed to have accepted this Plan. Class 2 is Unimpaired and hence is presumed to have accepted this Plan. Class 3 is Impaired under this Plan and the members of such Class will receive a Distribution under this Plan and, therefore, are entitled to vote to accept or reject this Plan. Class 4 is Impaired under this Plan, and the Holders of Interests will not receive a Distribution under this Plan or retain any property in the Bankruptcy Case on account of their Interests. Accordingly, the members of Class 4 are presumed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code, and shall not be entitled to vote.

5.2 **Acceptance by a Class of Creditors.** Consistent with section 1126(c) of the Bankruptcy Code and except as provided for in section 1126(e) of the Bankruptcy Code, a Class of Claims shall have accepted this Plan if it is accepted by at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Holders of Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

5.3 **Non-consensual Confirmation.** If any Impaired Class of Claims entitled to vote shall not accept the Plan by the requisite majorities provided in section 1126(c) of the Bankruptcy Code, the Plan Proponents reserve the right to amend the Plan or undertake to have the Bankruptcy Court confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code or both. With respect to Impaired Classes of Claims that are deemed to reject the Plan or that reject the Plan, the Debtor shall request the Bankruptcy Court to confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code.

## ARTICLE VI

### PROCEDURES FOR RESOLVING DISPUTED OR CONTINGENT CLAIMS

6.1 **Objections to Claims.** Prior to the Effective Date, the Debtor and the Committee shall be entitled to pursue any objection to the allowance of any Claim or request estimation of any Claim for voting or Distribution purposes. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, and except as otherwise expressly provided for in this Plan, following the Effective Date, the Liquidating Trustee shall be authorized and vested with the exclusive right to object to any and all Claims, and initiate, File and/or prosecute such objections on behalf of the Debtor and its Estate so as to have the Bankruptcy Court determine the Allowed amount, if any, of such Claims to be paid under this Plan. All objections to Claims must be Filed with the Bankruptcy Court and served upon the Holder of the Claim at the address provided in the Proof of Claim or at the address of any counsel that has appeared on the Holder's behalf in the Bankruptcy Case by no later than one hundred and twenty (120) days after the Effective Date. To the extent the Liquidating Trustee requests any extension of the objection deadline greater than one hundred and twenty (120) days after the Effective Date, such request must provide notice to, and an opportunity to be heard by, the affected Holders. Responses and litigation over the allowance of any Claim that is the subject of an objection shall be governed by

the Bankruptcy Code and the Bankruptcy Rules, and any other applicable order of the Bankruptcy Court. From and after the Effective Date, all objections shall be litigated to Final Order except to the extent that the Liquidating Trustee elects to withdraw such objection or elects to compromise, settle or otherwise resolve any such objection.

6.2 **Claims Filed After the Bar Date.** No Claim that was required to be Filed by an applicable Bar Date shall be Filed with the Bankruptcy Court after such applicable Bar Date, unless such Bar Date was extended by the Debtor with respect to such person or entity asserting such a Claim. Any Claim that was required to be Filed by an applicable Bar Date that is instead Filed after such applicable Bar Date shall be deemed Disallowed without further action or order of the Bankruptcy Court, the Debtor, or the Liquidating Trustee.

6.3 **No Distribution on Account of Disputed Claims.** Notwithstanding any provision in the Plan or Confirmation Order to the contrary, except as otherwise agreed to by the Liquidating Trustee, or as otherwise ordered by the Bankruptcy Court, no payment or Distribution, partial payments or partial Distributions shall be made with respect to a Disputed Claim until the resolution of such disputes by settlement or Final Order. No Distribution or payment shall be made to any Holder of an Allowed Claim who is also a potential defendant in any Estate Action. Notwithstanding this subsection, the making of a Distribution to such potential defendant or the lack of any objection Filed to such Allowed Claim on the basis of such potential Estate Action shall not constitute a waiver of any rights of the Debtor or the Liquidating Trustee, as the case may be. For purposes of the Plan, such Distribution or payment on account of such Allowed Claim shall be held in the applicable Disputed Claims Reserve as if it were a Disputed Claim.

6.4 **Estimation.** In order to effectuate Distributions pursuant to the Plan and avoid undue delay in the administration of the Estate, the Debtor prior to the Effective Date, or the Liquidating Trustee thereafter, may request that the Bankruptcy Court estimate any contingent, unliquidated or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, irrespective of whether the Debtor or Liquidating Trustee have previously objected to such Claim, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time. In the event that the Bankruptcy Court estimates any contingent, unliquidated or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court with respect to the Debtor only. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor, prior to the Effective Date, and thereafter 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 exclusive of one another. In addition to seeking estimation of Claims as provided in this Section 6.4, the Debtor or the Liquidating Trustee, as the case may be, may resolve or adjudicate any Disputed Claim in the manner in which the amount of such Claim and the rights of the Holder of such Claim would have been resolved or adjudicated if this Bankruptcy Case had not been commenced. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

6.5 **Settlement and Compromise of Disputed Claims.** From and after the Effective Date, the Liquidating Trustee shall have the exclusive right and authority, without notice to any

party or further order of the Bankruptcy Court, to settle or compromise all objections to Claims. Consistent with Section 15.9 of this Plan, the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee shall also have the authority to execute any documents or take any other action required to effectuate such settlements or compromises.

## ARTICLE VII

### IMPLEMENTATION OF PLAN; ESTABLISHMENT OF LIQUIDATING TRUST

7.1 **Establishment of the Liquidating Trust.** On the Effective Date, the Debtor and the Committee, on their own behalf and on behalf of the Holders of Allowed Claims, shall execute, or be deemed to have executed, the Liquidating Trust Agreement, and shall take all other steps necessary to establish the Liquidating Trust. The Liquidating Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, but not limited to, any and all provisions necessary to govern the rights, powers, obligations and appointment and removal of the Liquidating Trustee, and to ensure the treatment of the Liquidating Trust as a liquidating trust for federal income tax purposes. On the Effective Date, the Debtor shall transfer and be deemed to have transferred to the Liquidating Trust all of its right, title, and interest in and to all of the Trust Assets and any and all other remaining property of the Debtor and its Estate, free and clear of any Lien, claim or interest in such property of any other Person except as provided in the Plan. In addition, on the Effective Date, the exclusive right, but not the obligation, to investigate and pursue any and all Estate Actions shall vest in the Liquidating Trust. Title to all Trust Assets shall vest in the Liquidating Trust on the Effective Date. The Debtor, or such other Persons that may have possession or control of all other assets of the Estate, shall transfer possession or control of such assets to the Liquidating Trustee and shall cooperate with the Liquidating Trustee by executing documents or instruments necessary to effectuate such transfers or that shall aid implementation of the deemed transfers under the Plan. Upon the Effective Date or as soon thereafter as practicable, the Debtor shall provide to the Trustee the books and records of the Debtor to enable the Trustee to perform the Trustee's tasks under the Trust Agreement and the Plan. In addition, the Debtor shall transfer to the Trustee all rights and remedies relating to the Estate Actions, including the Debtors' evidentiary privileges (including the attorney-client privilege). All Cash held in the Liquidating Trust shall be invested in accordance with the Liquidating Trust Agreement.

7.1.1 **Purpose of the Liquidating Trust.** The Liquidating Trust shall be established for the sole purpose of liquidating and distributing the Trust Assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. Subject to definitive guidance from the Internal Revenue Service (the "IRS"), all parties shall treat the Liquidating Trust as a liquidating trust for all federal income tax purposes.

7.1.2 **Transfer of Assets to Liquidating Trust.** The transfer of the Trust Assets into the Liquidating Trust shall be made, as provided herein and in the Liquidating Trust Agreement, for the benefit of the Holders of Allowed Claims, whether Allowed on or after the Effective Date, and such other Persons and Professionals as provided in this Plan. After the transfer of the Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make Distributions in accordance with and subject to the terms and

conditions of the Plan, the Liquidating Trust Agreement and the Confirmation Order. All parties shall treat the Liquidating Trust as a liquidating trust for federal income tax purposes with the Liquidating Trust Beneficiaries being the beneficiaries, grantors and owners of the Liquidating Trust, as set forth in the Liquidating Trust Agreement. The transfer of the Trust Assets to the Liquidating Trust shall be treated by all parties for all federal income tax purposes as if all the transferred assets had been first transferred to the Liquidating Trust Beneficiaries and then transferred by such beneficiaries to the Liquidating Trust.

7.1.3 Intent to Pursue Causes of Actions after Confirmation. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, as of the Effective Date, the Liquidating Trustee shall have the right, authority and discretion to investigate, pursue, object to, settle or compromise any and all Estate Actions on behalf of and for the benefit of the Estate and its Creditors. Any Person, Entity or other party subject to an Estate Action should assume that the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee may take any action appropriate to prosecute or enforce such cause of action against them, regardless of how such Person, Entity or other party may have voted on the Plan. No party should assume that any general release or general discharge provision contained in the Plan or the Confirmation Order will bar or otherwise inhibit the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee from taking any action to prosecute or enforce any causes of action under any provision of the Bankruptcy Code or any applicable nonbankruptcy law. All Cash received by the Liquidating Trust as a result of prosecution or settlement of any Estate Action or of enforcement of any judgment or order obtained in connection with any Estate Action shall be distributed in accordance with the terms of this Plan.

7.1.4 Termination. The Liquidating Trust shall terminate no later than the ~~third~~second (~~3rd~~2nd) anniversary of the Effective Date; provided, however, that, on or prior to the date ~~six~~two (~~6~~2) months prior to such termination, the Bankruptcy Court, upon motion by a party in interest, including the Liquidating Trustee, may extend the term of the Liquidating Trust, upon notice to all parties listed in the Special Notice List, if it is necessary to complete the liquidation of the Trust Assets. Notwithstanding the foregoing, multiple extensions can be obtained so long as Bankruptcy Court approval is requested at least ~~six~~two (~~6~~2) months prior to the expiration of each extended term; provided, however, that the aggregate of all such extensions shall not exceed three (3) years, unless the Liquidating Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the trust as a liquidating trust within the meaning of the Treasury Regulation Section 301.7701-4(d) for federal income tax purposes. The Liquidating Trustee shall further cause the ~~Liquidating~~ Trust to be terminated ~~within three (3) months~~as soon after making the Final Distribution as is reasonably practicable.

7.2 Appointment of the Liquidating Trustee. The Confirmation Order shall provide for the appointment of Clingman & Hanger Management Associates, LLC as Liquidating Trustee. The Liquidating Trustee shall be the exclusive trustee of the Trust Assets for purposes of section 3713(b) of title 31 and section 6012(b)(3) of title 26 of the United States Code, as well as ~~the representative~~shall exercise the rights and powers of the Estate in

accordance with section 1123 of the Bankruptcy Code and shall have all the powers, authority and responsibilities specified in the Liquidating Trust Agreement, including without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code. The compensation for the Liquidating Trustee shall be as set forth in the Liquidating Trust Agreement. From and after the Effective Date, the Liquidating Trustee shall ~~act for the Debtor in the same fiduciary capacity as applicable to a board of directors and officers, subject to the provisions hereof, and shall succeed to such powers as would have been applicable to the Debtor's officers and directors. From and after the Effective Date, the Liquidating Trustee shall be the sole representative of, and shall act for, the Debtor~~ have, and be entitled to exercise, all rights and powers provided to the Estate under the Bankruptcy Code, including section 1107 thereof, in addition to all rights and powers granted in the Trust Agreement. Accordingly, from and after the Effective Date, the Liquidating Trustee shall make all Distributions contemplated under this Plan and shall have the exclusive right to settle or compromise any Disputed Claim or Estate Action pursuant to the terms of the Liquidating Trust Agreement.

7.3 **Applicability of Securities Law, Non-Transferability of Beneficial Interests and Reporting Requirements.** Under section 1145 of the Bankruptcy Code, the issuance of the Beneficial Interests under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Liquidating Trustee shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission. Upon issuance thereof, the Beneficial Interests shall not be certificated and are not transferable (except as otherwise provided in the Liquidating Trust Agreement). Any Holder of a Beneficial Interest who provides the Liquidating Trustee with written notice of their request to receive notice of Liquidating Trust activities shall be included on the Special Notice List maintained by the Liquidating Trustee for such purposes.

7.4 **Distributions on Account of Beneficial Interests.** To the extent Available Cash is available, the Liquidating Trustee shall, in the discretion of the Liquidating Trustee, make distributions of Available Cash from the Liquidating Trust to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Agreement and the Plan. Any proceeds received from the liquidation of the Trust Assets shall be distributed in accordance with the Liquidating Trust Agreement and the Plan.

7.5 **Establishment of Accounts and Reserves.** On the Effective Date, and in conjunction with making all Distributions required to be made on the Effective Date, the Debtor or the Liquidating Trustee, as the case may be, shall establish the General Disbursement Account and each of the Reserves described below, all of which shall be interest bearing accounts and shall be administered by the Liquidating Trustee.

7.5.1 **Transfer of Distributions to the Administrative Claims Reserve, the Priority Claims Reserve and Expense Reserve.** On the Effective Date, all of the Debtor's assets will be transferred to the General Disbursement Account, from which the Liquidating Trustee shall fund (i) the Administrative Claims Reserve with Cash in an



amount sufficient to pay the full amount of all Disputed Administrative Expense Claims, all Disputed Priority Tax Claims, all Disputed Priority Non-Tax Claims and all estimated unpaid Professional Fee Claims, (ii) the Priority Claims Reserve in an amount necessary to fund payment of all Priority Tax Claims and Priority Non-Tax Claims outstanding as of the Effective Date, and (iii) the Expense Reserve with Cash in ~~an~~the amount of \$400,000 to pay the Post-Effective Date Costs, including such costs as are necessary to effectuate the liquidation of the remaining assets hereunder, administering the Liquidating Trust, ~~including payments to its Professionals,~~payment of professionals retained by the Liquidating Trustee as well as funding any necessary or appropriate litigation against third parties. On notice to the parties on the Special Notice List, ~~in accordance with the Plan~~ with an opportunity for such parties to be heard, the Expense Reserve may be replenished from time to time in the reasonable discretion of the Trustee, from the funds in the General Disbursement Account.

7.5.2 Transfer of Distributions to Disputed Unsecured Claims Reserve. On and after the Effective Date, any Distributions that would otherwise be made to the Holders of Disputed Unsecured Claims shall be transferred to the Disputed Unsecured Claims Reserve.

7.5.3 Duties in Connection with Disputed Claims. The Liquidating Trustee shall (i) hold and administer the Disputed Claims Reserve, (ii) object to, settle or otherwise resolve Disputed Claims, (iii) make Distributions to Holders of Disputed Claims that subsequently become Allowed Claims in accordance with the Plan and (iv) distribute any remaining assets of the Disputed Claims Reserve, after resolving all Disputed Claims, to the Liquidating Trust Beneficiaries in accordance with the Liquidating Trust Agreement and the Plan.

7.5.4 Termination of the Disputed Claims Reserves. The Administrative Claims Reserve and the Disputed Unsecured Claims Reserve shall be terminated by the Liquidating Trustee when all Disputed Claims related to such accounts have either become Allowed Claims or Disallowed, and Distributions required herein to be made have been made in accordance with the terms of the Plan.

7.6 Distributions on Account of Disputed Claims. A Disputed Claim, to the extent it becomes an Allowed Claim for Distribution purposes, shall receive from the applicable Disputed Claims Reserve any amounts held in such Disputed Claims Reserve attributable to the Allowed amount of such Claim, as set forth in the Plan. Any Cash Distributions held in the applicable Disputed Claims Reserve for the benefit of the Holder of a Disputed Claim, which is subsequently Disallowed, in whole or in part, shall be distributed, in the Liquidating Trustee's discretion, on a Pro Rata basis to the Liquidating Trust Beneficiaries. The Liquidating Trustee may elect to delay making a Pro Rata Distribution to all Liquidating Trust Beneficiaries until sufficient Available Cash is available to meet the minimum Distribution requirements set forth herein or if delaying such Distribution to a subsequent Payment Date would be more efficient and economical as determined by the Liquidating Trustee.

7.7 No Recourse. Notwithstanding that the Allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and

Bankruptcy Rules or is Allowed in an amount for which, after application of the payment priorities established by the Plan, there is insufficient value to provide a recovery equal to that received by other Holders of Allowed Claims in the respective Class, no Holder of a Claim shall have recourse against the Debtor, the Estate, the Committee, the Liquidating Trust, the Trust Assets, the Liquidating Trustee, or any of their respective Professionals, consultants, officers, directors or members or their successors or assigns, or any of their respective property: (the “Non- Recourse Parties”). This provision is not intended to be, nor shall it be construed or interpreted as, a general release of the Non-Recourse Parties, rather such Non-Recourse Parties shall only be entitled to the injunction, exculpation, limitations of liability or releases set forth in Section 12.3 and Section 12.4.

7.8 **Disputed Payments or Distributions.** In the event of any dispute between or among Holders of Allowed Claims as to the right of any Person to receive or retain any Distribution to be made to such Holders under this Plan, the Liquidating Trustee may, in lieu of making such Distribution to such entity, make it instead into an escrow for payment or Distribution as ordered by the Bankruptcy Court or as the interested parties to such dispute may otherwise agree in writing among themselves.

7.9 **Investment of Disputed Claims Reserves.** The Liquidating Trustee shall be permitted, from time to time, to invest all or a portion of the Cash in the Disputed Claims Reserves in United States Treasury Bills, interest-bearing certificates of deposit, tax exempt securities, money market accounts or investments permitted by section 345 of the Bankruptcy Code or otherwise as authorized by the Bankruptcy Court, using prudent efforts to enhance the rates of interest earned on such Cash without inordinate credit risk or interest rate risk. All interest earned on such Cash shall be held in the Disputed Claims Reserves and, after satisfaction of any expenses incurred in connection with the maintenance of such Disputed Claims Reserves, including taxes payable on such interest income, if any, shall be transferred out of such Disputed Claims Reserves and, in the discretion of the Liquidating Trustee, be used to satisfy the costs of administering and fully consummating this Plan or become Available Cash for distribution in accordance with this Plan.

7.10 **Post-Effective Date Costs.** From and after the Effective Date, the Liquidating Trustee shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of its Professionals thereafter incurred on behalf of the Debtor, the Committee (to the limited extent permitted under Section 9.4) or the Liquidating Trustee, including, without limitation, those fees and expenses incurred in connection with the implementation and consummation of this Plan. On a monthly basis, all Professionals shall serve a detailed invoice to the Liquidating Trustee. If the Liquidating Trustee disputes the reasonableness of any such invoice within fifteen (15) days of service of such invoice, the Liquidating Trustee or the affected Professional may submit such dispute to the Bankruptcy Court for determination of reasonableness of such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved. If no objections are raised to an invoice in accordance with the deadline established above, the Liquidating Trustee shall promptly pay such invoice in full.

## ARTICLE VIII

### PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE PLAN

8.1 **The Initial Distribution.** Except as otherwise provided herein or by order of the Bankruptcy Court, the Initial Distribution will be made by the Liquidating Trustee to Holders of Allowed Unsecured Claims after satisfaction in full of all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Miscellaneous Secured Claims, as well as reserving in full for all Disputed Claims and Post-Effective Date Costs, as determined by the Liquidating Trustee; provided, however, that the Initial Distribution may also be the Final Distribution if so determined by the Liquidating Trustee. As set forth in Section 7.5, on the Effective Date, all Available Cash of the Debtor will be transferred to the General Disbursement Account, from which the Liquidating Trustee shall establish and fund the Reserves as described in Section 7.5 and pay, in full and in Cash, on the Effective Date or as soon thereafter as is practicable (i) all Allowed Administrative Expense Claims, (ii) all Allowed Priority Tax Claims and (iii) all Allowed Priority Non-Tax Claims.

8.2 **Timing of Subsequent Distributions.** Except as set forth herein, following the Initial Distribution, the Liquidating Trustee shall make Distributions to the Liquidating Trust Beneficiaries on each Payment Date, as appropriate, or on the Final Distribution Date. If a Claim is not an Allowed Claim as of the Payment Date, Distributions will be made only if and when the Claim is an Allowed Claim.

8.2.1 **Timing of Final Distribution.** The Final Distribution shall have occurred when, after giving effect to a Distribution of Available Cash, there are remaining Trust Assets with a de minimis value and the Liquidating Trustee determines, or the Bankruptcy Court otherwise orders after notice and a hearing, that such Distribution is the final Distribution to a Holder of an Allowed Claim under the Plan. For the Estate, the Final Distribution will be after (i) the liquidation into Cash of all remaining assets of the Debtor (other than any assets abandoned by the Debtor or the Liquidating Trust) and collection of other sums due or otherwise remitted or returned to the Debtor and (ii) all Cash in the Reserves has been distributed or made available as Available Cash in accordance with this Plan or the Liquidating Trust Agreement.

8.3 **Requirements for Allowance of Claims.** No payment or other Distributions shall be made on account of any Claim to the extent it is not an Allowed Claim. To the extent that a Disputed Claim becomes an Allowed Claim or a Disputed Administrative Expense Claim becomes an Allowed Administrative Expense Claim, Distributions, if any, shall be made to the Holder of such Allowed Claim or Allowed Administrative Expense Claim in accordance with the provisions of this Plan. Distributions made after the Effective Date to Holders of Claims that become Allowed Claims after the Effective Date shall be deemed to have been made on the Effective Date.

8.4 **Minimum Distribution.** Notwithstanding anything to the contrary in this Plan, no Cash payment of less than fifteen (~~\$15.00~~50.00) dollars shall be made to any Holder of a Allowed Claim or Beneficial Interest on account of its Allowed Claim or Beneficial Interest unless either a request therefor is made in writing to the Liquidating Trustee by the Holder of the

Allowed Claim or Beneficial Interest and the Liquidating Trustee determines to make such payment in its sole and absolute discretion.

8.5 **Undeliverable Distributions.** If any Distribution to the Holder of an Allowed Claim is returned as undeliverable, no further Distributions shall be made to such Holders unless and until the Liquidating Trustee is notified in writing of such Holder's then-current address. Undeliverable Distributions made by the Liquidating Trustee and any other unclaimed Distributions shall become a Trust Asset and be deposited in the appropriate Disputed Claim Reserve until such time as the Distribution becomes deliverable. Any Holder of an Allowed Claim that does not assert a claim for an undeliverable Distribution to be made by the Liquidating Trustee within one hundred eighty (180) days after the ~~later of (i) the Effective Date and (ii) the last date on which a~~date that the undeliverable Distribution was ~~deliverable~~sent to such Holder, will have its claim for such undeliverable Distribution deemed satisfied, waived ~~and cancelled, discharged,~~ released and will be forever barred from asserting any such ~~claim~~Claim against the Debtor, the Estate, the ~~Liquidating~~ Trust, the Trust Assets or the ~~Liquidating~~ Trustee and any accounts or reserves. ~~Any unclaimed, and the Trustee shall have no further obligation to make any Distribution on account of such Claim. Any undeliverable Distributions pursuant to this Section shall be Available Cash for Distribution as part of the Final Distribution. The Liquidating deemed unclaimed property under section 347(b) of the Bankruptcy Code and shall irrevocably revert to the Trust for Distribution to other Beneficiaries.~~ The Trustee shall have no obligation to attempt to locate any Holder of an Allowed Claim with regard to whom a Distribution has been returned as undeliverable, forwarding time expired or similar indication. Undeliverable Distributions shall not be entitled to any interest, dividends or other accruals of any kind.

8.6 **Setoff.** In accordance with this Plan, section 553 of the Bankruptcy Code and applicable non-bankruptcy law, the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee may, but shall not be required to, set off against any Claim, and the Distributions to be made pursuant to this Plan with respect to such Claim, claims of any nature whatsoever that the Debtor, the Estate or the Liquidating Trustee may have against the Holder of such Claim. Notwithstanding the foregoing, the failure to effect such a setoff or the allowance of any claim hereunder will not constitute a waiver or release by the Debtor, the Liquidating Trustee or the Estate of any such claim, right or cause of action against such Holder.

8.7 **No Postpetition Interest on Claims.** Unless otherwise specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claim, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

8.8 **Distributions Paid to Holders of Record.** All Distributions to be made pursuant to this Plan with respect to Claims of any nature whatsoever may be made by the Liquidating Trustee to the Holder of record as of the Record Date. The Liquidating Trustee will make Distributions to the Holders of Allowed Claims at the address set forth in the Schedules, if no Proof of Claim has been Filed, or at the address on the Proof of Claim. To the extent that any Claims are transferred, assigned or alienated in any way after the Record Date, the Liquidating Trustee, on its own behalf and on behalf of the Debtor, has the right, in its sole discretion, to

ignore and disregard such transfer or assignment and to make the Distribution to the Holder of record of such Claim as of the Record Date.

8.9 **Distributions in Cash.** Any payment or Distribution to be made pursuant to the Plan may be made by draft, check, or wire transfer on a domestic bank selected by the Debtor or the Liquidating Trustee at the option of the Debtor or the Liquidating Trustee, as the case may be. Any Creditor requesting payment by any method other than draft or check must pay the costs associated with such method of payment.

8.10 **Release of Reserve Funds.** Any Cash remaining in any Reserve, after all applicable Distributions or other payments have been made from said Reserve, shall be released therefrom by the Liquidating Trustee and treated as Available Cash for distribution in accordance with this Plan.

8.11 **Saturday, Sunday and Legal Holidays.** If any payment, Distribution or other act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been timely completed as of the required date.

8.12 **Failure to Negotiate Checks.** Checks issued in respect of Distributions under the Plan shall be null and void if not negotiated within one hundred twenty (120) days after the date of issuance. Any amounts returned to the Liquidating Trust in respect of such non-negotiated checks shall be held by the Liquidating Trustee for a period of one hundred twenty (120) days from the date of issuance, requests for reissuance for any such check shall be made directly to the Liquidating Trustee by the Holder of the Allowed Claim with respect to which such check was issued originally and shall be accompanied by the original check. Any Claim in respect of such voided check shall be made on or before thirty (30) days following the expiration of the one hundred twenty (120) day period from issuance of such check. Thereafter, all such amounts shall be deemed unclaimed property and irrevocably revert to the Liquidating Trust, and all Claims in respect of voided checks shall be forever barred, estopped and enjoined from assertion in any manner against the Debtor, the Estate, the Liquidating Trust, the Trust Assets or the Liquidating Trustee.

8.13 **Limitation on Distribution Rights.** If a Holder of an Allowed Claim holds more than one Allowed Claim in any one Class, all Allowed Claims in that Class may be aggregated in the discretion of the Liquidating Trustee and one Distribution will be made to the Holder with respect to the aggregated Claim.

8.14 **Withholding and Reporting Requirements.** In connection with this Plan and all Distributions hereunder, the Liquidating Trustee and the Debtor shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Liquidating Trustee or the Debtor shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements, [including the withholding of Distributions as set forth in Section 8.3 of the Liquidating Trust Agreement.](#) All Holders of Allowed Claims shall be required to provide any

information necessary to effect information reporting and the withholding of such taxes. Notwithstanding any other provision of this Plan to the contrary, (i) each Holder of an Allowed Claim shall have the 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 (ii) no Distribution shall be made to or on behalf of such Holder pursuant to this Plan unless and until such Holder has made arrangements satisfactory to the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee for the payment and satisfaction of such tax obligations. Any Cash and/or other consideration or property to be distributed pursuant to this Plan shall, pending the implementation of such arrangements, be treated as an undeliverable Distribution pursuant to Section 8.5 of this Plan.

## ARTICLE IX

### IMPLEMENTATION AND MEANS OF CONSUMMATING THIS PLAN

9.1 **Limited Survival and Ultimate Dissolution of Corporate Entities.** From and after the Confirmation Date, the Debtor shall continue in existence pursuant to the terms of this Plan until the Effective Date for the purposes of (a) winding up its affairs as expeditiously as reasonably possible, (b) liquidating, by converting to Cash or other methods, any remaining Trust Assets, as expeditiously as reasonably possible and (c) otherwise taking such steps and actions to transfer all Estate Actions and any other Trust Assets to the Liquidating Trust. Upon the Effective Date, the Liquidating Trustee shall be authorized to take all actions necessary to implement this Plan, including (i) ~~servicing as the sole officer and director of the Debtor (other than Christian D. Marques pursuant to Section 10.3 of the Plan) after the Effective Date~~ having all rights and powers provided for in the Bankruptcy Code, including section 1107 thereof, in addition all rights and powers granted in the Trust Agreement, (ii) liquidating assets, (iii) abandoning assets, (iv) pursuing Estate Actions, (v) enforcing and prosecuting claims, interests, rights and privileges of the Debtor, (vi) objecting to and resolving Disputed Claims, (vii) investing Cash, (viii) taking all steps to execute all instruments and documents necessary to effectuate the Distributions to be made under this Plan, (ix) making Distributions contemplated by this Plan, (x) complying with this Plan and the obligations thereunder, (xi) commencing and prosecuting all proceedings related to this Plan, (xii) maintaining all bank accounts in the name of the Debtor, (xiii) employing, retaining, terminating, or replacing Professionals to represent it with respect to its responsibilities or otherwise effectuating this Plan, (xiv) paying any and all reasonable fees and expenses of the Estate and the Liquidating Trust, (xv) administering and paying taxes, including filing of tax returns, (xvi) requesting an expedited determination of any unpaid tax liability of the Debtor or the Estate under section 505 of the Bankruptcy Code, (xvii) representing the interest of the Debtor or the Estate before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit, (xviii) taking in the event the dissolution of the Debtor is delayed beyond the Effective Date, take all steps reasonably necessary and practicable to terminate the corporate existence of the Debtor, including the Filing with the Secretary of State of Delaware of the applicable Certificate of Dissolution, or similar form, as set forth in the General Corporation Law of the State of Delaware; and (xix) exercising such other powers as may be vested in it pursuant to order of the Court or pursuant to this Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of this Plan. ~~In the event the dissolution of the Debtor is delayed beyond the Effective Date, the Liquidating~~

~~Trustee shall dissolve the Debtor as soon as reasonably practical.~~ From and after the Effective Date, to the extent the bylaws, certificate of incorporation or other charter and corporate documents of the Debtor are inconsistent with the terms and provisions of the Plan, the Plan shall supersede such bylaws, certificate of incorporation, or other charter and other corporate documents, as the case may be.

9.1.1 Shareholder, Officer and Director of the Debtor. All officers and directors of the Debtor serving immediately prior to the Effective Date (other than Christian D. Marques, pursuant to Section 10.3 of the Plan) shall be deemed to have been terminated or removed as of the Effective Date. From and after the Effective Date, the Liquidating Trustee shall ~~be deemed the sole shareholder and shall be appointed as the sole director and officer of the Debtor (other than Christian D. Marques, pursuant to Section 10.3 of the Plan)~~have, and be entitled to exercise, all rights and powers of the Estate provided for in the Bankruptcy Code, including section 1107 thereof, in addition to all rights and powers granted in the Trust Agreement, including the authority to direct the affairs of, and dissolve, the Debtor (and all bylaws, articles or certificates of incorporation, and related corporate documents are deemed amended by this Plan to permit and authorize such appointment) and shall ~~serve in~~have such ~~capacity~~authority through the earlier of the date the Debtor is dissolved in accordance with this Plan or the date such Liquidating Trustee resigns, is terminated or otherwise unable to serve; provided, however, that, any successor Liquidating Trustee appointed pursuant to the Liquidating Trust Agreement, shall ~~serve in~~succeed to such ~~capacity~~authority after the effective date of such person's appointment as Liquidating Trustee.

9.1.2 Corporate Governance. The entry of the Confirmation Order shall constitute authorization for the Debtor and the Liquidating Trustee, as the case may be, to take all corporate actions necessary or appropriate to consummate and implement the Plan. All such actions shall be deemed to have occurred and shall be in effect without the need for further board or shareholder approval. All corporate governance activities of the Debtor shall be exercised by the Liquidating Trustee, subject to the terms of this Plan.

9.1.3 Subsequent Dissolution/Records. Upon a certification to be Filed with the Court by the Liquidating Trustee of the completion of Distributions in accordance with Section 9.6 of this Plan and completion of all its duties under this Plan ~~and~~ entry of a Final Decree closing the Bankruptcy Case, and the Filing with the Secretary of State of the State of Delaware of the applicable Certificate of Dissolution, or similar form, as set forth by the General Corporation Law of the State of Delaware, the Debtor shall be deemed to be dissolved without any further action by the Debtor or the Liquidating Trustee, including the Filing of any further documents with the Secretary of State for the state in which the Debtor is incorporated or any other jurisdiction. However, the Debtor and the Liquidating Trustee shall have the authority to take all necessary actions to dissolve the Debtor in and withdraw the Debtor from applicable state(s). ~~Further, subject to applicable law, upon the aforementioned certification and entry of Final Decree, the Debtor shall be authorized to discard or destroy any and all prepetition or postpetition books and records of the Debtor in its possession.~~

9.2 **Governance of Trust Assets and Fiduciary Bond.** The Trust Assets will be managed by the Liquidating Trustee, subject to the provisions of this Plan, the Liquidating ~~trust~~ Trust Agreement and the Confirmation Order. Prior to the Effective Date, and in connection with its management of the Trust Assets, the Liquidating Trustee shall obtain a fiduciary bond or surety issued by such insurance company or other firm, and in such amount, as the Liquidating Trustee deems to be reasonably acceptable in its discretion. Notice of the effectiveness of such bond or surety shall be provided to the U.S. Trustee before the Effective Date. Furthermore, the Liquidating Trustee shall notify the Bankruptcy Court and the U.S. Trustee in writing before terminating any such bond or surety that is obtained. The Liquidating Trustee shall also inform the U.S. Trustee in writing of any changes to the identity of the Liquidating Trustee, as soon as is reasonably practicable.

9.3 **Records.** The Debtor and the Liquidating Trustee shall maintain good and sufficient books and records of account relating to the Trust Assets, the Available Cash, the management thereof, all transactions undertaken by such parties, all expenses incurred by or on behalf of the Trust Assets, and all Distributions contemplated or effectuated under this Plan. Upon the entry of a Final Decree closing the Bankruptcy Case, the Debtor and Liquidating Trustee may destroy or otherwise dispose of all records maintained by the Debtor and/or Liquidating Trustee. The Debtor shall make available to the Liquidation Trustee reasonable access during normal business hours, upon reasonable notice, to personnel and books and records of the Debtor to enable the Liquidation Trustee to perform the Liquidation Trustee's tasks under the Liquidation Trust Agreement and Plan.

9.4 **Dissolution of the Committee.** On the Effective Date, the Committee shall be automatically dissolved and all members, Professionals and agents of the Committee shall be deemed released from their duties and obligations, except solely with respect to applications for Professional Fee Claims pursuant to Section 3.1.2 of the Plan, reimbursement of expenses incurred as a member of the Committee, any motions, appeals or other actions seeking enforcement or implementation of the provisions of the Plan or the Confirmation Order or pending appeals of orders entered in this case. Further, after the Effective Date, the Committee's counsel shall be entitled to fees and expenses in accordance with Section 7.10 of the Plan limited to the services described in this Section 9.4.

9.5 **Cancellation of Notes, Instruments, Debentures and Interests.** On the Effective Date, except as otherwise provided in this Plan or the Confirmation Order, (i) any notes, bonds, indentures, guarantees or other instruments or documents evidencing or creating any indebtedness or obligations of the Debtor shall be cancelled and extinguished as to the Debtor only, (ii) the obligations of the Debtor under any agreements, documents, indentures or certificates of designation governing the Note Guarantee Claim and any other notes, bonds, indentures, guarantees or other instruments or documents evidencing or creating any indebtedness or obligations of the Debtor that are Impaired under this Plan shall be, and are hereby, discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers or directors of the Debtor or the Liquidating Trustee or by any other Person and (iii) the Interests shall be canceled (and all securities convertible or exercisable for or evidencing any other right in or with respect to the Interests) without any conversion thereof or Distribution with respect thereto. Notwithstanding



the foregoing, and only to the extent applicable to the Debtor, the Indenture shall continue in effect solely to the extent necessary to (i) allow the Indenture Trustee to make distributions pursuant to the Plan on account of the Notes, (ii) permit the Indenture Trustee to assert its charging lien against distributions on account of the Notes, (iii) permit the Indenture Trustee to appear in this case and any other proceeding, including, without limitation, in connection with any contested matter or adversary proceeding to which the Indenture Trustee is a party, and (iv) to permit the Indenture Trustee to perform any functions that are necessary in connection with the foregoing clauses.

9.6 **Closing of the Bankruptcy Case.** When all Disputed Claims Filed against the Debtor have become Allowed Claims or have been Disallowed by Final Order, and all remaining assets of the Debtor have been liquidated and converted into Cash (other than those assets abandoned by the Debtor), and such Cash has been distributed in accordance with this Plan, or at such earlier time as the Liquidating Trustee deems appropriate, the Liquidating Trustee shall File a certificate of completion of Distributions with the Bankruptcy Court and seek authority from the Bankruptcy Court to close the Bankruptcy Case in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

## ARTICLE X

### EXECUTORY CONTRACTS

10.1 **Rejection.** Effective on and as of the Effective Date, and except as otherwise provided in Sections 10.2 and 10.3 below, all Executory Contracts that exist between the Debtor and any Person and that have not previously been assumed and assigned or rejected by the Debtor will be deemed rejected pursuant to section 365 of the Bankruptcy Code. Entry of the Confirmation Order shall constitute approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection of executory contracts rejected pursuant to this Plan.

10.1.1 **Claims for Rejection Damages.** Unless otherwise provided by Order of the Bankruptcy Court, Proofs of Claim for damages allegedly arising from the rejection pursuant to this Plan or the Confirmation Order of any Executory Contract must be Filed with the Bankruptcy Court and served on the Liquidating Trustee no later than thirty (30) days after the Effective Date. All Proofs of Claim for such damages not timely Filed and properly served as prescribed herein shall be forever barred and the Holder of such a Claim shall not be entitled to participate in any Distribution under this Plan.

10.1.2 **Objections to Proofs of Claim Based On Rejection Damage.** The objection to any such Proof of Claim for damages allegedly arising from rejection of any Executory Contract shall be Filed no later than ninety (90) days after the later of (i) the date that such Proof of Claim is Filed, (ii) the Effective Date or (iii) such other date as the Bankruptcy Court may so order.

10.2 **Asset Purchase Agreement.** The Asset Purchase Agreement will not be deemed rejected and will continue to be binding on the Debtor, the Liquidating Trust and the Purchaser. Except as it relates to the Liquidating Trustee continuing as the successor to the Debtor, the

Asset Purchase Agreement shall not be modified or amended in any way by the Plan, the Liquidating Trust Agreement or the Confirmation Order.

10.3 **Employment Contract with Christian D. Marques**. On March 17, 2010, the Bankruptcy Court approved (i) the amended and restated employment agreement (the “Marques Employment Agreement”), effective as of January 15, 2010, by and between Christian D. Marques and the Debtor and (ii) the amended and restated cost-sharing agreement (the “Marques Cost-Sharing Agreement” and collectively with the Marques Employment Agreement, the “Marques Agreements”), effective as of January 15, 2010, by and among Christian D. Marques, the Debtor and the Purchaser. The Marques Agreements were deemed to amend, modify and supersede all prior agreements relating to the employment and compensation of Christian D. Marques by the Debtor. The Marques Agreements shall not be deemed rejected and shall continue to be binding on the Debtor, the Liquidating Trust and the Purchaser.

10.4 **Insurance Contracts**. All insurance contracts of the Debtor, to the extent transferable, were transferred to Purchaser at or around the time of closing. All other insurance contracts that had not previously been transferred, assumed and assigned or rejected by the Debtor will be deemed rejected pursuant to section 365 of the Bankruptcy Code. Entry of the Confirmation Order shall constitute approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection of Executory Contracts rejected pursuant to this Plan.

10.5 **Office Equipment Lease**. All leases for office equipment of the Debtor, to the extent transferable, were transferred to Purchaser at or around the time of closing. All other leases that had not previously been transferred, assumed and assigned or rejected by the Debtor will be deemed rejected pursuant to section 365 of the Bankruptcy Code. Entry of the Confirmation Order shall constitute approval, pursuant to section 365(a) of the Bankruptcy Code, of the rejection of Executory Contracts rejected pursuant to this Plan.

## ARTICLE XI

### CONDITIONS PRECEDENT

11.1 **Conditions Precedent to the Effective Date**. The following are conditions precedent to the Effective Date of this Plan, unless waived in writing by the Plan Proponents:

- (i) The Bankruptcy Court has entered the Confirmation Order, in form and substance satisfactory to the Plan Proponents, and such order has become a Final Order;
- (ii) No stay of the Confirmation Order is in effect and no order shall have been entered and shall remain in effect restraining the Debtor from consummating the Plan; and
- (iii) All documents required to implement the Plan, including, without limitation, the Plan Documents, shall have been executed in form and substance reasonably satisfactory to the Plan Proponents.

11.2 **Conditions Precedent to Consummation**. This Plan shall not become effective and operative unless and until the Effective Date occurs. In the event that one or more of the

conditions specified in Section 11.1 of the Plan have not been waived pursuant to Section 11.1 of this Plan or have not occurred on or before sixty (60) days after the Confirmation Date, (i) the Confirmation Order may, upon the request of the Plan Proponents, be vacated, (ii) no Distributions under the Plan shall be made, (iii) the Debtor and all Holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred and (iv) the Debtor's obligations with respect to Claims and Interests shall remain unchanged and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Interests by or against the Debtor or any other Person or to prejudice in any manner the rights of the Debtor, the Committee, the Liquidating Trustee or any Person in any further proceedings involving the Debtor, the Estate or its property.

## ARTICLE XII

### EFFECTS OF PLAN CONFIRMATION

12.1 **Satisfaction of Claims.** The treatment of and consideration to be received by Holders of Allowed Claims pursuant to this Plan shall be in full satisfaction of such Holders' respective Claims against the Estate. Notwithstanding the foregoing, unless an Estate Action is expressly waived, relinquished, exculpated, released, compromised or settled in this Plan or another Final Order of the Bankruptcy Court, all Estate Actions are expressly reserved for later adjudication and therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Estate Actions upon or after the confirmation or consummation of the Plan, and the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee will retain the exclusive right to enforce any and all present and future rights, claims or causes of action against any Person consistent with Section 12.7 of this Plan.

12.2 **Binding Effect.** This Plan shall be binding on and inure to the benefit of (and detriment to, as the case may be) the Debtor, its Estate, its property, the Committee, the Liquidating Trustee, the Liquidating Trust, all Holders of Claims or Interests (whether or not they have accepted this Plan) and their respective personal representatives, successors and assigns

12.3 **Injunction.** Except as expressly provided herein, at all times on and after the Effective Date, through and including the date of entry of a Final Order closing the Bankruptcy Case, all Persons that have held, currently hold or may hold a claim or other debt or liability against or interests in the Debtor or its Estate, are permanently enjoined from taking any of the following actions in any Court or forum, other than the Bankruptcy Court, against or affecting the Debtor, the Estate, its property, the Liquidating Trust, the Trust Assets, the Liquidating Trustee, or the Committee, with respect to such claims or interests:

- (i) commencing, conducting or continuing in any Court ~~other than the Bankruptcy Court~~ in any manner, directly or indirectly, any suit, action or other proceeding of any kind against or affecting the Debtor, the Estate, its property, the Liquidating Trust, the Trust Assets, the Liquidating Trustee, or the Committee (including,

without limitation, all suits, actions and proceedings that are pending as of the Effective Date);

(ii) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against the Debtor, the Estate, its property, the Liquidating Trust, the Trust Assets, the Liquidating Trustee, or the Committee;

(iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any Lien, charge or encumbrance of any kind against the Debtor, the Estate, its property, the Liquidating Trust, the Trust Assets, or the Liquidating Trustee;

(iv) asserting any right of subrogation or recoupment of any kind, directly or indirectly against any obligation due the Debtor, the Estate, its property, the Liquidating Trust, the Trust Assets, or the Liquidating Trustee; and

(v) proceeding in any manner in any place, other than the Bankruptcy Court, whatsoever against the Debtor, the Estate, its property, the Liquidating Trust, the Trust Assets, the Liquidating Trustee, or the Committee that does not conform to or comply with, or is inconsistent with, the provisions of this Plan;

provided, however, nothing in this Section 12.3 shall prohibit any Person from taking actions to enforce any rights or obligations under or in connection with its Claim(s) before the Bankruptcy Court, the terms of the Asset Purchase Agreement, this Plan, or the Confirmation Order in the Bankruptcy Court.<sup>1</sup>

provided further, however, nothing in the Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the released parties for any liability whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in the Confirmation Order or the Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the released parties.

**12.4 Exculpation and Limitation of Liability.** Any and all Claims, liabilities, causes of action, rights, damages, costs and obligations held by any party against the Exculpated Persons, whether known or unknown, matured or contingent, liquidated or unliquidated,

<sup>1</sup> Nothing contained in this Section 12.3 shall prohibit the Holder of a Disputed Claim from seeking to have the Bankruptcy Court resolve the Disputed Claim, or shall prohibit a Holder of a Claim from seeking relief in any court of competent jurisdiction in connection with any claim asserted against any non-Debtor entity.

existing, arising or accruing, whether or not yet due, in any manner, related to (i) the administration of the Bankruptcy Case, (ii) the formulation, negotiation, prosecution or implementation of this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement, pleading or document created or entered into in connection therewith ~~or (iii) the pursuit of Estate Actions or any other act taken or omitted in connection with the Asset Purchase Agreement, this Plan, the Disclosure Statement, the Confirmation Order,~~ shall be deemed fully waived, barred, released and discharged in all respects, except as to rights, obligations, duties, claims and responsibilities preserved, created or established by terms of this Plan; provided, however, that any Exculpated Person could incur liability as a result of any such act or omission to the extent that such act or omission constitutes fraud, gross negligence or willful misconduct, or such actions constitute a willful violation of federal or state securities laws or the Internal Revenue Code; provided, however, that nothing should limit the liability of the professionals pursuant to N.Y. Comp. Codes R. & Regs. Tit. 22 section 1200.8, rule 1.8(h)(1) and any other statutes, rules, or regulations dealing with professional conduct to which professionals are subject. Any Exculpated Person injured by any willful violation of the injunctions provided in the Plan shall recover from the willful violator actual damages (including costs and attorneys' fees) and, in appropriate circumstances, punitive damages. Nothing herein shall be construed to exculpate or release the Debtor and its officers, directors and professionals for their respective prepetition conduct, or bar any claims, causes of actions or suits on behalf of the Estate, the Liquidating Trustee or any third party.

**12.5 Term of Injunctions and Stays.** Unless otherwise provided herein or in another order of the Bankruptcy Court, all injunctions or stays provided for in the Bankruptcy Case pursuant to sections 105, 362 and 524 of the Bankruptcy Code, or otherwise, and in effect on the Confirmation Date shall remain in full force and effect until the later of (i) the entry of the Final Decree or (ii) dissolution of the Debtor. However, nothing in this Section 12.5 shall apply to the injunction provided for in Section 12.3 above.

**12.6 Release of Liens.** Except as otherwise provided in this Plan or the Confirmation Order, any and all Liens, security interests, deeds of trust, pledges, guaranties, indemnities or mortgages against property of the Debtor or the Estate shall and shall be deemed to be released, canceled, terminated, and nullified on the Effective Date.

**12.7 Preservation of Estate Actions.** Except as provided in the Plan, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or the relinquishment of any claims, rights or Estate Actions that the Debtor may have under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, whether arising before or after the Petition Date, in any court or other tribunal, including, without limitation, (i) any and all claims against any Person or Entity, to the extent such Person or Entity asserts a crossclaim, counterclaim, and/or claim for setoff which seeks affirmative relief against the Debtor, its officers, directors, or representatives and (ii) the turnover of any property of the Debtor's Estate. Upon the Effective Date, the Liquidating Trustee shall have the exclusive right, authority, and discretion to institute, prosecute, abandon, settle, or compromise any and all such claims, rights and Estate Actions without Bankruptcy Court approval and in accordance with the terms of this Plan, and all proceeds of such actions shall be transferred to the Liquidating Trust. Nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, cause of action, right of setoff, or other legal or equitable defense

which the Debtor had immediately prior to the Petition Date, against or with respect to any Claim left Unimpaired by the Plan.

## ARTICLE XIII

### MODIFICATION, WAIVER, REVOCATION OR WITHDRAWAL OF THIS PLAN

13.1 **Modification of the Plan.** The Plan Proponents may alter, amend or modify this Plan under section 1127 of the Bankruptcy Code or as otherwise permitted by applicable law at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of this Plan, any party in interest in the Bankruptcy Case may, so long as the treatment of Holders of Claims or Interests under this Plan are not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and intents of this Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

13.2 **Waiver.** Prior to the Confirmation Date, with the consent of the Committee, the Debtor reserves its right to waive any provision of the Plan to the extent such provision is for the sole benefit of the Debtor; provided, however, that reasonable notice is provided by the Debtor to the United States Trustee.

13.3 **Withdrawal of the Plan.** The Plan Proponents reserve the right, at any time prior to the substantial consummation (as that term is defined in section 1101(2) of the Bankruptcy Code) of the Plan, to revoke or withdraw the Plan. If the Plan is revoked or withdrawn or if the Confirmation Date does not occur, the Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claim by or against the Debtor or any other Person or to prejudice in any manner the rights of the Debtor, the Committee, the Liquidating Trustee or any Person in any further proceedings involving the Debtor.

## ARTICLE XIV

### RETENTION OF JURISDICTION

14.1 **Claims and Actions.** The Bankruptcy Court shall retain jurisdiction over the Bankruptcy Case, including, without limitation, such jurisdiction as is necessary to ensure that the purposes and intent of this Plan are implemented. The Bankruptcy Court shall also expressly retain jurisdiction to hear and determine all Claims against the Debtor or the Liquidating Trustee.

14.2 **Retention of Additional Jurisdiction.** Following the Effective Date, and notwithstanding the entry of the Confirmation Order, the Bankruptcy Court shall retain exclusive jurisdiction of the Bankruptcy Case and all matters arising under, arising out of, or related to, the Bankruptcy Case and this Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

- (i) Hear and determine motions, applications, adversary proceedings, and contested matters pending, filed on, or commenced after the Effective Date, including proceedings with respect to the rights of the Liquidating Trust to recover property under sections 542, 543 or 553 of the Bankruptcy Code, or of the Liquidating Trust to bring any Estate Action, or to otherwise collect or recover on account of any claim or Estate Action that the Debtor may have or retain;
- (ii) Hear and determine objections (whether filed before, on or after the Effective Date) to, or requests for estimation of any Claim, and to enter any order requiring the Filing of Proof of Claim before a particular date;
- (iii) Adjudicate any and all disputes over the ownership of a Claim or Beneficial Interest;
- (iv) Determine the extent, validity and/or priority of any Lien asserted against property of the Debtor or its Estate;
- (v) Ensure that all payments due under the Plan and performance of the provisions of the Plan are accomplished as provided herein and resolve any issues relating to distributions to the Holders of Allowed Claims pursuant to the provisions of the Plan;
- (vi) Enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (vii) Continue to enforce the automatic stay through the Effective Date;
- (viii) Issue injunctions and effect any other actions that may be necessary or appropriate to restrain interference by any Person or Entity with the consummation, implementation or enforcement of this Plan, the Confirmation Order or any other order of the Bankruptcy Code;
- (ix) Hear and determine matters concerning state, local and federal taxes including refunds or issues related to sections 346, 505 and 1146 of the Bankruptcy Code;
- (x) Issue orders in aid of execution and consummation of this Plan, to the extent authorized by section 1142 of the Bankruptcy Code;
- (xi) Construe and take any action to enforce this Plan and the Confirmation Order;
- (xii) Determine and resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, implementation or enforcement of the Plan or the Confirmation Order, and the indemnification and injunction provisions set forth in and contemplated by the Plan or the Confirmation Order, or any Entity's rights arising under or obligations incurred in connection therewith;

- (xiii) Hear and determine any applications to modify this Plan, to cure any defect or omission or to reconcile any inconsistency in this Plan, the Disclosure Statement or in any order of the Bankruptcy Court including, without limitation, the Confirmation Order;
- (xiv) Determine any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, except as otherwise provided in the Plan;
- (xv) Hear and determine all applications for Professional Fee Claims required by this Plan;
- (xvi) Hear and determine any pending applications for the assumption or rejection of executory contracts or unexpired leases, if any are pending, and the allowance of Claims resulting therefrom;
- (xvii) Hear and determine other issues presented or arising under this Plan, including disputes among Holders of Claims or arising under agreements, documents or instruments executed in connection with this Plan;
- (xviii) Determine and resolve controversies related to the Liquidating Trust;
- (xix) Determine such other matters and for such other purposes as may be provided in the Confirmation Order;
- (xx) Hear and determine any action concerning the recovery and liquidation of Trust Assets, wherever located, including without limitation, litigation to liquidate and recover Trust Assets that consist of, among other things, the Estate Actions, or other actions seeking relief of any sort with respect to issues relating to or affecting Trust Assets;
- (xxi) Enter a Final Decree closing the Bankruptcy Case;
- (xxii) Hear and determine any other matters related hereto and not inconsistent with chapter 11 of the Bankruptcy Code; and
- (xxiii) Hear and determine any question or questions regarding which the Liquidating Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Liquidating Trustee with respect to the Liquidating Trust, the Beneficiaries, or the Debtor, including the administration and distribution of the Trust Assets.

14.3 **Failure of Bankruptcy Court to Exercise Jurisdiction.** If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction, over any matter arising under, arising in or related to the Bankruptcy Case, including with respect to the matters set forth above in Sections 14.1 and 14.2 of this Plan, this Article shall not



prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

## ARTICLE XV

### MISCELLANEOUS PROVISIONS

15.1 **Payment of Statutory Fees.** All fees payable in the ordinary course pursuant to section 1930 of title 28 of the United States Code shall be paid by the Debtor on or before the Effective Date or ~~from~~by the Liquidating Trust ~~when otherwise due~~after the Effective Date until the entry of a final decree closing the case.

15.2 **Settlement and Compromise of Estate Actions.** From and after the Effective Date, the Liquidating Trustee shall have the exclusive right and authority, without notice to any party or further order of the Bankruptcy Court, to settle or compromise all Estate Actions enforced by the Liquidating Trustee after the Effective Date where (i) the original amount sought in such action is \$10,000 or less, (ii) the original amount sought in such action is greater than \$10,000 and less than \$100,000 and the settlement amount is seventy percent (70%) or more of the original amount sought in such action and (iii) the original amount sought in such action is \$100,000 or more and the settlement amount is eighty percent (80%) or more of the original amount sought in such action. Upon the Effective Date, the Liquidating Trustee shall have the exclusive right and authority to settle or compromise any other Estate Actions upon three (3) Business Days' notice to the U.S. Trustee and the parties on the Special Notice List: provided, however that nothing herein shall be construed as permitting the Trustee to settle or compromise objections to Claims without first seeking approval of the Bankruptcy Court. Consistent with Section 15.9 of this Plan, the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee shall also have the authority to execute any documents or take any other action required to effectuate such settlements or compromises.

15.3 **No Admissions.** Notwithstanding anything herein to the contrary, nothing contained in this Plan shall be deemed an admission by the Plan Proponents or the Liquidating Trustee with respect to any matter set forth herein including, without limitation, liability on any Claim or Interests or the propriety of any classification of any Claim or Interest.

15.4 **No Injunctive Relief.** No Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable or other prospective relief against the Debtor's Estate or the Liquidating Trust.

15.5 **Substantial Consummation of Plan.** This Plan shall be deemed to be substantially consummated when the Liquidating Trustee makes the Initial Distribution.

15.6 **Successors and Assigns.** The rights, benefits and obligations of any Person named or referred to in this Plan will be binding upon, and will inure to the benefit of, the heir, executor, administrator, representative, successor, or assign of such Person.

15.7 **Notices and Distributions.** On and after the Effective Date, all notices, requests and Distributions to a Holder of a Claim or Interest shall be sent to the last known address of (i) the Holder or its attorney of record as reflected in the Holder's Proof of Claim or Administrative

Expense Claim Filed by or on behalf of such Holder or (ii) if there is no such evidence of a last known address, to the last known address of the Holder according to the books and records of the Debtor. Any Holder of a Claim or Interest may designate another address for the purposes of this Section by providing the Debtor, prior to the Effective Date, and thereafter the Liquidating Trustee written notice of such address, which notice will be effective upon receipt by the Debtor or the Liquidating Trustee, as the case may be, of the written designation. All notices, requests and demands to or upon the Debtor or the Liquidating Trustee, as the case may be, to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

**To the Debtor:**

EUSA Liquidating Inc. (f/k/a Escada (USA) Inc.)  
1412 Broadway  
New York, NY 10018  
Attention: Christian D. Marques

-with a copy (which shall not constitute notice hereunder) to-

O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, NY 10036  
Tel: (212) 326-2000  
Fax: (212) 326-2061  
Attention: Gerald C. Bender, Esq.

**To the Liquidating Trustee:**

Clingman & Hanger Management Associates, LLC  
11038 Lakeridge Parkway, Suite 4  
Ashland, VA 23005  
Attention: Teresa S. Hanger  
Edward Clingman

15.8 **Plan Supplement.** The Plan Supplement and the documents contained therein shall be filed with the Bankruptcy Court no later than five (5) Business Days before the deadline for voting to accept or reject this Plan, provided that the documents included therein may thereafter be amended and supplemented prior to execution, so long as no such amendment or supplement materially affects the rights of holders of Claims. The Plan Supplement and the documents contained therein are incorporated into and made a part of this Plan as if set forth in full herein.

15.9 **Other Documents and Actions.** The Plan Proponents and the Liquidating Trustee, as appropriate, may execute, deliver, file or record such documents, contracts, instruments, releases and other agreements, and take such other action as is reasonable,

necessary, or appropriate to effectuate the transactions provided for in this Plan or the terms of this Plan, without any further action by or approval of the Bankruptcy Court or the Board of Directors of the Debtor.

15.10 **Accounts**. The Debtor or Liquidating Trustee, as appropriate, may establish one or more interest-bearing accounts as it determines may be necessary or appropriate to effectuate the provisions of this Plan consistent with section 345 of the Bankruptcy Code and any orders of the Bankruptcy Court.

15.11 **Allocation of Plan Distributions**. All Distributions in respect of Claims will be allocated first to the original principal amount of such Claims (as determined for federal income tax purposes), and any excess to the remaining portion of such Claims.

15.12 **Plan Controls**. To the extent there is an inconsistency or ambiguity between any term or provision contained in the Disclosure Statement and this Plan, the terms and provisions of this Plan shall control.

15.13 **Governing Law**. Except to the extent that (i) the Bankruptcy Code, the Bankruptcy Rules or other federal or state laws are applicable or (ii) the provisions of any contract, instrument, release or other agreement or document entered into in connection with the Plan provide that the law of a different jurisdiction shall govern, the laws of the State of New York shall govern the construction, implementation and enforcement of this Plan and all rights and obligations arising under this Plan, without giving effect to the principles of conflicts of law.

15.14 **Severability**. Should the Bankruptcy Court determine, on or prior to the Confirmation Date, that any provision of this Plan is either illegal or unenforceable on its face or illegal or unenforceable as applied to any Claim or Interest or to the Debtor, the Bankruptcy Court, at the request of the Plan Proponents, shall have the power to alter and modify such provision to make it valid and enforceable to the maximum extent practicable consistent with the original purpose of such provision. Notwithstanding any such determination, interpretation, or alteration, the remainder of the terms and provisions of this Plan shall remain in full force and effect.

15.15 **Entire Agreement**. The Plan sets forth the entire agreement and undertakings relating to the subject matter hereof and supersedes all prior discussions and documents. The Plan Proponents shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by the parties in writing.

