

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
FISKER AUTOMOTIVE HOLDINGS, INC., <u>et al.</u> , ¹)	Case No. 13-13087 (KG)
)	
Debtors.)	(Joint Administration Requested)

DEBTORS' JOINT PLAN OF LIQUIDATION
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE, OR A LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY OTHER PARTY IN INTEREST AND THIS PLAN IS SUBJECT TO APPROVAL BY THE BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THIS PLAN IS NOT AN OFFER WITH RESPECT TO ANY SECURITIES. YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS PLAN FOR ANY PURPOSE PRIOR TO THE CONFIRMATION OF THIS PLAN BY THE BANKRUPTCY COURT.

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Proposed Counsel to the
Debtors and Debtors in Possession

Dated: November 24, 2013

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: Fisker Automotive Holdings, Inc. (9678); and Fisker Automotive, Inc. (9075). For the purpose of these chapter 11 cases, the service address for the Debtors is: 5515 E. La Palma Ave., Anaheim, California 92807.

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INTRODUCTION

The Debtors propose the following joint plan of liquidation pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined have the meanings ascribed to such terms in Article I of the Plan. Contemporaneously herewith, the Debtors have requested consolidation for procedural purposes only and are seeking authority to jointly administer the Chapter 11 Cases pursuant to an order of the Bankruptcy Court. Reference is made to the Disclosure Statement, filed contemporaneously with the Plan, for a discussion of the Debtors' history, as well as a summary and analysis of the Plan and certain related matters. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code

ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. *Defined Terms*

As used in this Plan, capitalized terms have the meanings set forth below.

1. "Acquired Assets" has the meaning ascribed to it in the Purchase Agreement; provided that, for the avoidance of doubt, the Cash Sale Proceeds and the Remaining Assets shall not be Acquired Assets.

2. "Administrative Claims" means Claims for the costs and expenses of the administration of the Debtors' Estates pursuant to section 503(b) of the Bankruptcy Code. For the avoidance of doubt, Claims asserting priority under Section 503(b)(9) of the Bankruptcy Code are included in the definition of Administrative Claims, and, if Allowed, shall be paid in accordance with the Plan.

3. "Administrative Claims Objection Bar Date" means the first Business Day that is 120 days after the Effective Date; provided that the Administrative Claims Objection Bar Date may be extended by the Bankruptcy Court after notice and a hearing.

4. "Administrative Claims Bar Date" means the first Business Day that is 30 days following the Effective Date, except as specifically set forth in the Plan or a Final Order.

5. "Affiliate" shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

6. "Allowed" means with respect to Claims: (a) any Claim, proof of which is timely Filed by the applicable Claims Bar Date (or for which Claim under the Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court, a Proof of Claim is not or shall not be required to be Filed); (b) any Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; or (c) any Claim allowed pursuant to the Plan or a Final Order of the Bankruptcy Court; provided that, with respect to any Claim described in clauses (a) and (b) above, such Claim shall be considered allowed only if and to the extent that with respect to such Claim no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim shall have been Allowed by a Final Order. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. "Allow" and "Allowing" shall have correlative meanings.

7. "Avoidance Actions" means any and all actual or potential claims and causes of action to avoid a transfer of property or an obligation incurred by the Debtors pursuant to any applicable section of the Bankruptcy Code, including sections 502, 510, 542, 544, 545, 547-553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

8. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as the same may be amended from time to time.

9. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware having jurisdiction over the Chapter 11 Cases, and, to the extent of the withdrawal of any reference under 28 U.S.C. § 157 and/or the General Order of the District Court pursuant to section 151 of title 28 of the United States Code, the United States District Court for the District of Delaware.

10. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court.

11. “*Business Day*” means any day, other than a Saturday, Sunday, or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

12. “*Cash*” means the legal tender of the United States or the equivalent thereof.

13. “*Cash Sale Proceeds*” means the portion of the Purchase Price (as defined in the Purchase Agreement) payable in Cash to the Debtors’ Estates by the Purchaser upon consummation of the Sale Transaction by the Purchaser pursuant to the Purchase Agreement; provided that the Cash Sale Proceeds shall not include the Unsecured Creditor Recovery Pool or the SVB Cash Payment.

14. “*Causes of Action*” means any Claim, cause of action, controversy, right of setoff, cross claim, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law, including Avoidance Actions.

15. “*Chapter 11 Cases*” means the jointly administered chapter 11 cases commenced by the Debtors on the Petition Date and styled In re Fisker Automotive Holdings, Inc., 13-[] ([]), which are currently pending before the Bankruptcy Court.

16. “*Claim*” means a “claim” (as defined in section 101(a)(5) of the Bankruptcy Code) against a Debtor.

17. “*Claims Bar Date*” means the bar date by which a Proof of Claim must be or must have been Filed, as established by (a) a Final Order of the Bankruptcy Court or (b) pursuant to the Plan.

18. “*Claims Objection Bar Date*” means the first Business Day that is 120 days after the Effective Date; provided that the Claims Objection Bar Date may be extended by the Bankruptcy Court after notice and a hearing.

19. “*Claims Register*” means the official register of Claims maintained by the Notice and Claims Agent.

20. “*Class*” means a category of Holders of Claims or Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

21. “*Committee*” means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code.

22. “*Committee Members*” means each member of the Committee, in each case, solely in its capacity as such.

23. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.
24. “*Confirmation Date*” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.
25. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.
26. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.
27. “*Consummation*” means the occurrence of the Effective Date.
28. “*Cure Obligations*” means: all (a) amounts (or such other amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) required to cure any monetary defaults; and (b) other obligations required to cure any non-monetary defaults under any Executory Contract or Unexpired Lease that is to be assumed by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.
29. “*D&O Policy*” means all insurance policies for directors, members, trustees, and officers liability maintained by the Debtors’ Estates as of the Effective Date, including, for the avoidance of doubt: (a) that certain Policy No. 5943009 03, underwritten by Zurich American Insurance Company; and (b) that Policy No. 5943009 03, underwritten by National Union Fire Insurance Company of Pittsburgh.
30. “*Debtor Release*” means the release given on behalf of the Debtors and their Estates to the Released Parties as set forth in Article VIII.D hereof.
31. “*Debtors*” means, collectively: (a) Holdings; and (b) Fisker Automotive.
32. “*DEDA*” means the Delaware Economic Development Authority, a body corporate and politic constituted as an instrumentality of the State of Delaware.
33. “*DEDA Agreements*” means, collectively: (a) the DEDA Loan Agreement; and (b) the DEDA Grant Agreement.
34. “*DEDA Grant Agreement*” means that certain Grant Agreement dated as of December 10, 2010, between Fisker Automotive and DEDA.
35. “*DEDA Grant*” means the financing provided by DEDA to the Debtors pursuant to the DEDA Grant Agreement.
36. “*DEDA Loan*” means the lending facility provided under or related to the DEDA Loan Agreement.
37. “*DEDA Loan Claims*” means any Claim arising under or related to the DEDA Loan or the DEDA Agreements.
38. “*DEDA Loan Agreement*” means that certain Loan and Security Agreement, dated as of December 10, 2010, between the Debtors and DEDA.
39. “*DIP Term Sheet*” means that certain *Summary of Proposed Terms and Conditions for DIP Financing and Use of Cash Collateral*, dated as of November 22, 2013, in the form attached as **Exhibit [●]** to the DIP Order.
40. “*DIP Facility*” means that certain debtor-in-possession financing facility of up to \$8.040 million entered into pursuant to the DIP Term Sheet.

41. “*DIP Facility Claim*” means any Claim arising under or related to the DIP Facility.
42. “*DIP Lenders*” means the lenders party to the DIP Term Sheet, each solely in their capacities as such.
43. “*DIP Order*” means the *Final Order Under 11 U.S.C. § 105, 361, 362, 363(c), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), and 507 and Bankruptcy Rules 2002, 4001 and 9014 (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral and (III) Granting Adequate Protection to Prepetition Secured Lenders* [Docket No. ●].
44. “*Disclosure Statement*” means the *Disclosure Statement for the Debtors’ Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, dated November 22, 2013, as amended, supplemented, or modified from time to time, including all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.
45. “*Disclosure Statement Order*” means the *Order (A) Approving the Adequacy of the Debtors’ Disclosure Statement, (B) Approving Solicitation and Notice Procedures With Respect to Confirmation of the Debtors’ Proposed Joint Plan of Liquidation, (C) Approving the Form of Various Ballots and Notices In Connection Therewith, (D) Scheduling Certain Dates With Respect Thereto, and (E) Granting Related Relief*, entered on [●], 2013 [Docket No. [●]], approving the Disclosure Statement and granting related relief.
46. “*Disputed*” means, with respect to any Claim or Interest, any Claim or Interest that is not yet Allowed.
47. “*Disputed Claims Reserve*” means a Cash reserve that may be funded with a portion of the Cash Sale Proceeds for distributions to Holders of Disputed Claims if and to the extent that such Disputed Claims become Allowed Claims.
48. “*Distribution Record Date*” means the first Business Day that is two (2) Business Days after the Confirmation Date.
49. “*DOE*” means the United States Department of Energy, an agency of the United States.
50. “*Effective Date*” means the date selected by the Debtors that is a Business Day after the Confirmation Date on which: (a) no stay of the Confirmation Order is in effect; and (b) all conditions precedent specified in Article IX of the Plan have been satisfied or waived (in accordance with Article IX.B hereof).
51. “*Entity*” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.
52. “*Estate*” means, as to each Debtor, the estate created for such Debtor on the Petition Date pursuant to sections 301 and 541 of the Bankruptcy Code.
53. “*Exculpated Parties*” means the Released Parties.
54. “*Exculpation*” means the exculpation provision set forth in Article VIII.F hereof.
55. “*Executory Contract*” means a contract or lease to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.
56. “*Federal Judgment Rate*” means the federal judgment rate in effect as of the Effective Date.
57. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court or, with respect to the filing of a Proof of Claim, the Notice and Claims Agent.

58. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified, or amended from time to time, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be Filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules of the Bankruptcy Court, may be filed relating to such order shall not prevent such order from being a Final Order.

59. “*Fisker Automotive*” means Fisker Automotive, Inc., a Debtor in the Chapter 11 Cases.

60. “*General Unsecured Claim*” means any unsecured Claim, including any Lender Deficiency Claim, DEDA Loan Claim, or Related Party Note Claim, that is not: (a) an Administrative Claim; (b) a Professional Fee Claim; (c) a Section 510(b) Claim; (d) a Priority Tax Claim; or (e) an Other Priority Claim.

61. “*Governmental Unit*” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

62. “*Holder*” means any Entity holding a Claim or an Interest.

63. “*Holdings*” means Fisker Automotive Holdings, Inc., a Debtor in the Chapter 11 Cases.

64. “*Holdings Interests*” means all Interests in Holdings.

65. “*Impaired*” means, with respect to a Claim or Interest, or Class of Claims or Interests, “impaired” within the meaning of section 1124 of the Bankruptcy Code.

66. “*Indemnification Provision*” means each of the Debtors’ indemnification provisions currently in place whether in the bylaws, certificates of incorporation, other formation documents, board resolutions or employment contracts for the current and former directors, officers, employees, attorneys, other professionals and agents of the Debtors and such current and former directors’, and officers’ respective Affiliates.

67. “*Initial Distribution Date*” means the date on which the Debtors or the Liquidator, as applicable, make initial distributions to Holders of Claims pursuant to the Plan, which shall be a date selected by the Debtors and in any event no later than 7 Business Days after the Effective Date with respect to Claims.

68. “*Intercompany Claim*” means any Claim held by a Debtor against another Debtor.

69. “*Intercompany Interest*” means any Interest in a Debtor held by another Debtor.

70. “*Interest*” means any interest, equity, or share in the Debtors, including all options, warrants, or other rights to obtain such an interest or share in such Debtor, whether or not certificated, transferable, preferred, common, voting, or denominated “stock” or a similar security, including any Claim subject to subordination under section 510(b) of the Bankruptcy Code arising therefrom.

71. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

72. “*Lender Deficiency Claim*” means any means any Claim against the Debtors arising from any portion of, or related to, the Senior Loan (to the extent not satisfied by the Purchaser Credit Bid) or the SVB Loan that is not Allowed hereunder as a Senior Loan Claim or SVB Loan Claim, as applicable, that is not a Secured Claim.

73. “*Lien*” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

74. “*Liquidator*” means such Entity as may be designated by the Debtors as liquidator pursuant to the Liquidator Agreement and Article IV.I.2 hereof to effectuate the Wind Down.

75. “*Liquidator Agreement*” means the agreement governing, among other things, the retention and duties of the Liquidator, if applicable, as described in Article IV.I hereof, which shall be in form and substance reasonably acceptable to the Debtors and included as an exhibit to the Plan Supplement.

76. “*Local Bankruptcy Rules*” means the local rules for the United States Bankruptcy Court for the District of Delaware.

77. “*Notice and Claims Agent*” means Rust Consulting/Omni Bankruptcy, in its capacity as notice and claims agent and administrative advisor for the Debtors’ Estates pursuant to 28 U.S.C. § 156(c).

78. “*Other Priority Claim*” means a Claim asserting a priority described in section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim; (b) a Professional Fee Claims; (c) a Priority Tax Claim; (d) a Section 510(b) Claim; (e) an Other Priority Claim; or (f) a DIP Facility Claim.

79. “*Other Secured Claim*” means a Secured Claim other than a Senior Loan Claim, an SVB Loan Claim, or a DIP Facility Claim.

80. “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

81. “*Petition Date*” means November 22, 2013, the date on which the Debtors commenced the Chapter 11 Cases.

82. “*Plan*” means this *Debtors’ Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code*, as amended, supplemented, or modified from time to time, including the Plan Supplement, which is incorporated in the Plan by reference and made part of this Plan as if set forth in the Plan.

83. “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, to be Filed prior to Confirmation, as amended, supplemented, or modified from time to time in accordance with the terms hereof, the Bankruptcy Code, and the Bankruptcy Rules, including: (a) a list of Executory Contracts and Unexpired Leases to be assumed pursuant to the Plan, and as may be amended by the Debtors prior to the Effective Date; (b) a schedule of retained Causes of Action; and (c) the Liquidator Agreement and the identity of the Liquidator.

84. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

85. “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan.

86. “*Professional*” means any entity retained in the Chapter 11 Cases in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 326, 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

87. “*Professional Fee Claims*” mean all Claims for accrued fees and expenses (including success fees) for services rendered and expenses incurred by a Professional from the Petition Date through and including the Confirmation Date, to the extent such fees and expenses have not been paid or are disallowed pursuant to an order of the Bankruptcy Court and regardless of whether a fee application has been filed for such fees and expenses.

88. “*Professional Fee Escrow*” means an interest bearing escrow account to be funded on the Effective Date from the Remaining Assets in an amount equal to the Professional Fee Claim Estimate.

89. “*Professional Fee Claim Estimate*” means the amount of Professional Fee Claims that are estimated to be accrued but unpaid as of the Effective Date by the Debtors in consultation with each applicable Professional.

90. “*Proof of Claim*” means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

91. “*Purchase Agreement*” means that certain asset purchase agreement between the Debtors and the Purchaser.

92. “*Purchaser*” means Hybrid Tech Holdings, LLC, together with its successors and permitted assigns.

93. “*Purchaser Credit Bid*” means the \$75 million credit bid by Hybrid Tech Holdings, LLC, as assignee of Hybrid Technology, LLC, on account of the Senior Loan Claims pursuant to section 363(k) of the Bankruptcy Code in connection with the Sale Transaction.

94. “*Related Party Note Claim*” means any claim on account of the various promissory notes in favor of each of the Related Party Lenders and intended to be used by the Debtors to fund prepetition working capital needs and for other prepetition general corporate purposes.

95. “*Related Party Lenders*” means Ace Strength International Limited, FAH Loan Purchase Fund, LLC, GSR Principals Fund IV, L.P., GSR Special Situation I Limited, GSR Ventures IV, L.P., JR Holdings IV, Ltd., and SugarPine Kids Trust and certain of their respective Affiliates in their respective capacity as lenders from time to time under the Related Party Note Claims.

96. “*Released Parties*” means each of the Debtors’ current and former officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case in their capacity as such.

97. “*Releasing Parties*” means: (a) all Holders of Claims who vote to Accept the Plan and who do not opt out of the releases provided by the Plan; (b) all Holders of Claims who are deemed to accept the Plan; (c) the DIP Lenders; (d) the Purchaser; and (e) with respect to each of the foregoing Entities, their respective current and former officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, in each case in their capacity as such.

98. “*Remaining Assets*” means, for each Debtor, such Debtor’s assets, other than the Acquired Assets or the Cash Sale Proceeds.

99. “*Sale Transaction*” means that certain transaction between the Debtors and the Purchaser as set forth in the Purchase Agreement.

100. “*Schedules*” means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

101. “*Section 510(b) Claims*” means any Claim subject to subordination under section 510(b) of the Bankruptcy Code; provided that a Section 510(b) Claim shall not include any Claim subject to subordination under section 510(b) of the Bankruptcy Code arising from or related to an Interest.

102. “*Secured*” means when referring to a Claim: (a) secured by a Lien on property in which the applicable Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in such Estate’s interest in such property or to the extent of the

amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) otherwise Allowed pursuant to the Plan or a Final Order as a Secured Claim.

103. “*Senior Claims*” means, collectively: (a) Administrative Claims; (b) Priority Tax Claims; (c) Other Priority Claims; and (d) Other Secured Claims.

104. “*Senior Claims Assets*” means any and all property of the Estates as of the Effective Date, including the Remaining Assets, the Cash Sale Proceeds, and all Causes of Actions, but not including, for the avoidance of doubt, proceeds from any Causes of Action expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan (including pursuant to Article VIII.D of the Plan) or a Final Order; provided that the Senior Claim Assets shall not include: (a) the Unsecured Creditor Recovery Pool; (b) the SVB Cash Payment; or (c) the Wind Down Reserve.

105. “*Senior Loan Claim*” means any Claim arising under or related to the Senior Loan to the extent such Claim is a Secured Claim.

106. “*Senior Loan*” means the loan facilities provided pursuant to the Senior Loan Agreement.

107. “*Senior Secured Lender*” means the Purchaser, as successor in interest to the DOE with respect to the Senior Loan Agreement.

108. “*Senior Loan Agreement*” means that certain Loan Arrangement and Reimbursement Agreement, dated as of April 22, 2010, between the Debtors and the Senior Secured Lender, as amended, supplemented or otherwise modified from time to time.

109. “*SVB*” means Silicon Valley Bank.

110. “*SVB Cash Payment*” means the \$225,000 in Cash funded by the Purchaser (in addition to the Cash Sale Proceeds and Unsecured Creditor Recovery Pool) in accordance with the Purchase Agreement.

111. “*SVB Loan*” means the term loan facility and an asset-based revolving credit facility provided pursuant to the SVB Loan Agreement.

112. “*SVB Loan Agreement*” means that certain Loan Agreement dated as of July 30, 2010, between Fisker Automotive, as borrower, Holdings, as obligor, and SVB, as lender.

113. “*SVB Loan Claims*” means any Claim arising under or related to the SVB Loan to the extent that such Claim is Secured pursuant to section 506(a) of the Bankruptcy Code.

114. “*Unexpired Lease*” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

115. “*United States*” means the United States of America and its agencies.

116. “*U.S. Trustee*” means the United States Trustee for the District of Delaware.

117. “*U.S. Trustee Fees*” means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

118. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Claim or an Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

119. “*Unsecured Creditor Recovery Pool*” means the \$500,000 in Cash funded by the Purchaser (in addition to the Cash Sale Proceeds and SVB Cash Payment) in accordance with the Purchase Agreement in the event that Class 5A or Class 5B votes to accept the Plan.

120. “*Wind Down*” means the wind down, dissolution, and liquidation of the Debtors’ Estates following the Effective Date as set forth in Article IV.I hereof.

121. “*Wind Down Reserve*” means Cash in an amount not less than \$[●], which shall be funded from the Cash Sale Proceeds, and for which prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidator, shall have the right to reallocate such amount among the Debtors’ Estates and to the Disputed Claims Reserve in their reasonable business judgment.

B. Rules of Interpretation

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference in the Plan to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) any reference in the Plan to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified, or supplemented from time to time; (4) unless otherwise specified, all references in the Plan to “Articles” are references to Articles hereof or hereto; (5) unless otherwise stated, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (6) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (7) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (8) any term used in capitalized form in the Plan that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

C. Computation of Time

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

D. Governing Law

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

E. Reference to Monetary Figures

All references in the Plan to monetary figures shall refer to currency of the United States, unless otherwise expressly provided in the Plan.

F. Controlling Document

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan shall control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

ARTICLE II.
ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND PROFESSIONAL FEE CLAIMS

A. Administrative Claims

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim or Allowed Priority Tax Claim, as applicable, and the Debtors or the Liquidator, as applicable, to the extent an Allowed Administrative Claim or Allowed Priority Tax Claim, as applicable, has not already been paid in full during the Chapter 11 Cases, each Holder of an Administrative Claim or a Priority Tax Claim (to the extent such Claim is Allowed) will receive in exchange for full and final satisfaction, settlement, release, and compromise (subject to Article VIII of the Plan) of its Claim its Pro Rata share of the Senior Claims Assets in accordance with the priorities set forth in sections 503 and 507 of the Bankruptcy Code.

Except as otherwise provided by a Final Order previously entered by the Bankruptcy Court or as provided by Article II.B hereof, unless previously Filed, requests for payment of Administrative Claims, other than requests for payment of Professional Fee Claims, must be Filed and served on the Debtors no later than the Administrative Claims Bar Date pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property, and such Administrative Claims shall be deemed compromised, settled, and released as of the Effective Date. Objections to such requests must be Filed and served on the requesting party by the Administrative Claims Objection Bar Date.

B. DIP Facility Claims

As of the Effective Date, the DIP Facility Claims will be deemed waived, and the Holders thereof shall be deemed to have waived any such DIP Facility Claims, in each instance in accordance with the terms of the Purchase Agreement.

C. Professional Fee Claims

1. Professional Fee Escrow

In accordance with this Article II.C.1 of the Plan, as soon as reasonably practicable after the Confirmation Date and no later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow. The Debtors shall fund the Professional Fee Escrow with Cash equal to the Professional Fee Escrow Estimate. Except as provided in the Plan, the Professional Fee Escrow shall be funded on the Effective Date and maintained in trust for the Professionals and shall not be considered property of the Debtors' Estates. When all Professional Fee Claims have been paid in full, amounts remaining in the Professional Fee Escrow, if any, shall be distributed to the Wind Down Reserve.

2. Final Fee Applications

All final requests for payment of Professional Fee Claims shall be filed no later than the first Business Day that is 60 days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals from funds held in the Professional Fee Escrow when such Claims are Allowed by a Final Order. To the extent that funds held in the Professional Fee Escrow are unable to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which Allowed Administrative Claim shall be satisfied in accordance with the Plan. After all Allowed Professional Fee Claims have been paid in full, the Final Order allowing such Professional Fee Claims may direct the escrow agent to return any excess amounts to the Wind Down Reserve.

D. Treatment of Certain Claims and Interests

Notwithstanding anything to the contrary in the Plan, the failure to object to Confirmation of this Plan by a Holder of an Administrative Expense Claim, Priority Tax Claim, or Other Priority Claim against any Debtor shall be deemed to be such Holder's agreement to receive treatment for such Claim (to the extent such Claim is Allowed) that is different from that set forth in 28 U.S.C. § 1129(a)(9).

E. U.S. Trustee Statutory Fees

The Debtors shall pay all U.S. Trustee Fees for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

**ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims, Professional Fee Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims and Interests set forth in this Article III.

A. Summary of Classification of Claims and Interests

All Claims and Interests, other than Administrative Claims, DIP Facility Claims, Professional Fee Claims, and Priority Tax Claims, are classified in the Classes set forth in this Article III for all purposes, including voting, Confirmation, and distributions pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. The Debtors reserve the right to withdraw the Plan with respect to one or more Debtors while seeking Confirmation or approval of the Plan with respect to all other Debtors.

B. Class Identification

The classification of Claims and Interests against each Debtor (as applicable) pursuant to the Plan is as set forth below. The Plan shall apply as a separate Plan for each of the Debtors, and the classification of Claims and Interests set forth herein shall apply separately to each of the Debtors. All of the potential Classes for the Debtors are set forth herein. Certain of the Debtors may not have Holders of Claims or Interests in a particular Class or Classes, and such Claims shall be treated as set forth in Article III.E hereof. For all purposes under the Plan, each Class will contain sub-Classes for each of the Debtors (*i.e.*, there will be ten (10) Classes for each Debtor).

Class	Claims and Interests	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Senior Loan Claims	Impaired	Entitled to Vote
3	Other Secured Claims	Impaired	Entitled to Vote
4	SVB Loan Claims	Impaired	Entitled to Vote
5A	General Unsecured Claims against Holdings	Impaired	Entitled to Vote
5B	General Unsecured Claims against Fisker Automotive	Impaired	Entitled to Vote
6	Intercompany Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
7	Section 510(b) Claims	Impaired	Not Entitled to Vote (Deemed to Reject)
8	Intercompany Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
9	Holdings Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

C. *Classification of Claims and Interests*

1. Class 1—Other Priority Claims

- (a) *Classification:* Class 1 consists of all Other Priority Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Class 1 Claim agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Allowed Class 1 Other Priority Claim, each such Holder shall be paid in full with proceeds of the Senior Claims Assets in accordance with the priorities set forth in Bankruptcy Code.
- (c) *Voting:* Class 1 is Unimpaired. Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

2. Class 2—Senior Loan Claims

- (a) *Classification:* Class 2 consists of all Senior Loan Claims.
- (b) *Allowance:* Class 2 Claims shall be allowed in an amount equal to the Purchaser Credit Bid.
- (c) *Treatment:* Each Allowed Class 2 Claim shall be satisfied, compromised, settled, and released in full in exchange for the Purchaser Credit Bid.

- (d) *Voting:* Class 2 is Impaired. Holders of Claims in Class 2 are entitled to vote to accept or reject the Plan.

3. Class 3—Other Secured Claims

- (a) *Classification:* Class 3 consists of all Other Secured Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Class 3 Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Class 3 Claim, each such Holder shall receive, at the Debtors' election:
 - (i) payment in full in Cash of such Holder's Allowed Other Secured Claim with proceeds from the Senior Claims Assets;
 - (ii) the Collateral securing such Holder's Allowed Other Secured Claim; or
 - (iii) such other treatment rendering such Holder's Allowed Other Secured Claim Unimpaired.
- (c) *Voting:* Class 3 is Impaired. Holders of Claims in Class 3 are entitled to vote to accept or reject the Plan.

4. Class 4—SVB Loan Claims

- (a) *Classification:* Class 4 consists of all SVB Loan Claims.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Class 4 Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Class 4 Claim, each such Holder shall receive its Pro Rata Share of the SVB Cash Payment.
- (c) *Voting:* Class 4 is Impaired. Holders of Claims in Class 4 are entitled to vote to accept or reject the Plan.

5. Class 5A—General Unsecured Claims against Holdings

- (a) *Classification:* Class 5A consists of all General Unsecured Claims against Holdings.
- (b) *Treatment:* Except to the extent that a Holder of an Allowed Class 5A Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Class 5A Claim, each such Holder shall receive:

- (i) if Class 5A rejects the Plan, each such Holder shall receive a Pro Rata distribution of the Cash proceeds from the Senior Claims Assets after all Allowed Senior Claims have been paid in full in accordance with the priorities set forth in Bankruptcy Code; and
 - (ii) if Class 5A accepts the Plan, each such Holder that votes in favor of the Plan shall receive a Pro Rata distribution of (x) of the Cash proceeds from the Senior Claims Assets after all Allowed Senior Claims have been paid in full in accordance with the priorities set forth in Bankruptcy Code and (y) the Unsecured Creditor Recovery Pool.
 - (c) *Restrictions on Distributions:* Each Holder of an Allowed Class 5A Claim shall not be entitled to any distribution from the Senior Claims Assets or their proceeds until:
 - (i) all Allowed Senior Claims have been paid in full; or
 - (ii) a Disputed Claims Reserve has been established for the payment of all such Senior Claims.
 - (d) *Conditional Waiver of Lender Deficiency Claim:* If Class 5A votes to accept the Plan, the Purchaser shall waive, and shall be deemed to have waived, any Lender Deficiency Claim arising from or related to the Senior Loan.
 - (e) *Voting:* Class 5A is Impaired. Holders of Claims in Class 5A are entitled to vote to accept or reject the Plan.
6. Class 5B—General Unsecured Claims against Fisker Automotive
- (a) *Classification:* Class 5B consists of all General Unsecured Claims against Fisker Automotive.
 - (b) *Treatment:* Except to the extent that a Holder of an Allowed Class 5B Claim agrees to a less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Class 5B Claim, each such Holder shall receive:
 - (i) if Class 5B rejects the Plan, each such Holder shall receive a Pro Rata distribution of the Cash proceeds from the Senior Claims Assets after all Allowed Senior Claims have been paid in full in accordance with the priorities set forth in Bankruptcy Code; and
 - (ii) if Class 5B accepts the Plan, each such Holder that votes in favor of the Plan shall receive a Pro Rata distribution of (x) of the Cash proceeds from the Senior Claims Assets after all Allowed Senior Claims have been paid in full in accordance with the priorities set forth in Bankruptcy Code and (y) the Unsecured Creditor Recovery Pool.
 - (c) *Restrictions on Distributions:* Each Holder of an Allowed Class 5B Claim shall not be entitled to any distribution from the Senior Claims Assets or their proceeds until:
 - (i) all Allowed Senior Claims have been paid in full; or
 - (ii) a Disputed Claims Reserve has been established for the payment of all such Senior Claims.

- (d) *Conditional Waiver of Lender Deficiency Claim:* If Class 5B votes to accept the Plan, the Purchaser shall waive, and shall be deemed to have waived, any Lender Deficiency Claim arising from or related to the Senior Loan.
- (e) *Voting:* Class 5B is Impaired. Holders of Claims in Class 5B are entitled to vote to accept or reject the Plan.

7. Class 6—Intercompany Claims

- (a) *Classification:* Class 6 consists of all Intercompany Claims.
- (b) *Treatment:* Class 6 Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 6 Claims will not receive any distribution on account of such Class 6 Claim; provided, however, the Debtors may reinstate Class 6 Claims in their discretion solely to implement the Plan.
- (c) *Voting:* Class 6 is Impaired. Holders of Claims in Class 6 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

8. Class 7—Section 510(b) Claims

- (a) *Classification:* Class 7 consists of all Section 510(b) Claims.
- (b) *Treatment:* Class 7 Claims will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 7 Claims will not receive any distribution on account of such Class 7 Claims.
- (c) *Voting:* Class 7 is Impaired. Holders of Claims in Class 7 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

9. Class 8—Intercompany Interests

- (a) *Classification:* Class 8 consists of all Intercompany Interests.
- (b) *Treatment:* Class 8 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 8 Interests will not receive any distribution on account of such Class 8 Interests; provided, however, the Debtors may reinstate Class 8 Interests in their discretion solely to implement the Plan.
- (c) *Voting:* Class 8 is Impaired. Holders of Interests in Class 8 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

10. Class 9— Holdings Interests

- (a) *Classification:* Class 9 consists of all Holdings Interests.
- (b) *Treatment:* Class 9 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Class 9 Interests will not receive any distribution on account of such Class 9 Interests.

- (c) *Voting*: Class 9 is Impaired. Holders of Interests in Class 9 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

D. Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtors or the Debtors' Estates in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

E. Elimination of Vacant Classes

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

F. Voting Classes; Presumed Acceptance by Non-Voting Classes

If a Class contains Claims or Interests eligible to vote and no Holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be presumed accepted by the Holders of such Claims or Interests in such Class.

G. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

**ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. Sources of Consideration for Plan Distributions

The Debtors' Cash on hand, Cash Sale Proceeds, Remaining Assets, and rights under the Purchase Agreement shall be used to fund the distributions to the Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims provided herein.

B. General Settlement of Claims

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan.

C. Corporate Action

Upon the Effective Date, by virtue of the solicitation of votes in favor of this Plan and entry of the Confirmation Order, all actions contemplated by the Plan (including any action to be undertaken by the Liquidator) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtors, or any other Entity or Person. All matters provided for in the Plan involving the company structure of the Debtors, and any company action required

by the Debtors in connection therewith, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors or the Debtors' Estates.

The authorizations and approvals contemplated by this Article IV.C shall be effective notwithstanding any requirements under applicable nonbankruptcy law.

D. Waiver of Certain Lender Deficiency Claims

As of the Effective Date, all Lender Deficiency Claims on account of the Senior Loan will be deemed waived, and the Holders thereof shall be deemed to have waived any such Lender Deficiency Claims, in each instance in accordance with the terms of the Purchase Agreement.

E. Dissolution and Boards of the Debtors

As of the Effective Date, the existing boards of directors of the Debtors shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, shareholders, and members and any all remaining officers or directors of each Debtor shall be dismissed without any further action required on the part of any such Debtor, the shareholders of such Debtor, or the officers and directors of such Debtor.

F. Effectuating Documents; Further Transactions

Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidator, are each authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

G. Exemption from Certain Taxes and Fees

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any Post-Confirmation transfer from a Debtor to the Wind Down Reserve or to any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors; or (2) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

H. Preservation of Rights of Action

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Bankruptcy Court order, the Debtors reserve any and all Causes of Action, including any actions specifically enumerated in the Plan Supplement, whether arising before or after the Petition Date, and preserve the right to commence, prosecute, or settle such Causes of Action, notwithstanding the occurrence of the Effective Date. Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidator, may pursue such Causes of Action in its sole discretion.

Notwithstanding anything to the contrary herein, except as provided in Article VIII.D of the Plan, the Debtors shall not release any Avoidance Actions arising under section 547 or 548 of the Bankruptcy Code, or any applicable nonbankruptcy law pursuant to section 544(b) of the Bankruptcy Code, and the Liquidator shall be

authorized and empowered to enforce any such Avoidance Actions on and after the Effective Date in accordance with Article IV.I hereof.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Liquidator will not pursue any and all available Causes of Action against them. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. For the avoidance of doubt, other than with respect to Causes of Action (including Causes of Action on account of or arising under section 506(c) of the Bankruptcy Code) on account of the Senior Loan, which Causes of Action shall be released on and after the Effective Date, the Debtors reserve all rights arising under section 506(c) of the Bankruptcy Code with respect to all Secured Claims asserted against the Debtors or their Estates.

The Debtors reserve the Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidator, shall retain and shall have, including through its authorized agents or representatives, the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

I. Wind Down

1. Wind Down and Dissolution of the Debtors

On and after the Effective Date, the Liquidator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Liquidator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates. As soon as practicable after the Effective Date, the Liquidator shall: (a) cause the Debtors to comply with, and abide by, the terms of the Purchase Agreement; (b) file for each of the Debtors, a certificate of dissolution, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable laws of their state of incorporation or formation (as applicable); (c) complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws; and (d) take such other actions as the Liquidator may determine to be necessary or desirable to carry out the purposes of the Plan. The filing by the Liquidator of any Debtor's certificate of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders or board of directors of each such Debtor. Solely to the extent and subject to the limitations provided in the Purchase Agreement, the Liquidator Agreement, the Plan, and the Confirmation Order, the Debtors shall fund the Wind Down Reserve with funds to pay costs, expenses, or claims arising from or related to any Wind Down, including the costs and expenses associated with any Claims resolution or similar process following the Effective Date. Notwithstanding anything in the Plan to the contrary, the Liquidator will make, or cause to be made, all distributions under the Plan other than those distributions made by the Debtors on the Effective Date.

2. Liquidator

Prior to or on the Effective Date, the Liquidator shall be designated by the Debtors pursuant to the terms of the Liquidator Agreement for purposes of conducting the Wind Down and shall succeed, as successor to the Debtors, to such powers as would have been applicable to the Debtors, the Debtors' officers, directors, shareholders, and the Debtors' Estates, and the Liquidator shall be authorized to undertake the Wind Down, to implement the Plan, and to enforce any agreement, contract, claim, or Cause of Action and take any and all actions that, prior to the Effective Date, the Debtors could have undertaken on behalf of the Debtors or their Estates, including with regards to any objections, claims, motions, proceedings, or Causes of Action filed by the Debtors in these Chapter 11 Cases that are pending as of the date hereof. All property of the Debtors' Estates not distributed to the holders of Claims or Interests on the Effective Date, or transferred pursuant to the Purchase Agreement, shall be managed and

distributed by the Liquidator pursuant to the terms of the Liquidator Agreement and the Plan and shall be held in the name of the Debtors free and clear of all Claims against the Debtors and Interests in the Debtors except for rights to such distributions provided to Holders of Allowed Claims and Interests as provided in the Plan.

3. Wind Down Reserve

Any and all costs and expenses incurred by the Liquidator in connection with the Wind Down shall be paid through the Wind Down Reserve, which shall be funded into one or more segregated accounts and shall be used to fund the administration and Wind Down of the Chapter 11 Cases following the Effective Date; provided that any balance remaining in the Wind Down Reserve upon entry of a decree closing the Chapter 11 Cases pursuant to section 350(a) of the Bankruptcy Code shall be distributed to holders of Allowed Claims against the Debtors as provided in the Plan.

ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. *Assumption and Assignment of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided in the Plan, each Executory Contract and Unexpired Lease not previously rejected, assumed or assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically scheduled to be assumed or assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) was previously assumed or assigned to the Purchaser or another third party, as applicable, during the pendency of the Chapter 11 Cases; or (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Policy or an insurance policy.

B. *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any Cure Obligations under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Obligation in Cash on the Effective Date, subject to the limitation described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of the Cure Obligation, (2) the ability of the Debtors' Estates or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (3) any other matter pertaining to assumption, the Cure Obligations required by section 365(b)(1) of the Bankruptcy Code shall be satisfied following the entry of a Final Order or orders resolving the dispute and approving the assumption; provided that prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidator, may settle any dispute regarding the amount of any Cure Cost without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

At least fourteen (14) days before the Confirmation Hearing, the Debtors shall cause notice of proposed assumption and proposed Cure Obligations to be sent to applicable counterparties. Any objection by such counterparty must be filed, served, and actually received by the Debtors not later than fourteen (14) days after service of notice of the Debtors' proposed assumption and associated Cure Obligations. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption or Cure Obligation.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan, or otherwise, shall result in the full release and satisfaction of any Claims or defaults, subject to satisfaction of the Cure Obligations, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of assumption and/or assignment. **Anything in the Schedules and any Proofs of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed and**

assigned shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

C. Claims Based on Rejection of Executory Contracts and Unexpired Leases

Unless otherwise provided by an order of the Bankruptcy Court, any Proofs of Claim based on the rejection of the Debtors' Executory Contracts or Unexpired Leases pursuant to the Plan or otherwise, must be Filed with Bankruptcy Court and served on the Debtors or, after the Effective Date, the Liquidator, as applicable, no later than fourteen (14) days after the earlier of the Effective Date or the effective date of rejection of such Executory Contract or Unexpired Lease. In addition, any objection to the rejection of an Executory Contract or Unexpired Lease must be filed with the Bankruptcy Court and served on the Debtors or, after the Effective Date, the Liquidator, as applicable, no later than fourteen (14) days after service of the Debtors' proposed rejection of such Executory Contract or Unexpired Lease.

Any Holders of Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claims were not timely Filed as set forth in the paragraph above shall not (1) be treated as a creditor with respect to such Claim, (2) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection, or (3) participate in any distribution in the Chapter 11 Cases on account of such Claim, and any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Liquidator, the Debtors' Estates, or the property for any of the foregoing without the need for any objection by the Debtors or the Liquidator, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims against the appropriate Debtor, except as otherwise provided by order of the Bankruptcy Court.

D. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases

Rejection or repudiation of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors' Estates under such contracts or leases. In particular, notwithstanding any nonbankruptcy law to the contrary, the Debtors expressly reserve and do not waive any right for the Debtors or the Liquidator, as applicable, to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations on goods previously purchased, or services previously received, by the contracting Debtors from counterparties to rejected or repudiated Executory Contracts or Unexpired Leases.

E. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Unless otherwise provided in the Plan, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors or the Debtors on behalf of the Debtors' Estates during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

F. Insurance Policies

Each insurance policy, including the D&O Policy, shall be assumed by the Debtors on behalf of the applicable Debtor effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, to the extent such insurance policy is executory, unless such insurance policy previously was rejected by the Debtors or the Debtors' Estates pursuant to a Bankruptcy Court order, is the subject of a motion to reject pending on the Effective Date, or is included in the schedule of rejected Executory Contracts and Unexpired Leases contained in the Plan Supplement.

G. Reservation of Rights

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtors' Estates have any liability thereunder. In the event of a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Liquidator, as applicable, shall have 90 days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease as otherwise provided in the Plan.

**ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS**

A. Calculation of Amounts to Be Distributed

Each Holder of an Allowed Claim against or Allowed Interest in the Debtors shall receive the full amount of the distributions that the Plan provides for Allowed Claims or Allowed Interests in the applicable Class from the Debtors or the Liquidator, on behalf of the Debtors, as applicable. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims or Disputed Interests, distributions on account of any such Disputed Claims or Disputed Interests shall be made pursuant to the provisions set forth in Article VII. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim or Allowed Interest shall, on account of such Allowed Claim or Allowed Interest, receive a distribution in excess of the Allowed amount of such Claim or Interest plus any interest accruing on such Claim or Interest that is actually payable in accordance with the Plan.

B. Rights and Powers of the Debtors and Liquidator

1. Powers of the Debtors and Liquidator

All distributions under the Plan shall be made on the Effective Date by the Debtors or thereafter by the Liquidator, as applicable, or their designees. The Debtors or the Liquidator, as applicable, shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Debtors or the Liquidator, as applicable, is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be paid for with Cash held in the Wind Down Reserve.

Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidator, as applicable, shall be empowered to, as applicable: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated under the Plan; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Debtors or Liquidator, as applicable, by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Debtors or the Liquidator, as applicable, to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the fees and expenses incurred by the Liquidator on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Liquidator shall be paid in Cash from the Wind Down Reserve or the Remaining Assets without any further notice to or action, order, or approval of the Bankruptcy Court.

C. *Delivery of Distributions and Undeliverable or Unclaimed Distributions*

1. Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed and the Debtors, the Liquidator, or any other party responsible for making distributions shall instead be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

2. Delivery of Distributions in General

(a) Initial Distribution Date

Except as otherwise provided in the Plan, the Debtors or the Liquidator, as applicable, shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the Debtors' books and records as of the date of any such distribution; provided that, the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder. If a Holder holds more than one Claim in any one Class, all Claims of the Holder will be aggregated into one Claim and one distribution will be made with respect to the aggregated Claim.

(b) Disputed Claims Reserves

On or prior to the Effective Date, and after making all distributions required to be made on such date under the Plan, the Debtors shall establish the Disputed Claims Reserve for Disputed Claims, which Disputed Claims Reserve shall be administered by the Debtors or the Liquidator, as applicable.

The Debtors or the Liquidator, as applicable, shall hold Cash in the Disputed Claims Reserve in trust for the benefit of the Holders of Claims or Interests ultimately determined to be Allowed. The Debtors or the Liquidator, as applicable, shall, in its sole discretion, distribute such amounts (net of any expenses, including any taxes relating thereto), as provided in the Plan, as such Disputed Claims or Interests are resolved by a Final Order or agreed to by settlement, and such amounts will be distributable in respect of such Disputed Claims as such amounts would have been distributable had the Disputed Claims or Interests been Allowed Claims or Interests as of the Effective Date.

(i) Payments and Distributions on Disputed Claims

Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims as of the Effective Date but which later become Allowed Claims shall be deemed to have been made by the Liquidator at its reasonable discretion, unless the Liquidator and the applicable Holder of such Claim agree otherwise.

(ii) Special Rules for Distributions to Holders of Disputed Claims or Interests

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by, as applicable, the Debtors or the Liquidator on the one hand, and the Holder of a Disputed Claim or Interest, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim or Interests until all Disputed Claims or Interests held by the Holder of such Disputed Claim or Interest have become Allowed Claims or Interests or have otherwise been resolved by settlement or Final Order; provided that if the Debtors or the Liquidator, as applicable, does not dispute a portion of an amount asserted pursuant to an otherwise Disputed Claim, the Holder of such Disputed Claim shall be entitled to a distribution on account of that portion of such Claim, if any,

that is not disputed at the time and in the manner that the Debtors or the Liquidator, as applicable, makes distributions to similarly-situated Holders of Allowed Claims pursuant to the Plan.

(c) Distributions

On and after the Effective Date, the Liquidator shall make the distributions required to be made on account of Allowed Claims or Interests under the Plan on such date. Any distribution that is not made on the Initial Distribution Date or on any other date specified in the Plan because the Claim that would have been entitled to receive that distribution is not an Allowed Claim on such date, shall be held by the Liquidator in the Disputed Claims Reserve and distributed at the Liquidator's reasonable discretion after such Claim is Allowed. No interest shall accrue or be paid on the unpaid amount of any distribution paid in accordance with Article VI.C of the Plan.

3. Minimum; De Minimis Distributions

No Cash payment of less than \$100.00, in the reasonable discretion of the Debtors or the Liquidator, as applicable, shall be made to a Holder of an Allowed Claim or Allowed Interest on account of such Allowed Claim or Allowed Interest.

4. Undeliverable Distributions and Unclaimed Property

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Debtors or the Liquidator, as applicable, has determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided, however, such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six months from the date the initial distribution is made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) to the Debtors' Estates automatically and without need for a further order by the Bankruptcy Court and the Claim of any Holder to such property or interest in property shall be released, settled, compromised, and forever barred.

5. Manner of Payment Pursuant to the Plan

Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Debtors or the Liquidator, as applicable, by check or by wire transfer.

D. *Compliance with Tax Requirements/Allocations*

In connection with the Plan, to the extent applicable, the Debtors or the Liquidator, as applicable, shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

E. *Claims Paid or Payable by Third Parties*

1. Claims Paid by Third Parties

The Debtors or the Liquidator, as applicable, shall be authorized to reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or, as applicable, the Debtors or the Liquidator.

2. Claims Payable by Insurance, Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Notwithstanding anything to the contrary in the Plan or Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary of any of the Debtor's insurance policies with respect to such policies, including the D&O Policy, and the rights of the Debtors under any such insurance policies shall vest in such beneficiaries thereof as of the Effective Date.

**ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED, AND DISPUTED CLAIMS AND INTERESTS**

A. *Resolution of Disputed Claims*

1. Allowance of Claims and Interests

Prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidator, shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim or Interest, except with respect to any Claim or Interest deemed Allowed as of the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases allowing such Claim.

2. Prosecution of Objections to Claims or Interests

Unless otherwise agreed by, as applicable, the Debtors or the Liquidator on and after the Effective Date, the Debtors or the Liquidator, as applicable, or its designee shall have the exclusive authority to File objections to Claims or Interests, settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtors' Estates to any and all Claims or Interests, regardless of whether such Claims or Interests are in a Class or otherwise. From and after the Effective Date, the Liquidator (a) may settle or compromise any Disputed Claim without any further notice to or action, order, or approval of the Bankruptcy Court and (b) shall succeed to the Debtors' rights with respect to any objections Filed by the Debtors that remain pending as of the Effective Date. From and after the Effective Date, the Liquidator shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Claims Estimation

Prior to the Effective Date, the Debtors and on and after the Effective Date, the Liquidator, may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including section 502(c) of the Bankruptcy Code, regardless of whether the Debtors or the Liquidator have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. Notwithstanding any provision otherwise in the Plan to the contrary, a Claim that has been expunged

from the Claims Register but that is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Disputed Claim, contingent Claim, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under the Plan, including for purposes of distributions, and the Debtors or the Liquidator, as applicable, may elect to pursue additional objections to the ultimate distribution on such Claim. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors or the Liquidator, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before 21 days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

4. Expungement or Adjustment to Claims Without Objection

Any Claim that has been paid, satisfied, or superseded may be expunged on the Claims Register by, as applicable, the Debtors or the Liquidator (or the Notice and Claims Agent at, as applicable, the Debtors' or the Liquidator's direction), and any Claim that has been amended may be adjusted thereon by, as applicable, the Debtors or the Liquidator without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

5. Deadline to File Objections to Claims or Interests

Any objections to Claims or Interests shall be Filed no later than the Claims Objection Bar Date.

B. Disallowance of Claims

To the maximum extent provided by section 502(d) of the Bankruptcy Code, all Claims of any Entity from which property is recoverable by the Debtors or the Liquidator, as applicable, under section 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the Liquidator, as applicable, alleges is a transferee of a transfer that is avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if (1) the Entity, on the one hand, and the Debtors or the Liquidator, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code and (2) such Entity or transferee has failed to turnover such property by the date set forth in such agreement or Final Order.

C. Amendments to Claims

On or after the Effective Date, except as provided in Article II.A hereof, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or, as applicable, the Debtors or Liquidator, and any such new or amended Claim Filed shall be deemed disallowed and expunged without any further notice to or action, order, or approval of the Bankruptcy Court.

D. No Interest

Unless otherwise specifically provided for in the Plan (including Article III hereof), by applicable law, or agreed-to by, as applicable, the Debtors or the Liquidator, interest shall not accrue or be paid on any Claim, and no Holder of any Claim shall be entitled to interest accruing on and after the Petition Date on account of any Claim. Without limiting the foregoing, interest shall not accrue or be paid on any Claim after the Effective Date to the extent the final distribution paid on account of such Claim occurs after the Effective Date.

**ARTICLE VIII.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

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

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete settlement, compromise, and release, effective as of the Effective Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the settlement, compromise, and release of all Claims and Interests, subject to the Effective Date occurring.

B. Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised and all rights, titles, and interests of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall revert to the Debtors.

C. Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors reserve the right for the Debtors or the Liquidator, as applicable, to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

D. Debtor Release

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, EACH DEBTOR ON BEHALF OF ITSELF AND ITS ESTATE, FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, SHALL PROVIDE A FULL RELEASE TO EACH OF THE RELEASED PARTIES (AND EACH SUCH RELEASED PARTY SHALL BE DEEMED RELEASED BY EACH DEBTOR AND ITS ESTATE) AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION AND ANY OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE

SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, THE PLAN, OR THESE CHAPTER 11 CASES, INCLUDING THOSE THAT THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES; PROVIDED, HOWEVER, THAT THE FOREGOING “DEBTOR RELEASE” SHALL NOT OPERATE TO WAIVE OR RELEASE ANY CLAIMS OR CAUSES OF ACTION OF ANY DEBTOR OR THEIR RESPECTIVE CHAPTER 11 ESTATES AGAINST A RELEASED PARTY (1) ARISING UNDER ANY CONTRACTUAL OBLIGATION OWED TO THE DEBTORS THAT IS ENTERED INTO OR ASSUMED PURSUANT TO THE PLAN, (2) ARISING UNDER THE PURCHASE AGREEMENT, OR (3) WHICH RESULTS FROM ANY ACT OR OMISSION THAT IS JUDICIALLY DETERMINED PURSUANT TO A FINAL ORDER TO HAVE RESULTED FROM SUCH RELEASED PARTY’S FRAUD OR WILLFUL MISCONDUCT.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT’S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTOR RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT’S FINDING THAT THE DEBTOR RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE DEBTOR RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS’ ESTATES AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE DEBTORS’ ESTATES ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE DEBTOR RELEASE.

E. Third Party Release

ON THE EFFECTIVE DATE AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE RELEASING PARTIES SHALL BE DEEMED TO PROVIDE A FULL RELEASE TO THE RELEASED PARTIES AND THEIR RESPECTIVE PROPERTY FROM ANY AND ALL CAUSES OF ACTION AND ANY OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, DERIVATIVE CLAIMS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY TO THE DEBTORS, THE PLAN, OR THESE CHAPTER 11 CASES, INCLUDING THOSE THAT THE DEBTORS WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT ANY HOLDER OF A CLAIM AGAINST OR INTEREST IN THE DEBTORS OR ANY OTHER ENTITY COULD HAVE BEEN LEGALLY ENTITLED TO ASSERT DERIVATIVELY OR ON BEHALF OF THE DEBTORS OR THEIR ESTATES, PROVIDED, HOWEVER, THAT THE FOREGOING “THIRD PARTY RELEASE” SHALL NOT OPERATE TO RELEASE ANY RELEASED PARTY ON ACCOUNT OF LIABILITY THAT IS JUDICIALLY DETERMINED PURSUANT TO A FINAL ORDER TO HAVE RESULTED FROM SUCH RELEASED PARTY’S FRAUD OR WILLFUL MISCONDUCT.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT’S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE THIRD PARTY RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND, FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT’S FINDING THAT THE THIRD PARTY RELEASE IS: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS RELEASED BY THE THIRD PARTY RELEASE; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND

REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE RELEASING PARTIES ASSERTING ANY CLAIM RELEASED PURSUANT TO THE THIRD PARTY RELEASE.

F. Exculpation

The Exculpated Parties shall neither have, nor incur any liability to any Entity for any prepetition or postpetition act taken or omitted to be taken in connection with the Chapter 11 Cases, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan or consummating the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring or liquidation of the Debtors; provided that the foregoing “Exculpation” shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order to have constituted fraud or willful misconduct; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement. Without limiting the foregoing Exculpation provided under this Article VIII.F, the rights of any Holder of a Claim or Interest to enforce rights arising under this Plan shall be preserved, including the right to compel payment of distributions in accordance with the Plan.

G. Injunction

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, INTERESTS, CAUSES OF ACTION, OR LIABILITIES THAT: (1) ARE SUBJECT TO COMPROMISE AND SETTLEMENT PURSUANT TO THE TERMS OF THE PLAN; (2) HAVE BEEN RELEASED PURSUANT TO ARTICLE VIII.D HEREOF; (3) HAVE BEEN RELEASED PURSUANT TO ARTICLE VIII.E HEREOF; (4) ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE VIII.F HEREOF (BUT ONLY TO THE EXTENT OF THE EXCULPATION PROVIDED IN ARTICLE VIII.F); OR (5) ARE OTHERWISE STAYED OR TERMINATED PURSUANT TO THE TERMS OF THE PLAN, ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND, INCLUDING ON ACCOUNT OF ANY CLAIMS, INTERESTS, CAUSES OF ACTIONS, OR LIABILITIES THAT HAVE BEEN COMPROMISED OR SETTLED AGAINST THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF ANY ENTITY, DIRECTLY OR INDIRECTLY, SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (B) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (C) CREATING, PERFECTING, OR ENFORCING ANY LIEN, CLAIM, OR ENCUMBRANCE OF ANY KIND AGAINST THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES; (D) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION, OR RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES UNLESS SUCH HOLDER HAS OBTAINED ENTRY OF A FINAL ORDER AUTHORIZING SUCH SETOFF, SUBROGATION, OR RECOUPMENT AS PROVIDED IN THE PLAN; AND (E) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTORS OR ANY ENTITY SO RELEASED OR

EXCULPATED (OR THE PROPERTY OR ESTATE OF THE DEBTORS OR ANY ENTITY SO RELEASED OR EXCULPATED) ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH RELEASED, SETTLED, COMPROMISED, OR EXCULPATED CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES RELEASED, SETTLED, OR COMPROMISED PURSUANT TO THE PLAN; PROVIDED THAT NOTHING CONTAINED IN THE PLAN SHALL PRECLUDE AN ENTITY FROM OBTAINING BENEFITS DIRECTLY AND EXPRESSLY PROVIDED TO SUCH ENTITY PURSUANT TO THE TERMS OF THE PLAN; PROVIDED, FURTHER, THAT NOTHING CONTAINED IN THE PLAN SHALL BE CONSTRUED TO PREVENT ANY ENTITY FROM DEFENDING AGAINST CLAIMS OBJECTIONS OR COLLECTION ACTIONS WHETHER BY ASSERTING A RIGHT OF SETOFF OR OTHERWISE TO THE EXTENT PERMITTED BY LAW.

H. Waiver of Statutory Limitations on Releases

EACH RELEASING PARTY IN EACH OF THE RELEASES CONTAINED IN THE PLAN (INCLUDING UNDER THIS ARTICLE VIII OF THE PLAN) EXPRESSLY ACKNOWLEDGES THAT ALTHOUGH ORDINARILY A GENERAL RELEASE MAY NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE PARTY RELEASED, THEY HAVE CAREFULLY CONSIDERED AND TAKEN INTO ACCOUNT IN DETERMINING TO ENTER INTO THE ABOVE RELEASES THE POSSIBLE EXISTENCE OF SUCH UNKNOWN LOSSES OR CLAIMS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH RELEASING PARTY EXPRESSLY WAIVES ANY AND ALL RIGHTS CONFERRED UPON IT BY ANY STATUTE OR RULE OF LAW WHICH PROVIDES THAT A RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CLAIMANT DOES NOT KNOW OR SUSPECT TO EXIST IN ITS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY IT MAY HAVE MATERIALLY AFFECTED ITS SETTLEMENT WITH THE RELEASED PARTY, INCLUDING THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542. THE RELEASES CONTAINED IN Article VIII OF THE PLAN ARE EFFECTIVE REGARDLESS OF WHETHER THOSE RELEASED MATTERS ARE PRESENTLY KNOWN, UNKNOWN, SUSPECTED OR UNSUSPECTED, FORESEEN OR UNFORESEEN.

I. Setoffs

Except as otherwise provided in the Plan, prior to the Effective Date, the Debtors, and on and after the Effective Date, the Liquidator, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable nonbankruptcy law, or as may be agreed to by the Holder of a Claim or Interest, may set off against any Allowed Claim or Interest on account of any Proof of Claim or proof of Interest or other pleading Filed with respect thereto prior to the Confirmation Hearing and the distributions to be made pursuant to the Plan on account of such Allowed Claim or Interest (before any distribution is made on account of such Allowed Claim or Interest), any Claims, rights, and Causes of Action of any nature that the Debtors' Estates may hold against the Holder of such Allowed Claim or Interest, to the extent such Claims, rights, or Causes of Action against such Holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); provided that neither the failure to effect such a setoff nor the allowance of any Claim or Interest pursuant to the Plan shall constitute a waiver or release by the Debtors or the Liquidator, as applicable, of any such Claims, rights, and Causes of Action that the Debtors' Estates may possess against such Holder. In no event shall any Holder of Claims or Interests be entitled to setoff any Claim or Interest against any Claim, right, or Cause of Action of the Debtors' Estates unless such Holder obtains entry of a Final Order entered by the Bankruptcy Court authorizing such setoff; provided that nothing in the Plan shall prejudice or be deemed to have prejudiced the Debtors' or the Liquidator's right to assert that any Holder's setoff rights were required to have been asserted by motion or pleading filed with the Bankruptcy Court prior to the Effective Date.

**ARTICLE IX.
CONDITIONS PRECEDENT TO CONFIRMATION
AND CONSUMMATION OF THE PLAN**

A. Conditions Precedent to the Effective Date

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.B hereof:

1. the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Debtors;
2. the Plan and Plan Supplement, including any amendments, modifications, or supplements thereto shall be in form and substance reasonably acceptable to the Debtors;
3. the Liquidator shall have been appointed and the Liquidator Agreement shall have been executed and become effective;
4. all documents and agreements necessary to implement the Plan and the consummation of the Sale Transaction shall have (a) been tendered for delivery, and (b) been effected or executed by all Entities party thereto, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements;
5. the Sale Transaction shall have been consummated;
6. the Wind Down Reserve shall have been established and funded; and
7. the Professional Fee Escrow shall have been established and funded.

B. Waiver of Conditions

The conditions to Confirmation of the Plan and to the Effective Date of the Plan set forth in this Article IX may be waived by the Debtors in their sole discretion.

C. Effect of Non-Occurrence of Conditions to the Effective Date

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Interests in the Debtors; (2) prejudice in any manner the rights of the Debtors, the Debtors' Estates, any Holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, the Debtors' Estates, any Holders, or any other Entity in any respect.

**ARTICLE X.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. Modification and Amendments

Subject to the limitations contained in the Plan, the Debtors reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights to alter, amend, or modify materially the Plan with respect to the Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and

intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article X hereof.

B. Effect of Confirmation on Modifications

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of the Plan

The Debtors reserve the right to revoke or withdraw the Plan, including the right to revoke or withdraw the Plan for any Debtor or all Debtors, prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan with respect to any Debtor, or if Confirmation or Consummation does not occur with respect to any Debtor, then: (1) the Plan with respect to such Debtor shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan with respect to such Debtor (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan with respect to such Debtor, and any document or agreement executed pursuant to the Plan with respect to such Debtor, shall be deemed null and void; and (3) nothing contained in the Plan with respect to such Debtor shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtors, the Debtors' Estates, or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors, the Debtors' Estates, or any other Entity.

**ARTICLE XI.
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

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

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

3. resolve any matters related to: (a) the assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Costs pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Debtors amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases set forth on the list of Executory Contracts and Unexpired Leases to be assumed and assigned or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to Holders of Allowed Claims and Interests are accomplished pursuant to the provisions of the Plan;

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

6. adjudicate, decide, or resolve any and all matters related to Causes of Action;
7. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;
8. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;
9. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
11. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article VIII hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;
12. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.E.1 hereof;
13. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
14. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;
15. adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;
16. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
17. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;
18. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;
19. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
20. hear and determine all disputes involving the existence, nature, or scope of the Debtors' release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred prior to or after the Effective Date;
21. enforce all orders previously entered by the Bankruptcy Court;

22. hear any other matter not inconsistent with the Bankruptcy Code;
23. enter an order concluding or closing the Chapter 11 Cases; and
24. enforce the injunction, release, and exculpation provisions set forth in Article VIII hereof.

**ARTICLE XII.
MISCELLANEOUS PROVISIONS**

A. Immediate Binding Effect

Subject to Article IX.A hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan, the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors, the Debtors' Estates, and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

B. Additional Documents

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Payment of Statutory Fees

All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by the Debtors or the Liquidator, as applicable, until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

D. Dissolution of Committees

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve and members thereof shall be compromised, settled, and released from all rights and duties from or related to the Chapter 11 Cases. The Debtors, the Liquidator, and the Purchaser shall no longer be responsible for paying any fees or expenses incurred by the members of or advisors to any statutory committees after the Effective Date.

E. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtors or any Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors or any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

F. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

G. Service of Documents

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors shall be served via first class mail, overnight delivery, or messenger on:

Fisker Automotive Holdings, Inc.
c/o Beilinson Advisory Group
475 Washington Boulevard
Marina Del Rey, California 90292
Attn.: Marc Beilinson

with copies to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn.: Anup Sathy, P.C. and Ryan Preston Dahl

Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Attn.: Laura Davis Jones, James E. O'Neill, and Peter J. Keane

H. Term of Injunctions or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect to the maximum extent permitted by law. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

I. Entire Agreement

Except as otherwise indicated, the Plan, the Confirmation Order, and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

J. Nonseverability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (3) nonseverable and mutually dependent.

K. Waiver or Estoppel

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority,

Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court before the Confirmation Date.

Respectfully submitted, as of the date first set forth above,

Fisker Automotive Holdings, Inc.
Fisker Automotive, Inc.

By: _____
Name: Marc Beilinson
Title: Authorized Signatory

Prepared by:

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- and -

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