

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

In re:

Last Mile Inc. d/b/a Sting Communications,  
  
Debtor.

Chapter 11

Case No. 11-14769 (SHL)

**FIRST AMENDED JOINT PLAN OF LIQUIDATION FILED BY THE DEBTOR  
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated March 25, 2014

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. DEFINITIONS, INTERPRETATIONS AND EXHIBITS .....	1
<b>1.1</b> Scope of Definitions .....	1
<b>1.2</b> Rules of Interpretation .....	10
<b>1.3</b> Exhibits .....	11
II. TREATMENT OF UNCLASSIFIED, UNIMPAIRED CLAIMS .....	11
<b>2.1</b> Administrative Claims .....	11
<b>2.2</b> Statutory Fees.....	11
<b>2.3</b> Professional Claim .....	11
<b>2.4</b> Priority Claims .....	12
<b>2.5</b> Deadline for Filing Administrative Claims.....	12
III. CLASSIFICATION AND TREATMENT OF CLAIMS .....	12
<b>3.1</b> Classification and Treatment .....	12
<b>3.2</b> Class 1—GLC Claims.....	13
<b>3.3</b> Class 2—General Unsecured Claims.....	13
<b>3.4</b> Class 3—Indemnity Claims .....	13
<b>3.5</b> Class 4—Interests .....	13
IV. EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	14
<b>4.1</b> Approval of Rejection; Rejection Damages Claims Bar Date.....	14
<b>4.2</b> No Effect on Insurance .....	14
V. MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN .....	14
<b>5.1</b> Implementation of the Plan.....	14
<b>5.2</b> Vesting of Assets .....	14
<b>5.3</b> Appointment of Estate Representative.....	15
<b>5.4</b> Covenants of the Estate Representative.....	15
<b>5.5</b> Estate Representative’s Powers .....	16
<b>5.6</b> Estate Representative Compensation.....	16
<b>5.7</b> Maintenance of Records .....	16
<b>5.8</b> Estate Representative Expenses.....	16
<b>5.9</b> The Oversight Committee.....	16
<b>5.10</b> Limitation on Estate Representative’s Liability .....	17
<b>5.11</b> Replacing the Estate Representative.....	17
<b>5.12</b> Post-Effective Date Professional Fees and Expenses .....	17
<b>5.13</b> Cancellation of Instruments, Securities and Other Documentation.....	18
<b>5.14</b> Litigation.....	18
<b>5.15</b> Objections to Claims.....	18
<b>5.16</b> Post-Confirmation Funding of Plan.....	18

5.17	Dissolution of the Debtor .....	19
5.18	Validity of Corporate Actions.....	19
5.19	Closing of the Chapter 11 Case .....	19
VI. DISTRIBUTIONS .....		19
6.1	Distributions by the Estate Representative .....	19
6.2	Delivery of Distributions in General.....	20
6.3	Cash Payments .....	20
6.4	No De Minimis Distributions.....	20
6.5	Unclaimed Property/Failure to Negotiate Checks .....	20
6.6	Initial Distribution.....	21
6.7	Supplemental Distributions.....	21
6.8	Final Distributions .....	21
6.9	Full and Final Satisfaction .....	21
6.10	Compliance with Tax Requirements.....	21
VII. RELEASE OF LIENS .....		22
7.1	Release of Liens .....	22
VIII. EFFECT OF CONFIRMATION .....		22
8.1	Jurisdiction of Bankruptcy Court.....	22
8.2	Binding Effect.....	22
8.3	Stay .....	22
8.4	Exculpation .....	22
8.5	Indemnification .....	23
8.6	Releases.....	23
IX. ACCEPTANCE OR REJECTION OF THIS PLAN.....		25
9.1	Persons Entitled to Vote.....	25
X. CONDITIONS TO THE EFFECTIVE DATE AND CONFIRMATION .....		25
10.1	Conditions to Effective Date.....	25
10.2	Notice of Effective Date .....	26
XI. RETENTION OF JURISDICTION.....		26
11.1	Exclusive Jurisdiction of Bankruptcy Court .....	26
11.2	Failure of Bankruptcy Court to Exercise Jurisdiction.....	27
XII. MISCELLANEOUS PROVISIONS .....		27
12.1	Binding Effect of Plan .....	27
12.2	Withdrawal of this Plan .....	27
12.3	Final Order .....	28
12.4	Modification of this Plan .....	28
12.5	Severability of Plan Provisions.....	28
12.6	Governing Law .....	29
12.7	Notices .....	29
12.8	Filing of Additional Documents .....	29

<b>12.9</b>	No Attorneys' Fees .....	30
<b>12.10</b>	Successors and Assigns.....	30
<b>12.11</b>	Exemption from Certain Transfer Taxes .....	30
<b>12.12</b>	Preservation of Rights of Setoff.....	30
<b>12.13</b>	Defenses with Respect to Unimpaired Claims.....	30
<b>12.14</b>	No Injunctive Relief.....	30
<b>12.15</b>	No Admissions.....	31
<b>12.16</b>	Satisfaction of Claims and Interests.....	31
<b>12.17</b>	Authorizations.....	31
<b>12.18</b>	Transaction on Business Days .....	31
<b>12.19</b>	Headings .....	31
<b>12.20</b>	Entire Agreement .....	31

## CHAPTER 11 PLAN OF LIQUIDATION

### INTRODUCTION

This Joint Chapter 11 Plan of Liquidation (the “Plan”), dated March 25, 2014, is proposed by Last Mile, Inc. (the “Debtor”) and the Official Committee of Unsecured Creditors (the “Committee”) pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §101 *et seq.* Capitalized terms shall have the meanings set forth in Article I of this Plan, unless the context indicates otherwise.

**ALL HOLDERS OF CLAIMS ARE ENCOURAGED TO READ THIS PLAN IN ITS ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3018 AND IN THIS PLAN, THE DEBTOR AND THE COMMITTEE RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THIS PLAN UNTIL ITS SUBSTANTIAL CONSUMMATION.**

### I. DEFINITIONS, INTERPRETATIONS AND EXHIBITS

**1.1** Scope of Definitions. For purposes of this Plan, and to the extent not otherwise provided herein, the terms below shall have the respective meanings hereinafter set forth and designated with the initial letter of each word being capitalized and, unless otherwise indicated, the singular shall include the plural, the plural shall include the singular and capitalized terms shall refer to the terms as defined in this Article I.

“**363 Sale**” means the sale of substantially all the Debtor’s assets to affiliates of GLC in accordance with the *Order Approving the Debtor’s Motion Pursuant to 11 U.S.C. §§105(A), 363 and 365 and Federal Rules of Bankruptcy Procedure 6004 and 6006 for Entry of an Order Authorizing the Debtor (A) Sell Substantially All Of Its Assets Free and Clear of Liens, Claims and Encumbrances and (B) Assume and Assign Certain Leases and Contracts to the Purchaser* [Docket No. 305].

“**Administrative Claim**” means a Claim for any cost or expense of administration (including Professional Claims) of the Chapter 11 Case asserted or arising under sections 503(b), 507(a)(1), or 507(b) of the Bankruptcy Code.

“**Administrative Claims Bar Date**” means the date set by the Bankruptcy Court as the last date to request payment of Administrative Claims (other than (a) Claims of Professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code and (b) Claims arising in the ordinary course of a commercial relationship with the Debtor) in the Disclosure Statement Order.

“**Administrative Claims Fund**” means funds in an amount sufficient to satisfy the Administrative Claims as set forth on the Administrative Claims Schedule, which funds

shall be paid by GLC to the Estate Representative upon the Effective Date, and which will be held by the Estate Representative to satisfy Administrative Claims.

***“Administrative Claims Schedule”*** means a list, in form, substance and amount acceptable to GLC, of all (i) Administrative Claims as of the Effective Date, which shall include (a) the name and address of all Claimants, (b) the amounts asserted as Administrative Claims and (b) the Allowed amount of the Administrative Claims, and (ii) Administrative Claims that are anticipated to be asserted after the Effective Date, including (a) the name and address of the Claimants, and (b) the anticipated amounts to be asserted as Administrative Claims.

***“Administrative Claims Fund”*** means funds in an amount sufficient to satisfy the Administrative Claims as set forth on the Administrative Claims Schedule, which funds shall be paid by GLC to the Estate Representative upon the Effective Date, and which will be held by the Estate Representative to satisfy Administrative Claims.

***“Allowed”*** means any Claim or portion thereof against the Debtor, (a) proof of which was Filed within the applicable period of limitation fixed by the Bankruptcy Court in accordance with Bankruptcy Rule 3003(c) as to which (i) no objection to the allowance thereof, or action to equitably subordinate or otherwise limit recovery with respect thereto has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or a Final Order or (ii) any objection has been settled, waived, withdrawn or denied by a Final Order, or (iii) if an objection has been interposed, to the extent such Claim has been allowed by a Final Order, (b) which, if no proof of claim was so Filed, has been listed by the Debtor in its Schedules as liquidated in an amount and not disputed or contingent as to which (i) no objection to the allowance thereof, or action to equitably subordinate or otherwise limit recovery with respect thereto has been interposed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or a Final Order or (ii) any objection has been settled, waived, withdrawn or denied by a Final Order, or (iii) if an objection has been interposed, to the extent such Claim has been allowed by a Final Order, (c) which Claim arises from the recovery of property under sections 550 or 553 of the Bankruptcy Code and is allowed in accordance with section 502(h) of the Bankruptcy Code, (d) which Claim is expressly allowed under this Plan, or (e) which Claim is allowed by a Final Order; provided, however, that the term “Allowed” shall not include, unless otherwise specified in this Plan, interest on any Claim from and after the Petition Date.

***“Allowed Administrative Claim”*** means all or that portion of any Administrative Claim that is or has become an Allowed Claim.

***“Assets”*** means all legal or equitable interests of the Debtor in any and all real or personal property of any nature, including any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts, chattel paper, cash, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, Claims, Causes of Action and any other general intangibles, and the proceeds, product, offspring, rents or profits thereof.

***“Avoidance Actions”*** means any and all causes of action which a trustee, debtor-in-possession, the estate or other legal representative or appropriate party-in-interest, including

the Estate Representative, may assert, including those causes of action under sections 542, 543, 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code, including the Debtor's rights of setoff, recoupment, contribution, reimbursement, subrogation or indemnity in connection herewith (as those terms are defined by the non-bankruptcy law of any relevant jurisdiction) and any other indirect claim of any kind whatsoever, whenever and wherever arising or asserted.

**"Bankruptcy Code"** means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date, together with all amendments and modifications thereto to the extent applicable to the Chapter 11 Case.

**"Bankruptcy Court"** means the United States Bankruptcy Court for the Southern District of New York, which has jurisdiction over the Chapter 11 Case, or such other court exercising bankruptcy jurisdiction.

**"Bankruptcy Rules"** means (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of title 28 of the United States Code, (b) the Federal Rules of Civil Procedure, as amended and promulgated under section 2072 of title 28 of the United States Code, (c) the Local Bankruptcy Rules of the Bankruptcy Court, and (d) any standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto to the extent applicable to this Chapter 11 Case or proceedings therein, as the case may be.

**"Bar Date"** shall mean collectively the Administrative Claims Bar Date, the General Bar Date and the dates fixed in the Confirmation Order by which all proofs of Claim in this Chapter 11 Case must be, or must have been filed, or be forever barred from asserting a Claim against the Debtor or its property and from sharing in Distributions hereunder.

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

**"Case Closing Date"** shall mean the date the Chapter 11 Case shall be closed in accordance with section 350 of the Bankruptcy Code.

**"Cash"** means money, currency and coins, negotiable checks, balances in bank accounts and other lawful currency of the United States of America and its equivalents.

**"Causes of Action"** means any and all actions, claims, rights, defenses, impleader claims, damages, executions, demands, cross claims, counterclaims, suits, causes of action, choses in action, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims whatsoever, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly, indirectly or derivatively, at law, in equity or otherwise, accruing to the Debtor, including the Avoidance Actions.

**“Chapter 11 Case”** means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor in the Bankruptcy Court on the Petition Date assigned as Case No. 11-14769, pending in the Bankruptcy Court.

**“Claim”** has the meaning assigned to such term in section 101(5) of the Bankruptcy Code.

**“Class”** means a group of Claims or Interests as classified in a particular class under this Plan pursuant to section 1122 of the Bankruptcy Code.

**“Committee”** means the statutory committee of unsecured creditors appointed in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code as such committee thereafter was, and may be further, reconstituted.

**“Confirmation”** means the entry of an order confirming this Plan in accordance with section 1129 of the Bankruptcy Code.

**“Confirmation Date”** means the date on which the Confirmation Order is entered on the docket maintained by the Clerk of the Bankruptcy Court.

**“Confirmation Hearing”** means the hearing held before the Bankruptcy Court to consider Confirmation of this Plan pursuant to section 1128 of the Bankruptcy Code, as it may be continued from time to time.

**“Confirmation Order”** means the order issued and entered confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

**“Contingency Counsel”** means the Professionals retained by the Committee by Final Order to prosecute and/or settle the Preference Actions.

**“Creditor Funds”** means the \$275,000 to be paid by GLC in connection with the 363 Sale that will be held in trust by counsel to the Committee.

**“Dauphin Action”** means that certain Civil Action No. 2012cv6710cv commenced by the filing of *Praecipe for Writ of Summons* on or about August 6, 2012 naming as defendants Stevens & Lee, PC and Darol Lain.

**“Debtor”** means Last Mile, Inc. d/b/a Sting Communications, including in its capacity as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

**“Director Proofs of Claim”** means the proofs of claim filed by the members of the Debtor’s board of directors, which appear as numbers 74-80 on the Claims Register maintained by the clerk of the Bankruptcy Court.

**“Disallowed”** means a Claim or any portion thereof that (a) has been disallowed by a Final Order including without limitation pursuant to the Confirmation Order, (b) has been listed on the Schedules as zero or as contingent, disputed or unliquidated and as to which Bar Date has been established but no proof of claim or equity interest has been timely Filed or



deemed timely Filed pursuant to either the Bankruptcy Code or any Final Order or otherwise deemed timely Filed under applicable law, or (c) is not listed on the Schedules and as to which the Bar Date has been set and no proof of claim or interest has been timely Filed or deemed timely Filed pursuant to either the Bankruptcy Code or any Final Order or otherwise deemed timely Filed under applicable law.

***“Disclosure Statement”*** means the document entitled “Joint Disclosure Statement by Debtor and the Official Committee of Unsecured Creditors in Support of Plan of Liquidation,” dated March 25, 2014, and filed in connection with the Chapter 11 Case pursuant to section 1125 of the Bankruptcy Code and approved by the Bankruptcy Court as containing “adequate information” as that term is defined in section 1125(a)(1) of the Bankruptcy Code, any exhibits annexed thereto and any documents delivered in connection therewith, as the same may be amended or modified from time to time.

***“Disclosure Statement Order”*** means the *Order Approving Disclosure Statement, Establishing Administrative Claims Bar Date, Fixing Procedures and Time for Filing Acceptances and Rejections to the Plan and Fixing Time for Confirmation Hearing* entered in the Chapter 11 Case on February \_\_, 2014 [Docket No. \_\_\_\_].

***“Distributions”*** means, collectively, the Initial Distribution, any Supplemental Distributions and the Final Distribution.

***“Distribution Schedule”*** shall mean the list of all Allowed General Unsecured Claims.

***“Effective Date”*** means the Business Day following the date upon which all conditions set forth in Article X. shall have occurred or have been satisfied.

***“Estate”*** means the Debtor’s bankruptcy estate created in the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

***“Estate Funds”*** means the Administrative Claims Fund, the Creditor Funds and the Net Preference Proceeds.

***“Estate Representative”*** means any Person appointed as Estate Representative pursuant to this Plan, whose function shall be to take all steps required, and when appropriate, take all actions authorized, under this Plan, including presenting and/or settling the Preference Actions and making the Distributions.

***“Exit Term Sheet”*** means the Exit Arrangement Term Sheet appended as Exhibit H to that certain Senior, Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of September 10, 2012 between the Debtor, Global Leveraged Capital Advisors and the lenders party thereto, which was approved by *Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364, 503(B) and 507(A), Fed. R. Bankr. P. 2002, 4001 and 9014 and NY Bankr. L.R. 4001-2 (I) Authorizing the Debtor (A) to Obtain Post-Petition Secured DIP Financing and (B) to Compromise and Satisfy Certain Existing Secured Indebtedness; (II) Granting Liens and Providing for Superpriority Administrative Expense Status; (III) Modifying*

*the Automatic Stay; and (IV) Granting Related Relief* entered by the Bankruptcy Court on October 4, 2012.

“**File**” or “**Filed**” means file or filed with the Clerk of the Bankruptcy Court in the Chapter 11 case.

“**Final Distribution**” has the meaning set forth in Section 6.8.

“**Final Distribution Date**” means the date upon which the Final Distribution is made. The Final Distribution Date shall be determined by the Estate Representative, and shall occur after as soon as practicable after all the Preference Actions are finally resolved through a judgment, settlement or otherwise.

“**Final Order**” means an order or judgment entered by the Bankruptcy Court, or another court of competent jurisdiction, in connection with the Chapter 11 Case, which has not been reversed, stayed, modified or amended, and as to which the time to appeal or to seek certiorari, review or rehearing has expired and as to which no appeal or petition for certiorari, review or rehearing is pending or as to which any right to appeal or to seek certiorari, review or rehearing has been waived in writing in a manner satisfactory to the Debtor and the Committee.

“**General Bar Date**” shall mean the dates fixed by the *Order Establishing Deadline For Filing Proofs Of Claim And Approving The Form And Manner Of Notice Thereof* entered by the Bankruptcy Court on March 13, 2012 [Docket No. 305] by which all proofs of Claim arising prior to the Petition Date in this Chapter 11 Case must have been filed, or be forever barred from asserting a Claim against the Debtor or its property and from sharing in distributions hereunder.

“**General Unsecured Claim**” shall mean any Claim that is not an Administrative Claim, Professional Claim, Priority Claim or GLC Claim.

“**GLC**” means Global Leveraged Capital Credit Opportunity Fund I and its affiliates.

“**GLC Claims**” means any and all claims arising prior to the Petition Date that could be asserted against the Debtor by GLC (on behalf of GLC and/or The Board of Trustees of the Leland Stanford Junior University).

“**Impaired**” when used in this Plan with reference to a Claim or an Interest, has the meaning assigned to such term in section 1124 of the Bankruptcy Code.

“**Indemnity Claims**” means all indemnity claims against the Debtor including, but not limited to, the indemnity claims of the members of the Debtor’s board of directors as evidenced by the Director Proofs of Claim.

“**Initial Distribution**” means the Creditor Funds that will be distributed to creditors on the Initial Distribution Date for payments on Allowed General Unsecured Claims pursuant to this Plan.

***“Initial Distribution Date”*** means as soon as practicable, in the Estate Representative’s discretion, after the Effective Date.

***“Interest”*** means (a) all rights arising from any equity (as the term is defined in section 101(16) of the Bankruptcy Code) of the Debtor, and (b) the legal, equitable, contractual or other rights of any person or entity to acquire or receive any of the foregoing or any right thereto or interest therein, including, but not limited to, all issued, unissued, authorized or outstanding shares.

***“Net Estate Preference Proceeds”*** means thirty percent (30%) of the Net Preference Proceeds.

***“Net Preference Proceeds”*** means the aggregate amount recovered by the Committee and/or the Estate Representative from prosecution and/or settlement of the Preference Actions after (a) repayment to the Debtor, or GLC as its successor, of any Out of Pocket Expenses, and (b) payment of the fees and reimbursement of any Out of Pocket Expenses of Contingency Counsel.

***“Objection”*** means any objection, application, motion, complaint or any other legal proceeding, including, with respect to the terms of this Plan, seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim) or Interest other than an Allowed Claim.

***“Out of Pocket Expenses”*** shall retain the meaning ascribed thereto in the Preference Standing Stipulation.

***“Oversight Committee”*** means that advisory committee appointed to take the actions identified in this Plan, including without limitation overseeing the Estate Representative administer his/her duties with respect to this Plan. The Oversight Committee shall be comprised of the members of the Committee and GLC (or its designee).

***“Person”*** means an individual, corporation, partnership, limited liability company, joint venture, trust, estate, unincorporated association, unincorporated organization, governmental entity, or political subdivision thereof, or any other entity.

***“Petition Date”*** means October 12, 2011.

***“Plan”*** means this Chapter 11 Plan of Liquidation as it may be amended or modified.

***“Post-Petition”*** means a date on or after the Petition Date.

***“Pre-Petition”*** means a date prior to the Petition Date.

***“Preference Actions”*** means the Avoidance Actions commenced by the Committee prior to the Confirmation Date pursuant to section 547 of the Bankruptcy Code.

***“Preference Standing Stipulation”*** means the *Stipulation and Order Conferring Standing and Directing That the Official Committee of Unsecured Creditors Shall Have the Sole Authority to Prosecute the Debtor’s Avoidance Actions* entered in the Chapter 11 Case [Docket No. 357].

***“Priority Claim”*** means any Claim against the Debtor described in section 507(a) of the Bankruptcy Code to the extent such Claim has not already been paid during the Chapter 11 Case, other than an Administrative Claim.

***“Professional”*** means a Person (a) employed in the Chapter 11 Case pursuant to a Final Order in accordance with sections 327, 328 and/or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to sections 327, 328, 329, 330, and/or 331 the Bankruptcy Code or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

***“Professional Claim”*** means a Claim of a Professional retained in the Chapter 11 Case pursuant to sections 327 and/or 1103 of the Bankruptcy Code or otherwise, for compensation or reimbursement of costs and expenses relating to services incurred after the Petition Date and prior to and including the Effective Date.

***“Professional Fees”*** means Claims by Professionals retained by the Debtor or the Committee for compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code.

***“Professional Fee Applications”*** means applications by Professionals for payment of fees and reimbursement of expenses incurred prior to the Effective Date.

***“Professionals Fund”*** means the \$50,000 to be paid by GLC in connection with the 363 Sale, which will be held by counsel to the Committee to fund the costs of administration of the Estate after the Effective Date, as such fund may be supplemented in accordance with section 5.12 this Plan.

***“Property of the Estate”*** means all property of the Debtor and its Estate of every type and nature pursuant to section 541 of the Bankruptcy Code.

***“Proponents”*** means the Debtor and the Committee.

***“Released Claims”*** means collectively, (a) claims or causes of action that arise in or have been or could have been asserted in the Chapter 11 Case or by the Debtor or by Creditors relating to Claims or by holders of Interests relating to Interests, as the case may be, against the Debtor or other Released Parties, and (b) claims that otherwise arise from or relate to the Chapter 11 Case, the 363 Sale, the Plan, or the negotiations and compromises relating to the 363 Sale, GLC’s provision of debtor in possession financing, or set forth in the Plan, including, without limitation, any such claim, demand, right, liability, or cause of action for indemnification, contribution or any other basis in law or equity for damages, costs or fees incurred by the releasers herein arising directly or indirectly from or otherwise relating thereto, whether or not (i) a proof of claim based upon such debt is filed or deemed filed under section

501 of the Bankruptcy Code, (ii) a Claim based upon such debt is allowed under section 502 of the Bankruptcy Code (or is otherwise resolved), or (iii) the holder of a Claim based upon such debt voted to accept the Plan; provided, however, that “Released Claims” is not intended to release, nor shall it have the effect of releasing, any party from (t) claims or Causes of Action on account of conduct occurring after the Effective Date, (u) claims or Causes of Action unrelated to the Debtor or its business, (v) the performance of its obligations in accordance with the 363 Sale, the Confirmation Order or the Plan, (w) any and all claims or Causes of Action against Stevens & Lee, PC, its subsidiaries and/or affiliates, (x) any and all claims or Causes of Action commenced prior to the entry of the Disclosure Statement Order (including but not limited to the Dauphin Action), (y) any payments required to be made under, and in accordance with, the Stipulation and Order or (z) the Preference Actions.

**“Released Parties”** means collectively, (a) the Debtor, its predecessors, successors and assigns (whether by operation of law or otherwise) and its respective affiliates, and each of the Debtor’s current and former officers, directors, employees, managers, financial advisors, attorneys, accountants, investment bankers, consultants, agents and Professionals; (b) all members of the Committee and their predecessors, successors and assigns (whether by operation of law or otherwise) and their respective affiliates, and each of the members’ and their affiliates’ current and former members, equity holders, officers, directors, employees, managers, shareholders, financial advisors, attorneys, accountants, investment bankers, consultants, agents and professionals, and the Professionals retained by the Committee in the Chapter 11 Case pursuant to an order of the Bankruptcy Court; (c) GLC and its predecessors, successors and assigns (whether by operation of law or otherwise) and its respective affiliates, and each of GLC’s and its affiliates’ current and former members, equity holders, officers, directors, employees, managers, shareholders, financial advisors, attorneys, accountants, investment bankers, consultants, agents and Professionals and (d) holders of Indemnity Claims, provided, however, that “Released Parties” is not intended to include, nor shall it include Stevens & Lee, PC, its subsidiaries and/or affiliates.

**“Released Third Party Causes of Action”** means any Claims or causes of action, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated or unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secure or unsecured, and whether asserted or assertable directly or derivatively, in law, equity or otherwise, whether asserted or unasserted as of the date of entry of the Confirmation Order, whether arising prior to or after the Petition Date, that are based upon, relate to, or arise out of or in connection with, in whole or in part any act, omission, transaction, event or other circumstance relating to the Debtor, any transaction directly or indirectly related to the Debtor, or the Debtor’s Chapter 11 Case and taking place or existing, or arising prior to the Effective Date; provided, however, that “Released Third Party Causes of Action” is not intended to release, nor shall it have the effect of releasing, any party from (a) the performance of its obligations in accordance with the 363 Sale, the Confirmation Order or the Plan, (b) any and all claims or Causes of Action against Stevens & Lee, PC, its subsidiaries and/or affiliates, (c) any and all claims or Causes of Action commenced prior to the entry of the Disclosure Statement Order (including but not limited to the Dauphin Action), or (d) the Preference Actions.

**“Releases”** means the releases set forth in Section 8.6.

**“Schedules”** means the Debtor’s Schedules of Assets and Liabilities and Statement of Financial Affairs, as amended from time to time, Filed by the Debtor with the Bankruptcy Court pursuant to Bankruptcy Rule 1007.

**“Stipulation and Order”** means the Stipulation and Order Resolving Cure Claim of The United Telephone Company of Pennsylvania LLC d/b/a Centurylink, which was entered on January 24, 2014, in the docket of the Chapter 11 Case as Dkt. Item #419.

**“Supplemental Distribution”** has the meaning set forth in Section 6.7.

**“Supplemental Distribution Date”** means the date(s) for the making of Supplemental Distributions in accordance with Section 6.7. A Supplemental Distribution Date shall be set by the Estate Representative after obtaining approval of the Oversight Committee.

**“Unclaimed Property”** means any distribution of Cash or any other property made to the holder of an Allowed Claim pursuant to this Plan that (a) is returned to the Estate Representative as undeliverable and no appropriate forwarding address is received within the later of (i) 90 days after the Effective Date and (ii) 90 days after such distribution is made to such holder or (b) in the case of a distribution made in the form of a check, is not negotiated within 90 days and no request for reissuance is made. Unclaimed Property shall become Creditor Funds for distribution to holders of Allowed General Unsecured Claims in accordance with the terms of this Plan.

**“Unimpaired”** means any Claim that is not Impaired.

**“United States Trustee”** means the United States Trustee appointed under section 581(a)(3) of title 28 of the United States Code to serve in the Southern District of New York.

**“Wind-Down Reserve”** means a reserve to be established by the Estate Representative at the direction of the Oversight Committee in an amount reasonably believed to be sufficient to fund the costs of administration of the Estate after the Effective Date to the extent they exceed the Professionals Fund.

## **1.2 Rules of Interpretation.**

All references herein to “Plan” shall be construed, where applicable, to include references to this document and all its exhibits, appendices, schedules and annexes, if any (and any amendments thereto made in accordance with the Bankruptcy Code and the Bankruptcy Rules). Whenever from the context it appears appropriate, pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan as a whole and not to any particular paragraph, subparagraph, or clause contained in this Plan. The words “includes” and “including” are not limiting and mean that the things specifically identified are set forth for purposes of illustration, clarity or specificity and do not in any respect qualify, characterize or limit the generality of the class within which such things are included. The captions, headings, and table of contents in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Any term used in this Plan that is not

defined in this Plan, either in Article I hereof or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in (and shall be construed in accordance with the rules of construction under) the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the case of a conflict or ambiguity). Without limiting the preceding sentence, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to this Plan, unless superseded herein. In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply. Unless the context indicates otherwise, all references to "Article" shall refer to the Articles under this Plan. To the extent that the Disclosure Statement is inconsistent with any provisions contained in this Plan, the provisions in this Plan shall control.

**1.3 Exhibits** All Exhibits to this Plan are incorporated into and are a part of this Plan as if set forth in full herein, regardless of when Filed.

## **II. TREATMENT OF UNCLASSIFIED, UNIMPAIRED CLAIMS**

### **2.1 Administrative Claims**

Subject to the allowance procedures and deadlines provided herein, on the Effective Date or as soon thereafter as is practicable, the holder of an Allowed Administrative Claim shall receive from the Administrative Claims Fund on account of such Allowed Administrative Claim and in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of such Allowed Administrative Claim or (b) such other treatment as to which the Debtor (pre-Effective Date) or the Estate Representative (post-Effective Date) and the holder of such Allowed Administrative Claim have agreed upon in writing.

### **2.2 Statutory Fees**

Notwithstanding any other provision of this Plan to the contrary, GLC shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), within ten days after the Case Closing Date and simultaneously provide to the United States Trustee an appropriate affidavit indicating the cash disbursements for the period ending on the Case Closing Date.

### **2.3 Professional Claim**

No later than the date that is 45 days after the Effective Date, each Professional shall File with the Bankruptcy Court its final fee application seeking final approval of all fees and expenses from the Petition Date through the Effective Date, subject to the limitations set forth below. The holder of an Allowed Professional Claim shall receive on account of such Allowed Professional Claim and in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Professional Claim, (a) Cash equal to the unpaid portion of such Allowed Professional Claim or (b) such other treatment as to which the Debtor (pre-Effective Date) or the Estate Representative (post-Effective Date) and the holder of such Allowed Professional Claim have agreed upon in writing.

Subject to Section 5.12, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after the Effective Date will terminate.

#### **2.4 Priority Claims**

Each holder of an Allowed Priority Claim against the Debtor shall receive from the Administrative Claims Fund the amount of such holder's Allowed Priority Claim with interest, but excluding any associated fees, costs or charges, accruing after the Effective Date in full on the Initial Distribution Date. The Debtor does not believe any such claims exist because all Scheduled Claims entitled to priority status were fully paid by the Debtor in accordance with a Final Order and no Priority Claims have been timely filed on or before the applicable Bar Date.

#### **2.5 Deadline for Filing Administrative Claims**

Pursuant to the Disclosure Statement Order, the Administrative Claims, other than Claims of Professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code, must have been Filed no later than the Administrative Claims Bar Date. Objections to any such Administrative Claims must be Filed and served on the claimant on or before the first Business Day that is 45 days after the Effective Date or such other extended date granted by the Bankruptcy Court upon request by the Debtor or the Estate Representative or otherwise agreed to by the relevant claimant. The Debtor (pre-Effective Date) or the Estate Representative (post-Effective Date) shall use reasonable efforts to promptly and diligently pursue resolution of any and all disputed Administrative Claims.

In accordance with the Disclosure Statement Order, holders of Administrative Claims that are required to File a request for payment of such Claims and that do not File such requests on or before the Administrative Claims Bar Date, shall be forever barred from asserting such Claims against the Debtor, GLC, its Estate, the Estate Representative, any other Person, or any of their respective Assets.

### **III. CLASSIFICATION AND TREATMENT OF CLAIMS**

#### **3.1 Classification and Treatment**

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of the classes of Claims and Interests in the Debtor. A Claim or Interest is placed in a particular Class only to the extent such Claim or Interest is an Allowed Claim or Interest in that Class and such Claim or Interest has not been paid, released, or otherwise settled or paid prior to the Effective Date. Any claims not set forth in Article III are unclassified, and therefore, are not included in the classes below.

	<b>Class</b>	<b>Status</b>	<b>Voting Rights</b>
Class 1	GLC Claims	Impaired	Entitled to Vote



Class 2	General Unsecured Claims	Impaired	Entitled to Vote
Class 3	Indemnity Claims	Unimpaired	Not Entitled to Vote - Deemed to Accept
Class 4	Interests	Impaired	Not Entitled to Vote - Deemed to Reject

**3.2 Class 1—GLC Claims**

(a) *Classification:* Class 1 consists of the Allowed GLC Claims.

(b) *Treatment:* After giving effect to the 363 Sale, the holders of Allowed GLC Claims shall receive 70% of the Net Preference Proceeds in accordance with the Preference Standing Stipulation and the Exit Term Sheet in full and final settlement and satisfaction of the Allowed GLC Claims and no other payment or reserve shall be made on account of such Allowed GLC Claims.

(c) *Voting:* Class 1 is Impaired. The holders of Class 1 Claims are entitled to vote to accept or reject this Plan.

**3.3 Class 2—General Unsecured Claims**

(a) *Classification:* Class 2 consists the Allowed General Unsecured Claims.

(b) *Treatment:* Each holder of a Class 2 Claim shall be paid its *pro rata* share of (i) the Creditor Funds and (ii) the Net Estate Preference Proceeds, after payment of all costs of post-confirmation administration that exceed the Professionals Fund.

(c) *Voting:* Class 2 is Impaired. The holders of Class 2 Claims are entitled to vote to accept or reject this Plan.

**3.4 Class 3—Indemnity Claims**

(a) *Classification:* Class 3 consists of all Indemnity Claims.

(b) *Treatment:* The Indemnity Claims shall receive the benefit of the Releases in full and final settlement and satisfaction of the Indemnity Claims and, provided the Releases are approved as part of this Plan, no other payment or reserve shall be made on account of such Indemnity Claims.

(iii) *Voting:* Class 3 is Unimpaired. The holders of Class 3 Claims are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote on this Plan.

**3.5 Class 4—Interests**

(a) *Classification:* Class 4 consists of all Interests.

(b) *Treatment*: Class 4 Claims are Impaired. Through the Plan, all Interests shall be cancelled and extinguished and holders of Class 4 Claims shall receive no distributions.

(c) *Voting*: Class 4 is Impaired. Because the holders of Class 4 Interests will receive no distribution under this Plan, they are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Consequently, holders of Class 4 Claims may not vote on this Plan.

#### **IV. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

##### **4.1 Approval of Rejection; Rejection Damages Claims Bar Date**

Upon the occurrence of the Effective Date, the Confirmation Order shall constitute an Order of the Bankruptcy Court approving rejections of all executory contracts and unexpired leases not previously assumed or rejected pursuant to section 365 of the Bankruptcy Code as of the Effective Date. Any Claim for damages arising from any such rejection must be Filed within 30 days after the Debtor's mailing of Notice of the entry of the Confirmation Order or such Claim shall be forever barred, shall not be enforceable against the Debtor, its Estate, the Estate Representative, or any of their respective properties and shall receive no distribution under this Plan or otherwise on account of such Claim. GLC shall not have any liability for claims arising from rejection of any executory contracts.

##### **4.2 No Effect on Insurance**

The rejection of executory contracts shall not apply to, and shall have no effect upon, any insurance policy which the Debtor owns or pursuant to which the Debtor is an insured party or beneficiary.

#### **V. MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

##### **5.1 Implementation of the Plan**

The Plan will be implemented by the Debtor and the Estate Representative in a manner consistent with the terms and conditions set forth in the Plan and the Confirmation Order.

##### **5.2 Vesting of Assets**

Other than the Estate Funds, all Assets will be transferred to GLC pursuant the 363 Sale free and clear of all Claims, liens, encumbrances, charges, and other rights and interests of claimants arising on or before the Effective Date, including, without limitation, any and all amounts paid to the Debtor by Universal Service Administrative Company (whether received prior to, or after, confirmation of the Plan). Pursuant to Bankruptcy Code § 1141(b), the Estate Funds will vest in the Estate free and clear of all Claims, liens, encumbrances, charges, and other rights and interests of claimants arising on or before the Effective Date, but subject to the terms and conditions of the Plan and the Confirmation Order. The Debtor shall deliver to the Estate Representative the Distribution Schedules on the Effective Date and shall provide to the Estate Representative any records or other information necessary or required to prosecute the

Preference Actions. The Distribution Schedules shall consist of all Allowed General Unsecured Claims as of the Effective Date, shall be updated to include all Allowed Claims for rejection damages filed in accordance with Section 4.1 of this Plan, and shall include (a) the name and address of all Claimants as they are listed on any proof of Claim Filed, or, where no proof of Claim was Filed, as listed on the Schedules, and (b) the respective amount of the Allowed General Unsecured Claims. In addition, the Debtor shall deliver to the Estate Representative on the Effective Date the Administrative Claims Schedule and shall provide to the Estate Representative any records or other information necessary or required to pursue and/or resolve any objection to an Administrative Claim. The Debtor will (i) retain all books, records, and files of the Debtor and the Estate, other than books, records and/or files transferred to GLC in connection with the 363 Sale, provided that GLC shall make such books and records available to the Estate Representative during normal business hours and upon reasonable request to the extent such books and records are necessary or required to pursue the Preference Actions or object to and/or resolve any filed Administrative Claims, and (ii) provide for the retention and storage of such books, records, and files until such time as the Debtor, through its counsel, and the Estate Representative determine, in their best business judgment, that retention of same is no longer necessary or required.

### **5.3 Appointment of Estate Representative**

On the Effective Date, the Estate Representative shall be deemed “the representative of the Estate” as contemplated by § 1123(b)(3)(B) of the Bankruptcy Code, and shall have those powers and duties set forth in §§ 323, 704(1), 704(2), 704(5), 704(9), 1106(a)(6) and 1106(a)(7) of the Bankruptcy Code. The Estate Representative shall not be required to give any bond or surety or other security for the performance of its duties hereunder unless otherwise ordered by the Bankruptcy Court or required by the Bankruptcy Code or the Bankruptcy Rules.

The Oversight Committee, in its sole and absolute discretion, may terminate the Estate Representative at any time and appoint a new Estate Representative. Any subsequently appointed Estate Representative shall have all of the rights, powers, duties and authority of the Estate Representative as set forth in this Plan. The Estate Representative shall perform the duties set forth in this Plan through the earlier of the Final Distribution Date and the date the Estate Representative resigns, is unable to serve, or is terminated.

### **5.4 Covenants of the Estate Representative**

During the term of the Plan, the Estate Representative shall, unless otherwise waived in writing by the Oversight Committee, make periodic reports to the Oversight Committee, as requested by the Oversight Committee. The Estate Representative shall act under the control of the Oversight Committee. The Estate Representative shall follow written instructions received from the Oversight Committee, provided, however, that the Estate Representative and the Oversight Committee may waive the requirement that instructions be in writing.

### **5.5 Estate Representative's Powers**

Subject to the control of the Oversight Committee and the other provisions of the Plan, including the other provisions of Article V, the Estate Representative shall have, without further notice or Bankruptcy Court approval, full and complete authority to:

- a. receive, manage, liquidate, administer, invest, supervise, and protect the Estate Funds;
- b. retain and compensate on reasonable terms, without further order of the Bankruptcy Court, the services of Professionals and consultants to advise and assist in the administration and distribution of the Estate Funds;
- c. establish the Professional Fund and the Wind-Down Reserve and calculate and implement Distributions;
- d. prosecute, compromise, and settle the Preference Actions and Administrative Claims; and
- e. take such other actions, as may be necessary and proper to consummate the Plan in its role as a fiduciary.

### **5.6 Estate Representative Compensation**

The Estate Representative shall be paid at a reasonable rate to be agreed by the Estate Representative and the Oversight Committee first out of the Professional Fund, then, if necessary, from the Wind-Down Reserve and/or the Net Estate Preference Proceeds.

### **5.7 Maintenance of Records**

The Estate Representative shall keep or cause to be kept, books containing a description of all property from time to time constituting the Estate Funds, accounting of all receipts and disbursements.

### **5.8 Estate Representative Expenses**

All costs, expenses and obligations incurred by the Estate Representative, the Oversight Committee and/or their Professionals in administering the Estate or in any manner connected, incidental or related thereto shall be a charge first against the Professional Funds, then the Wind-Down Reserve and/or the Net Estate Preference Proceeds.

### **5.9 The Oversight Committee**

The Oversight Committee shall exist as of the Effective Date. The Oversight Committee will have the rights, powers and authority identified in this Plan, including without limitation the authority to control the Estate Representative. Neither the Oversight Committee nor any of its members shall be liable for any act the Oversight Committee or any of its members may do or omit to do hereunder or acting in good faith in the exercise of its best judgment, and the fact that

such act or omission was advised, directed or approved by an attorney acting as attorney for the Estate Representative or the Oversight Committee shall be conclusive evidence of such good faith and best judgment, nor shall the Oversight Committee or any of its members be liable in any event except for its own gross negligence or willful default or misconduct.

#### **5.10 Limitation on Estate Representative's Liability**

The Estate Representative shall not be liable for any act it may do or omit to do as Estate Representative hereunder or acting in good faith in the exercise of its best judgment, and the fact that such act or omission was advised, directed or approved by the Oversight Committee or advised by an attorney acting as attorney for the Estate Representative or the Oversight Committee shall be conclusive evidence of such good faith and best judgment, nor shall the Estate Representative be liable in any event except for its own gross negligence or willful default or misconduct.

#### **5.11 Replacing the Estate Representative**

In the event of the death, resignation, or dismissal of the Estate Representative, a successor Estate Representative shall be appointed by the Oversight Committee. The Estate Representative may resign at any time by giving written notice addressed to counsel for the Oversight Committee of the Estate Representative's intention to do so and giving at least 30 days' notice before the proposed effective date of resignation. The Estate Representative shall continue to serve as Estate Representative after the delivery of its resignation until the proposed effective date unless the Oversight Committee identifies an earlier effective date.

#### **5.12 Post-Effective Date Professional Fees and Expenses**

Subject to the limitations set forth in this Plan, counsel to the Debtor, counsel to the Committee and other Professionals who may have been retained in the Chapter 11 Case may, from time to time, following the Effective Date, provide reasonable and necessary legal or other professional services to the Estate Representative and/or the Oversight Committee in connection with the Chapter 11 Case. Such services may be paid reasonable compensation from the Professionals Fund without the need for approval by the Bankruptcy Court after approval by the Oversight Committee.

Counsel to the Debtor shall continue to serve in such role after the Effective Date for the sole purpose of reviewing, commenting, and objecting, if necessary, to the Professional Fee Applications and to provide to the Estate Representative any of the Debtor's records or other information necessary or required to prosecute the Preference Actions or object to Administrative Claims. The Estate Representative shall pay for such services from the Professionals Fund without the need for approval by the Bankruptcy Court, provided, however, that if there is a dispute concerning such payment, counsel to the Debtor may seek approval for such payment from the Bankruptcy Court. The Committee shall continue to exist post-confirmation for the sole purpose of reviewing, commenting, and objecting, if necessary, to Professional Fee Applications. Once all Professional Fee Applications have been resolved by Final Order, the Committee shall automatically and immediately dissolve.

To the extent the Professionals Fund is exhausted through the payment of reasonable fees and expenses by the Estate Representative prior to the making of the Final Distribution, GLC shall be obligated to remit additional funds to the Estate Representative in increments of \$25,000 for credit to the Professionals Fund, provided that GLC's obligation to fund Professional Fees shall not exceed \$100,000 in the aggregate (including the initial \$50,000 balance of the Professionals Fund).

### **5.13 Cancellation of Instruments, Securities and Other Documentation**

Except to the extent otherwise provided under this Plan or the Confirmation Order, upon the Effective Date, all Pre-Petition agreements (other than assumed contracts and third party guaranties and indemnities of the Debtor's obligations), credit agreements, Pre-Petition loan documents and Post-Petition loan documents to which the Debtor is a party, and all lien claims and other evidence of liens against the Debtor, shall be deemed to be cancelled and of no further force and effect, without any further action on the part of the Debtor or the Estate Representative. The holders of or parties to such cancelled instruments, agreements, securities and other documentation will have no remaining rights arising from or relating to such documents or the cancellation thereof, except the rights provided pursuant to this Plan and the Confirmation Order and any rights that, by the terms of the applicable agreement, survive the termination of such agreement.

### **5.14 Litigation**

All of the Preference Actions shall be preserved and the Estate Representative shall succeed to the interests of the Committee as Plaintiff in each of the Preference Actions. The Debtor and Committee are not aware of any other Avoidance Action and no other Avoidance Actions besides the Preference Actions shall be preserved by this Plan. Neither the Estate Representative nor the Oversight Committee shall have any liability arising out of their good faith determination of whether or not to pursue prosecution of and/or settle the Preference Actions.

### **5.15 Objections to Claims**

All proofs of Claim Filed after the applicable Bar Date are disallowed in their entirety except to the extent they amend or modify a timely Filed Proof of Claim. Except as otherwise provided herein, as of the Effective Date, all Persons will be enjoined from objecting to the allowance of Claims other than (a) any objections to Claims asserted pursuant to section 502(d) and any objections to Claims Filed under 502(h), in each case in connection with the Preference Actions, (b) any objection to the allowance of any Claim Filed in connection with the rejection of a contract under the Plan, and (c) any objections to Claims Filed after the applicable Bar Date for which a motion is made by the Claimants seeking to Allow the Claim notwithstanding its untimeliness.

### **5.16 Post-Confirmation Funding of Plan**

The Distribution to General Unsecured Creditors and GLC under this Plan shall be funded, in accordance with the Plan's terms, by the Estate Funds other than the Administrative

Claims Fund. The Distribution to holders of Allowed Administrative Claims under this Plan shall be funded by the Administrative Claims Fund.

#### **5.17** Dissolution of the Debtor

Upon the Effective Date, the Debtor will be dissolved without the necessity for any other or further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith. However, the Debtor shall file with the official public office for keeping corporate records in its state of incorporation or organization a certificate of dissolution or equivalent document and with the appropriate regulatory authority(ies) any and all such documents necessary to note its dissolution. Such documents and/or certificates of dissolution may be executed by the Estate Representative without need for any action by the Debtor. From and after the Effective Date, the Debtor (a) for all purposes shall be deemed to have withdrawn its business operations from any state in which the Debtor was previously conducting, or is registered or licensed to conduct, its business operations, and shall not be required to file any document, pay any sum or take any other action, in order to effectuate such withdrawal and (b) shall be deemed to have been cancelled pursuant to this Plan all Interests and all Claims. The Debtor shall file any and all appropriate final tax returns and pay any taxes or other fees or costs in connection therewith.

#### **5.18** Validity of Corporate Actions

Entry of the Confirmation Order by the Bankruptcy Court shall constitute due authorization (a) required for the full validity, enforceability and effectiveness of the Plan and all transactions provided for in the Plan, notwithstanding any provisions of law which would otherwise require the approval of such transactions by the board of directors, shareholders or other constituents of the Debtor, and (b) for the Debtor's officers and directors to take any and all actions and execute, deliver and file all agreements, certificates, notices and other documents necessary or appropriate to consummate the transactions provided for in this Plan.

#### **5.19** Closing of the Chapter 11 Case

On the later of (a) one (1) business day after the deadline for filing rejection damages claims under Section 4.1 of this Plan, and (b) the making of the Initial Distribution, the Debtor will procure a final decree and the Chapter 11 Case shall be closed in accordance with section 350 of the Bankruptcy Code.

### **VI. DISTRIBUTIONS**

#### **6.1** Distributions by the Estate Representative

Subject to Article V, Distributions on account of the Allowed GLC Claims and the Allowed General Unsecured Claims under this Plan shall be made by the Estate Representative. Distributions on account of all other Allowed Claims under this Plan shall be made by the Debtor on the Effective Date or the Estate Representative after the Effective Date.

## **6.2 Delivery of Distributions in General**

Distributions by the Debtor to holders of Allowed Claims other than Allowed General Unsecured Claims shall be made: (a) at the addresses set forth in the proofs of Claim filed by such holders; (b) at the addresses set forth in any written notices of address change delivered to the Debtor after the date on which any related proof of Claim was filed, or after the date hereof if no proof of Claim was filed; or (c) at the addresses reflected in the Schedules relating to the applicable Allowed Claim if no proof of Claim has been filed and the Debtor or the Estate Representative has not received a written notice of a change of address. Distributions made by the Estate Representative to holders of Allowed Administrative Claims, any Allowed Priority Claims and/or Allowed General Unsecured Claims shall be made at the addresses set forth on the Administrative Claims Schedule or the Distribution Schedule, as the case may be, or at the addresses set forth in any written notices of address change delivered to the Estate Representative after the Effective Date. The Estate Representative and all Professionals shall have the absolute right to rely upon the Distribution Schedule and the Administrative Claims Schedule, and shall bear no liability for any errors in such records, or Distributions made on account of such records. As of the close of business on the Confirmation Date, the claims register shall be closed, and there shall be no further changes in the record holders of any Claims. Neither the Debtor, GLC nor the Estate Representative, as applicable, shall have any obligation to recognize any transfer of any Claims occurring after the close of business on the Confirmation Date, and shall instead be entitled to recognize and deal for all purposes under the Plan with only those holders of record as of the close of business on the Confirmation Date.

## **6.3 Cash Payments**

Cash payments to be made pursuant to this Plan shall be made by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Debtor, GLC or the Estate Representative, as the case may be.

## **6.4 No De Minimis Distributions**

Other than in the Final Distribution, no payment of Cash in an amount of less than \$50 shall be made on account of any Allowed Claim. Such undistributed amount will instead be made part of the Estate Funds for use in accordance with this Plan. No Final Distribution of less than \$30 will be made to any holder of an Allowed Claim. Any Allowed Claim the Distribution on account of which will not meet these thresholds, will be deemed expunged.

## **6.5 Unclaimed Property/Failure to Negotiate Checks**

Unclaimed Distributions, including Distributions made by checks which fail to be negotiated, shall be held for the beneficial holders of respective Allowed Claims entitled thereto for a period of 90 days after the respective Distribution Date. Any Distribution remaining unclaimed or un-negotiated 90 days after the applicable Distribution Date shall be canceled (by a stop payment order or otherwise), the Claim(s) relating to such Distributions(s) shall be deemed forfeited and expunged and the holder of such Claim shall be removed from the Distribution Schedule, shall receive no further Distributions under this Plan and will be forever barred from asserting the Claim against the Debtor, GLC or the Estate Representative. Nothing contained in



this Plan shall require the Debtor, GLC or the Estate Representative to attempt to locate any holder of an Allowed Claim other than by reviewing the proofs of Claim and records of the Debtor.

#### **6.6 Initial Distribution**

As soon as practicable after receipt of the final Distribution Schedules, the Estate Representative shall establish the *Wind-Down Reserve* with the Oversight Committee and make the Initial Distribution to the holders of Allowed General Unsecured Claims pursuant to this Plan.

#### **6.7 Supplemental Distributions**

If the Estate Representative, with the approval of the Oversight Committee, determines that sufficient Net Preference Proceeds have been recovered to justify a further distribution to the holders of Allowed GLC Claims and Allowed General Unsecured Claims, the Estate Representative shall make such additional distributions as soon as reasonably practicable (each, a “**Supplemental Distribution**”).

#### **6.8 Final Distributions**

The Estate Representative shall, on the Final Distribution Date, distribute all Estate Funds, including any funds remaining in the Wind-Down Reserve, to the holders of Allowed General Unsecured Claims and GLC in accordance with this Plan (the “**Final Distribution**”). In addition, the Estate Representative shall distribute to GLC any funds remaining in the Professionals Fund after payment of all costs of administration of the Estate and/or in the Administrative Claims Fund after payment of all Administrative Claims.

#### **6.9 Full and Final Satisfaction**

All payments and all Distributions under the Plan shall be in full and final satisfaction, release and settlement of the Debtor’s obligations with respect to all Claims, except as otherwise provided in the Plan.

#### **6.10 Compliance with Tax Requirements**

The Estate Representative shall be entitled, but shall have no obligation, to deduct any federal, state or local withholding taxes from any Distribution made as reasonably appropriate. All Persons holding Allowed Claims shall be required to provide any information reasonably requested to effect the withholding of such taxes, including, without limitation, delivering to the Estate Representative a properly executed Form W-9 or equivalent, and the Estate Representative may withhold any Distribution absent the provision of such information or further Order of the Court. The Estate Representative shall provide three notices to each claimant of its obligation to submit an IRS Form W-9 or equivalent to the Estate Representative. If the Claimant does not provide a Form W-9 or equivalent to the Estate Representative within 60 days after the third notice is sent to the Claimant, then such Claimant’s Claim(s) shall be deemed forfeited and expunged and the holder of such Claim(s) shall be removed from the Distribution Schedule and shall receive no further Distributions under this Plan.

## **VII. RELEASE OF LIENS**

### **7.1 Release of Liens**

Except as otherwise provided in this Plan or other agreement or document created in connection with this Plan, all liens, encumbrances and other security interests against Assets of the Estate shall be deemed fully and completely released and discharged and all of the Assets of the Estate shall be deemed free and clear of any such liens, claims and encumbrances on and after the Effective Date.

## **VIII. EFFECT OF CONFIRMATION**

### **8.1 Jurisdiction of Bankruptcy Court**

Until the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Debtor, its Assets and its Estate. Thereafter, jurisdiction of the Bankruptcy Court over the Debtor, its Assets and its Estate shall be limited to the subject matters set forth in Article XI.

### **8.2 Binding Effect**

Except as otherwise provided in section 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of this Plan shall bind any holder of a Claim against or Interest in the Debtor and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under this Plan and whether or not such holder has accepted this Plan.

### **8.3 Stay**

Unless otherwise provided herein, all injunctions or stays provided for in the Chapter 11 Case pursuant to section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Final Distribution Date.

### **8.4 Exculpation**

To the fullest extent permissible under the Bankruptcy Code, the Debtor, the Committee and its members (solely with respect to each member's conduct in furtherance of its, his, or her duties as a member of the Committee, and not with respect to the actions of such members as individual creditors), GLC, the Estate Representative, the Oversight Committee and its members, (collectively, the "**Exculpated Parties**") and each of the Exculpated Parties' representatives, advisors, attorneys, financial advisors, investment bankers or agents, shall neither have nor incur, and are hereby released from, any Claim, obligation, cause of action or liability of any kind or nature to one another or to any holder of a Claim or an Interest, or any other party in interest, or any of its members, representatives, advisors, attorneys, financial advisors, investment bankers, agents, or affiliates, or any of its successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, GLC's provision of debtor-in-possession financing, the pursuit of Confirmation of the Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under the Plan, except for claims which arise or relate to actions or omissions determined in a Final Order to have constituted

willful misconduct or gross negligence at any time. In all respects the Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

#### **8.5 Indemnification**

The Estate Representative shall be indemnified and receive reimbursement against and from all loss, liability, expense (including counsel fees) or damage which the Estate Representative or its Professionals may incur or sustain in the exercise and performance of any of their respective powers and duties under the Plan, to the full extent permitted by law, except if such loss, liability, expense or damage is finally determined by a court of competent jurisdiction to result solely from the Estate Representative's willful misconduct, fraud, intentional misconduct or gross negligence. The amounts necessary for such indemnification and reimbursement shall be paid solely by the Estate Representative out of the Professionals Fund and the Estate Funds. The Estate Representative shall not be personally liable for this indemnification obligation or the payment of any expense of administering the Plan or any other liability incurred in connection with the Plan, and no person shall look to the Estate Representative personally for the payment of any such expense or liability. This indemnification shall survive the death, resignation or removal, as may be applicable, of the Estate Representative and shall inure to the benefit of the Estate Representative's successors, heirs and assigns, as applicable.

#### **8.6 Releases**

On the Effective Date, for good and valuable consideration, and to the fullest extent permissible under applicable law, each Person that has held, currently holds, or may hold a Released Claim or any Released Third Party Causes of Action, shall be deemed to have and hereby does irrevocably and unconditionally, fully, finally, and forever waive, release, acquit and discharge each and all of the Released Parties, from any and all Released Claims.

The treatment of Claims and Interests under the Plan shall be, and shall be deemed to be, in exchange for and in complete satisfaction and settlement of all Claims and any other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities of any nature whatsoever, and of all Interests, or other rights of a holder of an Interest, against the Debtor or any of its respective assets, property and estate, or interests of any nature whatsoever, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities, or Interests or other rights of an holder of an equity security or other ownership interest. Upon the Effective Date, all rights of any equity security holder in the Debtor and all Interests shall be deemed terminated and cancelled.

Except as provided otherwise in the Plan or Confirmation Order, all entities shall be precluded from asserting against the Debtor, and its assets, property, and estate, any other or further Claims, or any other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities of any nature whatsoever, and of all Interests, or other rights of a holder of an Interest, relating to the Debtor or its Assets, property, and estate, including any interest accrued on such Claims from and after the Petition Date, and regardless of whether any

property will have been distributed or retained pursuant to the Plan on account of such Claims or other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities, or Interests or other rights of a holder of an equity security or other ownership interest. In accordance with the foregoing, except as expressly provided in the Plan or Confirmation Order, the Confirmation Order shall constitute a judicial determination, as of the Effective Date, of the release of all such Claims or other obligations, suits, judgments, damages, debts, rights, remedies, Causes of Action or liabilities, and any Interests, or other rights of a holder of an equity interest in the Debtor, pursuant to sections 523 and 1141 of the Bankruptcy Code, and such release shall void and extinguish any judgment obtained against the Debtor and its assets, property and estate at any time, to the extent such judgment is related to a Claim, debt or liability or terminated right of any holder of any Interest in the Debtor.

Except as otherwise expressly provided in the Plan or Confirmation Order, all Entities who have held, hold, or may hold Claims or any other debt or liability that is discharged or Interests or other right of equity interests that is terminated or cancelled pursuant to the Plan, or who have held, hold, or may hold Claims or other debt or liability that is released pursuant to the Plan, are permanently enjoined, from and after the Effective Date, from (a) commencing or continuing, directly or indirectly, in any manner, any action or other proceeding (including, without limitation, any judicial, arbitral, administrative or other proceeding) of any kind on such Claim or other debt or liability that is released or Interest that is released, terminated, cancelled, assumed or transferred pursuant to the Plan against any of the Released Parties or any of their respective assets, property or estates, (b) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree or order against any of the Released Parties or any of their respective assets, property, or estates on account of any Claim or other debt or liability that is released or Interest that is released, terminated, cancelled, assumed, or transferred pursuant to the Plan, (c) creating, perfecting, or enforcing any encumbrance of any kind against any of the Released Parties or any of their respective assets, property or estates on account of any Claim or other debt or liability that is released or Interest that is released, terminated, cancelled, assumed or transferred pursuant to the Plan, (d) except to the extent provided, permitted or preserved by sections 553, 555, 556, 559, or 560 of the Bankruptcy Code or pursuant to the common law right of recoupment, asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from any of the Released Parties or any of their respective assets, property or estate, with respect to any such Claim or other debt or liability that is released or Interest that is released, terminated, cancelled, assumed, or transferred pursuant to the Plan, and (e) proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan; provided however, that such injunction shall not preclude the United States of America, any state or any of their respective police or regulatory agencies from enforcing their police or regulatory powers; and, provided, further, that, except in connection with a properly Filed proof of Claim, the foregoing proviso does not permit the United States of America, any State or any of their respective police or regulatory agencies from obtaining any monetary recovery, including fines, restitution or forfeiture, from any of the Released Parties, including, without limitation, the Debtor, the Estate or any of their respective assets and property with respect to any such Claim or other debt or liability that is discharged or Interest or other right of equity interest that is released, terminated or cancelled pursuant to the Plan, including, without limitation, any monetary claim or penalty in furtherance of a police or regulatory power. Such injunction shall extend to all successors and assigns of the Released Parties and their respective assets, property, and estates.

Each of the injunction and release provisions provided in this Article is an integral part of the Plan and is essential to its implementation. Each of the Released Parties shall have the right to independently seek the enforcement of the discharge, injunction and release provisions set forth in this Article.

The Debtor, the Debtor's officers and directors, the Committee and its members in such capacity, GLC, GLC's officers and directors, and each of their respective Professionals shall not have or incur any liability to any Person for any act taken or omitted to be taken in connection with the Chapter 11 Case, GLC's provision of debtor-in-possession financing, the formulation, preparation, dissemination, implementation, Confirmation, or approval of the Plan or any compromises or settlements contained therein, the Disclosure Statement, or any contract, instrument, release or other agreement or document provided for in the Plan; provided, however, that nothing in the Plan shall (1) be construed to release or exculpate any entity from fraud, gross negligence, willful misconduct, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts, or (ii) limit the liability of the professionals of the Debtor to its clients pursuant to DR 6-102 of the Code of Professional Responsibility.

#### **8.7 Payments Required by the Stipulation and Order**

Notwithstanding this Article VIII or any other provision of this Plan, nothing herein shall release, discharge, or waive any payments required to be made under the Stipulation and Order.

### **IX. ACCEPTANCE OR REJECTION OF THIS PLAN**

#### **9.1 Persons Entitled to Vote**

Votes from holders of Class 1 and 2 will be solicited. Claims in Class 3 are not Impaired so they are conclusively presumed to have accepted the Plan and will not be entitled to vote on the Plan. Interests in Class 4 are Impaired and are not entitled to distributions pursuant to this Plan. Class 4 Interests will be cancelled pursuant to this Plan and holders of such Interests in Class 4 are deemed pursuant to section 1126(g) of the Bankruptcy Code to have rejected this Plan. Votes from holders of Class 4 Interests will not be solicited.

### **X. CONDITIONS TO THE EFFECTIVE DATE AND CONFIRMATION**

#### **10.1 Conditions to Effective Date**

This Plan shall not become effective and the Effective Date shall not occur unless and until:

(a) The 363 Sale shall have closed;

(b) The Bankruptcy Court shall have entered the Confirmation Order, which becomes a Final Order, authorizing and directing the Debtor to take all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, indentures and other agreements or documents created, amended, supplemented, modified, or adopted in connection with this Plan;

(c) The Bankruptcy Court shall have approved the information contained in the Disclosure Statement as adequate pursuant to section 1125 of the Bankruptcy Code; and

(d) No stay of the Confirmation Order shall be in effect at the time the other conditions set forth in this Section 10.1 are satisfied, or, if permitted, waived.

For the avoidance of doubt, the Plan Proponents may waive conditions (b) – (d), but may not waive condition (a) without the written consent of GLC.

## **10.2 Notice of Effective Date**

On the Effective Date, or as soon thereafter as is practicable, the Debtor shall file with the Bankruptcy Court and serve on all creditors a “Notice of Effective Date,” which notice shall constitute appropriate and adequate notice that this Plan has become effective.

# **XI. RETENTION OF JURISDICTION**

## **11.1 Exclusive Jurisdiction of Bankruptcy Court**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain after the Effective Date exclusive jurisdiction of all matters arising out of, arising in or related to, the Chapter 11 Case to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest (whether filed before or after the Effective Date and whether or not contingent, disputed or unliquidated), including the compromise, settlement and resolution of any request for payment of any Administrative Claim or Priority Claim, the resolution of any objections to the allowance or priority of Claims or Interests and the resolution of any dispute as to the treatment necessary to reinstate a Claim pursuant to this Plan, and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any objection to such Claim or Interest (to the extent permitted under applicable law);

(b) grant or deny any Professional Fee Applications;

(c) hear and determine the Preference Actions;

(d) determine and resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising there from;

(e) ensure that all payments due under this Plan and performance of the provisions of this Plan are accomplished as provided herein, and resolve any issues relating to distributions to holders of Allowed Claims pursuant to the provisions of this Plan;

(f) determine and resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, implementation or enforcement of this Plan (and all Exhibits to this Plan) or the Confirmation Order, including the indemnification and injunction provisions set forth in and contemplated by this Plan or the Confirmation Order, or any Person's rights arising under or obligations incurred in connection therewith;

(g) modify this Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code and Section 12.4, or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission, or reconcile any inconsistency in any Court order, this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate this Plan, to the extent authorized by the Bankruptcy Code, this Plan;

(h) issue injunctions, enter, implement and enforce orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of this Plan, or the Confirmation Order;

(i) adjudicate any settlements pursuant to Bankruptcy Rule 9019, if required under this Plan and the Confirmation Order and all other matters contained herein;

(j) enter any orders necessary to effectuate the Confirmation.

## **11.2 Failure of Bankruptcy Court to Exercise Jurisdiction**

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Debtor's Estate, including with respect to the matters set forth in Section 11.1, this Article XI shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

## **XII. MISCELLANEOUS PROVISIONS**

### **12.1 Binding Effect of Plan**

The provisions of this Plan and Confirmation Order shall be binding upon and inure to the benefit of the Debtor, the Estate, the Released Parties, any holder of any Claim or Interest, including without limitation Released Claims and Released Third Party Causes of Action, treated herein or any Person named or referred to in this Plan, and each of their respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors, and, as to the binding effect, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by this Plan and Confirmation Order.

### **12.2 Withdrawal of this Plan**

The Proponents reserve the right, at any time prior to the substantial consummation (as that term is defined in section 1101(2) of the Bankruptcy Code) of this Plan, to revoke or

withdraw this Plan. If this Plan is revoked or withdrawn or if the Confirmation Date does not occur, this Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims or interests by or against the Proponents or any other Person, constitute an admission of any fact or legal conclusion by the Debtor or any other Person or to prejudice in any manner the rights of the Debtor, the Committee, or any Person in any further proceedings involving the Debtor or the Committee.

### **12.3 Final Order**

Except as otherwise expressly provided in this Plan, any requirement in this Plan for a Final Order may be waived by the Debtor and Committee or, after the Effective Date, the Estate Representative and Oversight Committee upon written notice to the Bankruptcy Court. No such waiver shall prejudice the right of any party in interest to seek a stay pending appeal of any order that is not a Final Order.

### **12.4 Modification of this Plan**

The Proponents may alter, amend, or modify this Plan under section 1127 of the Bankruptcy Code or as otherwise permitted at any time before the Confirmation Date, provided however that any alteration, amendment or modification that adversely affects the treatment or rights of GLC or the Class 2 General Unsecured Claims hereunder and shall be subject to the Committee's and GLC's written consent. After the Confirmation Date and before the substantial consummation of this Plan, and in accordance with the provisions of section 1127(b) of the Bankruptcy Code and the Bankruptcy Rules, the Proponents and any party in interest may, so long as the treatment of holders of Claims under this Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement, or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of this Plan. However, prior notice of such proceedings shall be served in accordance with Bankruptcy Rule 2002.

### **12.5 Severability of Plan Provisions**

If prior to Confirmation any term or provision of this Plan that does not govern on appeal the treatment of Claims or Interests or the terms 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 this Plan shall remain in full force and effect and shall 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 this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.



## 12.6 Governing Law

EXCEPT TO THE EXTENT THAT THE BANKRUPTCY CODE OR BANKRUPTCY RULES OR OTHER FEDERAL LAWS ARE APPLICABLE, AND SUBJECT TO THE PROVISIONS OF ANY OTHER AGREEMENT OR DOCUMENT ENTERED INTO IN CONNECTION WITH THIS PLAN THE CONSTRUCTION, IMPLEMENTATION AND ENFORCEMENT OF THIS PLAN AND ALL RIGHTS AND OBLIGATIONS ARISING UNDER THIS PLAN SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES WHICH WOULD APPLY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK OR THE UNITED STATES OF AMERICA.

## 12.7 Notices

Any notice required or permitted to be provided under this Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

To the Debtor:	Thomas A. Pitta, Esq. Emmet, Marvin & Martin, LLP 120 Broadway, 32 <sup>nd</sup> Floor New York, NY 10271
To the Committee or the Estate Representative:	Alan S. Halperin, Esq. Debra Cohen, Esq. Halperin Battaglia Raicht, LLP 40 Wall Street 37th Floor New York, NY 10005
To GLC:	Robert J. Stark Jeremy B. Coffey Brown Rudnick LLP 7 Times Square New York, NY 10036
To the United States Trustee:	Richard Morrissey, Esq. Office of the United States Trustee U.S. Federal Office Building 201 Varick Street, Suite 1006 New York, NY 10014

## 12.8 Filing of Additional Documents

On or before substantial consummation of this Plan, the Proponents shall issue, execute,

deliver, and file with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of this Plan, including by making such supplemental disclosures or notices as the Proponents deems useful.

#### **12.9 No Attorneys' Fees**

No attorneys' fees will be paid by the Debtor, GLC or the Estate Representative with respect to any Claim or Interest, except as expressly specified herein or allowed by a Final Order of the Bankruptcy Court.

#### **12.10 Successors and Assigns**

The rights, benefits and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.

#### **12.11 Exemption from Certain Transfer Taxes**

Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of any security or the making or delivery of any instrument of transfer under this Plan may not be taxed under any law imposing a stamp tax, use tax, sales tax or similar tax. Any sale of any Asset occurring before, after or upon the Effective Date shall be deemed to be in furtherance of this Plan.

#### **12.12 Preservation of Rights of Setoff**

The Estate Representative, with the approval of the Oversight Committee, may, but shall not be required to, set off against any Claim, and the payments or other distributions to be made pursuant to this Plan in respect of such Claim, claims of any nature whatsoever that the Debtor or its Estate may have against the holder of such Claims (including claims relating to the Preference Actions); but neither the failure to do so nor the Allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Estate or the Estate Representative of any such claim that they may have against such holder.

#### **12.13 Defenses with Respect to Unimpaired Claims**

Except as otherwise provided in this Plan, nothing shall affect the rights and legal and equitable defenses of the Estate Representative or the Debtor with respect to any Unimpaired Claim, including all rights in respect of legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

#### **12.14 No Injunctive Relief**

No Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable, or other prospective relief.

### **12.15 No Admissions**

Notwithstanding anything herein to the contrary, nothing contained in this Plan shall be deemed an admission by the Proponents with respect to any matter set forth herein, including, without limitation, liability on any Claim or Interest or the propriety of any classification of any Claim or Interest.

### **12.16 Satisfaction of Claims and Interests**

Upon confirmation of this Plan, the Debtor and the Estate shall be conclusively determined to have no liability to the holder of any Claim or Interest that is not Allowed, and only to the extent provided for in the Plan with respect to the holder of any Allowed Claim or Interest. This provision shall not be construed as a release of any Claims any creditor may have against a third party on account of its Claim.

### **12.17 Authorizations**

The Debtor and the Estate Representative are authorized, empowered and directed to execute such documents and take any and all other action as may be necessary or required in order to effectuate the terms of this Plan.

### **12.18 Transaction on Business Days**

If the Effective Date or any other date on which a transaction or Distribution may occur hereunder shall fall on a day that is not a Business Day, the transaction or Distribution shall instead take place on the next Business Day.

### **12.19 Headings**

The headings of the Articles, paragraphs and sections of this Plan are inserted for convenience only and shall not affect the interpretation hereof. This Plan, including any exhibits and other attachments hereto, shall constitute the entire Plan, subject to amendment or modification solely as provided herein. Article I of this Plan is and shall be regarded as an integral, substantive and operative part of the Plan.

### **12.20 Entire Agreement**

This Plan incorporates by reference the Exit Term Sheet and the Final Orders approving the 363 Sale and GLC's provision of debtor-in-possession financing, but otherwise sets forth the entire agreement and undertakings relating to the subject matter hereof and supersedes all prior discussions and documents. The Debtor, the Committee, the Estate Representative and the Oversight Committee shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by the applicable parties in writing.

Submitted by:

**EMMET, MARVIN & MARTIN, LLP**

/s/ Thomas A. Pitta

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