

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

|                      |   |                         |
|----------------------|---|-------------------------|
| -----                | X |                         |
| In re:               | : | Chapter 11              |
|                      | : |                         |
| LENSAR, INC.,        | : | Case No. 16-12808 (MFW) |
|                      | : |                         |
| Debtor. <sup>1</sup> | : |                         |
|                      | : |                         |
| -----                | X |                         |

**DISCLOSURE STATEMENT FOR THE CHAPTER 11  
PLAN OF REORGANIZATION OF LENSAR, INC.**

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<sup>1</sup> The Debtor in this case, along with the last four digits of the Debtor’s federal tax identification number, are: Lensar, Inc. (5724). The Debtor’s corporate headquarters are located at 2800 Discovery Drive, Orlando, Florida 32826.

**VOTING DEADLINE**

**THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 4:00 P.M. (PREVAILING EASTERN TIME) ON MARCH 29, 2017. TO BE COUNTED, THE CLAIMS AND VOTING AGENT MUST ACTUALLY RECEIVE YOUR BALLOT ON OR BEFORE THE VOTING DEADLINE.**

**CONFIRMATION HEARING AND  
DEADLINE TO OBJECT TO THE PLAN**

**THE HEARING TO CONSIDER CONFIRMATION OF THE PLAN HAS BEEN SCHEDULED FOR APRIL 6, 2017 AT 11:30 A.M. (PREVAILING EASTERN TIME). OBJECTIONS TO CONFIRMATION OF THE PLAN MUST BE FILED (I) ON OR BEFORE MARCH 29, 2017 AT 4:00 P.M. (PREVAILING EASTERN TIME), AND (II) IN ACCORDANCE WITH THE DISCLOSURE STATEMENT ORDER.**

**RECOMMENDATION BY DEBTOR**

**THE DEBTOR RECOMMENDS THAT ALL CREDITORS RECEIVING A BALLOT VOTE IN FAVOR OF THE PLAN.**

**DISCLAIMER**

THE DEBTOR IS PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR THE CHAPTER 11 PLAN OF REORGANIZATION OF LENSAR, INC. TO HOLDERS OF CLAIMS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE PLAN. YOU SHOULD NOT RELY UPON OR USE THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR ANY OTHER PURPOSE.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS. THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE AUTHORITY, AND NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT MAY CONTAIN “FORWARD-LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD LOOKING TERMINOLOGY SUCH AS “MAY,” “EXPECT,” “ANTICIPATE,” “ESTIMATE” OR “CONTINUE” OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD-LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD-LOOKING STATEMENTS. THE LIQUIDATION ANALYSIS, FINANCIAL PROJECTIONS AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY, AND THE TIMING AND AMOUNT OF ACTUAL DISTRIBUTIONS TO HOLDERS OF ALLOWED CLAIMS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE.

NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. THE DEBTOR URGES EACH HOLDER OF A CLAIM OR AN EQUITY INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT’S APPROVAL OF THE ADEQUACY OF DISCLOSURE CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT’S APPROVAL OF THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION OR

WAIVER. RATHER, HOLDERS OF CLAIMS AND EQUITY INTERESTS AND OTHER ENTITIES SHOULD CONSTRUE THIS DISCLOSURE STATEMENT AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR LITIGATION CLAIM OR PROJECTED OBJECTION TO A PARTICULAR CLAIM IS, OR IS NOT, IDENTIFIED IN THE DISCLOSURE STATEMENT. THE REORGANIZED DEBTOR MAY SEEK TO INVESTIGATE, FILE AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THE DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS. THE PLAN RESERVES FOR THE REORGANIZED DEBTOR THE RIGHT TO BRING CAUSES OF ACTION (DEFINED IN THE PLAN) AGAINST ANY ENTITY OR PARTY IN INTEREST EXCEPT THOSE SPECIFICALLY RELEASED.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTOR'S CHAPTER 11 CASE AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. THE DEBTOR DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

THE DEBTOR'S MANAGEMENT AND ADVISORS HAVE REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH THE DEBTOR HAS USED ITS REASONABLE BUSINESS JUDGMENT TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION, NO ENTITY HAS AUDITED THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT.

THE DEBTOR IS MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTOR MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTOR HAS NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS AND EQUITY INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET

FORTH HEREIN HAVE NOT CHANGED SINCE THE FILING OF THIS DISCLOSURE STATEMENT. HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN MUST RELY ON THEIR OWN EVALUATION OF THE DEBTOR AND THEIR OWN ANALYSIS OF THE TERMS OF THE PLAN, INCLUDING, WITHOUT LIMITATION, ANY RISK FACTORS CITED HEREIN, IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

THE DEBTOR HAS NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTOR HAS NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTOR OR THE VALUE OF ITS PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM IN A VOTING CLASS SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN.

THE DEBTOR RECOMMENDS AND SUPPORTS CONFIRMATION OF THE PLAN AND URGES ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN.

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I.

**INTRODUCTION**

Lensar Inc., the debtor and debtor in possession in the above-captioned case (the “**Debtor**”), filed a voluntary petition under chapter 11 of the Bankruptcy Code on December 16, 2016 (the “**Petition Date**”).<sup>2</sup> The Debtor hereby transmits this Disclosure Statement, pursuant to section 1125 of the Bankruptcy Code, to solicit acceptances of the Plan of Reorganization of Lensar, Inc. Under Chapter 11 of the Bankruptcy Code (the “**Plan**”), a copy of which is attached hereto as Exhibit A.

The objectives of the Plan are to (1) effect the restructuring of the Debtor whereby PDL Biopharma, Inc. (“**PDL**”), as the Debtor’s principal secured creditor, accepts equity in the Reorganized Debtor in exchange for the cancellation of \$14,181,698 of the PDL Secured Claim and modifies the terms of the remaining PDL Secured Claim to enable the Debtor to (1) continue operating; (2) facilitate the research and development services in which the Debtor participates; (3) preserve the jobs of the Debtor’s employees; (4) provide ongoing support to physicians who have bought or leased Debtor’s equipment; and (5) maximize total Distributions to the Debtor’s Creditors. The Plan divides Creditors and Interest Holders of the Debtor into Classes based on their legal rights and interests. All equity in the Reorganized Debtor will be issued to New Equity Holder, which is not an affiliate or insider of the Debtor. The current Interest Holders of the Debtor will not receive or retain anything on account of their Interests.

Attached as exhibits to this Disclosure Statement are the Plan (“Exhibit A”) and a liquidation analysis (“Exhibit B”).

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<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Plan, a copy of which is attached hereto as Exhibit A.

**A. Summary of Classification and Treatment.**

The following is a summary of the classification of all Claims and Interests under the Plan and the proposed treatment of each such Class under the Plan. This summary is qualified in its entirety by reference to more detailed provisions set forth in the Plan, the terms of which are controlling.

| <u>Class</u> | <u>Description</u>   | <u>Impairment</u> | <u>Entitlement to Vote</u> |
|--------------|--|-------------------|----------------------------|
| Class 1      | PDL Senior Secured Claim   | Impaired          | Yes                        |
| Class 2      | PDL Junior Secured Claim   | Impaired          | Yes                        |
| Class 3      | Other Secured Claims   | Unimpaired        | No (deemed to accept)      |
| Class 4      | General Unsecured Claims, including PDL Unsecured Deficiency Claim | Unimpaired        | No (deemed to accept)      |
| Class 5      | E-5 Equity Interests   | Impaired          | No (deemed to reject)      |
| Class 6      | Senior Preferred Equity Interests                                  | Impaired          | No (deemed to reject)      |
| Class 7      | Series A Equity Interests  | Impaired          | No (deemed to reject)      |
| Class 8      | Common Equity Interests  | Impaired          | No (deemed to reject)      |

**B. Summary of Voting on the Plan.**

The Court may confirm the Plan if at least one noninsider Impaired Class of Claims has accepted the Plan and certain statutory requirements are met as to both nonconsenting members within a consenting Class and as to dissenting Classes. A Class of Claims has accepted the Plan when more than one-half in number and at least two-thirds in amount of the Allowed Claims actually voting vote in that Class in favor of the Plan. A Class of Interests has accepted the Plan when at least two-thirds in amount of the Allowed Interests of such Class actually voting have accepted it. Even if the requisite number of votes to confirm the Plan are obtained,

the Plan will not bind the parties unless and until the Court makes an independent determination at a hearing that confirmation is appropriate.

The Debtor believes that Class 3 and Class 4 are Unimpaired and, therefore, are not entitled to vote on the Plan. A party that disputes the Debtor's characterization of its Claim or Interest as Unimpaired may request a finding of impairment from the Court in order to obtain the right to vote. All Classes of Interests shall receive nothing under the Plan and, therefore, are deemed to have rejected the Plan. This includes Class 5, Class 6, Class 7 and Class 8.

If you have any questions about the procedure for voting, or if you did not receive a Ballot, received a damaged Ballot, or have lost your Ballot, or if you would like additional copies of this Disclosure Statement, contact Epiq Bankruptcy Solutions, LLC, the Claims and Noticing Agent retained by the Debtor in the Chapter 11 Case, by: (i) visiting the Voting and Claim Agent's website at: <http://dm.epiq11.com/LEI>; (ii) sending an email to [tabulation@epiqsystems.com](mailto:tabulation@epiqsystems.com) with a reference to Lensar in the subject line; (iii) calling (646) 282-2500; or (iv) writing to Epiq Bankruptcy Solutions, LLC: (a) if by regular mail: Lensar, Inc. Ballot Processing, c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4422, Beaverton, OR 97076-4422; or (b) if by overnight mail, courier service, hand delivery or in person: Lensar, Inc. Ballot Processing, c/o Epiq Bankruptcy Solutions, LLC, 10300 S.W. Allen Blvd, Beaverton, OR 97005. You may also obtain copies of the Plan and Disclosure Statement for a fee via PACER at: <http://www.deb.uscourts.gov>.

**After carefully reviewing this Disclosure Statement and the Plan, including the exhibits, each Holder of an Impaired Claim should vote on the enclosed Ballot and return it in the envelope provided.**

**TO BE COUNTED, YOUR BALLOT MUST BE COMPLETELY FILLED IN, SIGNED, AND TRANSMITTED IN THE MANNER SPECIFIED IN THE BALLOT SO THAT IT IS RECEIVED BY EPIQ BANKRUPTCY SOLUTIONS, LLC, THE DEBTOR'S VOTING AGENT, BY THE VOTING DEADLINE SPECIFIED IN THE BALLOT. PLEASE FOLLOW CAREFULLY ALL INSTRUCTIONS CONTAINED IN THE BALLOT. ANY BALLOTS RECEIVED THAT DO NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN OR WHICH INDICATE BOTH AN ACCEPTANCE AND REJECTION OF THE PLAN WILL NOT BE COUNTED.**

**THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE BEST FEASIBLE RECOVERY TO THE CREDITORS OF THE BANKRUPTCY ESTATE, AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF SUCH CREDITORS. THE DEBTOR RECOMMENDS THAT CREDITORS VOTE TO ACCEPT THE PLAN.**

## **II.**

### **GENERAL BACKGROUND**

#### **A. The Debtor and the Debtor's Business Operations.**

The Debtor was formed in 2004 under the laws of the State of Delaware and remains incorporated in Delaware. The Debtor's headquarters are located in Orlando, Florida. The Debtor is a high technology medical devices company that develops and markets lasers primarily for use in refractive cataract surgery. The Debtor's technology uses a unique imaging process which converts multiple two-dimensional scans into a 3-D model based on each patient's biometric measurements. The Debtor markets and sells these lasers to surgeons and hospitals and is not engaged in the business of providing health care services directly to any patients.

The Debtor employs approximately 53 employees on a full- or part-time basis who are engaged in all aspects of developing the Debtor's laser technology, testing its clinical applications, interfacing with the Food and Drug Administration and other regulators, sales and marketing, and providing technical support to end-users. One of the principal goals in filing the Chapter 11 Case was to preserve the employees' jobs and maintain a going-concern business. None of the Debtor's employees are party to any collective bargaining agreement.

**B. Existing Capital Structure.**

The Debtor has 17 classes of stock consisting of (i) common stock ("Common Stock"), (ii) Series A-1 through Series A-6 preferred stock (collectively, the "Series A Equity Interests"), (iii) Series B, Series C, Series D, Series E, Series E-1, Series E-2, Series E-3 and/or Series E-4 preferred stock (collectively the "Senior Preferred Equity Interests") and (iv) Series E-5 preferred stock (the "E-5 Equity Interests").

**C. Debt Structure.**

PDL is the Debtor's principal secured creditor. Under an agreement dated as of October 1, 2013, the Debtor entered into a credit agreement with PDL, under which PDL agreed to loan \$40 million to the Debtor secured by most of the Debtor's assets (the "PDL 2013 Credit Agreement"). As of the Petition Date, the Debtor owes approximately \$7.3 million in aggregate principal amount under the PDL 2013 Credit Agreement, plus accrued and unpaid interest, fees and expenses (collectively, the "PDL Senior Secured Claim").

Shortly before the Petition Date, and as described further below, the Debtor and PDL entered into the PDL 2016 Credit Agreement (as defined below). The Debtor owes approximately \$42 million in aggregate principal amount under the PDL 2016 Credit Agreement, plus accrued and unpaid interest, fees and expenses (collectively, the "2016 PDL Indebtedness") and together with the PDL Senior Secured Claim, the "PDL Prepetition Claims"). The PDL

Prepetition Claims exceed the value of the Collateral. To the extent of the value of the Collateral, minus the PDL Senior Secured Claim, the 2016 PDL Indebtedness constitutes a Secured Claim, secured by a security interest in all of the Debtor's assets, which is subordinate to the PDL Senior Secured Claim (the "**PDL Junior Secured Claim**"). The remaining Claim arising from the 2016 PDL Indebtedness constitutes the PDL Unsecured Deficiency Claim.

In addition to the PDL Unsecured Deficiency Claims described above, as of the Petition Date, the Debtor has approximately \$1.4 million in unsecured trade and general operating liabilities that are pari passu with the PDL Unsecured Deficiency Claim.

During the Chapter 11 Case the Debtor projects that it will incur up to approximately \$4,368,216, in aggregate principal amount, of senior secured, super-priority debt pursuant to the DIP Loan (as defined in Section III.B below) provided by PDL.

**D. Events Leading to Chapter 11.**

Pursuant to the terms of the PDL 2013 Credit Agreement, the Debtor began paying interest in the fourth quarter of 2013. The Debtor became unable to service the debt incurred under the PDL 2013 Credit Agreement and stopped making interest payments in the first quarter of 2015.

To address the defaults under the PDL 2013 Credit Agreement, on May 12, 2015, the Debtor and PDL entered into a forbearance agreement (the "**Forbearance Agreement**"). Under the Forbearance Agreement, the Debtor acknowledged the outstanding debt, and PDL agreed to advance additional funds under specified conditions. The Debtor again defaulted and, beginning in mid-2015, the Debtor interviewed several nationally recognized financial advisory firms and investment banks to assist in a process of raising capital or marketing the company. Beginning in May 2015, the Debtor began to work with Armory Securities, LLC ("**Armory**"), to assist in implementing a strategic transaction.

In addition, prior to engaging Armory, the Debtor entered into an agreement dated December 2, 2014 with Wells Fargo Securities, LLC (“**Wells Fargo**”), pursuant to which Wells Fargo served as exclusive financial advisor to the Debtor with respect to exploring an initial public offering or a sale of all or a portion of the business or assets of the Debtor. Beginning in May 2015, Wells Fargo initially approached a select group of strategic buyers regarding a potential sale of the Debtor. In June 2015, Wells Fargo broadened the process and began reaching out to additional strategic and financial buyers regarding a potential sale of the Debtor. During the process, Wells Fargo reached out to a total of forty-seven (47) parties, including 38 potential strategic buyers and nine (9) potential financial buyers. Wells Fargo and the Debtor held management presentations with seven (7) of the parties identified and, ultimately, in early August 2015, focused on negotiating a letter of intent with Alphaeon Corporation (“**Alphaeon**”).

The Debtor and Alphaeon executed a letter of intent on or about August 17, 2015. Following extensive negotiation, on November 15, 2015, Alphaeon, its wholly owned subsidiary Lion Buyer, LLC (a/k/a Lensar, LLC) (“**Lion**”), as the buyer, and the Debtor entered into a purchase agreement (the “**2015 Purchase Agreement**”) pursuant to which Alphaeon, through Lion, completed its acquisition of substantially all of the assets of the Debtor on December 15, 2015. Pursuant to the 2015 Purchase Agreement, the Debtor’s assets were sold to Lion in exchange for, among other things: (1) Lion’s assumption of (a) approximately \$42 million in principal amount of the debt then owing by the Debtor to PDL under the PDL 2013 Credit Agreement, and (b) identified trade debt and unsecured obligations to the Debtor’s employees, who were hired by Lion; and (2) Alphaeon issuing 2,257,274 shares of Class A Common Shares, which it valued at approximately \$16.5 million, to creditors and shareholders of the Debtor. PDL received 1,710,056 shares of Class A Common Shares, in partial satisfaction of the obligations

outstanding under the PDL 2013 Credit Agreement, for which PDL provided a credit of \$12,500,000 against the balance owing under the PDL 2013 Credit Agreement.

Concurrently with the sale of the Debtor's assets to Lion, Lion and PDL entered into that certain Amended and Restated Credit Agreement, dated as of December 15, 2015 (the "**Lion 2015 Credit Agreement**"), under which Lion assumed \$42 million owed by Debtor to PDL under the PDL 2013 Credit Agreement. Alphaeon did not guaranty the debt to PDL that was assumed by Lion. After the assumption of debt by Lion and the credit for the Alphaeon stock received by PDL, approximately \$7.3 million of obligations remained outstanding under the 2013 Credit Agreement, leaving PDL with a remaining secured claim in that amount against the Debtor.

Lion was unable to service the debt owing to PDL. After an initial nine-month period during which Lion elected to pay-in-kind accrued interest, which was added to the outstanding principal amount of the debt, cash interest payments were due and payable quarterly under the Lion 2015 Credit Agreement, starting December 31, 2016. Shortly before the first cash interest payment became due, Alphaeon informed PDL that Lion would default. As of the Petition Date, Lion had not made any payments to PDL under the Lion 2015 Credit Agreement.

Lion and PDL discussed alternatives to a foreclosure by PDL or cessation of all operations by Lion, with an interest in preserving the business as a going concern. In order to maximize the value of the assets available to creditors and preserve the business as a going concern, PDL, Lion and the Debtor agreed to enter into a transaction in which the Debtor would re-acquire the assets it had previously transferred to Lion and re-assume the debt owing to PDL, effectively reversing the sale to Lion. Absent such an agreement, Lion would have ceased operating, destroyed the going concern value of the business, and terminated its employees.

Alphaeon was prepared to terminate all Lion operations and allow PDL to foreclose. It was not prepared to file a chapter 11 case for Lion or preserve Lion as a going concern. Unsecured creditors would have received little, if any distributions. The doctors and patients that rely on the Lensar technology would have lost the ongoing support of Lensar. The business' approximately 53 employees would have lost their jobs.

On December 16, 2016, before commencement of the Chapter 11 Case, Lion sold substantially all of its assets back to the Debtor. In consideration, the Debtor agreed to assume substantially all of Lion's debts, including its unsecured trade payables and employee obligations, and entered into a new credit agreement with PDL dated as of December 16, 2016 (the "**PDL 2016 Credit Agreement**"). As of the Petition Date, the Debtor owes approximately (i) \$8.5 million in aggregate principal and interest under the PDL 2013 Credit Agreement, plus unpaid fees and expenses accrued prepetition, and (ii) \$48.9 million in aggregate principal and interest under the PDL 2016 Credit Agreement, plus unpaid fees and expenses accrued prepetition. The debt owed under the PDL 2013 Credit Agreement is senior to the debt owed under the PDL 2016 Credit Agreement.

The Debtor now seeks to implement a restructuring pursuant to the terms of the Plan.

### III.

#### **THE CHAPTER 11 CASE**

The Debtor commenced the Chapter 11 Case with the support of PDL, its principal secured lender, in order to effectuate a consensual restructuring. The Debtor continues to operate its business and affairs as a debtor in possession, and no unsecured creditors' committee, trustee or examiner has been appointed in the Chapter 11 Case.

**A. First Day Motions.**

On the Petition Date, the Debtor filed several “first day” motions (the “**First Day Motions**”) to minimize any disruption to the Debtor’s business operations that might result from the filing of the Chapter 11 Case and streamline the administration of the Chapter 11 Case. The First Day Motions consisted of the following:

*(i) Motion of Debtor for an Order Pursuant To 11 U.S.C. §§ 105(a), 345 And 363, Fed. R. Bankr. P. 6003, And Del. Bankr. L.R. 2015-2 (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, and (II) Authorizing Continuation of Existing Deposit Practices [Docket No. 4];*

*(ii) Motion of Debtor for Order Under 11 U.S.C. §§ 105(a), 363(b), 363(c), 507(a), 541, 1107(a), and 1108 and Fed. R. Bankr. P. 6003 (I) Authorizing Payment of Certain Prepetition Workforce Obligations, Including Compensation, Benefits, Expense Reimbursements, and Related Obligations, (II) Authorizing Payment of Withholding and Payroll-Related Taxes, (III) Authorizing Payment of Prepetition Claims Owing to Administrators of, or Third Party Providers Under, Workforce Programs, and (IV) Directing Banks to Honor Checks and Fund Transfers for Authorized Payments [Docket No. 5];*

*(iii) Motion of Debtor for Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment [Docket No. 6]; and*

*(iv) Motion of Debtor for Interim and Final Orders Under 11 U.S.C. 105(a), 362(a)(3), And 541 Establishing Certain Notice and Hearing Procedures for Transfers of, or Claims of Worthlessness with Respect to, Certain Equity Interests of the Debtor [Docket No. 7].*

The Court granted the Debtor interim relief on the First Day Motions on December 20, 2016. A final hearing on the First Day Motions is set for January 30, 2017.

**B. Cash Collateral and Debtor in Possession Financing.**

As discussed above, the PDL Prepetition Claims are secured by two security interests in substantially all of the Debtor’s assets, including its cash. Shortly after filing for relief, the Debtor and PDL entered into an informal agreement whereby PDL consented to the

Debtor's use of cash collateral consistent with an agreed budget. The Debtor and PDL then negotiated a debtor in possession loan for up to approximately \$4,368,216 in aggregate principal amount, secured by senior super-priority liens on substantially all of the Debtor's assets (the "**DIP Loan**"). On January 10, 2017, the Court entered an interim Order approving the DIP Loan and authorizing the Debtor to enter into the debtor in possession credit agreement, security agreement and related loan documentation. The final hearing on approval of the DIP Loan is scheduled for January 30, 2017.

The Debtor is using the proceeds of the DIP Loan in compliance with an agreed 13-week budget (the "**DIP Budget**"). The DIP Budget provides for payment of the Debtor's ordinary course operating expenses, as well as the administrative costs of the Chapter 11 Case.

**C. Administrative Motions and Employment of Professionals.**

On December 28, 2016, the Debtor filed a motion seeking an extension of the deadline to file its schedules and statement of financial affairs (the "**Schedules and SOFA**"). The Debtor filed its Schedules and SOFA on January 17, 2017. The Debtor also filed a motion (the "**Bar Date Motion**") seeking to set the general claims bar date (the "**Claims Bar Date**") on March 9, 2017 and the governmental claims bar date (the "**Governmental Bar Date**") on June 14, 2017. The Bar Date Motion is set to be heard at the omnibus hearing scheduled for January 30, 2017.

The Debtor has sought to retain the following professionals in the Chapter 11 Case: (i) Ballard Spahr, LLP as counsel and (ii) Epiq as claims and noticing agent and administrative adviser. The Court entered an Order approving Epiq's retention as claims and noticing agent on January 9, 2017 [Docket No. 64]. The Debtor's additional applications are set to be heard at the omnibus hearing on January 30, 2017. In addition, the Debtor has filed (i) *Motion of Debtor for Order Under 11 U.S.C. 105(a), 327, 330, and 331 Authorizing Employment*

*and Payment of Professionals Utilized in Ordinary Course of Business* [Docket No. 58] (the “**OCP Motion**”) and (ii) *Motion for Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 46] (the “**Interim Compensation Motion**”). Pursuant to the OCP Motion, the Debtor has sought to continue, in the ordinary course of business, its use of, among other professionals, Steptoe & Johnson, LLP, to provide patent and intellectual property legal services. The Interim Compensation Motion seeks to establish procedures under which case professionals can be paid compensation and reimbursement of expenses on an interim basis throughout the Chapter 11 Case. Both the OCP Motion and the Interim Compensation Motion are also set to be heard on January 30, 2017.

#### IV.

#### **SUMMARY OF THE PLAN**

##### **A. General Overview of the Plan.**

PDL is the Debtor’s principal secured creditor. The Plan would be implemented through conversion of a portion of PDL’s secured debt into equity in the Reorganized Debtor and the modification of the payment terms of the remaining debt to provide for a feasible repayment schedule. In order to facilitate the restructuring, PDL has agreed to provide the DIP Loan, which will provide for needed liquidity during the administration of the Chapter 11 Case. PDL has also agreed to fund the Exit Facility, which, in addition to refinancing any unpaid amounts under the DIP Loan and the payments to PDL due on the Effective Date, will also allow for distributions to be made to the Debtor’s unsecured creditors in accordance with the Plan and will provide for payment of Allowed Administrative Claims.

As further described below, the Plan contemplates that General Unsecured Claims will be paid in full and as such are not Impaired by the Plan. Because the Debtor is insolvent,

existing equity Interests will be extinguished, and Holders of existing Interests will not retain or receive any property on account of their Interests.

**B. Summary of Classification of Treatment of Claims and Interests Under the Plan.**

THE DESCRIPTION OF THE PLAN SET FORTH BELOW IS ONLY A SUMMARY OF SOME OF THE MORE MATERIAL PROVISIONS OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED PROVISIONS SET FORTH IN THE PLAN, THE TERMS OF WHICH ARE CONTROLLING OVER THE SUMMARY SET FORTH BELOW.

The following discussion summarizes the classification and treatment of Claims and Interests under the Plan.

**1. Unclassified Claims.**

Certain types of Claims are not placed into voting Classes. They are not Impaired and they do not vote on the Plan because they are entitled to specific treatment provided in the Code. As such, the Debtor has **not** placed the following Claims in a Class. The treatment of these Claims is provided below.

**a. Administrative Claims.**

**i. Treatment.**

Administrative Claims are generally comprised of the actual and necessary costs and expenses of preserving the Estate and operating the business of the Debtor after the Petition Date. The Bankruptcy Code requires that allowed Administrative Claims be paid on the Effective Date unless the party holding the Administrative Claim agrees otherwise.

The Debtor anticipates two types of Administrative Claims. The first type consists of debt incurred by the Debtor in the ordinary course of business (other than Tax

Claims) after the Petition Date, including trade debt and operating expenses. Holders of these types of Administrative Claims will not be required to file any requests for payment of such Claims. Such Administrative Claims shall be assumed and paid by the Debtor pursuant to the terms and conditions of a particular transaction giving rise to such Administrative Claim, without any further action by the Holders of such Claim.

The second type of Administrative Claim consists of Professional Fee Claims, for fees and expenses as allowed by Order of the Bankruptcy Court for professionals employed by the Debtor or any statutory committee, if one is appointed. The Debtor anticipates paying Professional Fee Claims on an interim basis, and as otherwise approved by the Court. After the Effective Date, professionals will file final fee applications that seek approval of any unpaid amounts of Professional Fee Claims. Based on the Budget, the Debtor estimates that approximately \$834,000 may be needed to pay Professional Fee Claims. Payment of Administrative Claims will be funded through the Exit Facility and the Debtor's Cash on hand.

**ii. Professional Fee Application Deadlines.**

Each Holder of a Professional Fee Claim seeking an award by the Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date shall: (a) file such Holder's final application for compensation for services rendered and reimbursement of expenses incurred through the Effective Date by no later than 45 days after the Effective Date, or such other date as may be fixed by the Court; and (b) if granted such an award by the Court, be paid by the Reorganized Debtor, in full satisfaction, discharge, exchange, and release of such Claim, Cash, in such amounts as are allowed by the Court on the date such Professional Fee Claim becomes an Allowed Claim, or as soon thereafter as is practicable.

**iii. Administrative Claim Deadline.**

**As to other Administrative Claims that do not require Bankruptcy Court approval to become Allowed Claims, Creditors shall submit such Claims to the Debtor so that they are actually received at the following address no later than 4:00 p.m. (prevailing eastern time) on the sixtieth (60th) day after the Confirmation Date or by such other bar date as the Bankruptcy Court may set: if by regular mail: Lensar, Inc. Claims Processing Center, c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4412, Beaverton, OR 97076-4412; or (b) if by overnight mail, courier service, hand delivery or in person: Lensar, Inc. Claims Processing Center, c/o Epiq Bankruptcy Solutions, LLC, 10300 S.W. Allen Blvd, Beaverton, OR 97005.** Any such Claim not filed or submitted as explained above within these deadlines shall be forever barred, and any Creditor who is required to file a request for payment of such Claim and who does not file such request by the applicable bar date shall be forever barred from asserting such Claim against the Estate or its property. The following need not file proofs of Claims for their Administrative Claims:

- Holders of Claims for the provision of goods and services to the Debtor;
- Holders of a Claim of a governmental unit not required to be filed pursuant to section 503(b)(1)(D) of the Bankruptcy Code;
- Holders of Administrative Claims previously allowed by Final Order of the Court; and/or
- The holder of a Claim for U.S. Trustee Fees.

**b. Priority Tax Claims.**

Priority Tax Claims are comprised of claims of federal, state and local governmental units for taxes, interest and penalties for certain periods specified in section 507(a)

of the Bankruptcy Code. Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Allowed Priority Tax Claim, in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, Cash in the amount of such Allowed Priority Tax Claim (a) on, or as soon as practicable after, the later of: (i) the Effective Date and (ii) the date such Allowed Priority Tax Claim becomes an Allowed Claim; or (b) in regular payments over a period of time not to exceed five (5) years after the Petition Date with interest at a rate determined in accordance with section 511 of the Bankruptcy Code.

## 2. Classification and Treatment of Claims.

The following is a designation of the Classes of Claims and Interests under the Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in a different Class to the extent that any remainder of the Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that the Claim or Interest is an Allowed Claim or Allowed Interest in that Class and has not been paid, released, or otherwise satisfied before the Effective Date.

| <u>Class</u> | <u>Description</u>   | <u>Impairment</u> | <u>Entitlement to Vote</u> |
|--------------|--|-------------------|----------------------------|
| Class 1      | PDL Senior Secured Claim   | Impaired          | Yes                        |
| Class 2      | PDL Junior Secured Claim   | Impaired          | Yes                        |
| Class 3      | Other Secured Claims   | Unimpaired        | No (deemed to accept)      |
| Class 4      | General Unsecured Claims, including PDL Unsecured Deficiency Claim | Unimpaired        | No (deemed to accept)      |
| Class 5      | E-5 Equity Interests   | Impaired          | No (deemed to reject)      |
| Class 6      | Senior Preferred Equity Interests                                  | Impaired          | No (deemed to reject)      |

|         |                           |          |                       |
|---------|---------------------------|----------|-----------------------|
| Class 7 | Series A Equity Interests | Impaired | No (deemed to reject) |
| Class 8 | Common Equity Interests   | Impaired | No (deemed to reject) |

**a. Class 1 – PDL Senior Secured Claim.**

- (1) *Classification:* Class 1 consists solely of the PDL Senior Secured Claim.
- (2) *Allowance:* On the Effective Date, the PDL Senior Secured Claim shall be deemed an Allowed Claim in the aggregate principal amount of \$8,509,019.
- (3) *Impairment and Voting:* Class 1 is Impaired, and the Holder of the PDL Senior Secured Claim is entitled to vote to accept or reject the Plan.
- (4) *Treatment:* On account of the PDL Senior Secured Claim, the New Equity Holder shall receive 60% of the Reorganized Debtor Common Stock.

**b. Class 2 – PDL Junior Secured Claim.**

- (1) *Classification:* Class 2 consists solely of the PDL Junior Secured Claim.
- (2) *Allowance:* On the Effective Date, the PDL Junior Secured Claim shall be deemed an Allowed Claim in the aggregate principal amount of \$40,000,000 or such other amount as the Court determines constitutes the value of PDL's Collateral, minus the Allowed Class 1 Claim.
- (3) *Impairment and Voting:* Class 2 is Impaired, and the Holder of the PDL Junior Secured Claim is entitled to vote to accept or reject the Plan.
- (4) *Treatment:* On account of the PDL Junior Secured Claim, the New Equity Holder shall receive (i) 40% of the Reorganized Debtor Common Stock, and (ii) Cash in the amount of \$34,327,321.

**c. Class 3 – Other Secured Claims.**

- (1) *Classification:* Class 3 consists of Other Secured Claims. The Debtor does not believe that there are any Claims in Class 3.
- (2) *Allowance:* Any timely filed Class 3 Claims that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under Section 8.3 of the Plan.
- (3) *Impairment and Voting:* Class 3 is Unimpaired. The Holder of a Class 3 Claim is deemed to accept the Plan.
- (4) *Treatment:* Except to the extent that a Holder of an Allowed Claim in Class 3 agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 3, each such Holder shall receive, at the Debtor's option, either:
  - (i) payment in full in Cash;
  - (ii) delivery of the collateral securing any such Claim, and payment of any interest required under section 506(b) of the Bankruptcy Code;
  - (iii) Reinstatement of such Claim; or
  - (iv) other treatment rendering such Claim Unimpaired.

**d. Class 4 – General Unsecured Claims.**

- (1) *Classification:* Class 4 consists of General Unsecured Claims.
- (2) *Allowance:* Any timely filed Class 4 Claims that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under Section 8.3 of the Plan.

- (3) *Impairment and Voting:* Class 4 is Unimpaired. The Holder of a Class 4 Claim is deemed to accept the Plan with respect to such Claim.
- (4) *Treatment:* Except to the extent a Holder of an Allowed Claim in Class 4 has been paid by the Debtor prior to the Effective Date or agrees to less favorable treatment, each Holder of an Allowed Claim in Class 4 shall receive in full satisfaction, exchange, and release of such Claim, Cash on the later of: (i) the Effective Date; and (ii) the fifteenth (15th) Business Day after such General Unsecured Claim becomes an Allowed Claim, or, in either case, as soon thereafter as is practicable, in an amount equal to the amount of such Allowed Claim.

**e. Class 5 – E-5 Equity Interests.**

- (1) *Classification:* Class 5 consists of the E-5 Equity Interests.
- (2) *Allowance:* Any timely filed Class 5 Interests that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under Section 8.3 of the Plan.
- (3) *Impairment and Voting:* Class 5 is Impaired. Each Holder of an Interest in Class 5 is deemed to reject the Plan with respect to such Interest.
- (4) *Treatment:* Holders of Class 5 Interests shall receive no Distributions under the Plan on account of such Interests, and such Interests shall be cancelled.

**f. Class 6 – Senior Preferred Equity Interests.**

- (1) *Classification:* Class 6 consists of the Senior Preferred Equity Interests.

- (2) *Allowance:* Any timely filed Class 6 Interests that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under Section 8.3 of the Plan.
- (3) *Impairment and Voting:* Class 6 is Impaired. Each Holder of an Interest in Class 6 is deemed to reject the Plan with respect to such Interest.
- (4) *Treatment:* Holders of Class 6 Interests shall receive no Distributions under the Plan on account of such Interests, and such Interests shall be cancelled.

**g. Class 7 – Series A Equity Interests.**

- (1) *Classification:* Class 7 consists of the Series A Equity Interests.
- (2) *Allowance:* Any timely filed Class 7 Interests that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under Section 8.3 of the Plan.
- (3) *Impairment and Voting:* Class 7 is Impaired. Each Holder of an Interest in Class 7 is deemed to reject the Plan with respect to such Interest.
- (4) *Treatment:* Holders of Class 7 Interests shall receive no Distributions under the Plan on account of such Interests, and such Interests shall be cancelled.

**h. Class 8 – Common Equity Interests.**

- (1) *Classification:* Class 8 consists of the Common Equity Interests.
- (2) *Allowance:* Any timely filed Class 8 Interests that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under Section 8.3 of the Plan.

- (3) *Impairment and Voting:* Class 8 is Impaired. Each Holder of an Interest in Class 8 is deemed to reject the Plan with respect to such Interest.
- (4) *Treatment:* Holders of Class 8 Interests shall receive no Distributions under the Plan on account of such Interests, and such Interests shall be cancelled.

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

**C. Reservation of Rights.**

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of this Disclosure Statement, the Plan, any statement or provision contained in the Disclosure Statement or the Plan, or the taking of any action by any Debtor with respect to the Disclosure Statement or the Plan, shall be or shall be deemed to be an admission or waiver of any rights of the Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

**D. Treatment of Executory Contracts and Unexpired Leases.**

**1. Assumption and Rejection of Executory Contracts and Unexpired Leases.**

Subject to certain limitations, the Debtor has the right, subject to Bankruptcy Court approval, to assume or reject any Executory Contract or Unexpired Lease entered into prior to the Petition Date. Generally, damages resulting to the other party from a rejection are

treated as a General Unsecured Claim arising prior to the Petition Date and included in the appropriate Class to the extent such Claim is an Allowed Claim.

Effective upon the Effective Date, the Debtor will reject all Executory Contracts and Unexpired Leases that exist, between the Debtor and any other Person, which have not previously been assumed, assumed and assigned, or rejected, except the Debtor does not reject, and will assume, those executory contracts and unexpired leases which are listed in Schedule 6.2 to the Plan. At the present time the Debtor is not aware of any Executory Contracts or Unexpired Leases that will be rejected under this provision. Nothing in the Plan or Disclosure Statement shall constitute an admission by the Debtor that any contract or lease is in fact an Executory Contract or Unexpired Lease, or that the Reorganized Debtor has any liability thereunder. If there is a dispute at the time the Debtor seeks to assume or reject an Executory Contract or Unexpired Lease as to the status of an agreement as an Executory Contract or Unexpired Lease, the Debtor or the Reorganized Debtor, as applicable, shall have 30 days following entry of a Final Order to resolve and to alter the treatment of such agreement. If the Debtor becomes aware of any additional Executory Contracts or Unexpired Leases that will be assumed under the Plan the Debtor will file with the Bankruptcy Court a list of thereof, but the “default” under the Plan if an Executory Contract or Unexpired Lease is not listed as assumed or rejected is that such Executory Contract or Unexpired Lease will be rejected.

Entry of the Confirmation Order shall constitute a Bankruptcy Court Order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan, including Schedule 6.2, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date or such later date as

the Reorganized Debtor and an objecting counterparty may fix and agree and the Bankruptcy Court approves. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court Order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any Order of the Bankruptcy Court authorizing and providing for its assumption under applicable federal law. Any motions to assume or assume and assign Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order.

**2. Claims Based on Rejection of Executory Contracts or Unexpired Leases.**

Any Allowed Claims arising from the rejection of Executory Contracts or Unexpired Leases, whether under the Plan or by separate proceeding, shall be treated as General Unsecured Claims against the Debtor. If the rejection of an Executory Contract or Unexpired Lease by the Plan results in damages to the counterparty, then a Claim for damages or any other amounts related in any way to such Executory Contract or Unexpired Lease shall be forever barred and shall not be enforceable against the Debtor, the Estate, or their property, unless a proof of Claim is filed with the Court and served on the Reorganized Debtor within 30 days after the Effective Date. The rejection Claim bar date for Unexpired Leases and Executory Contracts rejected before the Effective Date, outside of the Plan, shall be, as applicable: (a) the date(s) set forth in the applicable Order(s) approving or authorizing rejection of such Unexpired Lease or Executory Contract; or (b) the Claims Bar Date.

**Rejection Claims for which a Proof of Claim is not timely filed will be forever barred from assertion against the Debtor, the Estate, the Reorganized Debtor and their**

**respective property unless otherwise ordered by the Bankruptcy Court or as otherwise provided in the Plan. Such rejection Claims shall, as of the Effective Date, be subject to the discharge and permanent injunction set forth in the Plan.**

**3. Cure of Defaults for Executory Contracts and Unexpired Leases.**

Except as may otherwise be agreed to by the Debtor and the non-Debtor party to the applicable Executory Contract or Unexpired Lease, within 30 days after the Effective Date, the Debtor (or the assignee, if applicable) shall cure any and all undisputed defaults under any Executory Contract or Unexpired Lease assumed pursuant to the Plan, in accordance with section 365(b) of the Bankruptcy Code and Section 6.2 of the Plan. All disputed defaults that are required to be cured shall be cured either within 30 days of the entry of a Final Order determining the amount, if any, of the liability with respect thereto, or as may otherwise be agreed to by the parties.

Schedule 6.2 of the Plan shall list the applicable Cure Amount for each Executory Contract or Unexpired Lease to be assumed; however, in order to protect information about the Debtor's customers, the Debtor intends to only make a redacted version of Schedule 6.2 publicly available and to submit the unredacted version to the Court under seal. In order to notify counterparties of the proposed assumption of Executory Contracts and Unexpired Leases as well as the Debtor's proposed cure amount, the Debtor will send a notice to each counterparty listed on the List of Assumed Contracts detailing the Executory Contracts or Unexpired Leases between that Debtor and the counterparty that the Debtor intends to assume under the Plan and the proposed cure amounts with respect to each (the "Assumption and Cure Notice") on or before March 15, 2017. If, after March 15, 2017, the Debtor identifies additional Executory Contracts or Unexpired Leases that it intends to assume, the Debtor shall promptly send an Assumption and Cure Notice to the applicable counterparty. The deadline to object to an

Assumption and Cure Notice is the earlier of March 29, 2017, or fourteen (14) days after the date service of the Assumption and Cure Notice was effectuated. Objections to the proposed assumption or proposed cure shall be filed with this Court and served on counsel to the Debtor and counsel to PDL. The Assumption and Cure Notices will not be filed with the Court, but an unredacted certificate of service will be filed with the Court under seal and a redacted version of the certificate of service (redacting Customer Information) will be filed with the Court and publicly available.

Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Amount will be deemed to have assented to such assumption or Cure Amount.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise, and payment of the applicable Cure Amount, if any, shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the date the Debtor or Reorganized Debtor assumes such Executory Contract or Unexpired Lease. Any Proofs of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, Order, or approval of the Bankruptcy Court.

The Debtor believes that there are no defaults under any of the Executory Contracts or Unexpired Leases to be assumed (except for nonmonetary defaults as a result of the Chapter 11 Case) and, therefore, no cure payments are required under Bankruptcy Code section 365.

**4. Nonoccurrence of Effective Date.**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting unexpired leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**E. Implementation of the Plan.**

**1. Restructuring Transactions.**

As described in the Plan and this Disclosure Statement, the Debtor will effect a restructuring whereby PDL, as the Debtor's principal secured creditor, accepts equity in the Reorganized Debtor in exchange for (i) the cancellation of a portion of PDL's secured debt and (ii) the effective modifications to the terms of PDL's remaining secured debt through the Exit Facility. This will reduce the Debtor's total expense of borrowing and enable it to satisfy its obligations going forward.

**2. Reorganized Debtor.**

On the Effective Date, the new board of the Reorganized Debtor shall be established, and the Reorganized Debtor shall adopt new organizational documents (the "**New Organizational Documents**"). Pursuant to section 1123(a)(6) of the Bankruptcy Code, the New Organizational Documents will prohibit the issuance of non-voting equity securities.

**3. Directors, Managers and Officers of the Reorganized Debtor.**

As of the Effective Date, the term of the current members of the board of directors of the Debtor shall expire, and the initial board of directors of the Reorganized Debtor shall be appointed by the New Equity Holder in accordance with the New Organizational Documents and the board of directors shall appoint the officers of the Reorganized Debtor. Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtor will disclose in advance of the Confirmation Hearing the identity and affiliations of any Person proposed to serve on the initial board of

directors or be an officer of the Reorganized Debtor. The Debtor also will disclose the nature and amount of any compensation to be paid to such director or officer. Each such director and officer shall serve from and after the Effective Date pursuant to the terms of the New Organizational Documents and other constituent documents of the Reorganized Debtor.

**4. Sources of Consideration for Plan Distributions.**

The Reorganized Debtor shall fund distributions under the Plan with proceeds from the Exit Facility and Cash on hand.

**5. Conditions to Plan Effectiveness.**

The Plan will not be consummated or become binding unless and until the Effective Date occurs. The Effective Date will be the first Business Day, as determined by the Debtor, in consultation with PDL, on which the following conditions have been satisfied or waived:

- a. the Confirmation Order, in form and substance acceptable to the Debtor and PDL, has been entered and is not stayed;
  - b. at least fourteen days have passed since the Confirmation Date;
- and
- c. all conditions to PDL's obligation to fund the Exit Facility have been satisfied or waived by PDL.

**6. Vesting and Transfer of Assets.**

On the Effective Date, the Assets of the Estate, and the equity Interests in the Reorganized Debtor, will be vested or transferred as follows:

- a. except as otherwise provided under the Plan, all Assets and Causes of Action of the Debtor, shall be transferred to and vested in the Reorganized Debtor, free

and clear of liens, claims, and encumbrances; provided, however, that such Assets and Causes of Action of the Debtor shall not include any Preference Action;

b. all equity Interests in the Reorganized Debtor shall be vested in New Equity Holder; and

c. all existing equity Interests in the Debtor shall be cancelled.

To the extent required to implement the transfers of the Assets from the Debtor and the Estate to the Reorganized Debtor, and the vesting of the Interests in New Equity Holder, all as provided for herein, all Persons including Governmental Authorities shall cooperate with the Debtor, the Estate, the Reorganized Debtor and New Equity Holder to assist in the implementation of such transfers. On the Effective Date, and as provided in the Plan and sections 1123, 1141, and 1146(a) of the Bankruptcy Code, the Debtor and its Estate are authorized as provided in the Plan to transfer, grant, assign, convey, set over, and deliver to the Reorganized Debtor all of the Debtor's and the Estate's right, title, and interest in and to the Assets to be transferred free and clear of all liens, Claims, encumbrances, or interests of any kind in such property, except as otherwise expressly provided for in the Plan. As of the Effective Date, the Assets of the Reorganized Debtor shall be free and clear of all liens, Claims, and interests of Holders of Claims and Interests, except as otherwise provided in the Plan. All assets vested in the Reorganized Debtor will be subject to the new security interest granted to secure the Reorganized Debtor's obligations under the Exit Facility.

**7. Section 1146 Exemption.**

Pursuant to section 1146 of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order,

the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

**8. Preservation of Causes of Action.**

In accordance with section 1123(b) of the Bankruptcy Code, but subject to Section 8.1 of the Plan, the Reorganized Debtor shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, and the Reorganized Debtor's rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtor may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtor. **No Entity may rely on the absence of a specific reference in the Plan or this Disclosure Statement to any Cause of Action against it as any indication that the Debtor or Reorganized Debtor, as applicable, will not pursue any and all available Causes of Action against it. The Debtor or Reorganized Debtor, as applicable, expressly reserves all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, or pursuant to a Bankruptcy Court Order, the Reorganized Debtor expressly reserves all Causes of Action, for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches shall apply to such Causes of Action upon, after, or as a consequence of Confirmation or Consummation of the Plan.

In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtor may hold against any Entity shall vest in the Reorganized Debtor. The Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtor shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, Order, or approval of the Bankruptcy Court.

**Notwithstanding anything herein to the contrary, the Causes of Action revested in the Reorganized Debtor shall not include any Preference Actions.**

**9. Section 1145 Exemption.**

Pursuant to section 1145 of the Bankruptcy Code and, to the extent that section 1145 of the Bankruptcy Code is inapplicable, section 4(a)(2) of the Securities Act, the issuance of equity Interests in the Reorganized Debtor to New Equity Holder, as contemplated by the Plan, is exempt from, among other things, the registration requirements of section 5 of the Securities Act and any other applicable United States, state, or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security. The Interests in the Reorganized Debtor are not “restricted securities” (as defined in rule 144(a)(3) under the Securities Act) and are freely tradable and transferable by the New Equity Holder.

**F. Distributions Generally.**

**1. Cash Distributions.**

The sources of all Distributions and payments under the Plan are and will be Cash provided through the Exit Facility and the Debtor’s Cash on hand on the Effective Date. Cash

Distributions made pursuant to the Plan shall be in United States funds, by check drawn on a domestic bank, or, by wire transfer from a domestic bank.

**2. Setoff and Recoupment.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE PLAN, THE DEBTOR, OR THE REORGANIZED DEBTOR, AS THE CASE MAY BE, MAY SET OFF, RECOUP, OR WITHHOLD AGAINST THE DISTRIBUTION TO BE MADE ON ACCOUNT OF ANY ALLOWED CLAIM, ANY CLAIMS THAT THE DEBTOR, THE ESTATE OR THE REORGANIZED DEBTOR MAY HAVE AGAINST THE HOLDER OF THE ALLOWED CLAIM. THE DEBTOR, THE ESTATE, AND THE REORGANIZED DEBTOR WILL NOT WAIVE OR RELEASE ANY CLAIM AGAINST THOSE HOLDERS BY FAILING TO EFFECT SUCH A SETOFF OR RECOUPMENT, BY ALLOWING ANY CLAIM AGAINST THE DEBTOR OR THE ESTATE, OR BY MAKING A DISTRIBUTION ON ACCOUNT OF AN ALLOWED CLAIM.**

**3. No Distributions with Respect to Disputed Claims.**

Notwithstanding any other Plan provision: (a) Distributions to Holders of Claims will be made only after, and only to the extent that, such Holders hold Allowed Claims; and (b) unless otherwise agreed by the Debtor or the Reorganized Debtor, as applicable, if any portion of a Claim is a Disputed Claim, the entire Claim shall be treated as a Disputed Claim and no Distribution to the Holder of such Claim shall be made on account of such Claim unless and until no portion of the Claim is a Disputed Claim.

**4. Undeliverable or Unclaimed Distributions.**

a. Distributions to Holders of Allowed Claims (except Administrative Claims) will be made by mail as follows:

- i. Distributions will be sent to the address, if any, set forth on a filed proof of Claim as amended by any written notice of address change that is received by Debtor or the Reorganized Debtor, as applicable, no later than ten Business Days before the date of any Distribution; or
    - ii. If no such address is available, Distributions will be sent to the address set forth on the Bankruptcy Schedules.
  - b. Distributions to Holders of Allowed Administrative Claims shall be made by mail to the address set forth in such Holder's request for payment, fee application, or transactional documents, as applicable, or by other method as specified therein and agreed to by the Debtor or Reorganized Debtor.
  - c. If no address is available on a proof of Claim, the Bankruptcy Schedules, request for payment, fee application, or transactional documents, as applicable, the Distribution will be deemed to be undeliverable. If a Distribution is returned as an undeliverable Distribution or is deemed to be an undeliverable Distribution, the Reorganized Debtor will make no further Distributions to the Holder to which such undeliverable Distribution was made unless and until the Reorganized Debtor is timely notified in writing of that Person's current address. Holders of Claims subject to undeliverable Distributions will not be entitled to any interest on account thereof.
  - d. Any Person or entity that is otherwise entitled to an undeliverable Distribution and that does not, within one year after a Distribution is deemed undeliverable or returned as undeliverable, provide the Reorganized Debtor with a written notice asserting its claim to or interest in that undeliverable Distribution and

setting forth a current, deliverable address will be deemed to waive any claim to or interest in that undeliverable Distribution and will be forever barred from receiving that undeliverable Distribution or asserting any Claim against the Debtor, the Estate, the Reorganized Debtor or their property. Any undeliverable Distributions that are not claimed timely as provided herein will be considered property of the Reorganized Debtor. Nothing in the Plan requires the Debtor or the Reorganized Debtor to attempt to locate any Person holding an Allowed Claim and whose Distribution is undeliverable.

**5. Negotiation of Checks.**

Checks issued in respect of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for reissuance of any check shall be made to the Reorganized Debtor by the Holder of the Allowed Claim to whom such check originally was issued. Such requests for reissuance must be made on or before 90 days after the expiration of the 90-day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Reorganized Debtor and any Claim in respect of such voided check shall be discharged and forever barred from assertion against the Debtor, the Estate, the Reorganized Debtor, and their respective property.

**6. Record Date.**

The record date for purposes of Distributions under this Plan shall be the date the Court enters the Disclosure Statement Order. The Debtor and the Reorganized Debtor will rely on the register of proofs of Claims filed in the Case except to the extent a notice of transfer of a Claim or Interest has been filed with the Court prior to the record date pursuant to Bankruptcy Rule 3001.

**7. Postpetition Interest.**

Nothing in the Plan or the Disclosure Statement will be deemed to entitle the Holder of a Claim to receive postpetition interest on account of such Claim, except to the extent that the Holder of a Claim has the benefit of a lien on assets that exceed the value of such Claim or the Plan expressly provides for postpetition interest on account of such Claim.

**8. Withholding and Reporting Requirements.**

In connection with the Distributions under the Plan, the Reorganized Debtor shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions shall be subject to any such withholding or reporting requirements. All such amounts withheld and paid to the appropriate Governmental Authority shall be treated as distributed to such Holders. Notwithstanding the above, each Holder of an Allowed Claim who is to receive a Distribution shall have the sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed by any Governmental Authority, including income, withholding, and other Tax obligations, on account of such Distribution. The Reorganized Debtor has the right, but not the obligation, to not make a Distribution until such Holder has made arrangements satisfactory to the Reorganized Debtor for payment of any such Tax obligations. The Reorganized Debtor may require, as a condition to receipt of a Distribution, that the Holder of an Allowed Claim provide a completed Form W-8, W-9, and/or other Tax information deemed necessary in the sole discretion of the Reorganized Debtor, provided that if the Reorganized Debtor makes such a request and the Holder fails to comply before the date that is one hundred eighty (180) days after the request is made, the amount of such Distribution shall irrevocably revert to the Reorganized Debtor and any Claim in respect of such Distribution shall be discharged and forever barred from assertion against the Debtor, the Estate, the Reorganized Debtor, and their respective property.

**9. Claims Register.**

The register of Claims maintained by the Debtor shall be based on Allowed Claims as of the Record Date. Any transfer of a Claim, whether occurring prior to or after the Record Date, shall not affect or alter the classification and treatment of such Claim under the Plan and any such transferred Claim shall be subject to classification and treatment under the Plan as if such Claim was held by the transferor who held such Claim on the Record Date.

**10. Maximum Amount of Distributions.**

In no event shall a Holder of an Allowed Claim be entitled to receive in the aggregate on account of such Allowed Claim from the Reorganized Debtor more than the total amount of such Allowed Claim.

**V.**

**LITIGATION AND CLAIMS OBJECTIONS**

**A. Preservation of Causes of Action.**

As of the Effective Date, the Reorganized Debtor shall retain all rights on behalf of the Debtor and its Estate to commence, pursue, and settle, as appropriate, any and all Causes of Action (including Avoidance Actions), whether arising before or after the Petition Date, in any court or other tribunal, including, without limitation, an adversary proceeding filed in the Case. Notwithstanding anything herein to the contrary, the Reorganized Debtor shall not retain any rights with respect to Preference Actions.

Unless a Cause of Action against a Person is expressly waived, relinquished, released, compromised, or settled by Final Order, the Debtor expressly reserves such Causes of Action for later adjudication (including, without limitation, Causes of Action of which the Debtor may presently be unaware, or which may arise or exist by reason of additional facts or circumstances

unknown to the Debtor at this time, or facts or circumstances which may change or be different from those which the Debtor now believes to exist) and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise), or laches shall apply to Causes of Action upon, or after, the Confirmation Date or consummation of the Plan based on the Disclosure Statement, the Plan, or the Confirmation Order, except where such Causes of Action have been expressly released by Final Order.

**B. No Waiver.**

Neither the failure to list a Claim in the Schedules filed by the Debtor, the failure of any Person to object to any Claim for purposes of voting, the failure of any Person to object to a Claim prior to the Confirmation Date or the Effective Date, the failure of any Person to assert a Cause of Action prior to confirmation of the Plan or the Effective Date, the absence of a proof of Claim having been filed with respect to a Claim, nor any action or inaction of any Person with respect to a Claim, or Cause of Action other than a legally effective express waiver or release shall be deemed a waiver or release of the right of the Debtor, the Estate, the Reorganized Debtor, or their successors or representatives, before or after solicitation of votes on the Plan or before or after the Confirmation Date or the Effective Date to: (a) object to or examine such Claim, in whole or in part; or (b) retain and either assign or exclusively assert, pursue, prosecute, utilize, or otherwise act on or enforce any Cause of Action. Any Person with respect to which the Debtor has incurred an obligation (whether on account of services, purchase or sale of property, or otherwise), or which has received services from the Debtor or a transfer of money or property of the Debtor, or who has transacted business with the Debtor, or leased equipment or property from or to the Debtor, should assume that such obligation, transfer, or transaction may be reviewed by the Reorganized Debtor subsequent to the Effective Date and may, if appropriate,

be the subject of an action after the Effective Date, whether or not (i) such Person has filed a proof of Claim against the Debtor; (ii) such Person's proof of Claim has been objected to by the Debtor, the Reorganized Debtor, or any other Person; (iii) such Person's Claim was included in the Bankruptcy Schedules; or (iv) such Person's scheduled Claims have been objected to by the Debtor or the Reorganized Debtor, or any other Person, or has been identified as disputed, contingent, or unliquidated.

**C. Objections to and Resolution of Disputed Claims.**

On and after the Effective Date, the Reorganized Debtor shall have the authority to compromise, settle, otherwise resolve, file or withdraw any objections to Disputed Claims without approval of the Bankruptcy Court. The Reorganized Debtor shall file and serve all objections to Claims (other than Administrative Claims) upon the Holder of the Claim as to which the objection is made no later than 180 days after the later of (a) the Effective Date or (b) the date on which a proof of Claim is filed with the Court (the "**Claims Objection Deadline**"). The Reorganized Debtor may extend the Claims Objection Deadline for a single 120-day period by filing a notice of the extended deadline with the Bankruptcy Court; provided, however, that nothing herein shall modify the statute of limitations for any affirmative Cause of Action that the Reorganized Debtor may assert against any third party. Thereafter, the deadline may be further extended only by an Order of the Bankruptcy Court.

**D. Estimation of Claims.**

Before or after the Effective Date, the Debtor or Reorganized Debtor, as applicable, may (but is not required to) at any time request that the Bankruptcy Court estimate any Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court

shall retain jurisdiction to estimate any such Claim or Interest, including during the litigation of any objection to any Claim or Interest or during the appeal relating to such objection.

Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions), and the Reorganized Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim or Interest.

**E. Adjustment to Claims Without Objection.**

Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, cancelled or otherwise expunged (including pursuant to the Plan), may be adjusted or expunged (including on the Claims Register, to the extent applicable) by the Reorganized Debtor without a Claim objection having to be filed and without any further notice to or action, Order or approval of the Bankruptcy Court.

**VI.**

**OTHER PLAN PROVISIONS**

**A. Discharge of the Debtor.**

The Confirmation Order will discharge all Claims. No Holder of a Claim may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Holder pursuant to the Plan. As of the Confirmation Date, all Persons are enjoined from asserting against any property that is to be

distributed under the Plan or re-vested in the Reorganized Debtor any Claims, rights, causes of action, liabilities, or Interests related thereto based upon any act, omission, transaction, or other activity that occurred before the Confirmation Date except as expressly provided in the Plan or the Confirmation Order. As of the Effective Date, notes and any other evidence of Claims will represent only the right to receive the Distributions contemplated under the Plan.

**B. Exculpation and Release of Debtor and Professionals.**

**Except to the extent arising from willful misconduct or gross negligence, any and all Claims, liabilities, causes of action, rights, damages, costs, and obligations held by any party against the Debtor, and the Reorganized Debtor, and their respective attorneys, accountants, agents, and other Professionals, and their officers, directors, and employees, whether known or unknown, matured or contingent, liquidated or unliquidated, existing, arising, or accruing, whether or not yet due in any manner related to the administration of the Cases or the formulation, negotiation, prosecution, or implementation of the Plan, shall be deemed fully waived, barred, released, and discharged in all respects, except as to rights, obligations, duties, claims, and responsibilities preserved, created, or established by the terms of the Plan. Pursuant to section 1125(e) of the Bankruptcy Code, the Debtor, and the Reorganized Debtor, and their present and former members, officers, directors, employees, agents, advisors, representatives, successors or assigns, and any Professionals (acting in such capacity) employed by any of the foregoing entities will neither have nor incur any liability to any Person for their or its role in soliciting acceptances or rejections of the Plan.**

**C. Injunction Enjoining Holders of Claims.**

**The Plan is the sole means for resolving, paying, or otherwise dealing with Claims and Interests. To that end, except as expressly provided herein, at all times on and after the Effective Date, all Persons who have been, are, or may be Holders of Claims**

**against or Interests in the Debtor arising before the Effective Date, shall be permanently enjoined from taking any of the following actions on account of any such Claims or Interests, against the Debtor, the Estate, the Reorganized Debtor, the New Equity Holder, or their successors (other than actions brought to enforce any rights or obligations under the Plan and any adversary proceedings pending in the Case as of the Effective Date):**

**a. commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against the Debtor, the Estate, the Reorganized Debtor, the New Equity Holder, their successors, or their respective property or assets (including, without limitation, all suits, actions, and proceedings that are pending as of the Effective Date);**

**b. enforcing, levying, attaching, executing, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or Order against the Debtor, the Estate, the Reorganized Debtor, the New Equity Holder, their successors, or their respective property or assets;**

**c. creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien, against the Debtor, the Estate, the Reorganized Debtor, the New Equity Holder, their successors, or their respective property or assets; and**

**d. proceeding in any place whatsoever against the Debtor, the Estate, the Reorganized Debtor, the New Equity Holder, their successors, or their respective property or assets, in any manner that does not conform to or comply with the provisions of the Plan.**

**D. Injunctions or Stays.**

**Unless otherwise provided by Court Order, all injunctions or stays arising under or entered during the Case under section 105 or section 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.**

**E. Severability of Plan Provisions.**

If, before entry of the Confirmation Order, the Court holds that any Plan term or provision is invalid, void, or unenforceable, the Court may alter or interpret that term or provision so that it is valid and enforceable to the maximum extent possible consistent with the original purpose of that term or provision. That term or provision will then be applicable as altered or interpreted.

Notwithstanding any such holding, alteration, or interpretation, the Plan's remaining terms and provisions will remain in full force and effect and will in no way be affected, impaired, or invalidated. The Confirmation Order will constitute a judicial determination providing that each Plan term and provision, as it may have been altered or interpreted in accordance with this Section, is valid and enforceable under its terms.

**F. Governing Law.**

The rights and obligations arising under the Plan and any agreements, contracts, documents, or instruments executed in connection with the Plan will be governed by, and construed and enforced in accordance with, Delaware law without giving effect to Delaware law's conflict of law principles, unless a rule of law or procedure is supplied by: (a) federal law (including the Bankruptcy Code and the Bankruptcy Rules); or (b) an express choice-of-law provision in any document provided for, or executed under or in connection with, the Plan.

**G. Successors and Assigns.**

The rights, benefits, and obligations of any Person referred to in the Plan will be binding on, and will inure to the benefit of, any heir, executor, administrator, personal representative, successor, or assign of that Person.

**H. Nonconsensual Confirmation.**

The Debtor will seek confirmation under section 1129(b) of the Bankruptcy Code with respect to each Class of Interests which is deemed to have rejected the Plan.

**I. Post-Effective Date Notice.**

From and after the Effective Date, any Person who desires notice of any pleading or document filed in the Case, or of any hearing in the Court, or of any matter as to which the Bankruptcy Code requires notice to be provided, shall file a request for post-Confirmation Date notice and shall serve the request on counsel for the Debtor and counsel for the Reorganized Debtor; provided, however, that the U.S. Trustee shall be deemed to have requested post-Confirmation Date notice.

**J. Retention of Jurisdiction.**

The Court will retain and have exclusive jurisdiction over any matter arising under the Bankruptcy Code, arising in or related to the Case or the Plan, or that relates to the following:

- a. the resolution of 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 therefrom;

- b. the entry of such Orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan;
- c. the determination of any and all motions, adversary proceedings, applications, and contested or litigated matters that may be pending before the Court on the Effective Date or that, pursuant to the Plan, may be instituted by the Reorganized Debtor after the Effective Date;
- d. ensuring that Distributions to Holders of Allowed Claims are accomplished as provided in the Plan;
- e. hearing and determining any objections to Administrative Claims or proofs of Claim, both before and after the Confirmation Date, including any objections to the classification of any Claim and to allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, in whole or in part;
- f. the entry and implementation of such Orders as may be appropriate in the event that the Confirmation Order is, for any reason, stayed, revoked, modified, reversed, or vacated;
- g. the issuance of such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;
- h. consideration of any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any Order of the Court, including the Confirmation Order;

i. hearing and determining all applications for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date;

j. hearing and determining disputes arising in connection with, or relating to, the Plan or the interpretation, implementation, or enforcement of the Plan, or the extent of any Person's obligations incurred in connection with or released or exculpated under the Plan;

k. the recovery of all Assets of the Debtor and property of the Estate, wherever located;

l. the issuance of injunctions or other Orders as may be necessary or appropriate to restrain interference by any Person with consummation, implementation, or enforcement of the Plan;

m. the determination of any other matters that may arise in connection with, or are related to, the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection therewith;

n. hearing and determining matters concerning state, local, and federal Taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

o. hearing any other matter or for any purpose specified in the Confirmation Order that is not inconsistent with the Bankruptcy Code;

p. entry of a final decree closing the Case;

q. hearing and determining any other matter deemed relevant to the consummation of the Plan or the administration of the Case; and

r. interpreting and enforcing Orders entered by the Court; provided that if the Court abstains from exercising jurisdiction, or is without jurisdiction, over any matter, this section will not affect, control, prohibit, or limit the exercise of jurisdiction by any other court, or the tribunal that has jurisdiction over that matter.

**K. Entry of a Final Decree.**

Promptly following completion of the Distributions as contemplated by the Plan, the Reorganized Debtor will file a motion with the Court to obtain entry of a final decree closing the Cases. Upon the entry of the final decree, the Reorganized Debtor shall be authorized in its sole discretion to discard or destroy any and all pre-Effective Date books and records of the Debtor.

**VII.**

**PROJECTED FINANCIAL INFORMATION**

On or before March 15, 2017, the Debtor will file its projected financial information (the “**Projections**”) and will serve the Projections by overnight mail on all holders of Impaired Claims. The Debtor believes that the Plan meets the feasibility requirement set forth in section 1129(a)(11) of the Bankruptcy Code, as Confirmation is not likely to be followed by the liquidation or need for further financial reorganization of the Reorganized Debtor. In connection with the development of the Plan and for the purposes of determining whether the Plan satisfies this feasibility standard, the Debtor analyzed the ability of the Reorganized Debtor to satisfy its financial obligations while maintaining sufficient liquidity and capital resources.

The Debtor does not, as a matter of course, publish its business plans or strategies, projections, or anticipated financial position. Accordingly, the Debtor does not anticipate that it or the Reorganized Debtor will, and disclaims any obligation to, furnish updated financial

projections to Holders of Claims or other parties in interest after the Confirmation Date except for any reporting requirements set forth in the Exit Facility or otherwise make such information public.

## VIII.

### **CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following is a summary of certain U.S. federal income tax consequences of the Plan to the Debtor and certain Creditors and Holders of certain Claims. This summary is based on the Internal Revenue Code of 1986, as amended (the “**Tax Code**”), Treasury Regulations promulgated thereunder, and administrative and judicial interpretations and practice, all as in effect on the date of the Disclosure Statement and all of which are subject to change, possibly with retroactive effect. This summary does not address the U.S. federal income tax consequences to holders of Claims who are Unimpaired, otherwise entitled to payment in full in Cash under the Plan, or deemed to reject the Plan. The Debtor has not obtained an opinion of counsel and does not intend to seek a ruling from the Internal Revenue Service (“**IRS**”) as to any of the tax consequences of the Plan discussed below. There can be no assurance that the IRS will not challenge one or more of the tax consequences of the Plan described below.

This summary does not apply to Holders of Claims that are not United States Persons (as such term is defined in the Tax Code) or that are otherwise subject to special treatment under U.S. federal income tax law (including, for example, partnerships or entities treated as partnerships for U.S. federal income tax purposes; Persons whose functional currency is not the U.S. dollar; banks; governmental authorities or agencies; financial institutions; insurance companies; pass-through entities; tax-exempt organizations; brokers and dealers in securities, currencies or commodities; small business investment companies; regulated

investment companies; Persons whose Claims arose in connection with providing services to the Debtor, including in an employment capacity). The following discussion assumes that Holders of Claims hold such Claims as “capital assets” within the meaning of section 1221 of the Tax Code. Moreover, this summary does not purport to cover all aspects of U.S. federal income taxation that may apply to the Debtor and Holders of Claims based upon their particular circumstances. Additionally, this summary does not discuss any tax consequences that may arise under any laws other than U.S. federal income tax law, including under U.S. federal estate tax law or any state, local, or foreign tax law.

The following summary is not a substitute for careful tax planning and advice based on the particular circumstances of each Holder of a Claim. Each Holder of a Claim is urged to consult its tax advisors as to the U.S. federal income tax consequences, as well as other tax consequences, including under U.S. federal estate tax law or any applicable state, local, and foreign law, of the restructuring described in the Plan.

## **IX.**

### **CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES TO THE HOLDERS OF THE ALLOWED CLASS 1 CLAIM AND THE ALLOWED CLASS 2 CLAIM**

#### **A. Consequences to Holders of the Class 1 Claim.**

Pursuant to the Plan, the Class 1 Claim will be exchanged for Reorganized Debtor Common Stock. The U.S. federal income tax consequences to Holders of the Class 1 Claim depend on whether the Class 1 Claim is treated as a “security” for U.S. federal income tax purposes.

Whether an instrument constitutes a “security” is determined based on all the facts and circumstances, but most authorities have held that term-length of a debt instrument at

issuance is an important factor in determining whether such an instrument is a security for U.S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are numerous other factors that could be taken into account in determining whether a debt instrument is a security, including, among others: the security for payment; the creditworthiness of the obligor; the subordination or lack thereof to other creditors; the right to vote or otherwise participate in the management of the obligor; convertibility of the instrument into an equity interest of the obligor; whether payments of interest are fixed, variable, or contingent; and whether such payments are made on a current basis, or accrued. Based on the terms of the debt underlying the Class 1 Claim, the Class 1 Claim is not expected to be treated as a “security” for U.S. federal income tax purposes and the remainder of this discussion assumes such treatment. If, contrary to the Debtor’s expectation, the Class 1 Claim is treated as a security for U.S. federal income tax purposes, the U.S. federal income tax consequences to Holders of the Class 1 Claim would be materially different from those described herein. Holders should consult their tax advisors with respect the possibility that the Class 1 Claim is treated as a security for U.S. federal income tax purposes and the attendant consequences.

Based on the foregoing, the exchange of the Class 1 Claim pursuant to the Plan should be treated as a taxable exchange for U.S. federal income tax purposes. Accordingly, Holders of the Class 1 Claim generally should recognize gain or loss equal to the difference between (1) the fair market value as of the Effective Date of any Reorganized Debtor Common Stock received by such Holder and (2) such Holder’s tax basis in such Class 1 Claim surrendered by such Holder (other than any tax basis attributable to accrued but unpaid interest). The character of such recognized gain or loss as capital gain or loss or as ordinary income or loss

should depend, among other things, on the application of the market discount rules, and Holders of the Class 1 Claim may recognize ordinary income to the extent that a portion of the consideration received in exchange for such Class 1 Claim is treated as received in satisfaction of accrued but unpaid interest that has not been included in income. If recognized gain or loss is capital, it generally would be long-term capital gain or loss if the Holder of the Class 1 Claim held such Class 1 Claim for more than one year at the time of the exchange. If such Holder is a non-corporate taxpayer, any such long-term capital gain may be taxed at preferential rates. In general, Holders of the Class 1 Claim's basis in the property received (i.e., the Reorganized Debtor Common Stock) should equal the fair market value of such property as of the Effective Date, and such Holder's holding period for the Reorganized Debtor Common Stock received should begin on the day following the Effective Date. The use of capital losses may be subject to limitation under the Tax Code.

**B. Consequences to Holders of Allowed Class 2 Claim.**

Pursuant to the Plan, the Class 2 Claim will be exchanged for Reorganized Debtor Common Stock and Cash. The U.S. federal income tax consequences to Holders of the Class 2 Claim depend on whether the Class 2 Claim is treated as a "security" for U.S. federal income tax purposes.

As noted above, whether an instrument constitutes a "security" is determined based on all the facts and circumstances, but most authorities have held that term-length of a debt instrument at issuance is an important factor in determining whether such an instrument is a security for U.S. federal income tax purposes. Based on the terms of the debt underlying the Class 2 Claim, the Class 2 Claim is not expected to be treated as a "security" for U.S. federal income tax purposes and the remainder of this discussion assumes such treatment. If, contrary to the Debtor's expectation, the Class 2 Claim is treated as a security for U.S. federal income tax

purposes, the U.S. federal income tax consequences to Holders of the Class 2 Claim would be materially different from those described herein. Holders should consult their tax advisors with respect to the possibility that the Class 2 Claim is treated as a security for U.S. federal income tax purposes and the attendant consequences.

Because the Holders of the Class 2 Claim are also the lenders under the Exit Facility, we intend to treat the exchange of the Class 2 Claim for Reorganized Debtor Common Stock and Cash, together with the execution of the Exit Facility, as an exchange of the Class 2 Claim for Reorganized Debtor Stock and an interest in the Exit Facility. The treatment of such exchange depends on whether the terms of the Exit Facility differ from the terms of the Class 2 Claim to such an extent that the exchange constitutes a “significant modification” of the Class 2 Claim. Based on the anticipated terms of the Exit Facility, and taking into account the receipt of Reorganized Debtor Common Stock by the Holders of the Class 2 Claim, we expect that such exchange will result in a “significant modification” of such Class 2 Claim for U.S. federal income tax purposes. If, contrary to the Debtor’s expectation, the exchange of the Class 2 Claim pursuant to the Plan is not treated as a significant modification of such Class 2 Claim, the U.S. federal income tax consequences to Holders of the Class 2 Claim would be materially different from those described herein. Holders should consult their tax advisors with respect to the possibility that the exchange of the Class 2 Claim pursuant to the plan is not treated as a “significant modification” for U.S. federal income tax purposes and the attendant consequences.

Based on the foregoing, the exchange of the Class 2 Claim pursuant to the Plan should be treated as a taxable exchange for U.S. federal income tax purposes. Accordingly, Holders of the Class 2 Claim generally should recognize gain or loss equal to the difference between (1) the sum of the “issue price” of the Exit Facility deemed received and the fair market

value as of the Effective Date of any Reorganized Debtor Common Stock received by such Holder and (2) such Holder's tax basis in such Class 2 Claim surrendered by such Holder (other than any tax basis attributable to accrued but unpaid interest). The "issue price" of the Exit Facility should generally be equal to its stated redemption price at maturity.

The character of such recognized gain or loss as capital gain or loss or as ordinary income or loss should depend, among other things, on the application of the market discount rules, and the Holder of the Class 2 Claim may recognize ordinary income to the extent that a portion of the consideration received in exchange for such Class 2 Claim is treated as received in satisfaction of accrued but unpaid interest that has not been included in income. If recognized gain or loss is capital, it generally would be long-term capital gain or loss if the Holder of the Class 2 Claim held such Class 2 Claim for more than one year at the time of the exchange. If such Holder is a non-corporate taxpayer, any such long-term capital gain may be taxed at preferential rates. In general, Holders of the Class 2 Claim's basis in the property received (i.e., the Reorganized Debtor Common Stock) should equal the fair market value of such property as of the Effective Date, and such Holder's holding period for the Reorganized Debtor Common Stock received should begin on the day following the Effective Date. The use of capital losses may be subject to limitation under the Tax Code.

**C. Accrued But Unpaid Interest**

A portion of the Reorganized Debtor Common Stock or cash received by Holders of a Claim may be attributable to accrued but unpaid interest on such Claim. Such amount may be taxable to that Holder as interest income if such accrued interest has not been previously included in the Holder's gross income for U.S. federal income tax purposes.

If the fair market value of the Reorganized Debtor Common Stock is not sufficient to fully satisfy all principal and interest on an Allowed Claim, the extent to which such

Reorganized Debtor Common Stock will be attributable to accrued but unpaid interest is unclear. Under the Plan, the aggregate consideration to be distributed to Holders of Allowed Claims in each Class will be treated as first satisfying an amount equal to the stated principal amount of the Allowed Claim for such Holders and any remaining consideration as satisfying accrued but unpaid interest, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for U.S. federal income tax purposes. There can be no assurance, however, that the IRS will not take the position that the consideration received by a Holder should be allocated in some way other than as provided in the Plan. Holders of Claims should consult their tax advisors regarding the proper allocation of the consideration received by them under the Plan.

**D. Market Discount**

Holders who exchange Claims for Reorganized Debtor Common Stock may be affected by the “market discount” provisions of sections 1276 through 1278 of the Tax Code. Under these rules, some or all of the gain recognized by a Holder may be treated as ordinary income (instead of capital gain), to the extent of the amount of accrued “market discount” on such Claims not previously included as income by such Holder.

In general, a debt obligation with a fixed maturity of more than one year that is acquired by a holder on the secondary market (or, in certain circumstances, upon original issuance) generally is considered to be acquired with “market discount” as to that holder if the debt obligation’s stated redemption price at maturity (or revised issue price as defined in section 1278 of the Tax Code, in the case of a debt obligation issued with original issue discount) exceeds the tax basis of the debt obligation in the holder’s hands immediately after its acquisition. However, a debt obligation is not a “market discount bond” if such excess is less than a statutory *de minimis* amount (equal to 0.25 percent of the debt obligation’s stated

redemption price at maturity or revised issue price, in the case of a debt obligation issued with original issue discount, multiplied by the number of complete years remaining until maturity at the time of the acquisition).

Gain recognized by a Holder on the taxable disposition of a Claim that was acquired with market discount may be treated as ordinary income to the extent of the market discount that accrued thereon while the Claim was held by the Holder (unless the Holder elected to include market discount in income as it accrued). Holders who purchased their Claims with market discount are advised to consult their tax advisors regarding the tax consequences to them under the market discount rules.

**E. Bad Debt Deduction.**

A Holder who, under the Plan, receives in respect of a Claim an amount less than the Holder's tax basis in the Claim may be entitled to a bad debt deduction in some amount under section 166(a) of the Tax Code. The rules governing character, timing and amount of bad debt deductions place considerable emphasis on the facts and circumstances of the Holder, the obligor and the instrument with respect to which a deduction is claimed. Each Holder of a Claim, therefore, is urged to consult its tax advisors with respect to its ability to take such a deduction.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM OR INTEREST IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE

PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTION CONTEMPLATED BY THE RESTRUCTURING, INCLUDING THE APPLICABILITY AND EFFECT OF ANY TAX LAWS, OTHER THAN FEDERAL INCOME TAX LAWS, ANY STATE, LOCAL, OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

**X.**

**CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES TO THE REORGANIZED DEBTOR**

**A. Cancellation of Debt and Reduction of Tax Attributes.**

In general, absent an exception, a debtor will realize and recognize cancellation of debt income (“**COD Income**”) upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the sum of (x) the amount of Cash paid, and (y) the fair market value of any non-cash consideration (including stock of the debtor) given in satisfaction of such indebtedness at the time of the exchange.

A debtor will not, however, be required to include any amount of COD Income in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as a consequence of such exclusion, a debtor must reduce certain of its tax attributes by the amount of COD Income that it excluded from gross income under section 108 of the Tax Code. In general, tax attributes will be reduced in the following order: (a) NOLs; (b) general business tax credit carryovers, (c) minimum tax credits, (d) capital loss carryovers; (e) tax basis in assets; and (f)

foreign tax credit carryovers. A debtor with COD Income may elect first to reduce the basis of its depreciable assets under section 108(b)(5) of the Tax Code.

Because the Plan provides that Holders of the Allowed Class 1 Claim and the Allowed Class 2 Claim will receive Reorganized Debtor Common Stock, the amount of COD Income, and accordingly the amount of tax attributes required to be reduced, will depend on the fair market value of the Reorganized Debtor Common Stock exchanged therefor. This value cannot be known with certainty until after the Effective Date.

**B. Limitation of Net Operating Loss Carry Forwards and Other Tax Attributes.**

The precise amount of NOL carryovers that will be available to the Reorganized Debtor at emergence is based on a number of factors and is impossible to calculate at this time. Some of the factors that will affect the amount of available NOLs include: the amount of tax losses incurred by the Debtor in 2016 and the pre-emergence portion of 2017; the value of the Reorganized Debtor Common Stock; and the amount of COD Income incurred by the Debtor in connection with consummation of the Plan. The Debtor anticipates that, taking these factors into account, they will have substantial federal NOL carryovers following emergence, subject to the limitations discussed below. The Reorganized Debtor's subsequent utilization of any losses and NOL carryovers remaining and possibly certain other tax attributes may be restricted as a result of and upon consummation of the Plan.

Following consummation of the Plan, any remaining NOL and tax credit carryovers and, possibly, certain other tax attributes of the Reorganized Debtor allocable to periods prior to the Effective Date (collectively, "**Pre-Change Losses**") will be subject to section 382 of the Tax Code as a result of an "ownership change" of the Reorganized Debtor by reason of the transactions pursuant to the Plan. Under section 382 of the Tax Code, if a corporation

undergoes an “ownership change,” the amount of its Pre-Change Losses that may be utilized to offset future taxable income generally is subject to an annual limitation.

**1. General Section 382 Annual Limitation.**

In general, the amount of the annual limitation on the use of NOLs to which a corporation that undergoes an “ownership change” would be subject is equal to the product of (i) the fair market value of the stock of the corporation immediately before the “ownership change” (with certain adjustments) multiplied by (ii) the highest “adjusted federal long-term rate” in effect for the month in which the “ownership change” occurs and the adjusted prior two months (currently 2.04% for ownership changes occurring in January 2017). However, the annual limitation is reduced to zero if the corporation fails to continue its business enterprise for the two years following the ownership change. Any unused limitation may be carried forward, thereby increasing the annual limitation in the subsequent taxable year.

Subject to a de minimis threshold, if a debtor’s assets in the aggregate have a fair market value less than such debtor’s tax basis therein (a “**Net Unrealized Built-in Loss**”), any built-in losses recognized by the reorganized debtor (up to the amount of such Net Unrealized Built-in Loss) during the five year period following the ownership change, including loss on disposition of assets and depreciation and amortization deductions attributable to the excess of the tax basis of the assets of the reorganized debtor over the fair market value of such assets as of the date of the ownership change, generally will be treated as Pre-Change Losses subject to the annual limitation.

Subject to a de minimis threshold, if a debtor’s assets in the aggregate have a fair market value greater than such debtor’s tax basis therein (a “**Net Unrealized Built-in Gain**”), any built-in gains recognized by the reorganized debtor (up to the amount of such Net Unrealized Built-in Gain) during the five year period following the ownership change will generally increase

the section 382 limitation in the year recognized, such that the reorganized debtor would be permitted to use its pre-change NOLs against such gain in addition to its annual limitation. For these purposes, the reorganized debtor would be permitted to increase its annual section 382 limitation during such five year period following the ownership change (up to the amount of the original Net Unrealized Built-in Gain) by an amount determined by reference to the additional depreciation deductions that a hypothetical purchaser of the debtor's assets would have been permitted to claim if it had acquired such debtor's assets in a taxable transaction.

## 2. Special Bankruptcy Exceptions.

An exception to the foregoing annual limitation rules generally applies when "qualified creditors" of a debtor company in chapter 11 receive, in respect of their claims, at least 50% of the vote and value of the stock of the reorganized debtor (or a controlling corporation if also in chapter 11) pursuant to a confirmed chapter 11 plan (the "**382(l)(5) Exception**"). Under the 382(l)(5) Exception, a debtor's Pre-Change Losses are not limited on an annual basis but, instead, are required to be reduced by the amount of any interest deductions claimed during the three taxable years preceding the Effective Date, and during the part of the taxable year prior to and including the Effective Date, in respect of all debt converted into stock in the reorganization. If the 382(l)(5) Exception applies and the debtor undergoes another "ownership change" within two years after consummation of the Plan, then the Debtor's Pre-Change Losses effectively would be eliminated in their entirety.

Where the 382(l)(5) Exception does not apply (either because the debtor does not qualify for it or the debtor elects not to utilize the 382(l)(5) Exception), a second special rule will generally apply (the "**382(l)(6) Exception**"). When the 382(l)(6) Exception applies, a debtor corporation in chapter 11 that undergoes an "ownership change" generally is permitted to determine the fair market value of its stock after taking into account the increase in value

resulting from any surrender or cancellation of creditors' claims in the bankruptcy. This differs from the ordinary rule that requires the fair market value of a debtor corporation that undergoes an "ownership change" to be determined before the events giving rise to the change. The 382(l)(6) Exception also differs from the 382(l)(5) Exception in that under it the debtor corporation is not required to reduce its NOLs by the amount of interest deductions claimed within the prior three-year period, and the debtor may undergo a change of ownership within two years without triggering the elimination of its NOLs.

Although a final determination will not be made until the Reorganized Debtor's 2017 U.S. federal income tax return is filed, the Debtor expects that the Reorganized Debtor will qualify for, and will not elect out of, the 382(l)(5) Exception. In the event that the Reorganized Debtor does not use the 382(l)(5) Exception, the Debtor expects that the Reorganized Debtor's use of its NOLs after the Effective Date will be subject to limitation based on the rules discussed above, but taking into account the 382(l)(6) Exception.

**C. Section 269 of the Tax Code.**

Aside from the objective limitations of section 382 of the Tax Code, the IRS may disallow the subsequent use of a corporation's losses pursuant to section 269 of the Tax Code. Under section 269, if the IRS determines that the "principal purpose" of an acquisition was to evade or avoid U.S. federal income tax by allowing the taxpayer to secure the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, the IRS may disallow such deduction, credit, or other allowance. Section 269 applies to direct or indirect acquisition of 50% or more (by vote or value) of a corporation's stock, including such acquisition pursuant to a plan of reorganization in chapter 11. The Debtor does not believe that securing a tax benefit is the principal purpose of the acquisition of control of the

Reorganized Debtor by the Debtor's creditors pursuant to the Plan. However, no assurance can be given in this regard.

**D. Alternative Minimum Tax**

In general, an alternative minimum tax ("**AMT**") is imposed on a corporation's alternative minimum taxable income ("**AMTI**") each year at a 20% rate to the extent such tax exceeds the corporation's regular federal income tax for such year. AMTI is generally equal to regular taxable income with certain adjustments. For purposes of computing AMTI, certain tax deductions and other beneficial allowances are modified or eliminated. For example, even though for regular tax purposes a corporation might otherwise be able to offset all of its taxable income by NOL carryovers from prior years, only 90% of a corporation's AMTI may be offset by available alternative tax NOL carryforwards. This rule could cause the Debtor to owe federal and state income tax on taxable income in future years even though NOL carryforwards are available to offset regular taxable income.

Additionally, if a corporation undergoes an "ownership change" within the meaning of section 382 of the IRC, the section 382 rules discussed above also apply to its NOL carryforwards for AMT purposes. Any AMT tax that a corporation pays is generally allowed as a nonrefundable credit against its regular U.S. federal income tax liability in future taxable years to the extent that the corporation is no longer subject to AMT.

THE FOREGOING SUMMARY HAS BEEN PROVIDED FOR INFORMATIONAL PURPOSES ONLY. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

**XI.**

**VOTING AND PLAN CONFIRMATION STANDARDS**

**A. Voting on the Plan.**

After carefully reviewing the Plan and this Disclosure Statement, including the Exhibits hereto, each Holder of a Claim in Class 1 or Class 2 should mark its vote on the enclosed Ballot and timely return it in the envelope provided.

**TO BE COUNTED, YOUR BALLOT MUST BE COMPLETELY FILLED IN, SIGNED AND TRANSMITTED IN THE MANNER SPECIFIED IN THE BALLOT SO THAT IT IS RECEIVED BY EPIQ, THE DEBTOR'S CLAIMS AND NOTICING AGENT, ON OR BEFORE THE VOTING DEADLINE OF MARCH 29, 2017 AS SPECIFIED IN THE BALLOT.**

**1. Classes Entitled To Vote.**

Whether a Holder of a Claim is entitled to vote on the Plan depends on (a) the Class in which the Claim is classified and (b) whether that Class is "Impaired" under the Plan within the meaning of Bankruptcy Code section 1124. PDL, the sole Holder of Allowed Claims in Class 1 and Class 2, is entitled to vote on the Plan because those Classes are Impaired under the Plan within the meaning of Bankruptcy Code section 1124. Class 3 (Other Secured Claims) and Class 4 (General Unsecured Claims) are Unimpaired and Holders of Claims in such Classes are deemed to accept the Plan. Holders of Interests in Class 5, Class 6, Class 7 and Class 8 are deemed to reject the Plan because they will receive no Distribution under the Plan.

**a. What Is an Allowed Claim/Interest?**

As noted above, a creditor must first have an Allowed Claim to have the right to vote. Generally, any proof of Claim will be allowed, unless a party in interest objects to the Claim. If an objection to a Claim is filed, the creditor holding the Claim cannot vote unless the

Court, after notice and hearing, either overrules the objection or allows the Claim for voting purposes.

A creditor may have an Allowed Claim or Allowed Interest even if a proof of Claim or Interest was not timely filed, if (1) it is scheduled on the Debtor's schedules and such Claim is not scheduled as disputed, contingent, or unliquidated, and (2) no party in interest has objected to the Claim.

**b. What Is an Impaired Claim?**

As noted above, an Allowed Claim only has the right to vote if it is in a Class that is Impaired under the Plan. A Class is Impaired if the Plan alters the legal, equitable, or contractual rights of the members of that Class.

In this Case, only Class 1 and Class 2, containing PDL's Senior Secured Claim and Junior Secured Claim, respectively, are Impaired and are therefore entitled to vote to accept or reject the Plan. Parties who dispute the Debtor's characterization of their Claim or Interest as being Impaired or Unimpaired may file an objection to the Plan contending that the Debtor has incorrectly characterized the Class.

**c. Who Is Not Entitled to Vote?**

The following types of Claims are not entitled to vote: (1) Claims that have been disallowed; (2) Claims entitled to priority pursuant to sections 507(a)(1), (a)(2), or (a)(8) of the Bankruptcy Code; (3) Claims in Classes that are not Impaired; and (4) Classes of Interests that are deemed to reject the Plan. Claims entitled to priority pursuant to sections 507(a)(1), (a)(2), or (a)(7) of the Bankruptcy Code are not entitled to vote because such Claims are not placed in Classes and they are required to receive certain treatment specified by the Code. Even if your Claim is of the type described above, you may still have a right to object to the confirmation of the Plan.

**d. Votes Necessary to Confirm the Plan.**

There is more than one Impaired Class in the Plan. In order for the Plan to be confirmed, at least one of the Impaired Classes must vote to accept the Plan.

**e. Votes Necessary for a Class to Accept the Plan.**

A Class of Claims is considered to have accepted the Plan when more than one-half in number and at least two-thirds in dollar amount (of the Claims actually voted) voted in favor of the Plan.

**2. How To Vote.**

Procedures for voting are specified in the Disclosure Statement Order (Exhibit C hereto) and the Confirmation Hearing Notice distributed with this Disclosure Statement in your solicitation package. The deadline for voting on the Plan is March 29, 2017. Your ballot must be received by 4:00 p.m., prevailing Eastern Time, on March 29, 2017 or it will not be counted.

**B. Confirmation of the Plan.**

The Bankruptcy Court has set a hearing on April 6, 2017, 2017, at 11:30 a.m., prevailing Eastern Time, in the Courtroom of The Honorable Mary F. Walrath, United States Bankruptcy Judge, to determine whether the requirements for confirmation of the Plan, including those set forth in section 1129 of the Bankruptcy Code, have been satisfied with respect to the Debtor. Your attention is directed to the Disclosure Statement Order (Exhibit C hereto) and the Confirmation Hearing Notice distributed with this Disclosure Statement in your solicitation package. Objections to Confirmation of the Plan must be served upon counsel to the Debtor by 4:00 p.m., prevailing Eastern Time, on March 29, 2017.

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan after the Ballots have been cast. The Confirmation Hearing may be postponed from time to time by the Bankruptcy Court without

further notice except for an announcement of the postponement made at the Confirmation Hearing. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. Objections must be made in writing, specifying in detail the name and address of the person or entity objecting, the grounds for the objection, and the nature and amount of the Claim or Interest held by the objector, and otherwise complying with the requirements of the Bankruptcy Rules and Local Bankruptcy Rules. Objections must be filed with the Clerk of the Bankruptcy Court, together with proof of service, and served upon the parties so designated in the notice in the manner set forth therein, on or before the time and date designated in the notice as being the last date for serving and filing objections to confirmation of the Plan. **UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THE NOTICE, IT WILL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

At the Confirmation Hearing, the Bankruptcy Court will determine, among other things, whether the confirmation requirements specified in section 1129 of the Bankruptcy Code have been satisfied. The Debtor believes that, upon acceptance of the Plan by the Classes of Claims entitled to vote (i.e., Class 1 and Class 2), the Plan will satisfy all of the applicable statutory requirements of chapter 11 of the Bankruptcy Code, that the Debtor has complied or will have complied with all of the requirements of chapter 11, and that the Plan is being proposed and will be submitted to the Bankruptcy Court in good faith.

**C. Feasibility.**

The Bankruptcy Code requires that a plan proponent demonstrate that the consummation of a plan is not likely to be followed by liquidation or the need for further financial reorganization of a debtor, unless that liquidation is proposed in a plan. The feasibility

test essentially requires the proponent demonstrate that it has sufficient ability to make the payments required under a plan.

The Bankruptcy Code requires that, in order for the Plan to be confirmed by the Court, it must be demonstrated that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. For purposes of determining whether the Plan meets this requirement, the Debtor has analyzed its ability to meet its obligations under the Plan. The Debtor believes that, through the Exit Facility and the Debtor's Cash on hand, it will have sufficient Cash on the Effective Date to make all required payments under the Plan. Furthermore, the Debtor has negotiated with PDL to ensure the terms of the Exit Facility are consistent with the Debtor's projected operational and financial needs. The Debtor expects that it will be able to perform pursuant to the terms of the Exit Facility.

**D. Best Interests of Creditors Test.**

Confirmation requires, among other things, that each holder of a Claim in an Impaired Class and each holder of an Interest either: (i) accepts the Plan; or (ii) receives or retains under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. This requirement is commonly referred to as the "Best Interests Test."

To determine if the Plan is in the best interest of the Impaired Classes in the Plan, the present value of the distributions from the proceeds of the liquidation of the Debtor's Assets and properties, after subtracting the amounts attributable to senior Claims, is then compared with the value of the property offered to each Impaired Class under the Plan.

Classes 1 and 2, consisting of the PDL Senior Secured Claim and the PDL Junior Secured Claim, respectively, are Impaired, but the Debtor anticipates that the sole member of each such Class (i.e., PDL) will vote to accept the Plan. Classes 3 and 4 are Unimpaired under

the Plan. Classes 5, 6, 7 and 8 (together the “**Existing Equity Classes**”) are Impaired under the Plan and based on their treatment are deemed to reject the Plan. In order to satisfy the Bankruptcy Code’s requirements, the Existing Equity Classes must be receiving under the Plan at least as much as they would in a chapter 7 liquidation.

The Debtor has performed a liquidation analysis, which is attached hereto as Exhibit B and incorporated herein by this reference (the “**Liquidation Analysis**”). The Liquidation Analysis sets forth the Debtor’s best estimate of what a chapter 7 trustee might generate from a disposition of the Debtor’s assets. The Debtor believes that such a process would not likely be completed much before the end of 2017, and that a chapter 7 liquidation of all of the Debtor’s assets would result in a substantial reduction in the gross proceeds received from selling these assets, hence a substantial reduction in the distributions to be made to Holders of Allowed Claims. The potential liquidation value is set forth in Exhibit B. In such a chapter 7 liquidation, Holders of Interests would receive no distribution.

Therefore, the Debtor believes that the Plan satisfies the requirements of the “best interests” test and provides Holders of Claims more than the present value as they would receive in a chapter 7 liquidation and Holders of Interests the same thing they would receive in a chapter 7 case – i.e., no distribution.

**E. Classification.**

In accordance with Bankruptcy Code section 1122, the Plan provides for the classification of four (4) Classes of Claims and four (4) Classes of Interests. Section 1122(a) permits a plan to place a claim or an interest in a particular class only if the claim or interest is substantially similar to the other claims or interests in that class. The Debtor believes that the classification of Claims and Interests under the Plan is appropriate and consistent with applicable law.

**F. Nonconsensual Confirmation**

Since the equity Interests under the Plan neither receive nor retain anything under the Plan, they are deemed to reject the Plan. Under section 1129(b) of the Bankruptcy Code, the Bankruptcy Court may nevertheless confirm the Plan if all other requirements of section 1129(a) are satisfied, and if the Bankruptcy Court determines that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect thereto.

The Plan constitutes a request by the Debtor that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of subsection 1129(a)(8) with respect to Classes 5, 6, 7 and 8, on the basis that the Plan is fair and equitable and does not discriminate unfairly with respect to each such Class of Interests that is Impaired under, and is deemed not to have accepted, the Plan.

**XII.**

**RISK FACTORS**

**A. Risks Related to Bankruptcy.**

**1. Parties May Object to the Plan’s Classification of Claims and Interests.**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interest in such class. The Debtor believes that the classification of the Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims or Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

**2. The Debtor May Not Be Able to Obtain Confirmation of the Plan.**

The Bankruptcy Court might not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements for confirmation under section 1129 of the Bankruptcy Code have not been met. If the Plan is not confirmed by the Bankruptcy Court, it is unclear whether the Debtor would be able to reorganize its business and what, if any, distributions Holders of Claims ultimately would receive with respect to their Claims. There can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

**3. The Conditions Precedent to the Effective Date of the Plan May Not Occur.**

As more fully set forth in the Plan, the Effective Date is subject to several conditions precedent. If such conditions precedent are not met or waived, the Effective Date will not occur.

**B. Risks Related to the Reorganized Debtor's Business.**

**1. The Reorganized Debtor May Not Be Able to Achieve Its Projected Financial Results.**

The Projections discussed in Section VII of this Disclosure Statement represent the Debtor's best estimate of the Reorganized Debtor's future financial performance based on known facts and assumptions at the time the Projections are filed or such other date as contained in the Projections. The Reorganized Debtor's actual financial results may differ significantly from the Projections. Moreover, the financial condition and results of operations of the Reorganized Debtor from and after the Effective Date may not be comparable to the financial condition or results of operations reflected in the Debtor's historical financial statements.

If the Reorganized Debtor does not achieve its projected financial results, the value of the Interests in the Reorganized Debtor may be negatively affected, and the Reorganized Debtor may lack sufficient liquidity to service its debt obligations under the Exit Facility and to continue operating as planned after the Effective Date. If the Reorganized Debtor defaults under the terms of the Exit Facility, the lender under the Exit Facility may exercise remedies against the Reorganized Debtor and its assets.

### **XIII.**

#### **ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Debtor believes that the Plan affords all creditors the best option for recovery. The Plan pays Allowed General Unsecured Claims and Allowed Other Secured Claims in full. The most likely alternative to the Plan is a foreclosure proceeding by PDL to realize on its collateral. In a foreclosure scenario, and based on the Liquidation Analysis attached as Exhibit B, Holders of Allowed General Unsecured Claims would likely receive nothing. Holders of Allowed Other Secured Claims would only recover to the extent their Claims were senior to those of PDL and to the extent of the value of their respective collateral. THE DEBTOR URGES ALL CREDITORS TO VOTE TO ACCEPT THE PLAN BY SO INDICATING ON THEIR BALLOTS AND RETURNING THEM AS SPECIFIED IN THE NOTICE.

### **XIV.**

#### **RECOMMENDATION AND CONCLUSION**

The Debtor believes that confirmation and implementation of the Plan is preferable to any feasible alternatives, because the Plan will provide greater recoveries for the holders of Allowed Claims. Accordingly, the Debtor urges all creditors to vote to accept the

Plan by so indicating on their Ballots and returning them as specified in this Disclosure Statement and on the Ballots.

Dated: January 24, 2017

LENSAR, INC.,  
DEBTOR AND DEBTOR IN POSSESSION

By: /s/ Nicholas T. Curtis

Name: Nicholas T. Curtis

Title: President & CEO

Respectfully submitted,

/s/ Matthew G. Summers

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*Proposed Counsel for the Debtor*

# **EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
In re: : Chapter 11  
 :  
LENSAR, INC., : Case No. 16-12808 (MFW)  
 :  
Debtor.<sup>1</sup> :  
 :  
-----X

**PLAN OF REORGANIZATION FOR LENSAR, INC.  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

---

<sup>1</sup> The Debtor in this case, along with the last four digits of the Debtor's federal tax identification number, is: Lensar, Inc. (5724). The Debtor's corporate headquarters are located at 2800 Discovery Drive, Orlando, Florida 32826.

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I.

**INTRODUCTION, PLAN OBJECTIVES AND OVERVIEW**

Lensar, Inc., as Debtor, respectfully proposes this Plan pursuant to section 1121(a) of the Bankruptcy Code.<sup>2</sup> An overview of the Plan, as well as a discussion of the Debtor's business, history and operations, is set forth in the Disclosure Statement distributed contemporaneously herewith. Parties are encouraged to read the Plan and the Disclosure Statement and their respective exhibits and schedules in their entirety before voting to accept or reject the Plan. No materials other than the Disclosure Statement and the respective schedules and exhibits attached thereto and referenced therein have been authorized by the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan. The Debtors reserve the right to alter, amend, modify, revoke or withdraw this Plan.

The objectives of the Plan, as discussed in greater detail in the Disclosure Statement, are to: (1) effect a restructuring of the Debtor under which PDL, as the Debtor's principal secured creditor, (a) accepts equity in the Reorganized Debtor in exchange for the cancellation of \$14,181,698 of PDL's Secured Claim and (b) modifies the terms of its remaining Secured Claim; (2) facilitate the research and development services in which the Debtor participates; and (3) provide for Distributions to the Debtor's Creditors. The Plan divides Creditors and Interest Holders of the Debtor into Classes based on their legal rights and interests. All equity in the Reorganized Debtor will be issued to New Equity Holder, which is not an affiliate or insider of the Debtor. The current Interest Holders of the Debtor will not receive or retain anything on account of their Interests.

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<sup>2</sup> Capitalized terms and phrases have the meanings set forth in Section II.

## II.

### **DEFINITIONS AND RULES OF INTERPRETATION**

**Section 2.1 Definitions.** The following terms and phrases, when used in the Plan, have the meanings set forth below:

“**Administrative Claim**” means a Claim for administrative costs or expenses that is allowable under section 503(b) of the Bankruptcy Code or for U.S. Trustee Fees. These costs or expenses include: (a) actual, necessary costs and expenses of preserving the Estate after the Petition Date; (b) Ordinary Course Administrative Claims; (c) Professional Fee Claims; and (d) Administrative Tax Claims.

“**Administrative Claim Bar Date**” means, with respect to Administrative Claims, the date that is 20 days after the Effective Date, or, if such date is not a Business Day, the next Business Day thereafter, or such other date as may be set by the Bankruptcy Court in the Confirmation Order.

“**Administrative Claim Objection Deadline**” means the deadline set forth in Section 3.4.

“**Administrative Tax Claim**” means a Claim that a Governmental Authority asserts against the Debtor for Taxes or related interest or penalties, to the extent such Claim is entitled to priority and allowable under section 503(b) of the Bankruptcy Code.

“**Allowed Administrative Claim**” means an Administrative Claim that is (a) an Ordinary Course Administrative Claim to which the Debtor has no objection, (b) allowed as set forth in Section III or (c) allowed by a Final Order.

“**Allowed Claim**” or “**Allowed Interest**” means a Claim or Interest, other than an Administrative Claim, to the extent that: (a) either: (1) a proof of claim or proof of interest was

timely filed before the Claims Bar Date or pursuant to an Order of the Bankruptcy Court; or (2) a proof of claim or proof of interest is deemed timely filed either under Bankruptcy Rule 3003(b)(1)-(2) or by a Final Order; and (b) either: (1) the Claim or Interest is not a Disputed Claim or a Disputed Interest; or (2) the Claim or Interest is allowed by a Final Order. Any Claim or portion of a Claim that is satisfied or released during the Chapter 11 Case is not an Allowed Claim.

“**Assets**” means all assets of the Debtor’s Estate, including “property of the estate” under section 541 of the Bankruptcy Code and any Causes of Action.

“**Avoidance Action**” means an adversary proceeding, lawsuit, or other proceeding with respect to Causes of Action arising under, relating to, or similar to, section 502(d), 506, 510, 542, 543, 544, 545, 548, 549, 550, 551, 552, or 553 of the Bankruptcy Code, or any fraudulent conveyance, fraudulent transfer, or avoidable transfer, or any Cause of Action arising under, or relating to, any similar state law or federal law that constitutes property of the Debtor’s Estate under section 541 of the Bankruptcy Code, whether or not an action is initiated on or before the Effective Date; provided, however, that Avoidance Action shall not include any action to avoid a preferential transfer under section 547 of the Bankruptcy Code.

“**Ballot**” means the ballot for accepting or rejecting the Plan, as approved by the Bankruptcy Court.

“**Bankruptcy Code**” means title 11 of the United States Code, as applicable in the Chapter 11 Case.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, as applicable in the Chapter 11 Case.

“**Bankruptcy Schedules**” means the Schedules of Assets and Liabilities and Statement of Financial Affairs filed by the Debtor in the Chapter 11 Case.

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

“**Cash**” means cash or cash equivalents including bank deposits, checks, or other similar items.

“**Causes of Action**” means any and all claims, demands, rights, actions, causes of action, and suits of the Debtor or the Estate, of any kind or character whatsoever, known or unknown, suspected or unsuspected, whether arising before, on, or after the Petition Date, in contract or in tort, at law or in equity, or under any other theory of law, that the Debtor or the Estate has or asserts or may have or assert against third parties, whether or not brought as of the Effective Date, and which not have been settled or otherwise resolved by Final Order as of the Effective Date, including: (a) rights of setoff, counterclaim, or recoupment; (b) claims on contracts or for breaches of duties imposed by law; (c) the right to object to Claims or Interests; (d) such claims and defenses as fraud, mistake, duress, and usury; (e) Avoidance Actions; (f) claims for Tax refunds; (g) claims to recover outstanding accounts receivable; (h) such claims and defenses as alter ego; and (i) any other claims that may be asserted against third parties.

“**Chapter 11 Case**” means the Debtor’s chapter 11 case.

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

“**Claims Bar Date**” means the last date for filing proofs of Claim against the Estate pursuant to an Order of the Bankruptcy Court.

“**Claims Objection Deadline**” means the deadline for the Reorganized Debtor to file objections to Claims other than Administrative Claims, as set forth in Section 8.3.

“**Class**” means a group of Claims or Interests, as classified in Section IV.

“**Common Equity Interests**” means the Debtor’s common stock.

“**Confirmation Date**” means the date on which the Bankruptcy Court enters the Confirmation Order on its docket.

“**Confirmation Hearing Date**” means the first date on which the Bankruptcy Court holds the hearing to consider confirmation of the Plan under section 1128(a) of the Bankruptcy Code.

“**Confirmation Order**” means the Order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code.

“**Creditor**” means the Holder of a Claim against the Debtor.

“**Cure Amount**” means the amount needed to cure any monetary defaults by the Debtor under an Executory Contract or Unexpired Lease existing as of the time such contract or lease is assumed by the Debtor pursuant to section 365 of the Bankruptcy Code.

“**Debtor**” means Lensar, Inc., as debtor and debtor in possession in the Chapter 11 Case.

“**DIP Credit Agreement**” means that certain credit agreement entered into by the Debtor and PDL, dated as of January [ ], 2017, and approved by the Bankruptcy Court on an interim basis on January 10, 2017, and on a final basis on or about January 30, 2017.

“**DIP Loan**” means the \$4,368,216 senior secured super-priority debtor in possession term loan facility extended by PDL to the Debtor under the terms and subject to the conditions of the DIP Credit Agreement.

“**Disbursing Agent**” means the Debtor or the Reorganized Debtor, as identified in Section 7.2.4.

“**Disclosure Statement**” means the disclosure statement relating to the Plan, including all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

“**Disclosure Statement Order**” means the Order entered by the Bankruptcy Court approving the Disclosure Statement.

“**Disputed**” means, with respect to any Claim or Administrative Claim: (a) any Claim or Administrative Claim proof of which was timely and properly filed, and which the dollar amount of such Claim or Administrative Claim is not specified in a fixed liquidated amount; (b) any Claim or Administrative Claim proof of which was timely and properly filed, and which is disputed under the Plan or as to which the Debtor or the Reorganized, has interposed a timely objection or request for estimation in accordance with section 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018, which objection or request for estimation has not been withdrawn or determined by a Final Order; (c) any Claim or Administrative Claim, proof of which was required to be filed by Order of the Bankruptcy Court, but as to which a proof of claim was not timely or properly filed; (d) any Claim that has been listed by the Debtor in its Schedules, as such Schedules have been or may be amended by the Debtor from time to time in accordance with Bankruptcy Rule 1009, as unliquidated, disputed or contingent; and (e) any Claim as to which an objection has been filed or an adversary proceeding has been commenced by the filing

of a complaint seeking, among other things, entry of an Order disallowing or characterizing such Claim from debt to equity. To the extent an objection relates to the allowance of only a part of a Claim, such Claim shall be a Disputed Claim only to the extent of the objection and shall be deemed Allowed as to the portion to which no objection is made.

**“Distribution”** means any transfer under the Plan.

**“Distribution Record Date”** means the Confirmation Hearing Date.

**“E-5 Equity Interest”** means an Interest in the Debtor’s Series E-5 preferred stock.

**“Effective Date”** means the date the Plan becomes effective, as set forth in Section 7.1.

**“Estate”** means the estate of the Debtor created in the Chapter 11 Case under section 541 of the Bankruptcy Code.

**“Executory Contract”** means a contract to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

**“Exit Facility”** means the new senior secured first priority term loan facility to be entered into by the Debtor and PDL on the Effective Date: to (a) pay certain costs and expenses of the Debtor’s estate as detailed in the Plan, Disclosure Statement, and Exit Facility Loan Documents; and (b) finance any amounts then unpaid under the PDL Credit Agreements.

**“Exit Facility Loan Agreement”** means that certain credit agreement to be executed on or before the Effective Date, by and between the Debtor and PDL, including and incorporating any agreements, documents, or supplements related thereto or delivered in connection therewith. The Exit Facility Loan Agreement shall be substantially in the form filed in the Plan Supplement.

**“Exit Facility Loan Documents”** means the Exit Facility Loan Agreement and any ancillary agreements, documents, notes, certificates, instruments and filings related thereto.

**“Final Order”** means an Order of the Bankruptcy Court or any other court of competent jurisdiction as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtor (on or prior to the Effective Date) or the Reorganized Debtor (after the Effective Date), or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such Order of the Bankruptcy Court or other court of competent jurisdiction shall have been determined by the highest court to which such Order was appealed, or certiorari, reargument, or rehearing shall have been denied and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable law, may be filed with respect to such Order, shall not cause such Order not to be a Final Order.

**“General Unsecured Claim”** means any Claim that is not an Administrative Claim, a Priority Claim, a PDL Secured Claim or an Other Secured Claim.

**“Governmental Authority”** means any federal, state, or local government or other political subdivision, department or agency thereof, including, without limitation, any Person exercising executive, legislative, judicial, regulatory, or administrative governmental powers or functions.

**“Holder”** means the holder of a Claim against or Interest in the Debtor.

**“Impaired”** means, when used with reference to a Claim or Interest, a Claim or Interest that is not Unimpaired.

“**Interest**” means the interest of any Person who holds an equity interest in the Debtor.

“**Lien**” means any mortgage, pledge, lien, encumbrance, charge, security interest, or other charge against or interest in property to secure payment of a debt or performance of an obligation.

“**New Equity Holder**” means PDL or its designee.

“**Order**” means any writ, judgment, decree, injunction, or order of any Governmental Authority (whether preliminary or final).

“**Ordinary Course Administrative Claim**” means a Claim for an administrative cost or expense that is allowable under section 503(b) of the Bankruptcy Code and that is incurred in the ordinary course of the Debtor’s operations or the Chapter 11 Case, or for which payment is authorized by a Final Order of the Bankruptcy Court.

“**Other Secured Claim**” means a secured Claim against the Debtor other than the PDL Claim.

“**PDL**” means PDL Biopharma, Inc., a Delaware corporation.

“**PDL Claim**” means any and all Claims arising under the PDL Credit Agreements or any other PDL Loan Documents, including all accrued and unpaid interest, fees, and expenses, and other obligations owed under the PDL Credit Agreements, and any unsecured deficiency portion of such thereof, but not including any Claim under the DIP Credit Agreement.

“**PDL Credit Agreements**” means the Reaffirmed 2013 Credit Agreement and the PDL 2016 Credit Agreement.

“**PDL Loan Documents**” means the PDL Credit Agreements and any ancillary agreements, documents, certificates, instruments and filings related to each such PDL Credit Agreement.

**“PDL 2016 Credit Agreement”** means that certain Second Amended and Restated Credit Agreement, dated as of December 16, 2016, by and between the Debtor and PDL, pursuant to which the Debtor assumed an aggregate amount of \$48,910,311 in “Obligations” under (and as defined in) that certain Amended and Restated Credit Agreement, dated as of December 15, 2015, by and between Lensar and PDL.

**“PDL Junior Secured Claim”** means PDL’s Claim arising under, derived from, or based upon the PDL 2016 Credit Agreement and any other applicable PDL Loan Document.

**“PDL Secured Claim”** means the PDL Senior Secured Claim and the PDL Junior Secured Claim.

**“PDL Senior Secured Claim”** means PDL’s Claim arising under, derived from, or based upon the Reaffirmed 2013 Agreement and any other applicable PDL Loan Document.

**“PDL Unsecured Deficiency Claim”** means the unsecured deficiency portion of the PDL Claim.

**“Person”** means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity, or a Governmental Authority.

**“Petition Date”** means December 16, 2016.

**“Plan”** means this plan of reorganization under chapter 11 of the Bankruptcy Code, including all exhibits, supplements, appendices, and schedules thereto.

**“Plan Supplement”** means the supplement to the Plan to be filed by the Debtor with the Bankruptcy Court prior to the hearing on approval of the Disclosure Statement, which supplement shall contain forms of substantially final documents required for the implementation of the Plan.

**“Postpetition”** means any time after the commencement of the Chapter 11 Case.

**“Priority Claims”** means Priority Non-Tax Claims and Priority Tax Claims.

**“Priority Non-Tax Claim”** means a Claim, other than an Administrative Claim or Priority Tax Claim, entitled to priority under section 507(a) of the Bankruptcy Code.

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

**“Professional Fee Claim”** means: (a) a claim under section 327, 328, 330, 331, 503(b), 1103, or 1106 of the Bankruptcy Code for compensation for professional services rendered or expenses incurred before the Effective Date; or (b) a claim either under section 503(b)(4) of the Bankruptcy Code for compensation for professional services rendered or under section 503(b)(3)(D) of the Bankruptcy Code for expenses incurred before the Effective Date in making a substantial contribution in the Chapter 11 Case.

**“Professionals”** means those Persons: (a) retained pursuant to an Order of the Bankruptcy Court in accordance with section 327, 1103, or 1106 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to section 327, 328, 329, 330, or 331 of the Bankruptcy Code; or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to sections 330 and 503(b)(2) of the Bankruptcy Code.

**“Reaffirmed 2013 Credit Agreement”** means that certain credit agreement (as amended by that certain Reaffirmation Agreement (as amended by Amendment No. 1 to Reaffirmation Agreement and to Term Note, dated as of December 16, 2016), dated as of December 14, 2015, by and between the Debtor and PDL), dated as of October 1, 2013, pursuant to which PDL made

an original loan to the Debtor in the aggregate principal amount of \$40,000,000 and multiple additional advances.

“**Record Date**” means 5:00 p.m. (prevailing U.S. Eastern Time) on February 28, 2017.

“**Reorganized Debtor**” means Lensar, Inc., from and after the Effective Date.

“**Reinstatement**” means, notwithstanding any contractual provision or applicable law that entitles the Holder of a Claim or Interest to demand or receive accelerated payment of such Claim or Interest after the occurrence of a default—

(A) cures any such default that occurred before or after the commencement of the Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured;

(B) reinstates the maturity of such Claim or Interest as such maturity existed before such default;

(C) compensates the Holder of such Claim or Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law;

(D) if such Claim or such Interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensates the Holder of such Claim or such Interest (other than the Debtor or an insider) for any actual pecuniary loss incurred by such Holder as a result of such failure; and

(E) does not otherwise alter the legal, equitable, or contractual rights to which such Claim or Interest entitles the Holder of such Claim or Interest.

“**Series A Equity Interest**” means an Interest in the Debtor’s Series A-1, Series A-2, Series A-3, Series A-4, Series A-5 or Series A-6 preferred stock.

“**Senior Preferred Equity Interest**” means an Interest in the Debtor’s Series B, Series C, Series D, Series E, Series E-1, Series E-2, Series E-3 or Series E-4 preferred stock.

“**Tax**” or “**Taxes**” means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Internal Revenue Code section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, escheat or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, and including any obligations to indemnify or otherwise assume or succeed to the tax liability of any other Person.

“**Unexpired Lease**” means a lease to which the Debtor is a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“**Unimpaired**” means, when used with reference to a Claim or Interest, a Claim or Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

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

“**U.S. Trustee Fees**” means all fees and charges assessed against the Estate by the U.S. Trustee and due pursuant to section 1930 of title 28 of the United States Code.

“**Voting Deadline**” means 4:00 p.m. (prevailing U.S. Eastern Time) on March 29, 2017, which is the deadline for submitting Ballots.

**Section 2.2 Rules of Interpretation.**

- (a) The rules of construction set forth in section 102 of the Bankruptcy Code apply to the Plan.
- (b) Except as otherwise provided in the Plan, Bankruptcy Rule 9006(a) applies when determining any time period under the Plan.
- (c) A term that is used in the Plan and that is not defined in the Plan has the meaning attributed to that term, if any, in the Bankruptcy Code or the Bankruptcy Rules.
- (d) The definition given to any term or provision in the Plan supersedes and controls over any different meaning that may be given to that term or provision in the Disclosure Statement. In the event of any conflict or inconsistency between the Plan and the Disclosure Statement, the Plan shall control. In the event of any conflict or inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.
- (e) Whenever it is appropriate from the context, each term, whether stated in the singular or the plural, includes both the singular and the plural.
- (f) Any reference to a document or instrument being in a particular form or on particular terms means that the document or instrument will be substantially in that form or on those terms or as amended. Any reference to an existing document means the document as it has been, or may be, amended, modified, or supplemented.
- (g) Unless otherwise indicated, the phrase “under the Plan” and similar words or phrases refer to the Plan in its entirety rather than to only a portion of the Plan.
- (h) Unless otherwise specified, all references to articles, sections, and exhibits are references to articles and sections of, and exhibits to, the Plan.

- (i) Captions and headings in the Plan are used only as convenient references and do not affect the meaning of the Plan.

### III.

#### **ADMINISTRATIVE AND PRIORITY CLAIMS**

**Section 3.1 Administrative Claims and Priority Claims.** Administrative Claims and Priority Claims are not placed into Classes and are not entitled to vote to accept or reject the Plan. Such unclassified Claims are not considered impaired, and the Holders of such Claims do not cast ballots to accept or reject the Plan because they are entitled to specific treatment under the Bankruptcy Code. The treatment of these Claims is provided in Sections 3.2 through 3.7.

**Section 3.2 Administrative Claims.** Except to the extent that the Holder of an Allowed Administrative Claim agrees to less favorable treatment or unless otherwise ordered by the Bankruptcy Court, each Holder of an Allowed Administrative Claim shall receive in full satisfaction, discharge, exchange, and release thereof, Cash in an aggregate amount equal to the amount of such Allowed Administrative Claim on the later of: (a) the Effective Date; and (b) the fifteenth Business Day after such Administrative Claim becomes an Allowed Administrative Claim, or, in either case, as soon thereafter as is practicable; provided, however, that (1) Ordinary Course Administrative Claims shall be paid in Cash in full after the Effective Date in accordance with the terms and conditions of the particular transactions, any applicable agreements, or as otherwise authorized by the Bankruptcy Court; and (2) no Priority Tax Claim shall be payable until otherwise payable under applicable non-bankruptcy law.

**Section 3.3 Administrative Claim Bar Date.** All requests for payment of an Administrative Claim shall be filed with the Bankruptcy Court no later than the Administrative Claim Bar Date or be forever barred. Within five business days after the Effective Date, the

Reorganized Debtor shall serve notice of the Effective Date, the Administrative Claim Bar Date, and the Administrative Claim Objection Deadline on all Creditors. Nothing in the Plan shall constitute a waiver of any grounds for objecting to any Administrative Claim.

**Section 3.4 Administrative Claim Objection Deadline.** The date by which all objections to the allowance of Administrative Claims subject to Section 3.3 must be filed by parties in interest, which date initially shall be 60 days after the Administrative Claim Bar Date. The Administrative Claim Objection Deadline may be extended for a one-time 60-day period by the Reorganized Debtor by filing a notice of the extended Administrative Claim Objection Deadline with the Bankruptcy Court and giving notice of such extension to all Creditors and all parties that have filed a request for payment of an Administrative Claim. Thereafter, the Administrative Claim Objection Deadline may be further extended only by an Order of the Bankruptcy Court. If no objection to an Administrative Claim is filed on or before the Administrative Claim Objection Deadline, such Administrative Claim shall be deemed an Allowed Administrative Claim as of that date.

**Section 3.5 U.S. Trustee Fees.** U.S. Trustee Fees shall be paid before the Effective Date by the Debtor and after the Effective Date by the Reorganized Debtor, in each case when due in accordance with applicable law. The Debtor shall continue to file reports to show the calculation of such fees for the Estate until the Effective Date; after the Effective Date, the Reorganized Debtor shall file such consolidated reports until the Chapter 11 Case is closed under Bankruptcy Code section 350.

**Section 3.6 Professional Fee Claims.** Each Holder of a Professional Fee Claim seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date shall: (a) file such

Holder's interim (if applicable) and final applications for allowances of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by no later than 45 days after the Effective Date, or such other date as may be fixed by the Bankruptcy Court; and (b) if granted such an award by the Bankruptcy Court, be paid by the Reorganized Debtor in full satisfaction, discharge, exchange, and release of such Claim, Cash in such amounts as are allowed by the Bankruptcy Court on the date such Professional Fee Claim becomes an Allowed Claim, or as soon thereafter as is practicable. All objections to the allowance of Professional Fee Claims through the Effective Date must be filed and served by no later than 65 days after the Effective Date, or such other date as may be fixed by Order of the Bankruptcy Court.

**Section 3.7 Priority Claims.**

Except to the extent that a Holder of an Allowed Priority Claim agrees to less favorable treatment, each Holder of an Allowed Priority Claim shall receive in full satisfaction, discharge, exchange, and release thereof, Cash in an aggregate amount equal to such Allowed Priority Claim on the last to occur of: (a) the Effective Date; (b) the 15th Business Day after such Priority Claim becomes an Allowed Priority Claim; and (c) the first day that such Allowed Priority Claim is due and payable under applicable non-bankruptcy law, or, in any case, as soon thereafter as is practicable.

**IV.**

**CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

**Section 4.1 Classifications Generally.** For all purposes, including voting on, confirmation of, and Distributions under the Plan, the Plan separately classifies all Claims and Interests, except for Administrative Claims and Priority Claims, which are not classified. A

Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest falls within the description of that Class. To the extent that part of the Claim or Interest falls within a different Class description, that portion of the Claim or Interest is classified in that different Class. The treatment of Claims and Interests under the Plan is in full and complete satisfaction of the legal, contractual, and equitable rights that each Person holding an Allowed Claim or an Allowed Interest may have in or against the Debtor or its property. This treatment supersedes and replaces any agreements or rights those entities have in or against the Debtor or its property. All Distributions under the Plan will be tendered to the Person holding the Allowed Claim or Allowed Interest as set forth in the Plan. EXCEPT AS SPECIFICALLY SET FORTH IN THIS PLAN, NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED ON ACCOUNT OF ANY CLAIM OR INTEREST THAT IS NOT AN ALLOWED CLAIM OR ALLOWED INTEREST. The following chart summarizes the Classes of Claims and Interests under the Plan.

| <u>Class</u> | <u>Description</u>   | <u>Impairment</u> | <u>Entitlement to Vote</u> |
|--------------|--|-------------------|----------------------------|
| Class 1      | PDL Senior Secured Claim   | Impaired          | Yes                        |
| Class 2      | PDL Junior Secured Claim   | Impaired          | Yes                        |
| Class 3      | Other Secured Claims   | Unimpaired        | No (deemed to accept)      |
| Class 4      | General Unsecured Claims, including PDL Unsecured Deficiency Claim | Unimpaired        | No (deemed to accept)      |
| Class 5      | E-5 Equity Interests   | Impaired          | No (deemed to reject)      |
| Class 6      | Senior Preferred Equity Interests                                  | Impaired          | No (deemed to reject)      |
| Class 7      | Series A Equity Interests  | Impaired          | No (deemed to reject)      |
| Class 8      | Common Equity Interests  | Impaired          | No (deemed to reject)      |

**Section 4.2 Treatment of Classified Claims.**

**(a) Class 1 – PDL Senior Secured Claim**

- (1) *Classification:* Class 1 consists solely of the PDL Senior Secured Claim.
- (2) *Allowance:* On the Effective Date, the PDL Senior Secured Claim shall be deemed an Allowed Claim in the aggregate principal amount of \$8,509,019.
- (3) *Impairment and Voting:* Class 1 is Impaired, and the Holder of the PDL Senior Secured Claim is entitled to vote to accept or reject the Plan.
- (4) *Treatment:* On account of the PDL Senior Secured Claim, the New Equity Holder shall receive 60% of the equity of the Reorganized Debtor.

**(b) Class 2 – PDL Junior Secured Claim**

- (1) *Classification:* Class 2 consists solely of the PDL Junior Secured Claim.
- (2) *Allowance:* On the Effective Date, the PDL Junior Secured Claim shall be deemed an Allowed Claim in the aggregate principal amount of \$40,000,000.
- (3) *Impairment and Voting:* Class 2 is Impaired, and the Holder of the PDL Junior Secured Claim is entitled to vote to accept or reject the Plan.
- (4) *Treatment:* On account of the PDL Junior Secured Claim, the New Equity Holder shall receive (i) 40% of the equity of the Reorganized Debtor and (ii) Cash in the amount of \$34,327,321.

**(c) Class 3 – Other Secured Claims**

- (1) *Classification:* Class 3 consists of Other Secured Claims. The Debtor does not believe that there are any Claims in Class 3.

- (2) *Allowance*: Any timely filed Class 3 claims that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under Section 8.3.
- (3) *Impairment and Voting*: Class 3 is Unimpaired. The Holder of a Class 3 Claim is deemed to accept the Plan with respect to such Claim.
- (4) *Treatment*: Except to the extent that a Holder of an Allowed Claim in Class 3 agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class 3, each such Holder shall receive, at the Debtor's option, either:
  - (i) payment in full in Cash;
  - (ii) delivery of the collateral securing any such Claim;
  - (iii) Reinstatement of such Claim; or
  - (iv) other treatment rendering such Claim Unimpaired.

**(d) Class 4 – General Unsecured Claims**

- (1) *Classification*: Class 4 consists of General Unsecured Claims.
- (2) *Allowance*: Any timely filed Class 4 Claims that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under Section 8.3.
- (3) *Impairment and Voting*: Class 4 is Unimpaired. The Holder of a Class 4 Claim is deemed to accept the Plan with respect to such Claim.
- (4) *Treatment*: Except to the extent a Holder of an Allowed Claim in Class 4 has been paid by the Debtor prior to the Effective Date or agrees to less

favorable treatment, each Holder of an Allowed Claim in Class 4 shall receive in full satisfaction, exchange, and release of such Claim, Cash on the later of: (i) the Effective Date; and (ii) the fifteenth (15th) Business Day after such General Unsecured Claim becomes an Allowed Claim, or, in either case, as soon thereafter as is practicable, in an amount equal to the amount of such Allowed Claim.

**(e) Class 5 – E-5 Equity Interests**

- (1) *Classification:* Class 5 consists of the E-5 Equity Interests.
- (2) *Allowance:* Any timely filed Class 5 Interests that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under Section 8.3.
- (3) *Impairment and Voting:* Class 5 is Impaired. Each Holder of an Interest in Class 5 is deemed to reject the Plan with respect to such Interest.
- (4) *Treatment:* Holders of Class 5 Interests shall receive no Distributions under the Plan on account of such Interests, and such Interests shall be cancelled.

**(f) Class 6 – Senior Preferred Equity Interests**

- (1) *Classification:* Class 6 consists of the Senior Preferred Equity Interests.
- (2) *Allowance:* Any timely filed Class 6 Interests that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under to Section 8.3.
- (3) *Impairment and Voting:* Class 6 is Impaired. Each Holder of an Interest in Class 6 is deemed to reject the Plan with respect to such Interest.

- (4) *Treatment:* Holders of Class 6 Interests shall receive no Distributions under the Plan on account of such Interests, and such Interests shall be cancelled.

**(g) Class 7 – Series A Equity Interests**

- (1) *Classification:* Class 7 consists of the Series A Equity Interests.
- (2) *Allowance:* Any timely filed Class 7 Interests that have not been allowed or disallowed as of the Effective Date shall be allowed or disallowed under to Section 8.3.
- (3) *Impairment and Voting:* Class 7 is Impaired. Each Holder of an Interest in Class 7 is deemed to reject the Plan with respect to such Interest.
- (4) *Treatment:* Holders of Class 7 Interests shall receive no Distributions under the Plan on account of such Interests, and such Interests shall be cancelled.

**(h) Class 8 – Common Equity Interests**

- (1) *Classification:* Class 8 consists of the Common Equity Interests.
- (2) *Allowance:* On the Effective Date, any Common Equity Interests shall be deemed Allowed Interests.
- (3) *Impairment and Voting:* Class 8 is Impaired. Each Holder of an Interest in Class 8 is deemed to reject the Plan with respect to such Interests.
- (4) *Treatment:* Holders of Class 8 Interests shall receive no Distributions under the Plan on account of such Interests, and such Interests shall be cancelled.

**Section 4.3 Elimination of Vacant Classes.** Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest (or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing) shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**V.**

**VOTING RIGHTS**

Each Holder of an Allowed Claim as of the Voting Deadline in an Impaired Class of Claims or Interests that (1) is not deemed to have rejected the Plan and (2) held such Claim as of the Record Date, shall be entitled to vote to accept or reject the Plan. The only Classes entitled to vote are Classes 1 and 2, and the sole member of each such Class is PDL.

The requirements for Confirmation of the Plan are met as set forth in section 1129(a) of the Bankruptcy Code, except subsection (8) thereof with respect to each Class of Interests. The Plan constitutes a request by the Debtor that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of subsection 1129(a)(8) with respect to Classes 5, 6, 7 and 8 on the basis that the Plan is fair and equitable and does not discriminate unfairly with respect to each such Class of Interests that is Impaired under, and is deemed not to have accepted, the Plan.

**VI.**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**Section 6.1 Rejection.** Effective upon the Effective Date, the Debtor hereby rejects all Executory Contracts and Unexpired Leases other than those listed on Schedule 6.2 and all

Executory Contracts and Unexpired Leases previously rejected by Order of the Bankruptcy Court.

**Section 6.2 Assumption.** Effective upon the Effective Date, the Debtor hereby assumes all Executory Contracts and Unexpired Leases between the Debtor and any other Person, which have not previously been assumed, assumed and assigned, or rejected, that are listed on Schedule 6.2. Schedule 6.2 shall be contained in the Plan Supplement. The Debtor reserves the right, on or prior to the Effective Date, to amend Schedule 6.2 to delete any Executory Contract or Unexpired Lease therefrom or add any Executory Contract or Unexpired Lease thereto, in which event such Executory Contract(s) or Unexpired Lease(s) shall be deemed to be, as applicable, rejected, assumed, or assumed and assigned. The Debtor shall provide notice of any amendments to Schedule 6.2 to the parties to the Executory Contracts and Unexpired Leases affected thereby.

**Section 6.3 Cure Amount.** Schedule 6.2 shall list the applicable Cure Amount for each Executory Contract or Unexpired Lease to be assumed. Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related Cure Amount must be filed by the earlier of March 29, 2017, or fourteen (14) days after the date service of the Assumption and Cure Notice was effectuated. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Amount will be deemed to have assented to such assumption or Cure Amount.

**Section 6.4 Timing for Cure of Default.** Except as may otherwise be agreed to by the Debtor and the non-Debtor party to the applicable Executory Contract or Unexpired Lease, within 30 days after the Effective Date, the Debtor (or the assignee, if applicable) shall cure any and all undisputed defaults under any Executory Contract or Unexpired Lease assumed pursuant

to the Plan, in accordance with section 365(b) of the Bankruptcy Code and Section 6.2 hereof. All disputed defaults that are required to be cured shall be cured either within 30 days of the entry of a Final Order determining the amount, if any, of the liability with respect thereto, or as may otherwise be agreed to by the parties.

**Section 6.5 Rejection Claims.** All Allowed Claims arising from the rejection of Executory Contracts or Unexpired Leases, whether under the Plan or by separate proceeding, shall be treated as General Unsecured Claims, based on the dollar amount of such Allowed Claim. If the rejection of an Executory Contract or Unexpired Lease by the Plan results in damages to the counterparty to such Executory Contract or Unexpired Lease, then a Claim for damages or any other amounts related in any way to such Executory Contract or Unexpired Lease shall be forever barred and shall not be enforceable against the Debtor, the Estate, or its property, unless a proof of claim is filed with the Bankruptcy Court and served on the Reorganized Debtor within 30 days after the Effective Date. The rejection claim bar date for Executory Contracts or Unexpired Leases rejected before the Effective Date, outside of the Plan, shall be, as applicable: (a) the date(s) set forth in the applicable Order(s) approving or authorizing rejection of such Executory Contract or Unexpired Lease; or (b) the Claims Bar Date.

**Section 6.6 Reservation of Rights.** Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on Schedule 6.2, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Reorganized Debtor has any liability thereunder. If there is a dispute at the time the Debtor seeks to assume or reject an executory contract or unexpired lease as to the status of an agreement as an executory contract or unexpired lease, the

Debtor or Reorganized Debtor, as applicable, shall have 30 days following entry of a Final Order to resolve and to alter the treatment of such contract or lease.

## VII.

### **PLAN IMPLEMENTATION**

**Section 7.1 Conditions to Plan Effectiveness.** The Plan will not be consummated or become binding unless and until the Effective Date occurs. The Effective Date will be the first Business Day, as determined by the Debtor, in consultation with PDL, on which the following conditions have been satisfied or waived:

- (a) the Confirmation Order, in form and substance acceptable to the Debtor and PDL, has been entered and is not stayed;
- (b) at least fourteen days have passed since the Confirmation Date; and
- (c) all conditions to PDL's obligation to fund the Exit Facility have been satisfied or waived by PDL.

The Debtor's rights under the "mootness doctrine" shall be unaffected by any provision hereof.

The failure to satisfy any condition may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied, including any act, action, failure to act, or inaction by the Debtor. If the Debtor fails to assert the non-satisfaction of any such condition, such failure shall not be deemed a waiver of any other rights.

### **Section 7.2 Distributions.**

**7.2.1 Date of Distributions.** Distributions pursuant to the Plan shall be made on the dates otherwise set forth in the Plan or as soon as practicable thereafter. In the event that any payment or any act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be

completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**7.2.2 No Distributions With Respect to Any Claim Until That Claim Is an Allowed Claim.** Notwithstanding any other Plan provision: (a) Distributions to Holders of Claims will be made only after, and only to the extent that, such Holders hold Allowed Claims; and (b) unless otherwise agreed by the Debtor or Reorganized Debtor, as applicable, if any portion of a Claim is not yet an Allowed Claim, no Distribution shall be made to the Holder on account of such Claim unless and until the entire Claim is an Allowed Claim.

**7.2.3 Setoffs and Recoupments.** The Reorganized Debtor may, but shall not be required to, set off or recoup against any Claim (for purposes of determining the allowed amount of such Claim on which a Distribution shall be made), any Causes of Action of any nature whatsoever that the Debtor may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor of any Cause of Action it may have against the Holder of such Claim.

**7.2.4 Disbursing Agent.** The Debtor shall act as the Disbursing Agent under the Plan with respect to distributions of Cash made on the Effective Date, and the Reorganized Debtor shall act as the Disbursing Agent after the Effective Date. The Debtor and the Reorganized Debtor shall not be required to give any bond, surety or other security for the performance of duties as Disbursing Agent.

**7.2.5 Distribution Record Date.** For purposes of the Plan, as of the close of business on the Distribution Record Date, the records of ownership of Claims against the Debtor (including the claims register in the Chapter 11 Case) will be closed. For purposes of the Plan, the Debtor, the Estate, and the Reorganized Debtor shall have no obligation to recognize the

transfer of any Claims occurring after the Distribution Record Date, and shall be entitled for all purposes relating to the Plan, to recognize and deal only with those Holders of record as of the close of business on the Distribution Record Date.

**7.2.6 Cash Payments.** Any Cash payments made pursuant to the Plan will be made in U.S. dollars. Cash payments made pursuant to the Plan in the form of a check shall be null and void if not cashed within 180 days of the date of issuance thereof.

**7.2.7 Delivery of Distributions.** If the Distribution to any Holder of an Allowed Claim is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of such Holder. Undeliverable Distributions shall be held by the Disbursing Agent, subject to Section 7.2.9.

**7.2.8 Withholding Taxes.**

**7.2.8.1.** The Disbursing Agent shall comply with all withholding, reporting, certification, and information requirements imposed by any federal, state, local, or foreign taxing authority and all Distributions hereunder shall, to the extent applicable, be subject to any such withholding, reporting, certification, and information requirements.

**7.2.8.2.** Persons entitled to receive Distributions hereunder shall, as a condition to receiving such Distributions, provide such information and take such steps as the Disbursing Agent may reasonably require to ensure compliance with such withholding and reporting requirements, and to enable the Disbursing Agent to obtain the certifications and information as may be necessary or appropriate to satisfy the provisions of any Tax law.

**7.2.8.3.** Any Person that does not provide the Disbursing Agent with requisite information after the Disbursing Agent has made at least three attempts (by written notice or request for such information, including on the Ballots in the Chapter 11 Case) to obtain such

information, may be deemed to have forfeited such Person's right to such distributions, which shall be treated as unclaimed property under Section 7.3.10.

**7.2.9 Unclaimed Property.** Any Person that fails to claim any Distribution to be distributed hereunder within one year from the initial date for such distribution shall forfeit all rights to any such Distributions under the Plan. Upon such forfeiture of Cash or other property, such Cash or property shall be the property of the Reorganized Debtor. Nothing herein shall require the Disbursing Agent to attempt to locate or notify any Person with respect to any forfeited property. Persons that fail to claim Cash or other property to be distributed under the Plan within such one-year period shall forfeit their rights thereto and shall have no claim whatsoever with respect thereto against the Debtor, its Estate, the Disbursing Agent, or any Holder of an Allowed Claim to which Distributions are made.

**7.2.10 No Postpetition Interest on Claims.** Unless otherwise specifically provided for in the Plan, the Confirmation Order, or other Final Order of the Bankruptcy Court, or required by applicable bankruptcy law, Postpetition interest shall not accrue or be paid on any Claims against the Debtor, and no Holder of a Claim against the Debtor shall be entitled to interest accruing on or after the Petition Date on any such Claim

**7.2.11 Applicability of Insurance Policies and Agreements.** Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims that are covered by any of the Debtor's insurance policies or agreements shall be in accordance with the provisions of any applicable insurance policy or agreement. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Person may hold against any other Person, including insurers under any insurance policies or agreements, nor shall anything

contained herein constitute or be deemed a waiver by such insurers of any rights, claims or defenses, including coverage defenses, held by such insurers.

**Section 7.3 Corporate Action.** Upon the Effective Date, all transactions and applicable matters provided for under the Plan, including the Exit Facility and each Exit Facility Loan Document, shall be deemed to be authorized and approved by the Debtor without any requirement of further action by the Debtor or its shareholders, directors or officers, and with like effect as though such action had been taken by unanimous action of such shareholders, directors and officers.

**Section 7.4 Vesting and Transfer of Assets.** On the Effective Date, and except as expressly set forth in the Plan, the Assets of the Estate will be transferred to and automatically vested in the Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances, other than the Liens securing the Exit Facility. To the extent required to implement the transfers of the Assets from the Debtor and the Estate to the Reorganized Debtor as provided for herein, all Persons, including Governmental Authorities, shall cooperate with the Debtor, the Estate, the Reorganized Debtor, and the New Equity Holder, as the case may be, to assist in the implementation of such transfers. On and after the Effective Date, except as otherwise provided herein, the Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

**Section 7.5 Management of Reorganized Debtor.** On and after the Effective Date, the New Equity Holder shall have the right to elect a new board of directors for the Reorganized Debtor. The Debtor shall submit the information about the proposed officers and directors of the

Reorganized Debtor that is necessary to satisfy section 1129(a)(5) of the Bankruptcy Code in the Plan Supplement.

## VIII.

### **LITIGATION AND CLAIMS OBJECTIONS**

#### **Section 8.1 Preservation of Causes of Action**

As of the Effective Date, the Reorganized Debtor shall retain all rights on behalf of the Debtor and the Estate to commence, pursue, and settle, as appropriate, any and all Causes of Action (including Avoidance Actions, but excluding claims arising under section 547 of the Bankruptcy Code), whether arising before or after the Petition Date, in any court or other tribunal, including an adversary proceeding filed in the Chapter 11 Case. Unless a Cause of Action against a Person is expressly waived, relinquished, released, compromised, or settled by Final Order, the Debtor and the Reorganized Debtor, as applicable, expressly reserve such Causes of Action for later adjudication (including Causes of Action of which the Debtor or Reorganized Debtor may be unaware, or that may arise or exist by reason of additional facts or circumstances unknown to the Debtor or Reorganized Debtor) and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise), or laches shall apply to Causes of Action upon, or after, the Confirmation Date or consummation of the Plan based on the Disclosure Statement, the Plan, or the Confirmation Order, except where such Causes of Action have been expressly released by Final Order.

**Section 8.2 No Waiver.**

Neither the failure to list a Claim in the Schedules filed by the Debtor, the failure of any Person to object to any Claim for purposes of voting, the failure of any Person to object to a Claim prior to the Confirmation Date or the Effective Date, the failure of any Person to assert a Cause of Action prior to confirmation of the Plan or the Effective Date, the absence of a proof of Claim having been filed with respect to a Claim, nor any action or inaction of any Person with respect to a Claim, or Cause of Action other than a legally effective express waiver or release shall be deemed a waiver or release of the right of the Debtor, the Estate, the Reorganized Debtor, or their successors or representatives, before or after solicitation of votes on the Plan or before or after the Confirmation Date or the Effective Date to: (a) object to or examine such Claim, in whole or in part; or (b) retain and either assign or exclusively assert, pursue, prosecute, utilize, or otherwise act on or enforce any Cause of Action.

**Section 8.3 Objections to and Resolution of Disputed Claims.**

The Debtor, and the Reorganized Debtor after the Effective Date, shall have the right to make and file objections to Claims and to prosecute, settle, and/or withdraw such objections; provided, however, that the PDL Claim shall be Allowed as set forth in the DIP Credit Agreement and the Plan. The Debtor, and the Reorganized Debtor, as applicable, shall file and serve all objections to Claims (other than Administrative Claims subject to Section III) upon the Holder of the Claim as to which the objection is made no later than the Claims Objection Deadline, which initially shall be 180 days after the later of (a) the Effective Date or (b) the date on which a proof of Claim is filed with the Bankruptcy Court. The Reorganized Debtor may extend the Claims Objection Deadline for a single 120-day period by filing a notice of the extended deadline with the Bankruptcy Court; provided, however, that nothing herein shall

modify the statute of limitations for any affirmative Cause of Action that the Reorganized Debtor may assert against any third party. Thereafter, the deadline may be further extended only by an Order of the Bankruptcy Court.

**IX.**

**OTHER PLAN PROVISIONS**

**Section 9.1 Discharge of the Debtor.** The Confirmation Order will discharge all Claims. No Holder of a Claim may receive any payment from, or seek recourse against, any Assets that are to be distributed under the Plan other than Assets required to be distributed to that Holder pursuant to the Plan. As of the Confirmation Date, all Persons are enjoined from asserting against any property that is to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, or Interests related thereto based upon any act, omission, transaction, or other activity that occurred before the Confirmation Date, except as expressly provided in the Plan or the Confirmation Order. As of the Effective Date, notes and any other evidence of Claims will represent only the right to receive the Distributions contemplated under the Plan.

**Section 9.2 Exculpation and Release of Debtor, Committee, and Professionals.** Except to the extent arising from willful misconduct or gross negligence, any and all Claims, liabilities, Causes of Action, rights, damages, costs, and obligations held by any party against the Debtor, PDL, and their respective attorneys, accountants, agents, and other Professionals, and their officers, directors, and employees, whether known or unknown, matured or contingent, liquidated or unliquidated, existing, arising, or accruing, whether or not yet due in any manner related to the administration of the Chapter 11 Case or the formulation, negotiation, prosecution, or implementation of the Plan, shall be deemed fully waived, barred, released, and discharged in all respects, except as to rights, obligations, duties, claims, and responsibilities expressly

preserved, created, or established by the terms of the Plan. Pursuant to section 1125(e) of the Bankruptcy Code, the Debtor and PDL and their present and former members, officers, directors, employees, agents, advisors, representatives, successors or assigns, and any Professionals (acting in such capacity) employed by any of the foregoing entities will neither have nor incur any liability to any Person for their role in soliciting acceptances or rejections of the Plan.

**Section 9.3 Injunction Enjoining Holders of Claims.** The Plan is the sole means for resolving, paying, or otherwise dealing with Claims and Interests. To that end, except as expressly provided herein, at all times on and after the Effective Date, all Persons who have been, are, or may be Holders of Claims against or Interests in the Debtor arising before the Effective Date, shall be permanently enjoined from taking any of the following actions on account of any such Claims or Interests, against the Debtor, the Estate, the Reorganized Debtor or the New Equity Holder, or their respective property (other than actions brought to enforce any rights or obligations under the Plan or under any express written guarantee and any adversary proceedings pending in the Chapter 11 Case as of the Effective Date):

- (a) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against the Debtor, the Estate, the Reorganized Debtor or the New Equity Holder, their successors, or their respective property or assets (including, without limitation, all suits, actions, and proceedings that are pending as of the Effective Date);
- (b) enforcing, levying, attaching, executing, collecting, or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree, or Order against the Debtor, the Estate, the Reorganized Debtor or the New Equity Holder, their successors, or their respective property or assets;

- (c) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien against the Debtor, the Estate, the Reorganized Debtor or the New Equity Holder, their successors, or their respective property or assets; and
- (d) proceeding in any place whatsoever against the Debtor, the Estate, the Reorganized Debtor or the New Equity Holder, their successors, or their respective property or assets, in any manner that does not conform to or comply with the provisions of the Plan.

**Section 9.4 Injunctions or Stays.** Unless otherwise provided by Bankruptcy Court Order, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or section 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**Section 9.5 Exemption from Stamp, Transfer, and Other Taxes.** Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer, or exchange of assets under the Plan by the Debtor, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease, or the making or delivery of any deed or instrument of transfer under, in furtherance of, or in connection with the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar Tax.

**Section 9.6 No Admissions.** Except as specifically provided in the Plan, nothing contained in the Plan shall be deemed or construed in any way as an admission by the Debtor or the Estate with respect to any matter set forth in the Plan, including the amount or allowability of any Claim, or the value of any property of the Estate. Notwithstanding anything to the contrary in the Plan, if the Plan is not confirmed or the Effective Date does not occur, the Plan will be null and void, and nothing contained in the Plan will: (a) be deemed to be an admission by the Debtor

or the Estate with respect to any matter discussed in the Plan, including liability on any Claim or the propriety of any Claim's classification; (b) constitute a waiver, acknowledgement, or release of any Claims, Interests, or any claims held by the Debtor or the Estate; or (c) prejudice in any manner the rights of the Debtor or the Estate in any further proceedings.

**Section 9.7 Severability of Plan Provisions.** If, before entry of the Confirmation Order, the Bankruptcy Court holds that any Plan term or provision is invalid, void, or unenforceable, the Bankruptcy Court may alter or interpret that term or provision so that it is valid and enforceable to the maximum extent possible consistent with the original purpose of that term or provision. That term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the Plan's remaining terms and provisions will remain in full force and effect and will in no way be affected, impaired, or invalidated. The Confirmation Order will constitute a judicial determination providing that each Plan term and provision, as it may have been altered or interpreted in accordance with this section, is valid and enforceable under its terms.

**Section 9.8 Governing Law.** The rights and obligations arising under the Plan and any agreements, contracts, documents, or instruments executed in connection with the Plan will be governed by, and construed and enforced in accordance with, Delaware law without giving effect to Delaware law's conflict of law principles, unless a rule of law or procedure is supplied by: (a) federal law (including the Bankruptcy Code and the Bankruptcy Rules); or (b) an express choice-of-law provision in any document provided for, or executed under or in connection with, the Plan.

**Section 9.9 Successors and Assigns.** The rights, benefits, and obligations of any Person referred to in the Plan will be binding on, and will inure to the benefit of, any heir, executor, administrator, personal representative, successor, or assign of that Person.

**Section 9.10 Amendment.** In accordance with section 1127 of the Bankruptcy Code, the Debtor reserves the right to alter, amend, or modify the Plan or any Plan exhibit or schedule, including amending or modifying it to satisfy the requirements of the Bankruptcy Code.

**Section 9.11 Saturday, Sunday, or Legal Holiday.** If any payment or act under the Plan should be made or performed on a day that is not a Business Day, then the payment or act may be completed on the next succeeding day that is a Business Day, in which event the payment or act will be deemed to have been completed on the required day.

**Section 9.12 Post-Effective Date Status Reports.** The Reorganized Debtor shall file status reports regarding the status of implementation of the Plan and the review, prosecution, and resolution of Causes of Action, respectively, every 120 days following the entry of the Confirmation Order through entry of a final decree closing the Chapter 11 Case, or as otherwise ordered by the Bankruptcy Court.

**Section 9.13 Post-Effective Date Notice.** From and after the Effective Date, any Person who desires notice of any pleading or document filed in the Chapter 11 Case, or of any hearing in the Bankruptcy Court, or of any matter as to which the Bankruptcy Code requires notice to be provided, shall file a request for post-Confirmation Date notice and shall serve the request on counsel for the Reorganized Debtor; provided, however, that the U.S. Trustee shall be deemed to have requested post-Confirmation Date notice.

**Section 9.14 Retention of Jurisdiction.** The Bankruptcy Court will retain and have exclusive jurisdiction over any matter arising under the Bankruptcy Code, arising in or related to the Chapter 11 Case or the Plan, or that relates to the following:

- (a) the resolution of 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 therefrom;
- (b) the entry of such Orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan;
- (c) the determination of any and all motions, adversary proceedings, applications, and contested or litigated matters that may be pending before the Bankruptcy Court on the Effective Date or that, pursuant to the Plan, may be instituted after the Effective Date;
- (d) ensuring that Distributions to Holders of Allowed Claims and Allowed Interests are accomplished as provided in the Plan;
- (e) hearing and determining any objections to Administrative Claims or proofs of Claim, both before and after the Confirmation Date, including any objections to the classification of any Claim and to allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, in whole or in part;

- (f) the entry and implementation of such Orders as may be appropriate in the event that the Confirmation Order is, for any reason, stayed, revoked, modified, reversed, or vacated;
- (g) the issuance of such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;
- (h) consideration of any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including the Confirmation Order;
- (i) hearing and determining all applications for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date;
- (j) hearing and determining disputes arising in connection with, or relating to, the Plan or the interpretation, implementation, or enforcement of the Plan, or the extent of any Person's obligations incurred in connection with or released or exculpated under the Plan;
- (k) the recovery of all Assets of the Debtor and property of the Estate, wherever located;
- (l) the issuance of injunctions or other Orders as may be necessary or appropriate to restrain interference by any Person with consummation, implementation, or enforcement of the Plan;
- (m) the determination of any other matters that may arise in connection with, or are related to, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the Plan or the Disclosure Statement;

- (n) hearing and determining matters concerning state, local, and federal Taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
- (o) hearing any other matter or for any purpose specified in the Confirmation Order that is not inconsistent with the Bankruptcy Code;
- (p) entry of a final decree closing the Chapter 11 Case;
- (q) hearing and determining any other matter deemed relevant to the consummation of the Plan or the administration of the Chapter 11 Case; and
- (r) interpreting and enforcing Orders entered by the Bankruptcy Court; provided that if the Bankruptcy Court abstains from exercising jurisdiction, or is without jurisdiction, over any matter, this section will not affect, control, prohibit, or limit the exercise of jurisdiction by any other court, or the tribunal that has jurisdiction over that matter.

**Section 9.15 Entry of a Final Decree.** Promptly following the consummation of the Plan, the Reorganized Debtor will file a motion with the Bankruptcy Court to obtain entry of a final decree closing the Chapter 11 Case. Upon the entry of the final decree, the Reorganized Debtor shall be authorized, in its sole discretion, to discard or destroy any and all pre-Effective Date books and records of the Debtor.

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Dated: January 24, 2017

**Lensar, Inc.**

**Debtor and Debtor in Possession**

By: /s/ Nicholas T. Curtis  
Name: Nicholas T. Curtis  
Title: CEO & President

Respectfully submitted:

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# **EXHIBIT B**

## LIQUIDATION ANALYSIS

### INTRODUCTION

The Debtor prepared this Liquidation Analysis in connection with the Disclosure Statement<sup>1</sup> for the purpose of evaluating whether the Plan meets the “best interest of creditors” test of section 1129(a)(7) of the Bankruptcy Code. The Debtor believes that the Plan meets this test and that the members of each impaired class that have not voted to accept the Plan or that are not deemed to accept the Plan will receive under the Plan at least as much as they would if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. This analysis is summarized below.

In determining whether the best interests of creditors test has been met, the first step is to estimate cash proceeds that would be realized if the Debtor was to be liquidated in accordance with chapter 7 of the Bankruptcy Code. The Debtor’s assets are primarily outstanding accounts receivables, customer contracts, equipment, inventory and intellectual property.

The total value available would be the sum of the proceeds from the disposition of the Debtor’s assets and the cash held by the Debtor at the time of the commencement of the chapter 7 case. The total value available would then be reduced, first, by the estimated chapter 7 liquidation-related costs, including the fees and expenses of the chapter 7 trustee (the “**Trustee**”), second, by any claims secured by enforceable security interests and liens against assets of the Debtor, and third, by such additional administrative expenses and priority claims that may exist or may result from the termination of the Debtor’s business and liquidation under chapter 7. Finally, any remaining cash would be allocated to creditors and equity holders in strict priority in accordance with section 726 of the Bankruptcy Code. This Liquidation Analysis has been prepared assuming that the Chapter 11 Case would convert to a chapter 7 case under the Bankruptcy Code on April 1, 2017 (the “**Liquidation Date**”). The Trustee would be appointed or elected to commence a liquidation of the Debtor and/or all of its assets. Thus, this Liquidation Analysis has been prepared based on the Debtor’s estimated balance sheet as of April 1, 2017.

Estimating recoveries in a chapter 7 liquidation is an uncertain process due to the number of unknown variables and is necessarily speculative. Thus, this Liquidation Analysis relies upon the extensive use of estimates and assumptions that, although considered reasonable by the Debtor, are inherently subject to significant business, economic and competitive uncertainties and contingencies beyond the control of the Debtor.

For purposes of distribution, each and every Claim asserted against or Interest in the Debtor is presumed to be entitled to a distribution from the aggregated proceeds.

This Liquidation Analysis should be reviewed in conjunction with the accompanying notes below.

THE DEBTOR DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OF THE ESTIMATES AND ASSUMPTIONS OR THE ABILITY TO ACHIEVE FORECASTED RESULTS. THERE CAN BE NO ASSURANCE THAT THE VALUES REFLECTED IN THIS LIQUIDATION ANALYSIS WOULD BE

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<sup>1</sup> All capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Disclosure Statement. To the extent that a definition of a term in the text of this Liquidation Analysis and the definition of such term in the Disclosure Statement are inconsistent, the definition included in the Disclosure Statement shall control and govern.

REALIZED IF THE DEBTOR WERE, IN FACT, TO UNDERGO SUCH A LIQUIDATION. IN THE EVENT THE CHAPTER 11 CASE IS CONVERTED TO CHAPTER 7, ACTUAL RESULTS MAY VARY MATERIALLY FROM THE ESTIMATES AND PROJECTIONS SET FORTH IN THIS LIQUIDATION ANALYSIS AND THERE CAN BE NO ASSURANCE THAT THE VALUES REFLECTED WOULD BE REALIZED.

NOTHING CONTAINED IN THIS LIQUIDATION ANALYSIS IS INTENDED TO BE OR CONSTITUTES A CONCESSION OR ADMISSION OF THE DEBTOR.

EVENTS AND CIRCUMSTANCES OCCURRING SUBSEQUENT TO THE DATE ON WHICH THIS LIQUIDATION ANALYSIS WAS PREPARED MAY BE DIFFERENT FROM THOSE ASSUMED, OR, ALTERNATIVELY, MAY HAVE BEEN UNANTICIPATED, AND THUS THE OCCURRENCE OF THESE EVENTS MAY AFFECT THE ANALYSES IN A MATERIALLY ADVERSE OR MATERIALLY BENEFICIAL MANNER. THE DEBTOR DOES NOT INTEND AND DOES NOT UNDERTAKE ANY OBLIGATION TO UPDATE OR OTHERWISE REVISE THIS LIQUIDATION ANALYSIS (OR ANY OTHER PART OF THE DISCLOSURE STATEMENT) TO REFLECT EVENTS OR CIRCUMSTANCES EXISTING OR ARISING AFTER THIS LIQUIDATION ANALYSIS IS PREPARED OR TO REFLECT THE OCCURRENCE OF UNANTICIPATED EVENTS. THEREFORE, THIS LIQUIDATION ANALYSIS SHOULD NOT BE RELIED ON AS A GUARANTEE OR OTHER ASSURANCE OF THE ACTUAL RESULTS THAT WILL OCCUR. IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, HOLDERS OF CLAIMS MUST MAKE THEIR OWN DETERMINATIONS AS TO THE REASONABLENESS OF SUCH ASSUMPTIONS AND THE RELIABILITY OF THIS LIQUIDATION ANALYSIS.

THIS LIQUIDATION ANALYSIS WAS DEVELOPED SOLELY FOR PURPOSES OF THE DISCLOSURE STATEMENT AND PLAN AND TO ENABLE THE HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN TO MAKE AN INFORMED JUDGMENT ABOUT THE RESTRUCTURING AND PLAN AND SHOULD NOT BE USED OR RELIED ON FOR ANY OTHER PURPOSE, INCLUDING THE PURCHASE OR SALE OF SECURITIES OF, OR CLAIMS OR INTERESTS IN, THE DEBTOR.

## **GENERAL ASSUMPTIONS**

### **ESTIMATE OF NET PROCEEDS**

The conversion of the Debtor's chapter 11 reorganization to chapter 7 would entail a forced sale of the Debtor's assets in one or more sales pursuant to section 363 of the Bankruptcy Code and/or liquidating the tangible assets, which, for purposes of this Liquidation Analysis, is assumed would take place over a 90-day period of time.

It is assumed that upon conversion of the Chapter 11 Case to chapter 7, the Debtor would cease all operations.

Without limitation, it is assumed that the following factors would adversely affect the net proceeds that would be realized from a chapter 7 liquidation of the Debtor's assets:

- (i) Sale process to be run by the Trustee;
- (ii) Shortened time period involved in the sale process;
- (iii) Possible discounts buyers would require given a shorter due diligence period;
- (iv) Potentially negative perceptions involved in liquidation sales;

- (v) The potential impact on the Debtor's accounts receivable and customer contracts;
- (vi) The limited universe of prospective buyers; and
- (vii) Dynamics within a highly competitive industry.

The estimated values of Debtor's assets are based on an estimated percentage of recovery of the gross book value of the Debtor's assets that the Trustee might realize. This Liquidation Analysis does not take into account any insurance proceeds that may be paid to any Holder of an Allowed Claim.

This Liquidation Analysis assumes that there are no recoveries from the pursuit of any potential preferences, fraudulent conveyances, or other causes of action and does not include the estimated costs of pursuing those actions.

#### ESTIMATE OF COSTS

Proceeds from a chapter 7 liquidation would be reduced by administrative costs incurred during a liquidation period. These costs would include fees payable to the Trustee and professional advisors to the Trustee, salaries and severances, occupancy, costs of sale of assets, costs of closing the Debtor's office and costs of the claims reconciliation and adjudication process, plus any unpaid expenses incurred by the Debtor during its Chapter 11 Case and allowed in the chapter 7 case, such as compensation for professionals and costs.

#### DISTRIBUTION OF NET PROCEEDS

Under a chapter 7 liquidation, all secured claims are required to be satisfied from the proceeds of the collateral securing such claims before any such proceeds would be distributed to any other creditors. This analysis assumes the application of the rule of absolute priority of distributions with respect to the remaining proceeds of the Debtor.

It is likely that the pool of General Unsecured Claims would be significantly larger in a chapter 7 liquidation than in a chapter 11 restructuring. For example, in a chapter 7 liquidation claims could arise due to breach or rejection of obligations assumed by the Debtor during its Chapter 11 Case and the rejection of executory contracts or other obligations entered into by the Debtor both pre and post-petition. These claims would dilute any potential recoveries to all Holders of General Unsecured Claims. The Debtor has not attempted to estimate the amount of such additional General Unsecured Claims in the context of a chapter 7 liquidation, but it is assumed that the total amount of Claims allowed in a chapter 7 liquidation would be significantly higher than the total Allowed Claims under the Plan.

| (\$US)   | Estimated Book Value<br>(Unaudited)<br>4/1/2017 | Notes | Assumed Recovery Percentage |      | Estimated Liquidation Value |                     |
|--|---|-------|-----------------------------|------|-----------------------------|---------------------|
|  |   |       | Low                         | High | Low                         | High                |
| <b>CURRENT ASSETS:</b>                                       |   |       |                             |      |                             |                     |
| Cash and Cash Equivalents <sup>(1)</sup>                     | \$ 248,000                                      | A     | 100%                        | 100% | \$ 248,000                  | \$ 248,000          |
| Accounts Receivable, Net                                     | \$ 2,414,459                                    | B     | 5%                          | 10%  | \$ 120,723                  | \$ 241,446          |
| Prepaid Expenses & Deposits                                  | \$ 442,285                                      | C     | 0%                          | 5%   | \$ 0                        | \$ 22,114           |
| Inventory  | \$ 4,993,078                                    | D     | 25%                         | 30%  | \$ 1,248,270                | \$ 1,497,923        |
| <b>Total Current Assets<sup>(2)</sup></b>                    | <b>\$ 8,097,882</b>                             |       |                             |      | <b>\$ 1,616,993</b>         | <b>\$ 2,009,483</b> |
| <b>PROPERTY, PLANT AND EQUIPMENT:</b>                        |   |       |                             |      |                             |                     |
| Manufacturing Equipment                                      | \$ 28,220                                       | E     | 0%                          | 25%  | \$ 0                        | \$ 7,055            |
| Lensar Laser Systems   | \$ 7,396,881                                    |       | 25%                         | 30%  | \$ 1,849,220                | \$ 2,219,064        |
| Topographers   | \$ 143,979                                      |       | 50%                         | 60%  | \$ 71,990                   | \$ 86,387           |
| R&D Equipment  | \$ 963,395                                      |       | 15%                         | 25%  | \$ 144,509                  | \$ 240,849          |
| Computers  | \$ 7,290  |       | 40%                         | 50%  | \$ 2,916                    | \$ 3,645            |
| Office Furniture & Equipment                                 | \$ 20,989                                       |       | 40%                         | 50%  | \$ 8,396                    | \$ 10,495           |
| <b>Total Property, Plant and Equipment</b>                   | <b>\$ 8,560,754</b>                             |       |                             |      | <b>\$ 2,077,031</b>         | <b>\$ 2,567,495</b> |
| <b>OTHER ASSETS: <sup>(3)</sup></b>                          |   |       |                             |      |                             |                     |
| Patents/Intellectual Property                                | \$ 3,150,000                                    |       | 20%                         | 30%  | \$ 630,000                  | \$ 945,000          |
| Customer Contracts   | \$ 17,608,333                                   |       | 0%                          | 0%   | \$ 0                        | \$ 0                |
| <b>Total Other Assets</b>                                    | <b>\$ 20,758,333</b>                            |       |                             |      | <b>\$ 630,000</b>           | <b>\$ 945,000</b>   |
| <b>Total Assets</b>  | <b>\$ 37,416,919</b>                            |       |                             |      |                             |                     |
| <b>Preliminary Proceeds from Liquidation of Assets Range</b> |   |       |                             |      | <b>\$ 4,324,024</b>         | <b>\$ 5,521,978</b> |
| <b>Costs of Liquidation (Trustee):</b>                       | 5%  | F     |                             |      | \$ 216,201                  | \$ 276,099          |
| <b>Net Estimated Proceeds Available for Distribution</b>     |   |       |                             |      | <b>\$ 4,107,823</b>         | <b>\$ 5,245,879</b> |

(1) Cash and Cash Equivalents balance based on the week of 4/1/2017 Cash Balance per DIP budget filed on 1/4/2017.

(2) The Debtor has material net operating losses relevant to after tax revenues and cash flow if the Debtor continues to operate. The net operating losses have no value in a liquidation.

(3) Other assets are not based upon book value. Instead, the value for patents and intellectual property assets is based upon the Debtor's analysis of the value of the patents and intellectual property if sold. Further, the value for customer contracts is based upon the expected revenue from existing customer contracts.

(\$US)

|  | Estimated Allowable Claim |                      | Notes    | Recoveries          |                     |
|--|---------------------------|----------------------|----------|---------------------|---------------------|
|  | Low                       | High                 |          | Low                 | High                |
| <b>Net Estimated Proceeds Available for Distribution</b>                 |                           |                      |          | \$ 4,107,823        | \$ 5,245,879        |
| <b>DIP Claims</b>  |                           |                      |          |                     |                     |
| DIP Facility   | \$ 4,068,216              | \$ 4,368,326         |          | \$ 4,068,216        | \$ 4,368,326        |
| <b>Total DIP Claims</b>  | <b>\$ 4,068,216</b>       | <b>\$ 4,368,326</b>  |          | <b>\$ 4,068,216</b> | <b>\$ 4,368,326</b> |
| Recovery Rate  |                           |                      |          | 100%                | 100%                |
| <b>PDL Prepetition Secured Claims</b>                                    |                           |                      |          |                     |                     |
| <b>Total</b>   | <b>\$ 57,437,429</b>      | <b>\$ 57,437,429</b> | <b>G</b> | <b>\$ 0</b>         | <b>\$ 829,788</b>   |
| Recovery Rate  |                           |                      |          | 0%                  | 1.4%                |
| <b>Other Secured Claims</b>  |                           |                      |          |                     |                     |
| <b>Silicon Valey Bank</b>  | <b>\$ 47,765</b>          | <b>\$ 47,765</b>     |          | <b>\$ 39,607</b>    | <b>\$ 47,765</b>    |
| Recovery Rate  |                           |                      |          | 83%                 | 100%                |
| <b>Administrative &amp; Priority Claims Payable in Liquidation</b>       |                           |                      |          |                     |                     |
| General Admin and Operating Expenses                                     | \$ 1,258,000              | \$ 1,258,000         |          | \$ 0                | \$ 0                |
| Outstanding Professional Fee Claims                                      | \$ 50,000                 | \$ 50,000            |          | \$ 0                | \$ 0                |
| Bankruptcy Fees  | \$ 250,000                | \$ 250,000           |          | \$ 0                | \$ 0                |
| 503(b)(9) Claims   | \$ 146,541                | \$ 146,541           |          | \$ 0                | \$ 0                |
| <b>Total Administrative &amp; Priority Claims Payable in Liquidation</b> | <b>\$ 1,704,541</b>       | <b>\$ 1,704,541</b>  | <b>H</b> | <b>\$ 0</b>         | <b>\$ 0</b>         |
| Recovery Rate  |                           |                      |          | 0.0%                | 0.0%                |
| <b>Priority Claims</b>   |                           |                      |          |                     |                     |
| <b>Priority Tax Claims</b>   | <b>\$ 252,181</b>         | <b>\$ 252,181</b>    |          | <b>\$ 0</b>         | <b>\$ 0</b>         |
| <b>Other Priority Claims</b>   | <b>\$ 0</b>               | <b>\$ 0</b>          | <b>I</b> | <b>\$ 0</b>         | <b>\$ 0</b>         |
| <b>Total Priority Claims</b>   | <b>\$ 252,181</b>         | <b>\$ 252,181</b>    |          | <b>\$ 0</b>         | <b>\$ 0</b>         |
| Recovery Rate  |                           |                      |          | 0.0%                | 0.0%                |
| <b>General Unsecured Claims</b>  |                           |                      |          |                     |                     |
| General Unsecured Claims   | \$ 1,166,859              | \$ 1,166,859         | <b>J</b> | \$ 0                | \$ 0                |
| <b>Total General Unsecured Claims</b>                                    | <b>\$ 1,166,859</b>       | <b>\$ 1,166,859</b>  |          | <b>0</b>            | <b>0</b>            |
| Recovery Rate  |                           |                      |          | 0.0%                | 0.0%                |

## NOTES

### NOTE A – CASH AND CASH EQUIVALENTS

This Liquidation Analysis assumes, based on the Debtor's estimated cash flow projections as of April 1, 2017, that cash and cash equivalents of approximately \$248,000 will be in the Debtor's accounts.

### NOTE B – ACCOUNTS RECEIVABLE, NET

The analysis of accounts receivables assumes that the Trustee would retain certain existing staff of the Debtor to handle an aggressive collection effort for outstanding accounts receivable. Collections during a liquidation could be significantly compromised because customers may attempt to set off outstanding amounts owed to the Debtor against alleged damage and breach of contract claims. The liquidation value of accounts receivable was estimated by applying a recovery factor consistent with the Debtor's experience in collecting accounts. The estimate also considers the inevitable difficulty that a liquidating company has in collecting its receivables and any concessions that might be required to facilitate the collection of certain accounts. The Debtor estimates recoveries between 5% to 10% of net accounts receivable.

### NOTE C – PREPAID EXPENSES

Prepaid expenses include retainers for professional fees, rent security deposits, prepaid insurance premiums, and software licensing agreements. The Debtor estimates that these assets will have minimal value in liquidation.

### NOTE D – INVENTORY

The Debtor estimates that these assets will have a substantially reduced value in liquidation because the Debtor's laser medical devices would no longer be used.

### NOTE E – PROPERTY, PLANT & EQUIPMENT

The property, plant and equipment value relates primarily to its laser systems, research and development equipment and topographers, other equipment and office furniture. The Debtor estimates that it will recover between \$2,077,031 and \$2,567,495 through liquidation of property, plant and equipment.

### NOTE F – COSTS ASSOCIATED WITH LIQUIDATION

Trustee fees include those fees associated with the appointment of the Trustee in accordance with section 326 of the Bankruptcy Code. Trustee fees are calculated at 5% of the gross proceeds of a liquidation (excluding cash). The Trustee fees are assumed to be between \$206,201 and \$276,099.

### NOTE G – SECURED CLAIMS

For purposes of this Liquidation Analysis, the Debtor assumes that Secured Claims consist of the estimated amount owed to PDL under the DIP Facility, the prepetition claims of PDL, and the prepetition claim of Silicon Valley Bank. This Liquidation Analysis does not account for any prepetition accrued interest and assumes that there are no Other Secured Claims other than the

amounts owed to Silicon Valley Bank. The Liquidation Analysis also assumes that amounts due under the DIP Facility Credit Agreement and the prepetition claims of PDL are secured by a first-priority lien on all of the assets of the Debtor.

NOTE H – ADMINISTRATIVE CLAIMS

Certain Administrative Claims are payable under the carve-out permitted by the Final DIP Order. The Debtor estimates the total amount of such claims to be approximately \$200,000. The Debtor estimates the total Other Administrative & Priority Claims to be \$1,704,541.

NOTE I – PRIORITY CLAIMS

The analysis assumes all priority claims of employees will be paid under the Debtor's pending motion seeking approval to pay bonuses to employees.

NOTE J – UNSECURED CLAIMS

General Unsecured Claims include trade claims and certain accrued liability claims. This Liquidation Analysis does not attempt to estimate potential additional General Unsecured Claims that could arise in the context of a chapter 7 liquidation, but such additional claims could be substantial in amount particularly those claims arising out of rejection of the Debtor's contracts with its customers.