

**THIS DISCLOSURE STATEMENT HAS
NOT YET BEEN APPROVED BY THE COURT**

This proposed Disclosure Statement is not a solicitation of acceptance or rejection of the Joint Plan of Liquidation Pursuant To Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors. Acceptances or rejections may not be solicited until the Bankruptcy Court has approved this Disclosure Statement under section 1125 of the Bankruptcy Code. This proposed Disclosure Statement is being submitted for approval only, and has not yet been approved by the Bankruptcy Court.

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

-----	X	
	:	
In re:	:	Chapter 11
	:	
MACKEYSER HOLDINGS, LLC, <u>et al.</u> ,	:	Case No. 14-11550 (CSS)
	:	
Debtors.	:	Jointly Administered
	:	
-----	X	

**DISCLOSURE STATEMENT WITH RESPECT TO
JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11
OF THE BANKRUPTCY CODE PROPOSED BY THE DEBTORS AND
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**
David R. Hurst (I.D. No. 3743)
Marion M. Quirk (I.D. No. 4136)
500 Delaware Ave., Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131

*Counsel for the Debtors and
Debtors-in-Possession*

Dated: Wilmington, Delaware
November 10, 2014

DISCLAIMER¹

THE INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE PROPOSED BY THE DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY PROVIDE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL HOLDERS OF CLAIMS AND INTERESTS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETIES BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT WITH RESPECT TO THE PLAN ARE QUALIFIED IN THEIR ENTIRETIES BY REFERENCE TO THE PLAN, THE EXHIBITS ATTACHED TO THE PLAN AND ANY PLAN SUPPLEMENT(S). THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(b) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-APPLICABLE BANKRUPTCY LAWS. THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), AND THE SEC HAS NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING SECURITIES OR CLAIMS OF THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSES FOR WHICH THEY WERE PREPARED.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO CONSTITUTE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS IT RELATES TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS.

¹ Terms used in this Disclaimer that are not otherwise defined shall have the meanings ascribed to such terms elsewhere in the Disclosure Statement.

TABLE OF CONTENTS

ARTICLE I

INTRODUCTION..... 1

A. Purpose of the Disclosure Statement1

B. Disclosure Statement Enclosures2

 1. Order Approving the Disclosure Statement.....2

 2. Ballot.....2

 3. Notice.....2

C. Final Approval of the Disclosure Statement and Confirmation of the Plan2

 1. Requirements2

 2. Approval of the Plan and Confirmation Hearing2

 3. Effect of Confirmation2

 4. Only Impaired Classes Vote2

D. Treatment and Classification of Claims and Interests; Impairment3

E. Voting Procedures and Voting Deadline.....5

F. Confirmation Hearing6

ARTICLE II

GENERAL INFORMATION REGARDING THE DEBTORS 7

A. The Debtors’ Business7

B. The Debtors’ Corporate Structure7

C. The Debtors’ Prepetition Debt Structure.....8

 1. Secured Debt.....8

 2. Unsecured Debt.....11

D. Summary of Events Leading to the Chapter 11 Filings13

ARTICLE III

THE CHAPTER 11 CASES 14

A. Commencement of the Chapter 11 Cases.....14

B. “First Day” Motions and Related Applications14

C. Retention of Professionals and Appointment of the Committee.....15

 1. Retention of Debtors’ Professionals15

 2. Retention of Claims and Noticing Agent and Administrative Agent15

 3. Appointment of Committee and Retention of Committee Professionals15

D. Significant Events During the Chapter 11 Cases15

 1. Debtor-in-Possession Financing.....16

 2. Global Settlement with Committee17

 3. Asset Sales.....19

 4. Executory Contracts and Personal Property Leases23

 5. The Claims Process23

 6. The Essilor Repayment Motion24

 7. The Meyers Litigation.....25

ARTICLE IV

SUMMARY OF PLAN

		25
A.	Classification and Treatment of Claims and Interests	26
1.	Unclassified Claims	27
2.	Unimpaired Claims	28
3.	Impaired Claims	29
4.	Interests	31
5.	Special Provision Regarding Unimpaired Claims	31
6.	Allowed Claims	31
7.	Special Provisions Regarding Insured Claims	31
B.	Provisions Covering Distributions	32
1.	Limitations on Distributions on Allowed Claims	32
2.	Disbursing Agent	32
3.	Delivery of Distributions and Undeliverable or Unclaimed Distributions	33
4.	Means of Cash Payment	34
5.	Interest on Claims	34
6.	Withholding and Reporting Requirements	34
7.	Setoffs	35
8.	Procedure for Treating and Resolving Disputed, Contingent and/or Unliquidated Claims	35
C.	Means for Implementation of the Plan	37
1.	Substantive Consolidation	37
2.	Corporate Action	38
3.	Books and Records; Privilege Matters	40
4.	Creditors' Committee and Liquidating Trust Committee	41
5.	No Revesting of Assets in Debtors	42
6.	Limited Release of Liens	43
7.	Accounts and Reserves	43
8.	Exemption from Certain Transfer Taxes	44
9.	Applicability of Sections 1145 and 1125(e) of the Bankruptcy Code	44
10.	Preservation of Causes of Action	44
11.	Effectuating Documents; Further Transactions	45
D.	The Liquidating Trust	45
1.	Establishment and Administration of the Liquidating Trust	45
2.	Assets of the Liquidating Trust	46
3.	Other Funds to be Transferred to the Liquidating Trust	46
4.	Rights and Powers of the Liquidating Trust and the Liquidating Trustee	46
5.	Liquidating Trust Interests	47
6.	Appointment of a Liquidating Trustee	47
7.	Distributions to Holders of Allowed Claims	48
8.	Distributions to Holders of Administrative and Priority Claims	49
9.	Reporting Requirement of Liquidating Trust	49
E.	Conditions Precedent to Confirmation and Consummation of the Plan	49
1.	Conditions to Confirmation	49
2.	Conditions to Effective Date	50
3.	Waiver of Conditions	50

4.	Consequences of Non-Occurrence of Effective Date	51
F.	Effects of Confirmation	51
1.	Compromise and Settlement of Claims and Controversies	51
2.	Binding Effect	51
3.	Discharge of the Debtors	51
4.	Releases	51
5.	Exculpation and Limitation of Liability	53
6.	Injunction	54
7.	Compromises and Settlements	55
8.	Satisfaction of Subordination Rights	55
G.	Other Matters	56
1.	Treatment of Executory Contracts and Unexpired Leases	56
2.	Allowance and Payment of Certain Administrative Claims	57
3.	Modifications and Amendments	58
4.	Payment of Statutory Fees	58
5.	Revocation, Withdrawal or Non-Consummation	58
6.	Plan Supplement(s)	58
H.	Retention of Jurisdiction	59

ARTICLE V

VOTING REQUIREMENTS; ACCEPTANCE AND CONFIRMATION OF THE PLAN	61
A. General	61
B. Parties in Interest Entitled to Vote	61
C. Classes Impaired and Entitled to Vote under the Plan	61
D. Voting Procedures and Requirements	62
1. Ballots	62
2. Returning Ballots	62
3. Voting	62
E. Acceptance of Plan	63
F. Confirmation Without Necessary Acceptances; Cramdown	64
1. No Unfair Discrimination	64
2. Fair and Equitable Test	64

ARTICLE VI

FEASIBILITY AND BEST INTERESTS OF CREDITORS	65
A. Best Interests Test	65
B. Feasibility	67

ARTICLE VII

EFFECT OF CONFIRMATION	67
A. Binding Effect of Confirmation	67
B. Good Faith	67

ARTICLE VIII

CERTAIN RISK FACTORS TO BE CONSIDERED	68
A. Plan May Not Be Accepted	68
B. Certain Bankruptcy Law Considerations	68

C. Distributions to Holders of Allowed Claims Under The Plan68
D. Conditions Precedent to Consummation of the Plan69
E. Certain Tax Considerations69

ARTICLE IX

CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN 69
A. Tax Consequences to the Debtors70
B. Tax Consequences to Creditors.....70
 1. Holders of Claims.....70
 2. Non-United States Persons71
C. Tax Treatment of the Liquidating Trust.....71
 1. Classification of the Liquidating Trust71
 2. General Tax Reporting by the Trust and Beneficiary72
 3. Allocations of Taxable Income and Loss73
D. Importance of Obtaining Professional Tax Assistance74

ARTICLE X

RECOMMENDATION AND CONCLUSION 75

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Title</u>
A	Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors
B	Debtors' Corporate Structure

ARTICLE I

INTRODUCTION

A. Purpose of the Disclosure Statement

On June 20, 2014 (the “Petition Date”), MacKeyser Holdings, LLC (“MacKeyser”) and twenty-two (22) of its direct and indirect subsidiaries² (collectively, the “Debtors”) filed voluntary petitions for relief (collectively, the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Court”).

The Debtors and the Official Committee of Unsecured Creditors in the Chapter 11 Cases (the “Committee” and, together with the Debtors, the “Plan Proponents”) have filed the Joint Plan Of Liquidation Pursuant To Chapter 11 Of The Bankruptcy Code Proposed By The Debtors and the Official Committee of Unsecured Creditors (including all exhibits thereto, and as may be amended, altered, modified or supplemented from time to time, the “Plan”) with the Court. A copy of the Plan is attached hereto as Exhibit A.

Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Plan; provided, however, that any capitalized term used herein that is not defined herein or in the Plan, but is defined in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) will have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

The Debtors submit this disclosure statement (as may be amended, altered, modified or supplemented from time to time, the “Disclosure Statement”) pursuant to section 1125 of the Bankruptcy Code to Holders of Claims against the Debtors in connection with (i) the solicitation of acceptances of the Plan and (ii) the hearing to consider confirmation of the Plan.

The purpose of this Disclosure Statement is to describe the Plan and its provisions and to provide certain information, as required under section 1125 of the Bankruptcy Code, to creditors who will have the right to vote on the Plan so they can make informed decisions in doing so. Creditors entitled to vote to accept or reject the Plan will receive a Ballot (as defined herein) together with this Disclosure Statement to enable them to vote on the Plan.

This Disclosure Statement includes, among other things, information pertaining to the Debtors’ prepetition business operations and financial history and the events leading to the filing of the Chapter 11 Cases. This Disclosure Statement also contains information regarding significant events that have occurred during the Chapter 11 Cases. In addition, an overview of

² The subsidiary debtors are American Optical Services, Inc., Exela Hearing Services, LLC, Optical Management Systems, Inc., Riverfront Hearing, Inc., AOS-OMS, LLC, American Optical Services, LLC, EHS-Riverfront, LLC, 926 N. Wilcrest, LLC, Epic Management Group, LLC, Eyeglasses Etc., Inc., Eyes On You Eyecare, Inc., Genesis Billing Systems, LLC, Genesis Eye Center, PLLC, J. Richard Susi, D.O., P.A., Joseph D. Udvari, Jr., O.D., P.C., Joseph Kurstin, M.D., P.A., Lakewood Eye Clinic, P.C., Larry R. Moorman, M.D., P.C., Philip H. Clark, O.D., P.A., Steven T. Olkowski, M.D., P.C., Thomas Retinal Eye Specialists, P.C., and Thomas G. Abell, M.D., P.S.C.

the Plan is included, which overview sets forth certain terms and provisions of the Plan, the effects of confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which distributions will be made under the Plan. This Disclosure Statement also discusses the confirmation process and the procedures for voting, which procedures must be followed by the Holders of Claims entitled to vote under the Plan for their votes to be counted.

B. Disclosure Statement Enclosures

Accompanying this Disclosure Statement are:

1. Order Approving the Disclosure Statement. A copy of the Court’s order (the “Solicitation Procedures Order”) approving this Disclosure Statement and, among other things, establishing procedures for voting on the Plan, setting the deadline for objecting to the Plan and scheduling the Confirmation Hearing.
2. Ballot. A ballot (the “Ballot”) for voting to accept or reject the Plan, if you are the record Holder of a Claim in a Class entitled to vote on the Plan (each, a “Voting Class”).
3. Notice. A notice setting forth: (i) the deadline for casting Ballots either accepting or rejecting the Plan; (ii) the deadline for filing objections to confirmation of the Plan; and (iii) the date, time and location of the Confirmation Hearing (the “Notice”).

C. Final Approval of the Disclosure Statement and Confirmation of the Plan

1. Requirements. The requirements for confirmation of the Plan are set forth in section 1129 of the Bankruptcy Code. The requirements for the Disclosure Statement are set forth in section 1125 of the Bankruptcy Code.
2. Approval of the Plan and Confirmation Hearing. To confirm the Plan, the Court must hold a hearing to determine whether the Plan meets the requirements of section 1129 of the Bankruptcy Code.
3. Effect of Confirmation. Except as otherwise provided in the Plan or in the order confirming the Plan (the “Confirmation Order”), confirmation will effect the distribution of the Debtors’ remaining assets. Confirmation serves to make the Plan binding upon the Debtors and all Creditors, Interest Holders and other parties in interest, regardless of whether they cast a Ballot to accept or reject the Plan.
4. Only Impaired Classes Vote. Pursuant to the provisions of the Bankruptcy Code, only classes of claims or interests that are “impaired” under a plan may vote to accept or reject such plan. Generally, a claim or interest is impaired under a plan if the holder’s legal, equitable or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an impaired class do not receive or retain any property under a plan on account of such claims or interests, such impaired class is deemed to have rejected such plan under section 1126(g) of the Bankruptcy Code and, therefore, such holders do not need to vote on such plan.

Under the Plan, Holders of Claims in Class 1 are Unimpaired and therefore deemed to accept the Plan.

Under the Plan, Holders of Claims in Classes 2, 3 and 4 are Impaired and are entitled to vote on the Plan.

Under the Plan, Holders of Claims and Interests in Classes 5, 6, 7 and 8 are deemed to reject the Plan and are not entitled to vote on the Plan.

ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASSES 2, 3 AND 4.

D. Treatment and Classification of Claims and Interests; Impairment

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. For a summary of the treatment of each Class of Claims and Interests, see Article IV, "Summary of Plan," below.

Class Description	Status	Proposed Treatment
DIP Facility Claim Estimated Recovery: 100%	Unclassified	The Holder of the Allowed DIP Facility Claim will receive the Liquidating Trust Proceeds allocated to the Holder of the DIP Facility Claim under the Liquidating Trust Waterfall and the Global Settlement Order.
Administrative Claims Estimated Recovery: 100%	Unclassified	On or as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) the date an Administrative Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim (other than a Professional) will receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, have agreed upon in writing.
Priority Tax Claims Estimated Recovery: 100%	Unclassified	Except to the extent that an Allowed Priority Tax Claim has been paid prior to the Distribution Date, a Holder of an Allowed Priority Tax Claim will receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim, (i) deferred Cash payments over a period not exceeding five years after the Petition Date in an aggregate principal amount equal to the Face Amount of such Allowed Priority Tax Claim, plus interest on the unpaid portion thereof at the Case Interest Rate from the Effective Date through the date of payment thereof, or (ii) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, have agreed upon in writing.

<p>Class 1: Miscellaneous Secured Claims Estimated Recovery: 100%</p>	<p>Unimpaired</p>	<p>On or as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) the date such Miscellaneous Secured Claim becomes an Allowed Miscellaneous Secured Claim, at the option of the Debtors or the Liquidating Trustee, as applicable, a Holder of an Allowed Miscellaneous Secured Claim will receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Miscellaneous Secured Claim, (a) Cash from the Debtors equal to the value of such Allowed Miscellaneous Secured Claim, (b) a return of the Holder's Collateral securing the Miscellaneous Secured Claim, (c) such treatment required under section 1124(2) of the Bankruptcy Code for such Claim to be rendered Unimpaired or (d) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, have agreed upon in writing.</p>
<p>Class 2: Priority Non-Tax Claims Estimated Recovery: 100%</p>	<p>Impaired</p>	<p>Except to the extent that an Allowed Priority Non-Tax Claim has been paid prior to the Distribution Date, a Holder of an Allowed Priority Non-Tax Claim will receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Non-Tax Claim, (i) deferred Cash payments over a period not exceeding five years after the Petition Date in an aggregate principal amount equal to the Face Amount of such Allowed Priority Non-Tax Claim, plus interest on the unpaid portion thereof at the Case Interest Rate from the Effective Date through the date of payment thereof, or (ii) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, have agreed upon in writing.</p>
<p>Class 3: HEP Prepetition Secured Claim Estimated Recovery: Unknown</p>	<p>Impaired</p>	<p>The Holder of the Allowed HEP Prepetition Secured Claim will receive the Liquidating Trust Proceeds allocated to the Holder of the HEP Prepetition Secured Claim under the Liquidating Trust Waterfall and the Global Settlement Order.</p>
<p>Class 4: General Unsecured Claims Estimated Recovery: Unknown</p>	<p>Impaired</p>	<p>Each Holder of an Allowed General Unsecured Claim will receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed General Unsecured Claim, its Pro Rata share of the Cash proceeds generated by the Liquidating Trust after the Effective Date allocated to Holders of General Unsecured Claims under the Liquidating Trust Waterfall.</p>
<p>Class 5: Intercompany Claims Estimated Recovery: 0%</p>	<p>Impaired</p>	<p>In connection with, and as a result of, the substantive consolidation of the Debtors' Estates and the Chapter 11 Cases, on the Effective Date, all Intercompany Claims will be eliminated and the Holders of Intercompany Claims will not be entitled to, and will not receive or retain, any property or interest in property on account of such Claims.</p>

Class 6: Subordinated 510(c) Claims Estimated Recovery: 0%	Impaired	On or after the Effective Date, all Subordinated 510(c) Claims will be deemed eliminated, cancelled and/or extinguished and each Holder thereof will not be entitled to, and will not receive or retain, any property under the Plan on account of such Subordinated 510(c) Claims.
Class 7: Subordinated 510(b) Claims Estimated Recovery: 0%	Impaired	On or after the Effective Date, all Subordinated 510(b) Claims will be deemed eliminated, cancelled and/or extinguished and each Holder thereof will not be entitled to, and will not receive or retain, any property under the Plan on account of such Subordinated 510(b) Claims.
Class 8: Interests Estimated Recovery: 0%	Impaired	On the Effective Date, all Interests will be cancelled and each Holder thereof will not be entitled to, and will not receive or retain, any property or interest in property under the Plan on account of such Interests.

E. Voting Procedures and Voting Deadline

If you are entitled to vote to accept or reject the Plan, a Ballot is enclosed for the purpose of voting on the Plan. To ensure your vote is counted, you must (i) complete the Ballot, (ii) indicate your decision either to accept or reject the Plan in the boxes provided, and (iii) sign and return the Ballot(s) in the envelope provided.

TO BE COUNTED, YOUR BALLOT WITH YOUR ORIGINAL SIGNATURE INDICATING YOUR ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED NO LATER THAN 4:00 P.M. (EASTERN TIME) ON JANUARY 23, 2015 (THE “VOTING DEADLINE”).

The following Ballots will not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected:

- (i) any Ballot received after the Voting Deadline (unless extended by the Debtors);
- (ii) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant;
- (iii) any Ballot cast by a person or entity that does not hold a Claim in a Class that is entitled to vote to accept or reject the Plan;
- (iv) any Ballot cast for a Claim designated as contingent, unliquidated or disputed or as zero or unknown in amount and for which no Rule 3018(a) Motion has been filed by the Rule 3018(a) Motion Deadline (as such terms are defined in the Solicitation Procedures Order);
- (v) any Ballot that indicates neither an acceptance nor a rejection, or indicates both an acceptance and a rejection, of the Plan;

- (vi) any Ballot that casts part of its vote in the same Class to accept the Plan and part to reject the Plan;
- (vii) any form of Ballot other than the official form sent by the Voting Agent, or a copy thereof;
- (viii) any Ballot received that the Voting Agent cannot match to an existing database record;
- (ix) any Ballot that does not contain an original signature; or
- (x) any Ballot that is submitted by facsimile, email or by other electronic means.

In order for the Plan to be accepted by an Impaired Class of Claims, a majority in number and two-thirds in dollar amount of the Claims voting in such Class must vote to accept the Plan. At least one Voting Class, excluding the votes of insiders, must actually vote to accept the Plan.

YOU ARE URGED TO COMPLETE, DATE, SIGN AND PROMPTLY MAIL THE BALLOT ENCLOSED WITH THE NOTICE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY, AND IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR. IF YOU ARE A HOLDER OF A CLAIM ENTITLED TO VOTE ON THE PLAN AND YOU DID NOT RECEIVE A BALLOT, YOU RECEIVED A DAMAGED BALLOT OR YOU LOST YOUR BALLOT, OR IF YOU HAVE ANY QUESTIONS CONCERNING THE DISCLOSURE STATEMENT, THE PLAN OR PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE VOTING AGENT, AMERICAN LEGAL CLAIM SERVICES, AT (904) 517-1442 OR AT NOTICE_MACKEYSER@AMERICANLEGALCLAIMS.COM. THE VOTING AGENT IS NOT AUTHORIZED TO AND WILL NOT PROVIDE LEGAL ADVICE.

F. Confirmation Hearing

The Court has scheduled a hearing to consider confirmation of the Plan for February 2, 2015 at 10:00 a.m. (Eastern time) in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware 19801 (the “Confirmation Hearing”). The Court has directed that objections, if any, to confirmation of the Plan be filed and served on or before January 16, 2015 at 4:00 p.m. (Eastern time) in the manner described in the Notice accompanying this Disclosure Statement. The Confirmation hearing may be adjourned from time to time by way of announcement of such continuance in open Court or otherwise, without further notice to parties in interest.

THE DEBTORS URGE ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT THE PLAN.

ARTICLE II

GENERAL INFORMATION REGARDING THE DEBTORS

A. The Debtors' Business

Prior to their chapter 11 filings, the Debtors managed the first nationally-integrated eye care and hearing systems provider with over 80 optical retail, optometry and ophthalmology locations in 14 states. In addition, within certain of the Debtors' locations, dedicated audiology and dispensing staff conducted diagnostics, fitting and dispensing of hearing systems.

The Debtors' business model was to provide a plan for optometrists and ophthalmologists to exit their practices over time and seamlessly transition new doctors in, thereby creating a clean transition invisible to patients, leaving the natural flow of patients to the practice unchanged, and ensuring the well-being of the patient base. Over time, the Debtors replaced retiring doctors with younger optometrists and ophthalmologists, who benefitted from the arrangement by avoiding the need to build an entirely new patient base.

In a typical purchase transaction, the Debtors purchased the non-medical assets of a practice (*e.g.*, medical equipment and the lease for the real property at which the practice operated) (collectively, the "Practice Assets"), while the medical assets of the practice (*e.g.*, patient records and controlled substances) were sold to a professional corporation (each, an "Amedco") owned by a physician (each, a "Medical Director"). The Debtors then typically entered into a management services agreement with the Amedco, pursuant to which the Debtors leased the Practice Assets to the Amedco and provided the necessary personnel to staff the medical office. The Debtors also provided necessary back-office support to the Amedcos (*e.g.*, centralized accounting, finance, marketing and sales), thereby allowing doctors to focus on patient care.

The Debtors sought to establish regionally dense "hubs" of optometry, ophthalmology and retail assets and create a self-contained network of vision providers. The Debtors believed that this structure would drive (i) increased volume and procedures through cross referrals among optometrist, ophthalmologist and retail locations; (ii) practice management efficiencies (*e.g.*, consolidated and centralized billing, collections, purchasing and accounting); (iii) direct expense reduction by virtue of scale, group purchasing and key vendor relationships; (iv) opportunities for increased reimbursements from payors upon meeting certain volume or coverage thresholds; and (v) cost control and productivity improvements due to regional management oversight.

B. The Debtors' Corporate Structure

MacKeyser is a holding company and the ultimate parent of the other Debtors in these cases, and has five direct subsidiaries: American Optical Services, Inc. ("AOS, Inc."), AOS-OMS, LLC, American Optical Services, LLC ("AOS, LLC"), EHS-Riverfront, LLC ("EHS-Riverfront") and Exela Hearing Services, LLC ("Exela"). AOS, Inc. and Exela each have a single subsidiary, while AOS, LLC has fifteen (15) wholly-owned subsidiaries. A diagram of the Debtors' corporate structure is attached hereto as Exhibit B.

In addition to its wholly-owned subsidiaries, AOS, LLC has a 55% ownership interest in WCEC, LLC, which, with non-Debtor Barry Katzman, M.D., Inc., operates seven (7) “West Coast Eye Care” ophthalmological practices in California (the “WCEC Practices”). The Debtors and the Committee currently are analyzing various factual and legal matters relating to the Debtors’ interest in the WCEC Practices, to determine whether such ownership interest may be a source of value for the Debtors’ Estates.

The ownership interests of MacKeyser include preferred units and series A and B common units. Health Evolution Partners Fund I (AIVI), L.P. (f/k/a Health Evolution Partners Growth (AIV I), LP) and Series F and G of Health Evolution Partners Co-Invest, LLC collectively are the majority equity owner of MacKeyser, holding 75.58% of the outstanding capital units. The other capital units are held by: (i) PKO, LLC, an entity owned and controlled by Pierre Keyser, the Debtors’ former Chief Executive Officer (19.34%); (ii) Essilor of America, Inc., one of the Debtors’ vendors (3.83%); and (iii) Erica Perreira, the Debtors’ former Chief Operating Officer (1.24%).

C. The Debtors’ Prepetition Debt Structure

The Debtors are borrowers, guarantors and/or obligors under various credit agreements, promissory notes and other financial arrangements. As of the Petition Date, the Debtors’ secured and unsecured debt obligations totaled approximately \$58 million.

1. Secured Debt

As of the Petition Date, the Debtors had aggregate outstanding purportedly secured debt totaling approximately \$23 million arising in connection with various loans and equipment financings, as described in more detail below.

a. HEP

Health Evolution Partners Fund I (AIVI), L.P. (f/k/a Health Evolution Partners Growth (AIV I), LP), Series F of Health Evolution Partners Co-Invest, LLC, Series G of Health Evolution Partners Co-Invest, LLC, and the affiliates of each of the foregoing (collectively, “HEP”) provided rescue financing to the Debtors prior to the Petition Date, on both a secured and unsecured basis, in order to provide for continuity of patient care and to preserve value. Specifically, MacKeyser executed a Secured Promissory Note dated as of May 29, 2014 (the “HEP Secured Note”) in favor of Health Evolution Partners Fund I (AIVI), L.P. (f/k/a Health Evolution Partners Growth (AIVI), LP) and Series F of Health Evolution Partners Co-Invest, LLC in an amount of up to \$4,617,000. The HEP Secured Note accrues interest at 7.0% per annum, which is added to the principal balance quarterly. The note is due and payable upon demand of HEP.

The HEP Secured Note is jointly and severally guaranteed by the other Debtors in these Chapter 11 Cases (the “Debtor Guarantors”), and such guarantees are secured by a first priority lien on substantially all assets of the Debtor Guarantors (the “HEP Prepetition Secured Collateral”). As of the Petition Date, HEP had advanced \$3,461,681.96 under the HEP Secured Note.

b. Essilor of America, Inc.

MacKeyser executed a Senior Secured Promissory Note dated January 11, 2013 (the "Essilor Note") in favor of Essilor of America, Inc. ("Essilor") in the amount of \$4 million. The Essilor Note accrues interest at 5.0% per annum.

The Essilor Note is jointly and severally guaranteed by certain direct and indirect subsidiaries of MacKeyser, including AOS, LLC. In accordance with that certain security agreement dated January 11, 2013 (the "Essilor Security Agreement"), AOS, LLC's guaranty obligations were secured by a first priority lien in that portion of its assets owned or used exclusively in the operation of the optometric practice and optical eye care retailing business commonly known as "The Eye Gallery" and the "Artful Eye" (the "Essilor Collateral"). As discussed in Article III.D.3 below, the Essilor Collateral was sold in an open auction process and, accordingly, Essilor's liens on such collateral (to the extent valid) attached to the proceeds of such sale.

As of the Petition Date, the Debtors estimate that the amount outstanding under the Essilor Note was approximately \$3.7 million.

c. Audiology Holding Company, LLC

On December 15, 2010, MacKeyser executed (i) a Secured Note Purchase Agreement with Audiology Holding Company, LLC ("Audiology Holding"), and (ii) a Secured Promissory Note in the amount of \$5 million (the "Audiology Holding Note"). The Audiology Holding Note accrues interest at the greater of (x) prime plus two percent (2.0%) or (y) four and one-half percent (4.5%). The unpaid balance as of the second anniversary of the Audiology Holding Note is due and payable in eighty-four (84) equal consecutive monthly installments in an amount sufficient to amortize the unpaid balance in full.

No recorded UCC-1 financing statements have been filed against MacKeyser in connection with the Audiology Holding Note. MacKeyser's obligations under the Audiology Holding Note, however, are purportedly secured by a pledge of all of its equity interests in Exela and AOS, Inc. (the "Audiology Holding Pledged Interests") pursuant to pledge agreements dated December 15, 2010 (the "Audiology Holding Pledge Agreements"). Under the Audiology Holding Pledge Agreements, the collateral includes, among other things, all rights, benefits, distributions, premiums, profits, dividends, interest, cash, instruments, documents of title, accounts, contract rights, inventory, equipment, general intangibles, payment intangibles, deposit accounts, chattel paper and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for, or as a replacement of or a substitution for, any of the Audiology Holding Pledged Interests or proceeds thereof (including any cash, equity interests or other securities or instruments issued after any recapitalization, readjustment, reclassification, merger or consolidation with respect to Exela).

The obligations of MacKeyser under the Audiology Holding Note also are guaranteed by Exela and AOS, Inc., pursuant to guaranties dated December 15, 2010. However, Audiology Holding has filed a UCC-1 financing statement only against Exela (and not against AOS, Inc.).

As of the Petition Date, the Debtors estimate that the amount outstanding under the Audiology Holding Note was \$5 million. The Debtors believe that all or substantially all of this nominally “secured” debt will be reclassified as a general unsecured claim.

d. The Meyers Family Agreement of Trust

Exela and The Meyers Family Agreement of Trust dated October 14, 1996 (the “Meyers Trust”) entered into that certain Stock Purchase Agreement (the “Riverfront Stock Purchase Agreement”) dated November 1, 2010 under which Exela purchased from the Meyers Trust one hundred percent (100%) of the issued and outstanding stock of Riverfront Hearing, Inc. (“Riverfront”). As part of the purchase, Exela executed a secured promissory note in favor of the Meyers Trust in the amount of \$1 million (the “Meyers Note”). The Meyers Note accrues interest at 1.72% per year and is payable in twenty (20) equal quarterly installments of \$52,291.50 commencing on February 1, 2011 and continuing until November 1, 2015, at which time the entire unpaid balance together with interest on the Meyers Note is payable in full.

The Meyers Note is secured by (i) a Stock Pledge Agreement dated November 1, 2010, among Exela, the Meyers Trust and Sklar Williams LLP (as escrow agent) pursuant to which Exela pledged its interest in Riverfront; (ii) a Security Agreement dated November 1, 2010, by Riverfront in favor of the Meyers Trust pursuant to which Riverfront granted a lien on substantially all of its assets; and (iii) a Guaranty dated November 1, 2010, by Pierre Keyser to the Meyers Trust.

As of the Petition Date, the Debtors estimate that the amount outstanding under the Meyers Note was approximately \$360,000. As discussed in Article III.D.7 below, the Debtors believe that this nominally “secured” debt will be reclassified as a general unsecured claim.

e. Starkey Laboratories, Inc.

Exela entered into a revolving credit agreement and promissory note dated December 4, 2013 with Starkey Laboratories, Inc. (“Starkey”), pursuant to which Starkey agreed to make loans to Exela for business purposes in an amount not to exceed \$2 million. Interest on the line of credit accrues at the rate of prime plus one percent (1%) and becomes payable, together with principal, nine months after the date of the line of credit on a monthly basis.

The Starkey line of credit is secured by, among other things, a security interest in all “Accounts,” “General Intangibles,” “Equipment,” “Fixtures” and “Inventory” (as those terms are defined in the Minnesota Uniform Commercial Code) of Exela pursuant to that certain Security Agreement dated December 4, 2013. Starkey filed a UCC-1 financing statement with respect to the Starkey line of credit on May 20, 2014.

As of the Petition Date, the Debtors estimate that the amount outstanding on the Starkey line of credit was \$1 million. The Debtors believe that this nominally “secured” debt will be reclassified as a general unsecured claim.

f. Keilson and Segall

Since February 22, 2010, AOS, LLC acquired the non-medical assets of thirty-three (33) ophthalmology and optometry practices. Stemming from these acquisition transactions, there remain twenty-six (26) outstanding promissory notes issued by AOS, LLC to the sellers in consideration for the sale of their respective practices. Notwithstanding AOS, LLC's execution of security agreements in connection with most of these transactions, only Drs. Louis Keilson and Morris Segall ("Keilson and Segall") filed UCC-1 financing statements to purportedly perfect their liens on certain of AOS, LLC's assets.

Keilson and Segall purportedly are secured parties pursuant to separate security agreements dated November 12, 2012 in connection with seller notes issued to each of them in the original principal amount of \$5 million (for a total of \$10 million). Under the security agreements, Keilson and Segall purportedly were granted liens on substantially all of AOS, LLC's assets at the locations owned by South Florida Eye Associates, P.A. and Eye Care Services of America, Inc., to the extent obtained by AOS, LLC as part of a stock purchase agreement involving Amedco SF, LLC.

As of the Petition Date, the Debtors' books and records reflected a potential liability to Keilson and Segall of approximately \$9.7 million, although such amount is disputed. Because the Debtors believed that their obligations to Keilson and Segall exceeded the value of the underlying collateral, the Debtors abandoned such collateral pursuant to the Debtors' Notice of Abandonment of De Minimis Assets [Docket No. 187].

g. Lease Financing

AOS, LLC incurred debt in connection with its acquisition or lease of certain equipment that was used in the ordinary course of its operations (the "Equipment Lease Obligations"), and a number of equipment lessors and lease financing companies filed UCC-1 financing statements against AOS, LLC.

h. Secured Debt of AOS, LLC Subsidiary Debtors

UCC-1 financing statements have been filed against six of AOS, LLC's Debtor subsidiaries: (i) Steven T. Olkowski, M.D., P.C., (ii) Joseph D. Udvari, Jr., O.D., P.C., (iii) Eyes On You Eyecare, Inc., (iv) Joseph Kurstin, M.D., P.A., (v) Thomas G. Abell, M.D., P.S.C., and (vi) Philip H. Clark, O.D., P.A. However, the Debtors believe that these Debtor entities either have shuttered their businesses or have no assets.

2. Unsecured Debt

As of the Petition Date, the Debtors had aggregate outstanding unsecured debt of approximately \$35 million arising in connection with (i) notes issued in connection with practice acquisitions (approximately \$14.3 million), (ii) other loan transactions (approximately \$5.6 million), and (iii) accounts payable, accrued liabilities and other liabilities (approximately \$15.1 million).

a. Seller Notes

As discussed above, despite the Debtors' execution of security agreements in connection with most physician practice acquisition transactions, none of the notes issued in these transactions, except for those held by Keilson and Segall, are subject to filed UCC-1 financing statements. As such, any purported liens relating to such notes are avoidable and unsecured as against the Debtors' estates. According to the Debtors' books and records, the balance owed on these notes as of the Petition Date was approximately \$14.3 million.

b. Exela, LLC

MacKeyser executed an unsecured promissory note (undated) in favor of Exela, LLC in the amount of \$1.6 million (the "Exela Note") in connection with the buyout of the equity of the former president of MacKeyser, Stephen J. McCormack, Ph.D., pursuant to that certain Membership Interest Purchase Agreement dated April 30, 2012 by and among Exela, LLC, Stephen J. McCormack, Ph.D. and MacKeyser. The Exela Note does not accrue interest.

The Exela Note is guaranteed by AOS, LLC pursuant to that certain guaranty dated April 30, 2012 (the "Exela Guaranty") by and between Exela, LLC and AOS, LLC. Pursuant to the Exela Guaranty, AOS, LLC unconditionally and absolutely guaranteed to Exela, LLC the full and prompt payment by MacKeyser of all sums due under the Exela Note.

As of the Petition Date, the Debtors estimate that the amount outstanding under the Exela Note was approximately \$1.1 million.

c. HEP

As noted above, HEP provided rescue financing to the Debtors prior to the Petition Date, on both a secured and unsecured basis, in order to provide for continuity of patient care and to preserve value. Specifically, MacKeyser executed an unsecured Promissory Note dated as of February 4, 2014 in favor of HEP in the amount of \$4 million (the "HEP Initial Unsecured Note"). The HEP Initial Unsecured Note earns interest at 7.0% per annum, and matured and became due and payable on February 18, 2014.

Additionally, as of April 1, 2014, MacKeyser executed an unsecured Promissory Note in favor of HEP in the amount of \$500,000 (the "HEP Subsequent Unsecured Note" and, together with the HEP Initial Unsecured Note, the "HEP Unsecured Notes"). The HEP Subsequent Unsecured Note earns interest at 7.0% per annum and is payable on demand. As of the Petition Date, the full amount remained outstanding under each of the HEP Unsecured Notes.

d. Other Unsecured Debt

In addition to the unsecured seller obligations, Exela Note and HEP Unsecured Note, the Debtors had incurred approximately \$15 million in other unsecured debt in the ordinary course of their business in the form of accounts payable, accrued liabilities and other liabilities as of the Petition Date.

D. Summary of Events Leading to the Chapter 11 Filings

In January 2014, the Debtors' then chief financial officer (CFO) notified the MacKeyser board of managers (the "Board") that the Debtors were rapidly approaching a liquidity crisis. In mid-February, the Debtors' CFO was terminated and, several weeks later, Ms. Teresa Robinson was hired as the Debtors' interim CFO. Ms. Robinson subsequently identified inaccuracies in the Debtors' historical books and records and deficiencies in financial forecasting and reporting, cash management and medical billing. As the magnitude of the Debtors' accounting irregularities became more apparent, the Debtors retained outside accountants in the first week of May 2014 to rebook 2013 revenue entries. Later in May, the Debtors retained GlassRatner Advisory & Capital Group, LLC to provide support to Ms. Robinson and the Debtors' accounting department.

Although the Debtors' poor financial condition had not been apparent before January 2014 due to the Debtors' deficient (and indeed misleading) accounting practices, the Debtors' financial situation had been deteriorating over time due to a variety of factors, including the following:

(a) Non-Strategic Acquisitions. Over the past several years, the Debtors pursued an aggressive growth strategy, expanding their practice management business through the addition of thirty-three (33) ophthalmology and optometry practices since 2010. In some cases, these acquisitions were not strategic in that the acquisitions were not in core geographic markets. As such, the Debtors could not take advantage of economies of scale with respect to marketing, support, inventory management, distribution and other operational matters.

(b) Non-Economical Acquisitions. In addition to acquiring geographically non-strategic practices, the Debtors also paid too much for some acquisitions. As a consequence, the Debtors were burdened with supporting a significant number of money-losing operations that, even with performance improvements, would never have been profitable.

(c) Costs of Integration. The costs of the Debtors' acquisitions, along with the associated transaction costs (*e.g.*, redeployment of manpower, systems and billing integration, etc.), caused a drain on the Debtors' liquidity.

(d) Electronic Medical Records ("EMR") Implementation. The Debtors recently implemented Medinfomatix practice management and EMR software in seventeen (17) locations. While the implementation of this software ultimately would have made practice and records management more efficient, doctor and staff productivity were impacted in the short term.

These factors—along with general mismanagement (*e.g.*, failing to timely collect accounts receivable, and having poor inventory control and inefficient billing practices) and the accounting irregularities discussed above—forced the Debtors to take the drastic step of filing for chapter 11 protection.

ARTICLE III

THE CHAPTER 11 CASES

A. Commencement of the Chapter 11 Cases

As set forth above, on the Petition Date the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Court. By order dated June 24, 2014 [Docket No. 29], the Debtors' cases are being jointly administered for procedural purposes only. No trustee or examiner has been appointed in the Chapter 11 Cases.

Since the Petition Date, the Debtors have continued to operate their businesses and manage their properties as debtors and debtors-in-possession.

B. "First Day" Motions and Related Applications

On the Petition Date, the Debtors filed a number of "first-day" motions and applications designed to ease the Debtors' transition into chapter 11, maximize the Debtors' assets and minimize the effects of the commencement of the Chapter 11 Cases.³ On June 24, 2014, the Court entered orders providing various first-day relief, including:

- (i) authorizing the Debtors to pay prepetition wages, commissions and employee benefits; and continue certain employee benefit programs in the ordinary course [Docket No. 32];
- (ii) authorizing the Debtors to continue certain prepetition customer programs and practices in the ordinary course of business [Docket No. 33];
- (iii) authorizing the Debtors to pay certain prepetition taxes and related obligations [Docket No. 34];
- (iv) authorizing the Debtors to continue use of their existing cash management system and bank accounts, business forms and deposit and investment practices; continue intercompany transactions and transactions with certain Amedcos; and accord administrative expense priority status to all postpetition intercompany claims [Docket No. 35];
- (v) enforcing the "automatic stay" protections of 11 U.S.C. § 362 and the bankruptcy termination provisions of 11 U.S.C. § 365 [Docket No. 36];
- (vi) establishing procedures for resolving objections by utility companies and prohibiting utility companies from altering, refusing or discontinuing service (final order entered July 16, 2014) [Docket No. 151]; and

³ In addition to the "first-day" motions, the Debtors filed certain other motions that are described more fully herein.

(vii) authorizing the Debtors to obtain debtor-in-possession financing, use cash collateral and grant adequate protection to the Debtors' prepetition secured lenders (final order entered July 16, 2014) [Docket No. 157].

C. Retention of Professionals and Appointment of the Committee

1. Retention of Debtors' Professionals

The Debtors were authorized to retain the following bankruptcy professionals in the Chapter 11 Cases: (i) Cole, Schotz, Meisel, Forman & Leonard, P.A., as their bankruptcy counsel [Docket No. 291], (ii) GlassRatner Advisory & Capital Group, LLC, as their financial advisor [Docket No. 154], and (iii) Hammond Hanlon Camp, LLC, as their investment banker [Docket No. 324].

The Debtors also were authorized to retain certain professionals utilized by the Debtors in the ordinary course of business prior to the Petition Date pursuant to an order [Docket No. 135] entered by the Court on July 14, 2014.

2. Retention of Claims and Noticing Agent and Administrative Agent

By order entered on June 24, 2014 [Docket No. 30], the Court authorized the Debtors to retain American Legal Claim Services ("ALCS") as their claims and noticing agent in the Chapter 11 Cases. By order entered July 16, 2014 [Docket No. 153], the Court also authorized the Debtors to retain ALCS as their administrative agent in the Chapter 11 Cases.

3. Appointment of Committee and Retention of Committee Professionals

On July 8, 2014, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Committee pursuant to section 1102(a) of the Bankruptcy Code [Docket No. 98]. The members of the Committee are: (i) Steven T. Olkowski, M.D., (ii) Exela, LLC, and (iii) Oakley Sales Corp. Luxottica USA Inc. subsequently was added as an *ex officio* and non-voting member of the Committee.

The Committee was authorized to retain the following bankruptcy professionals in the Chapter 11 Cases: (i) Cooley LLP, as its counsel [Docket No. 278], (ii) Klehr Harrison Harvey Branzburg LLP, as its co-counsel [Docket No. 289], and (iii) Giuliano, Miller & Company, LLC, as its financial advisor [Docket No. 429].

D. Significant Events During the Chapter 11 Cases

In addition to the first-day relief sought and received in the Chapter 11 Cases, the Debtors have sought and received authority with respect to various matters designed to assist in the administration of the Chapter 11 Cases and to maximize the value of the Debtors' estates. Material events since the commencement of the Chapter 11 Cases are summarized below and include:

1. Debtor-in-Possession Financing

When the Debtors filed their Chapter 11 Cases, all of their cash was the cash collateral of the Debtors' prepetition secured lenders. Moreover, even if the Debtors had been given free access to their cash, they still would not have had sufficient liquidity to conduct the Chapter 11 Cases and liquidate their assets for the benefit of creditors. Accordingly, at the Debtors' request, HEP extended post-petition financing to the Debtors, which financing contemplated no roll-up of prepetition debt, no priming of prepetition liens, no mandatory prepayments and no penalties, to provide the Debtors with stability, funding for a process of transitioning practices with no interruption to patient care, and for a sale process that is expected to maximize value for the estates and creditors. On June 22, 2014, the Debtors filed a motion seeking authority to, among other things, obtain post-petition secured financing from the HEP, use cash collateral and grant adequate protection to prepetition secured parties [Docket No. 12] (the "DIP Financing Motion"). The Court approved the DIP Financing Motion on an interim basis on June 24, 2014 [Docket No. 38], and set the hearing to consider entry of an order (the "Final DIP Order") approving the DIP Financing Motion on a final basis for July 16, 2014.

Shortly after the Committee was appointed on July 8, 2014, it informally objected to the following provisions of the proposed Final DIP Order: (i) the Debtors' proposed waiver of its rights under section 506(c) of the Bankruptcy Code to surcharge the HEP's collateral, (ii) the proposed grant of liens on Avoidance Actions, and (iii) the Debtors' proposed release of HEP and certain affiliated individuals and entities from any and all claims that the Debtors could have asserted against such entities as of the Petition Date ((i), (ii), and (iii), collectively, the "Retained Objections").

To facilitate the entry of the Final DIP Order while the parties continued discussions regarding a global settlement of all of the Committee's issues and a case exit strategy, the Debtors, the Committee and HEP agreed that the Final DIP Order would preserve the Committee's right to prosecute the Retained Objections until July 30, 2014, which date subsequently was extended pursuant to an agreement among the parties. It also was agreed among the parties that the Final DIP Order would provide the Committee with sixty (60) days to object to or otherwise challenge HEP's prepetition secured claim (as defined in the Plan, the "HEP Prepetition Secured Claim"). This deadline also ultimately was extended pursuant to an agreement between among the parties. The Court approved the Final DIP Order on July 16, 2014 [Docket No. 157].

As discussed in Article III.D.2, the Committee's Retained Objections ultimately were resolved pursuant to the Global Settlement (as defined below) pursuant to which, among other things, HEP forbore from requiring immediate payment in full of the post-petition facility, extended the maturity date beyond the effective date of the Plan, allowed use of cash collateral in accordance with a budget, and agreed to subordinate a portion of its DIP Facility Claim to administrative and priority creditors.

2. Global Settlement with Committee

As discussed above, the Committee raised a number of issues in connection with the approval of the DIP Financing Motion on a final basis and the allowance and priority of the HEP Prepetition Secured Claim. In particular, the Committee asserted and alleged that:

- (a) the Debtors' proposed waiver of its rights under section 506(c) of the Bankruptcy Code to surcharge HEP's collateral was inappropriate under the facts and circumstances of these Chapter 11 Cases;
- (b) DIP Liens and Adequate Protection Liens (as defined in the Final DIP Order) should not attach to Avoidance Actions because, among other reasons, it would inequitable for such actions to be pursued for the exclusive benefit of secured creditors;
- (c) the Debtors' proposed release of HEP and certain affiliated individuals and entities under the Final DIP Order was overbroad; and
- (d) the HEP Prepetition Secured Claim, as an investment made by a controlling insider while the Debtors were insolvent on terms that no third party market participant would have provided, should be recharacterized as equity, or, in the alternative, subordinated on equitable grounds ((a)-(d) collectively, the "Committee Objections").

HEP denied these assertions and allegations, and contended that (i) all of the relief requested in the Final DIP Order was customary and appropriate for the reasons set forth in the DIP Financing Motion, and (ii) the HEP Prepetition Secured Claim constitutes a properly perfected, valid secured claim against the Debtors that clearly was intended by the Debtors and HEP to constitute secured debt and was not intended to be an equity investment or capital contribution by HEP to the Debtors.

In an effort to avoid further costs and time associated with the expensive and protracted prosecution of the Committee Objections, the Debtors, the Committee and HEP (the "Global Settlement Parties") engaged in extensive, arm's-length and good faith negotiations that concluded in a global settlement (the "Global Settlement"), which Global Settlement paved the way for the proposed Plan. Under the terms of the Global Settlement:

- (a) HEP provided significant consideration in connection with the Global Settlement, including agreeing to:
 - (i) assign its direct causes of action against Pierre Keyser, Victoria Keyser, Erica Perreira, Erik Larsen and Sean Lyman, as well as related rights under any applicable Debtor insurance policy, for the benefit of the Debtors' estates,
 - (ii) forbear from exercising its rights under the Final DIP Order to have the DIP Facility Claim repaid in full from the proceeds of asset sales,

- (iii) allow the continued use of its cash collateral in accordance with an agreed-upon budget,
 - (iv) voluntarily extend the maturity date of the debtor-in-possession financing to beyond the Effective Date of the Plan,
 - (v) subordinate a portion of the DIP Facility Claim to Administrative Claims, Priority Claims (and potentially General Unsecured Claims), and
 - (vi) compromise its HEP Prepetition Secured Claim through a 35% reduction in the face amount of the claim, and partially subordinate such claim to Priority Claims (and potentially General Unsecured Claims); and
- (b) the Debtors agreed, with limited exceptions, not to pursue and to waive Causes of Action arising under section 547 of the Bankruptcy Code or its state law analogs against Persons or Entities that are not insiders (as such term is defined in section 101(31) of the Bankruptcy Code) of the Debtors;⁴ and
- (c) the Committee agreed not to pursue to the Committee Objections and to support the releases being granted to HEP under the Final DIP Order and any proposed plan.

Without the Global Settlement and HEP's significant concessions and support under the Global Settlement, the Debtors do not believe that a plan of liquidation would be feasible in these cases. Further, pursuant to the terms of the Global Settlement, the Global Settlement Parties agreed to support the consummation of a chapter 11 liquidating plan consistent with the Global Settlement's terms. Among other things, the Global Settlement contemplates the creation of a liquidating trust (as defined in the Plan, the "Liquidating Trust") under the Plan. All of the Debtors' causes of action, as well as the rights and causes of action assigned by HEP for the benefit of the Debtors' estates, will be transferred to the Liquidating Trust upon the effective date of a Plan. The Liquidating Trust also will be funded by all cash and other assets of the Debtors remaining on the Effective Date, other than (i) asset sale proceeds being held for the benefit of holders of Permitted Senior Liens (as defined in the Final DIP Order) or (ii) cash necessary to fund the Administrative Claims Reserve and the Professional Fee Reserve.

By motion filed on September 19, 2014 [Docket No. 511] (the "Global Settlement Motion"), the Global Settlement Parties sought approval by the Court of the Global Settlement. The Global Settlement was approved by the Court by order entered on October 17, 2014 [Docket No. 568].

⁴ The Debtors may pursue Causes of Action arising under section 547 of the Bankruptcy Code or its state law analogs against Precision Optics, Inc., Garry Thomas, Meridian Optical, Grant Thornton and Thomas Abell.

3. Asset Sales

The Debtors filed for chapter 11 protection to stabilize their businesses and sell as many of their profitable practices as possible for the benefit of all the Debtors' stakeholders. To begin to implement this strategy, the Debtors closed twelve (12) unprofitable practice locations immediately before filing these Chapter 11 Cases and sold those practice assets through an online auction process approved by the Court and conducted by Tiger Remarketing Services ("Tiger"). Then, during the course of these Chapter 11 Cases, the Debtors sold a series of practice locations through the miscellaneous asset sale procedures approved by the Court. Finally, the Debtors conducted an open auction pursuant to section 363 of the Bankruptcy Code to sell their remaining practice location assets. Through this multi-faceted sales process, the Debtors sold substantially all of their assets during the Chapter 11 Cases.

Following the open auction, Tiger sold (i) the practice assets of the Debtors' Pontiac, Michigan location, which was the only location not sold through the open auction, and (ii) the furniture and equipment at the Debtors' Las Vegas, Nevada headquarters facility, along with eyeglass inventory that had been stored at that location.

The Debtors' sales efforts are described in more detail below.

a. Tiger Asset Sales

As noted above, prior to the Petition Date, the Debtors closed twelve (12) unprofitable practice locations (collectively, the "Closed Locations") that the Debtors did not believe could be sold as a going concern.

On July 2, 2014, the Debtors filed a motion [Docket No. 81] (the "Asset Disposition Motion") for entry of an order (i) authorizing the Debtors' entry into that certain Asset Disposition Agreement, dated as of July 2, 2014 (the "Disposition Agreement"), by and between the Debtors and Tiger, and (ii) authorizing the Debtors to sell certain furniture, fixtures and equipment (the "FF&E") and inventory (the "Inventory" and, together with the FF&E, the "Assets") from the Closed Locations pursuant to the Disposition Agreement free and clear of liens, claims and other interests. The expedient liquidation of the FF&E and Inventory at these Closed Locations enabled the Debtors to promptly reject the associated real property leases and avoid further administrative rental expenses.

The Court entered an order [Docket No. 156] (the "Asset Disposition Order") on July 16, 2014 approving the Asset Disposition Motion. The sales conducted by Tiger pursuant to the Asset Disposition Order were completed by July 31, 2014, and ultimately yielded net proceeds of \$515,000.

On August 13, 2014, the Debtors filed a motion [Docket No. 333] (the "Second Asset Disposition Motion") for entry of an order (i) authorizing the Debtors' entry into that certain Asset Disposition Agreement, dated as of August 13, 2014 (the "Second Disposition Agreement"), by and between the Debtors and Tiger, and (ii) authorizing the Debtors to sell certain additional FF&E and Inventory pursuant to the Second Disposition Agreement free and clear of liens, claims and other interests. In particular, pursuant to the Second Disposition Agreement, the Debtors sought authority for Tiger to sell any practice location assets that were

not sold through the Debtors' open auction process, along with FF&E and Inventory at the Debtors' corporate headquarters in Las Vegas, Nevada and at the Debtors' Las Vegas storage facility.

The Court entered an order [Docket No. 441] (the "Second Asset Disposition Order") on September 3, 2014 approving the Second Asset Disposition Motion. The sales conducted by Tiger pursuant to the Second Asset Disposition Order were completed by September 30, 2014, and ultimately yielded net proceeds of \$285,983.60.

b. Sale Procedures

To facilitate the sale of assets and to minimize unnecessary administrative expenses, the Debtors filed a motion on June 27, 2014 [Docket No. 56] seeking to establish procedures to streamline the sale of any assets for aggregate consideration under a certain dollar threshold (the "De Minimis Assets") and to permit such sales to be consummated without need for the filing of additional motions with the Court. The Court entered an order on July 16, 2014 [Docket No. 152] (the "De Minimis Asset Sale Order") establishing procedures (the "De Minimis Asset Sale Procedures") permitting the sale of the De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers with an aggregate selling price of \$750,000 or less. Absent written objection in accordance with the requirements of the De Minimis Asset Sale Procedures, the applicable Debtor was authorized to consummate the proposed sale after the expiration of a fourteen-day notice period if no objection to such sale was filed with the Court. Such transaction(s) were free and clear of all liens, claims, interests and encumbrances (collectively, the "Liens"), with such Liens attaching only to the sale proceeds with the same validity, extent and priority as had attached to the De Minimis Assets immediately prior to such sale.

During the Chapter 11 Cases, the Debtors filed thirteen (13) notices pursuant to the De Minimis Asset Sale Procedures, as set forth in more detail below. Such sales generated aggregate consideration of \$1,265,010.

1. On July 17, 2014, the Debtors filed a notice [Docket No. 162] to sell the practice assets of their Atlantic Eye Associates (Conway and Murrells Inlet, South Carolina) locations to Dr. Jonathon Ply for cash consideration in the amount of \$30,000.
2. On July 17, 2014, the Debtors filed a notice [Docket No. 165] to sell the practice assets of their Clark Eye Clinic (Russelville, Arkansas) location to Dr. Philip H. Clark for cash consideration in the amount of \$105,000, plus the waiver of all claims held by Dr. Clark against the Debtors.
3. On July 17, 2014, the Debtors filed a notice [Docket No. 167] to sell the practice assets of their Simon Vision Institute (Concord, California) location to Henry Schneidman and Dr. George V. Simon for cash consideration in the amount of \$60,000.
4. On July 17, 2014, the Debtors filed a notice [Docket No. 177] to sell the practice assets of their International Eye Care (College Station and Houston, Texas) locations to International Laser Eyecare TX AM, P.A. for cash consideration in the amount of \$105,000.

5. On July 17, 2014, the Debtors filed a notice [Docket No. 178] to sell the practice assets of their St. Luke's Eye Care & Laser Center (Colorado Springs, Colorado) location to Dr. Blake Simmons for cash consideration in the amount of \$175,000.

6. On July 17, 2014, the Debtors filed a notice [Docket No. 179] to sell the practice assets of their Genesis Eye Center (Charlotte, North Carolina) location to Carolinas Physicians Network, Inc. for cash consideration in the amount of \$40,000.

7. On July 21, 2014, the Debtors filed a notice [Docket No. 189] to sell the practice assets of their Lakewood Eye Clinic (Lakewood, Colorado) location to Dr. Douglas M. Campbell for cash consideration in the amount of \$35,000, plus the waiver of all claims held by Dr. Campbell against the Debtors.

8. On July 22, 2014, the Debtors filed a notice [Docket No. 196] to sell the practice assets of their Abell Eyes Refractive Solutions and Abell Eye Institute of Central Kentucky (Lexington and Campbellsville, Kentucky) locations to Amedco Kentucky PLLC for cash consideration in the amount of \$160,000.

9. On July 22, 2014, the Debtors filed a notice [Docket No. 210] to sell the practice assets of their Apple Hill Eye Center (York, Pennsylvania) location to Olkowski Ophthalmology, P.C. for cash consideration in the amount of \$200,010.

10. On July 24, 2014, the Debtors filed a notice [Docket No. 212] to sell the practice assets of their Chrycy Eye Group (South Miami, Florida) location to Dr. Garry T. Chrycy, O.D. for cash consideration in the amount of \$35,000, plus the waiver of all claims held by Dr. Chrycy against the Debtors.

11. On July 28, 2014, the Debtors filed a notice [Docket No. 223] to sell the practice assets of their West Hills Vision Center (Moon Township, Pennsylvania) location to Complete Family Vision Care, Inc. for cash consideration in the amount of \$35,000.

12. On August 1, 2014, the Debtors filed a notice [Docket No. 267] to sell the practice assets of their Simon Vision Institute (Foster City, California) location to Henry Schneidman and Dr. George V. Simon for cash consideration in the amount of \$35,000.

13. On August 7, 2014, the Debtors filed a notice [Docket No. 309] to sell the practice assets of their Wabash Eye Center (Vincennes and Washington, Indiana) locations to Clearview Eye Center LLC for cash consideration in the amount of \$250,000.

c. Open Auction Sale Process

On July 17, 2014, the Debtors filed a motion [Docket No. 166] (the "Bidding Procedures Motion") seeking entry of an order (the "Bidding Procedures Order") (i) approving the proposed auction and bidding procedures (the "Bidding Procedures") for the sale of the Debtors' remaining physician practice assets; (ii) establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure

amounts; (iii) approving the form and manner of notice of the auction and sale; and (iv) scheduling a hearing (the “Sale Hearing”) to approve such sale (the “Sale”).

On August 7, 2014, the Court entered the Bidding Procedures Order [Docket No. 312]. Pursuant to the Bidding Procedures Order, if the Debtors received one or more qualified bids on any of the properties subject to the Bidding Procedures Motion, an auction would be conducted for the sale of such assets (the “Auction”), beginning on August 26, 2014.

The Debtors received three qualified bids for the Debtors’ Warren, Ohio location; two qualified bids for the Debtors’ Anderson, Indiana location; two qualified bids for the Debtors’ Austintown, Ohio location; three qualified bids for the Debtors’ Miami, Florida location; six qualified bids for the Debtors’ Flint and Saginaw, Michigan locations; and four qualified bids for the Debtors’ ten The Eye Gallery and The Artful Eye locations in Florida and Georgia (collectively, the “TEG Practices”). Only one qualified bid was received for each of the Debtors’ Indianapolis, Indiana and Tifton, Georgia locations. An auction was held for each group of assets for which more than one qualified bid was received.

The successful bidder for the Warren, Ohio location was DaVinci Equity Group, LC (“DaVinci”), with its bid in the amount of \$80,000. The successful bidder for the Anderson, Indiana location was Wisconsin Vision, Inc. (“Wisconsin Vision”), with its bid in the amount of \$50,000. The successful bidder for the Austintown, Ohio location was DaVinci, with its bid in the amount of \$54,000. The successful bidder for the Miami, Florida location was Dr. Joseph Kurstin, with his bid in the amount of \$445,000. The successful bidders for the Flint and Saginaw, Michigan locations were DaVinci and Dr. Milton Meyers, with their joint bid in the amount of \$1,650,000 (with \$1,290,000 apportioned to the optical assets of the practices, and \$360,000 apportioned to the hearing assets of the practices). Finally, the successful bidder for the TEG Practices was Wisconsin Vision, with its bid in the amount of \$5,200,000. Emerging Vision, Inc. submitted the second-highest bid (the “Back-Up Bid”) for the TEG Practices, with its bid in the amount of \$5,150,000.

On September 1, 2014, the Debtors were formally notified by Wisconsin Vision that it would not consummate its purchase of the Debtors’ TEG Practices. The Debtors, in consultation with the Committee and HEP, are continuing to evaluate their options with respect to Wisconsin Vision’s actions.

As provided in the Bidding Procedures Order, the Debtors, in consultation with the Committee and HEP, elected to close the sale of the TEG Practices with the backup bidder for such locations, Emerging Vision. Although Emerging Vision had submitted a Back-Up Bid in the amount of \$5,150,000, Emerging Vision requested a reduction in purchase price to reflect the reduction in value of the TEG Practices arising from the delayed sale closing. Emerging Vision also asserted that the delayed closing gave rise to a termination right under its asset purchase agreement with the Debtors.

In order to preserve the sale transaction with Emerging Vision and mitigate the Debtors’ damages, and after significant arm’s-length negotiations between the parties, the Debtors agreed to a purchase price reduction in the amount of \$225,000, resulting in an agreed sale price for the

TEG Practices of \$4,925,000. On September 8, 2014, the Debtors filed the asset purchase agreement (the “APA”) memorializing the agreement of the parties [Docket No. 458].

The Court approved the sales of the various practice location assets sold pursuant to the open auction (except for the TEG Practices) on September 3, 2014 [Docket Nos. 438, 439, 443, 444, 445, 450, 451]. Then, on September 18, 2014, the Court approved the sale of the TEG Practices to Emerging Vision [Docket No. 508]. These sales were closed on or before September 26, 2014, and generated aggregate cash consideration of \$7,274,000.

4. Executory Contracts and Personal Property Leases

On June 27, 2014, the Debtors filed a motion [Docket No. 51] (the “Rejection Procedures Motion”) seeking entry of an order authorizing and approving expedited procedures for the rejection of executory contracts and unexpired leases. On July 16, 2014, the Court entered an order [Docket No. 150] approving the rejection procedures set forth in the Rejection Procedures Motion (the “Rejection Procedures”).

During the course of the Chapter 11 Cases, the Debtors utilized the Rejection Procedures to reject various real property leases, equipment leases and contracts [Docket Nos. 163, 170-76, 191-92, 195, 209, 211-12, 221-22, 266, 308, 389, 406, 417, 463, 477, 521-22, 531].

5. The Claims Process

a. Schedules and Statements

On August 19, 2014, the Debtors filed their Schedules of Assets and Liabilities [Docket Nos. 365-387] (the “Schedules”) and Statements of Financial Affairs [Docket Nos. 342-364] (the “Statements”) and, together with the Schedules, the “Schedules and Statements”). Among other things, the Schedules and Statements set forth the claims of known creditors against the Debtors as of the Petition Date, based upon the Debtors’ books and records. The Debtors retain the right to amend the Schedules and Statements during the pendency of the Chapter 11 Cases.

b. Bar Date Order

On September 30, 2014, the Court entered an order [Docket No. 530] (the “Bar Date Order”) establishing the following deadlines for filing claims against the Debtors (the “Bar Dates”):

General Bar Date. Each person or entity (including, without limitation, each individual, partnership, joint venture, corporation, limited liability company, estate, trust or governmental unit) holding or asserting a claim against one or more of the Debtors that arose (or is deemed to have arisen) on or before the Petition Date (including any claims arising under section 503(b)(9) of the Bankruptcy Code) was required to file a proof of claim form so that it was actually received by ALCs on or before November 14, 2014 at 5:00 p.m. (Eastern Time) (the “General Bar Date”).

Governmental Bar Date. Each governmental unit holding or asserting a claim against one or more of the Debtors that arose (or is deemed to have arisen) on or before the Petition Date was required to file a proof of claim form so that it was actually received by ALCS on or before December 17, 2014 at 5:00 p.m. (Eastern Time) (the “Governmental Bar Date”).

Amended Schedules Bar Date. If the Debtors amend their Schedules to change the amount, nature, classification or characterization of a claim, or to schedule a new claim, the affected claimant may dispute the amount, nature, classification or characterization of the scheduled claim by filing a proof of claim form with respect to the scheduled claim, so that the proof of claim form is actually received by ALCS on or before the later of (i) the General Bar Date or (ii) twenty-one (21) days from the date notice is served alerting the affected creditor of the applicable amendment to the Schedules (the “Amended Schedules Bar Date”).

Rejection Bar Date. If the Debtors reject pursuant to section 365 of the Bankruptcy Code any executory contract or unexpired lease, each person or entity holding or asserting a claim arising from such rejection must file a proof of claim form so that it is actually received by ALCS on or before the later of (i) the General Bar Date or (ii) thirty (30) days after entry of any order authorizing the rejection of an executory contract or unexpired lease (the “Rejection Bar Date”).

Administrative Claims Bar Date. All persons and entities holding a claim arising under sections 503(b)(1) through (8) and 507(a)(2) of the Bankruptcy Code (each, an “Administrative Claim”) against the Debtors that may have arisen, accrued or otherwise become due and payable at any time subsequent to the Petition Date but on or before September 30, 2014 (the “Initial Administrative Claims Period”), was required to file a request for payment of administrative claim so that it was actually received by ALCS on or before November 14, 2014 at 5:00 p.m. (Eastern Time) (the “Initial Administrative Claims Bar Date”).

c. Claims Objections

The Debtors and their professionals are investigating claims filed against the Debtors to determine the validity of such claims and anticipate filing objections to claims that are filed in improper amounts or classifications, or are otherwise subject to objection under the Bankruptcy Code or other applicable law.

6. The Essilor Repayment Motion

On September 9, 2014, Essilor filed a motion (the “Motion for Immediate Repayment”) seeking entry of an order, pursuant to section 506(b) of the Bankruptcy Code, directing the Debtors to immediately pay Essilor the full amount of its purportedly secured claim, including nearly \$250,000 in attorneys’ fees and accrued default interest, from the proceeds generated by the sale of the Debtors’ TEG Practices. The Committee and the Debtors objected to Essilor’s motion to shorten notice with respect to the Motion for Immediate Repayment, and in connection therewith, asserted several potential grounds for the reduction or disallowance of Essilor’s claim.

The Debtors and the Committee conducted a preliminary investigation into potential causes of action against Essilor, including subordination of Essilor's secured and unsecured claims under section 510(c) of the Bankruptcy Code, and summarized their findings in a draft objection to the Motion for Immediate Repayment that was provided to Essilor. The Debtors, the Committee and Essilor then conducted extensive, arms-length negotiations regarding a global resolution of Essilor's claims against the estates and the Debtors' claims against Essilor. On or about November 4, 2014, the parties reached an agreement in principle to resolve the dispute. The settlement is subject to further documentation and Court approval at a hearing anticipated to take place prior to the Effective Date.

7. The Meyers Litigation

As discussed above, as of the Petition Date, the Debtors estimate that the amount outstanding under the Meyers Note was approximately \$360,000. Meyers asserts that it has a secured claim in this amount, secured by the proceeds of the sale of the hearing assets of the Debtors' Flint and Saginaw, Michigan practices (the "Hearing Assets"). The Debtors dispute that Meyers' purported security interest, even if valid, attached to the Hearing Assets or the proceeds thereof.

On September 12, 2014, Meyers filed a complaint against certain of the Debtors seeking a declaration that it holds a perfected security interest in the proceeds of the Hearing Assets and certain other related relief. On October 17, 2014, the Debtors filed their answer, and counterclaimed seeking a declaration that Meyers' security interest in the Hearing Assets is avoided and preserved for the benefit of the Debtors' Estates under sections 544(a) and 551 of the Bankruptcy Code. On November 7, 2014, Meyers filed its answer to the Debtors' counterclaim.

ARTICLE IV

SUMMARY OF PLAN

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE AND MEANS FOR IMPLEMENTATION OF THE PLAN AND THE CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN. THIS SECTION IS QUALIFIED IN ITS ENTIRETY BY AND IS SUBJECT TO THE PLAN AS WELL AS THE EXHIBITS THERETO AND DEFINITIONS THEREIN. THE PLAN IS ATTACHED TO THIS DISCLOSURE STATEMENT AS EXHIBIT A.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN. REFERENCE IS MADE TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN CONTROL THE ACTUAL TREATMENT OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS UNDER THE PLAN. UPON OCCURRENCE OF THE EFFECTIVE DATE, THE PLAN AND ALL SUCH DOCUMENTS SHALL BE BINDING UPON ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS AND THEIR ESTATES AND ALL OTHER PARTIES IN INTEREST. IN THE EVENT OF ANY CONFLICT BETWEEN THIS DISCLOSURE STATEMENT, ON THE ONE HAND, AND THE PLAN, THE LIQUIDATING TRUST AGREEMENT OR ANY OTHER OPERATIVE DOCUMENT, ON THE OTHER HAND, THE TERMS OF THE PLAN, THE LIQUIDATING TRUST AGREEMENT AND SUCH OTHER OPERATIVE DOCUMENT WILL CONTROL.

A. Classification and Treatment of Claims and Interests

Section 1123 of the Bankruptcy Code provides that a plan must classify the claims and interests of a debtor's creditors and equity interest holders. In accordance with section 1123 of the Bankruptcy Code, the Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than Administrative Claims and Priority Tax Claims, which pursuant to section 1123(a)(1) of the Bankruptcy Code need not be and have not been classified). The Debtors also are required, under section 1122 of the Bankruptcy Code, to classify Claims against and Interests in the Debtors (except for certain claims classified for administrative convenience) into Classes that contain Claims and Interests that are substantially similar to the other Claims and Interests in such Class.

The Bankruptcy Code also requires that a plan provide the same treatment for each claim or interest of a particular class unless the claim holder or interest holder agrees to a less favorable treatment of its claim or interest. The Debtors believe that they have complied with such standard. If the Court finds otherwise, however, it could deny confirmation of the Plan if the Claimholders and Interest Holders affected do not consent to the treatment afforded them under the Plan.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim also is placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

The Debtors believe that the Plan has classified all Claims and Interests in compliance with the provisions of section 1122 of the Bankruptcy Code and applicable case law. It is possible that a holder of a Claim or Interest may challenge the Debtors' classification of Claims and Interests and that the Court may find that a different classification is required for the Plan to be confirmed. If such a situation develops, the Debtors intend, in accordance with the terms of the Plan, to make such permissible modifications to the Plan as may be necessary to permit its confirmation. Any such reclassification could adversely affect holders of Claims by changing the composition of one or more Classes and the vote required of such Class or Classes for approval of the Plan. UNLESS SUCH MODIFICATION OF CLASSIFICATION MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM

AND REQUIRES RESOLICITATION, ACCEPTANCE OF THE PLAN BY ANY HOLDER OF A CLAIM OR INTEREST PURSUANT TO THIS SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER ULTIMATELY IS DEEMED TO BE A MEMBER.

The amount of any Impaired Claim that ultimately is Allowed by the Court may vary from any estimated Allowed amount of such Claim and, accordingly, the total Claims that are ultimately Allowed by the Court with respect to each Impaired Class of Claims may also vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the value of property that ultimately will be received by a particular Holder of an Allowed Claim may be adversely or favorably affected by the aggregate amount of Claims Allowed in the applicable Class.

The classification of Claims and Interests and the nature of Distributions to members of each Class are summarized below. The Debtors believe that the consideration, if any, provided under the Plan to holders of Claims and Interests reflects an appropriate resolution of their Claims and Interests, taking into account the differing nature and priority (including applicable contractual subordination) of such Claims and Interests. The Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of holders of Claims or Interests who are not entitled to vote on the Plan, or do not vote to accept the Plan, but who will be bound by the provisions of the Plan if it is confirmed by the Court.

1. Unclassified Claims

a. DIP Facility Claim

The Holder of the Allowed DIP Facility Claim will receive the Liquidating Trust Proceeds allocated to the Holder of the DIP Facility Claim under the Liquidating Trust Waterfall and the Global Settlement Order. The Liquidating Trust Assets transferred by the Debtors and HEP to the Liquidating Trust and the Liquidating Trust Proceeds will at all times remain subject to the DIP Liens (to the extent that such assets and proceeds were subject to the DIP Liens prior to the Effective Date) without the necessity for an account control agreement, financing statement or any other action or filing by the Holder of the Allowed DIP Facility Claim.

b. Administrative Claims

An Administrative Claim means a Claim for payment of an administrative expense of a kind specified in sections 503(b) or 1114(e)(2) of the Bankruptcy Code and entitled to priority in payment under sections 507(a)(2) or 507(b) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries or commissions for services and payments for goods and other services and leased premises) and Claims by Governmental Units for taxes accruing after the Petition Date (but excluding Claims related to taxes accruing on or before the Petition Date); (b) Professional Fee Claims; (c) all fees and charges assessed against the Estates under 28 U.S.C. § 1930; (d) obligations designated as Administrative Claims

pursuant to an order of the Court; and (e) Claims under section 503(b)(9) of the Bankruptcy Code.

On or as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) the date such Administrative Claim becomes an Allowed Administrative Claim, a Holder of an Allowed Administrative Claim (other than a Professional) will receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, have agreed upon in writing; provided, however, that Allowed Administrative Claims with respect to liabilities incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto (x) on or prior to the Effective Date, by the Debtors, and (y) after the Effective Date, by the Disbursing Agent.

c. Priority Tax Claims

A Priority Tax Claim means any Claim accorded priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

Except to the extent that an Allowed Priority Tax Claim has been paid prior to the Distribution Date, a Holder of an Allowed Priority Tax Claim will receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim, (i) deferred Cash payments over a period not exceeding five years after the Petition Date in an aggregate principal amount equal to the Face Amount of such Allowed Priority Tax Claim, plus interest on the unpaid portion thereof at the Case Interest Rate from the Effective Date through the date of payment thereof, or (ii) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, have agreed upon in writing.

2. Unimpaired Claims

a. Class 1: Miscellaneous Secured Claims

A Miscellaneous Secured Claim means a Claim, other than the HEP Prepetition Secured Claim or a DIP Facility Claim, (a) that is secured by a Lien on property in which an Estate has an interest, which Lien is valid, perfected and enforceable under applicable law or by reason of a Final Order, or (b) that is subject to setoff under section 553 of the Bankruptcy Code and such right of setoff has been asserted by the holder of such right prior to the Confirmation Date in a properly filed motion for relief from the automatic stay, to the extent of the value of the Claimholder's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

On or as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) the date such Miscellaneous Secured Claim becomes an Allowed Miscellaneous Secured Claim, at the option of the Debtors or the Liquidating Trustee, as applicable, a Holder of an Allowed Miscellaneous Secured Claim will receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Miscellaneous Secured Claim, (a) Cash from the Debtors equal to the value of such Allowed Miscellaneous Secured Claim, (b) a return of the

Holder's Collateral securing the Miscellaneous Secured Claim, (c) such treatment required under section 1124(2) of the Bankruptcy Code for such Claim to be rendered Unimpaired or (d) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, have agreed upon in writing.

Any Holder of a Miscellaneous Secured Claim will retain its Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold by the Debtors or the Liquidating Trustee free and clear of such Lien) to the same extent and with the same priority as such Lien held as of Petition Date until such time as (A) the Holder of such Miscellaneous Secured Claim (i) has been paid Cash equal to the value of its Allowed Miscellaneous Secured Claim, (ii) has received a return of the Collateral securing the Miscellaneous Secured Claim or (iii) has been afforded such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, have agreed upon in writing; or (B) such purported Lien has been determined by an order of the Court to be invalid or otherwise avoidable.

3. Impaired Claims

a. Class 2: Priority Non-Tax Claims

A Priority Non-Tax Claim means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

Except to the extent that an Allowed Priority Non-Tax Claim has been paid prior to the Distribution Date, a Holder of an Allowed Priority Non-Tax Claim will receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Non-Tax Claim, (i) deferred Cash payments over a period not exceeding five years after the Petition Date in an aggregate principal amount equal to the Face Amount of such Allowed Priority Non-Tax Claim, plus interest on the unpaid portion thereof at the Case Interest Rate from the Effective Date through the date of payment thereof, or (ii) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, have agreed upon in writing.

b. Class 3: HEP Prepetition Secured Claim

The HEP Prepetition Secured Claim means the Allowed Claim of HEP arising under that certain Secured Promissory Note, dated as of May 29, 2014, among MacKeyser, as borrower, and Health Evolution Partners Fund I, L.P. and Series F of Health Evolution Partners Co-Invest, LLC, which Claim has been Allowed in the fixed amount of \$2,250,093.27 pursuant to the Global Settlement Order.

The Holder of the Allowed HEP Prepetition Secured Claim will receive the Liquidating Trust Proceeds allocated to the Holder of the HEP Prepetition Secured Claim under the Liquidating Trust Waterfall and the Global Settlement Order. The Liquidating Trust Assets transferred by the Debtors and HEP to the Liquidating Trust and the Liquidating Trust Proceeds will at all times remain subject to the HEP Prepetition Liens (to the extent that such assets and proceeds were subject to the HEP Prepetition Liens prior to the Effective Date) without the

necessity for an account control agreement, financing statement or any other action or filing by the Holder of the Allowed HEP Prepetition Secured Claim.

c. Class 4: General Unsecured Claims

A General Unsecured Claim means a Claim against any or all of the Debtors that is not a DIP Facility Claim, Administrative Claim, Priority Tax Claim, Miscellaneous Secured Claim, Priority Non-Tax Claim, HEP Prepetition Secured Claim, Intercompany Claim, Subordinated 510(b) Claim or Subordinated 510(c) Claim.

Each Holder of an Allowed General Unsecured Claim will receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed General Unsecured Claim, its Pro Rata share of the Cash proceeds generated by the Liquidating Trust after the Effective Date allocated to Holders of General Unsecured Claims under the Liquidating Trust Waterfall.

d. Class 5: Intercompany Claims

An Intercompany Claim means any Claim held by a Debtor against another Debtor, including, without limitation: (i) any account reflecting intercompany book entries by a Debtor with respect to another Debtor, (ii) any Claim not reflected in such book entries that is held by a Debtor against another Debtor, and (iii) any derivative Claim asserted by or on behalf of one Debtor against another Debtor.

In connection with, and as a result of, the substantive consolidation of the Debtors' Estates and the Chapter 11 Cases, on the Effective Date, all Intercompany Claims will be eliminated and the Holders of Intercompany Claims will not be entitled to, and will not receive or retain, any property or interest in property on account of such Claims.

e. Class 6: Subordinated 510(c) Claims

A Subordinated 510(c) Claim means any Claim that has been subordinated pursuant to section 510(c) of the Bankruptcy Code, including pursuant to a final order of the Bankruptcy Court, or is for punitive or exemplary damages or for a fine or penalty, to the extent permitted by applicable law.

On or after the Effective Date, all Subordinated 510(c) Claims will be deemed eliminated, cancelled and/or extinguished and each Holder thereof will not be entitled to, and will not receive or retain, any property under the Plan on account of such Subordinated 510(c) Claims.

f. Class 7: Subordinated 510(b) Claims

A Subordinated 510(b) Claim means any Claim subordinated pursuant to section 510(b) of the Bankruptcy Code, including pursuant to a final order of the Bankruptcy Court.

On or after the Effective Date, all Subordinated 510(b) Claims will be deemed eliminated, cancelled and/or extinguished and each Holder thereof will not be entitled to, and

will not receive or retain, any property under the Plan on account of such Subordinated 510(b) Claims.

4. Interests

a. Class 8: Interests

Interest means the legal interests, equitable interests, contractual interests, equity interests or ownership interests, or other rights of any Person in the Debtors, including all capital stock, stock certificates, common stock, preferred stock, partnership interests, limited liability company or membership interests, rights, treasury stock, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtors, partnership interests in the Debtors' stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights, subscription rights and liquidation preferences, puts, calls, awards or commitments of any character whatsoever relating to any such equity, common stock, preferred stock, ownership interests or other shares of capital stock of the Debtors or obligating the Debtors to issue, transfer or sell any shares of capital stock whether or not certificated, transferable, voting or denominated stock or a similar security.

On the Effective Date, all Interests will be cancelled and each Holder thereof will not be entitled to, and will not receive or retain, any property or interest in property under the Plan on account of such Interests.

5. Special Provision Regarding Unimpaired Claims

Except as otherwise provided in the Plan, the Confirmation Order, any other order of the Court or any document or agreement enforceable pursuant to the terms of the Plan, nothing will affect the rights and defenses, both legal and equitable, of the Debtors and/or the Liquidating Trust with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

6. Allowed Claims

Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent will only make Distributions to Holders of Allowed Claims. No Holder of a Disputed Claim will receive any Distribution on account thereof until (and then only to the extent that) its Disputed Claim becomes an Allowed Claim. The Debtors and/or the Liquidating Trustee may, in their discretion, withhold Distributions otherwise due under the Plan to any Claimholder until the Claims Objection Deadline, to enable a timely objection thereto to be filed. Any Holder of a Claim that becomes an Allowed Claim after the Effective Date will receive its Distribution in accordance with the terms and provisions of the Plan and/or the Liquidating Trust Agreement, as applicable.

7. Special Provisions Regarding Insured Claims

Distributions under the Plan to each Holder of an Insured Claim will be in accordance with the treatment provided under the Plan for the Class in which such Insured Claim is

classified; provided, however, that the maximum amount of any Distribution under the Plan on account of an Allowed Insured Claim will be limited to an amount equal to: (a) the applicable deductible or self-insured retention under the relevant insurance policy minus (b) any reimbursement obligations of the Debtors to the insurance carrier for sums expended by the insurance carrier on account of such Claim (including defense costs); provided further, however, that, to the extent that a Claimholder has an Allowed Insured Claim, the amount of which exceeds the total coverage available from the relevant insurance policies of the Debtors, such Claimholder will have an Allowed General Unsecured Claim in the amount by which such Allowed Insured Claim exceeds the coverage available from the relevant Debtor's insurance policies. Nothing in this Section will constitute a waiver of any Cause of Action the Debtors may hold against any Person, including the Debtors' insurance carriers, or is intended to, will or will be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to any Distribution such Holder may receive under the Plan; provided, however, that the Debtors do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

The Plan will not expand the scope of, or alter in any other way, the obligations of the Debtors' insurers under their policies, and the Debtors' insurers will retain any and all defenses to coverage that such insurers may have. The Plan will not operate as a waiver of any other Claims the Debtors' insurers have asserted or may assert in any Proof of Claim or the Debtors' rights and defenses to such Proofs of Claim.

B. Provisions Covering Distributions

1. Limitations on Distributions on Allowed Claims

Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date or become Allowed Claims thereafter will be made by the Disbursing Agent pursuant to the terms and conditions of the Plan and the Liquidating Trust Agreement. Notwithstanding any other provision of the Plan to the contrary, no Distribution will be made on account of any Allowed Claim or portion thereof that (i) has been satisfied after the Petition Date; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a Proof of Claim has not been timely filed; or (iii) is evidenced by a Proof of Claim that has been amended by a subsequently filed Proof of Claim.

2. Disbursing Agent

The Disbursing Agent will make all Distributions required under the Plan, subject to the terms and provisions of the Plan and the Liquidating Trust Agreement. If the Disbursing Agent is an independent third party designated to serve in such capacity, such Disbursing Agent will receive, without further Court approval, reasonable compensation from the Liquidating Trust for distribution services rendered pursuant to the Plan and reimbursement of reasonable out-of-pocket expenses. No Disbursing Agent will be required to give any bond or surety or other security for the performance of its duties. The Disbursing Agent will be authorized and directed to rely upon the Debtors' books and records and the Liquidating Trust's representatives and

professionals in determining Allowed Claims not entitled to Distributions under the Plan in accordance with the terms and conditions of the Plan.

3. Delivery of Distributions and Undeliverable or Unclaimed Distributions

a. Delivery of Distributions in General

Distributions to Holders of Allowed Claims will be made by the Disbursing Agent (a) at the addresses set forth on the Proofs of Claim filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is filed or if the Debtors have been notified of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related Proof of Claim, after sufficient evidence of such addresses as may be requested by the Disbursing Agent is provided, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Disbursing Agent has not received a written notice of a change of address, (d) at the addresses set forth in the other records of the Debtors or the Disbursing Agent at the time of the Distribution or (e) in the case of the Holder of a Claim that is governed by an agreement and is administered by an agent or servicer, at the addresses contained in the official records of such agent or servicer.

In making Distributions under the Plan, the Disbursing Agent may rely upon the accuracy of the Claims register maintained by the Claims Agent in the Chapter 11 Cases, as modified by any Final Order of the Court disallowing Claims in whole or in part.

b. Undeliverable and Unclaimed Distributions

If the Distribution to any Holder of an Allowed Claim is returned to the Disbursing Agent as undeliverable or is otherwise unclaimed, no further Distributions will be made to such Holder unless and until the Disbursing Agent is notified in writing of such Holder's then-current address and such Holder provides sufficient evidence of such address as may be requested by the Disbursing Agent, at which time all missed Distributions will be made to such Holder without interest, subject to the time limitations set forth below. Amounts in respect of undeliverable Distributions made by the Disbursing Agent will be returned to the Disbursing Agent until such Distributions are claimed. The Disbursing Agent will segregate and, with respect to Cash, deposit in a segregated account designated as an unclaimed Distribution reserve undeliverable and unclaimed Distributions for the benefit of all such similarly-situated Persons until such time as a Distribution becomes deliverable or is claimed, subject to the time limitations set forth below.

Any Holder of an Allowed Claim that does not assert a claim pursuant to the Plan for an undeliverable or unclaimed Distribution within three (3) months after the date such Distribution was returned undeliverable will be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and will be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed Distribution against the Debtors and their Estates, the Liquidating Trustee, the Liquidating Trust, the Liquidating Trust Committee and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its or their property. In the case of undeliverable or unclaimed Distributions on account of Administrative Claims, any Cash otherwise reserved for undeliverable or unclaimed Distributions will revert to

the Administrative Claims Reserve. In the case of undeliverable or unclaimed Distributions on account of Liquidating Trust Interests, any Cash otherwise reserved for undeliverable or unclaimed Distributions will revert to the Liquidating Trust, and all title to and all beneficial interests in the Liquidating Trust Assets represented by any such undeliverable Distributions will revert to and/or remain in the Liquidating Trust and will be distributed in accordance with Article IV of the Liquidating Trust Agreement and the Plan. The reversion of such Cash to the Administrative Claims Reserve or the Liquidating Trust, as applicable, will be free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and will be treated in accordance with the terms of the Plan and the Liquidating Trust Agreement. Nothing contained in the Plan or the Liquidating Trust Agreement will require the Debtors, the Liquidating Trust, the Liquidating Trustee or any Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

4. Means of Cash Payment

Cash payments made pursuant to the Plan will be in U.S. dollars and will be made at the option and in the sole discretion of the Disbursing Agent by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by the Disbursing Agent. In the case of foreign creditors, Cash payments may be made, at the option of the Disbursing Agent, in such funds and by such means as are necessary or customary in a particular jurisdiction.

5. Interest on Claims

Unless otherwise specifically provided for in the Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest will not accrue or be paid on any Claims, and no Claimholder will be entitled to interest accruing on or after the Petition Date on any Claim. Interest will not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

6. Withholding and Reporting Requirements

In accordance with section 346 of the Bankruptcy Code and in connection with the Plan and all Distributions thereunder, the Disbursing Agent will, to the extent applicable, comply with all withholding and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority. The Disbursing Agent will be authorized to take any and all actions necessary and appropriate to comply with such requirements.

All Distributions under the Plan will be subject to withholding and reporting requirements. As a condition of making any Distribution under the Plan, each Entity holding an Allowed Claim is required to provide any information necessary in writing, including returning W-9 statements, to effect the necessary information reporting and withholding of applicable taxes with respect to Distributions to be made under the Plan as the Disbursing Agent may request. The Disbursing Agent will be entitled in its sole discretion to withhold any Distributions to a Holder of an Allowed Claim who fails to provide tax identification or social security information within the timeframe requested in writing by the Disbursing Agent to such Holder of an Allowed Claim, which timeframe will not be less than 30 days. The Distribution to

any Holder of an Allowed Claim that fails to timely respond to the Disbursing Agent will be treated as an undeliverable or unclaimed Distribution pursuant to Article VI.C.2 of the Plan.

Notwithstanding any other provision of the Plan, each entity receiving a Distribution pursuant to the Plan will have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution.

7. Setoffs

Subject to the terms and conditions of the Liquidating Trust Agreement, the Debtors and/or the Liquidating Trust may, but will not be required to, set off against any Claim and the payments or other Distributions to be made under the Plan on account of the Claim, claims of any nature whatsoever that the Debtors may have against the Holder thereof, provided that any such right of setoff that is exercised will be allocated, first, to the principal amount of the related Claim, and thereafter to any interest portion thereof, but neither the failure to do so nor the allowance of any Claim under the Plan will constitute a waiver or release by the Debtors and/or the Liquidating Trust of any such claim that the Debtors may have against such Holder.

8. Procedure for Treating and Resolving Disputed, Contingent and/or Unliquidated Claims

a. Objection Deadline; Prosecution of Objections

Except as set forth in the Plan with respect to Professional Fee Claims and Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims by the Claims Objection Deadline, as the same may be extended by the Court. If an objection has not been filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been Allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline will be required to be given only to those persons or entities that have requested notice in the Chapter 11 Cases in accordance with Bankruptcy Rule 2002.

Subject to any reporting to the Liquidating Trust Committee that may be required under the Liquidating Trust Agreement, and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, on and after the Effective Date, the Liquidating Trust will have the authority to: (1) file, withdraw or litigate to judgment objections to and requests for estimation of Claims; (2) settle or compromise any Disputed Claim without any further notice to or action, order or approval by the Court; and (3) administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Court; provided, however, that the objection to and settlement of Professional Fee Claims will not be subject to Article VI.H of the Plan, but rather will be governed by Article IX.A of the Plan. In the event that any objection filed by the Debtors or the Committee remains pending as of the Effective Date, the Liquidating Trustee will be deemed substituted for the Debtors or the Committee, as applicable, as the objecting party.

The Liquidating Trust will be entitled to assert all of the Debtors' rights, claims, defenses, offsets, rights of recoupment, setoffs, rights of disallowance, subrogation, recharacterization and/or equitable subordination and counter-claims with respect to Claims.

b. No Distributions Pending Allowance

Notwithstanding any other provision of the Plan or the Liquidating Trust Agreement, no payments or Distributions will be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtors or the Liquidating Trust on account of a Cause of Action, no payments or Distributions will be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Court or such other court having jurisdiction over the matter.

c. Disputed Claims Reserve

On the Distribution Date and on each subsequent Periodic Distribution Date, the Liquidating Trust will withhold on a Pro Rata basis from property that would otherwise be distributed to Holders of Claims entitled to Distributions under the Plan on such date, in a separate Disputed Claims Reserve, such amounts or property as may be necessary to equal one hundred percent (100%) of Distributions to which Holders of such Disputed Claims would be entitled under the Plan if such Disputed Claims were allowed in their Disputed Claims Amount. The Liquidating Trust may request, if necessary, estimation for any Disputed Claim that is contingent or unliquidated, or for which the Liquidating Trust determines to reserve less than the face amount. The Liquidating Trust will withhold the applicable Disputed Claims Reserve with respect to such Claims based upon the estimated amount of each such Claim as estimated by the Court. If the Liquidating Trust elects not to request such an estimation from the Court with respect to a Disputed Claim that is contingent or unliquidated, the Liquidating Trust will withhold the applicable Disputed Claims Reserve based upon the good faith estimate of the amount of such Claim by the Liquidating Trust. If practicable, the Liquidating Trust will invest any Cash that is withheld as the Disputed Claims Reserve in an appropriate manner to ensure the safety of the investment, in accordance with Section 3.5 of the Liquidating Trust Agreement. Nothing in the Plan, the Disclosure Statement or the Liquidating Trust Agreement will be deemed to entitle the Holder of a Disputed Claim to postpetition interest on such Claim, however.

d. Distributions After Allowance

Payments and Distributions to Holders of Disputed Claims that ultimately become Allowed Claims will be made in accordance with provisions of the Liquidating Trust Agreement that govern Distributions to Holders of Allowed Claims (Article IV of the Liquidating Trust Agreement).

e. De Minimis Distributions

The Liquidating Trust will not be required to make any distributions to Holders of Allowed Claims aggregating less than fifty dollars (\$50.00). Cash that otherwise would be payable under the Plan to Holders of Liquidating Trust Interests will remain Liquidating Trust Assets to be used in accordance with the Liquidating Trust Agreement. Cash that otherwise would be payable under the Plan to Holders of Administrative Claims will remain in the Administrative Claims Reserve.

f. Fractional Dollars

The Disbursing Agent will not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment will reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

g. Allocation of Plan Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a Distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution will, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

h. Distribution Record Date

The Disbursing Agent will have no obligation to recognize the transfer of or sale of any participation in any Allowed Claim that occurs after the close of business on the Distribution Record Date. Instead, the Disbursing Agent will be entitled to recognize and deal for all purposes under the Plan with only those record Holders stated on the official Claims register or the Debtors' Books and Records, as applicable, as of the close of business on the Distribution Record Date.

C. Means for Implementation of the Plan

1. Substantive Consolidation

a. Consolidation of the Chapter 11 Estates

The Plan contemplates and is predicated upon entry of an order substantively consolidating the Debtors' Estates and Chapter 11 Cases for all purposes, including voting, Distribution and Confirmation. On the Effective Date, (i) all Intercompany Claims between the Debtors will be eliminated, (ii) all assets and liabilities of the Affiliate Debtors will be merged or treated as if they were merged with the assets and liabilities of MacKeyser, (iii) any obligation of a Debtor and any guarantee thereof by another Debtor will be deemed to be one obligation of MacKeyser, and any such guarantee will be eliminated, (iv) the issued and outstanding shares of stock and membership interests of the Affiliate Debtors will be cancelled, (v) each Claim Filed or to be Filed against any Debtor will be deemed Filed only against MacKeyser and will be

deemed a single Claim against and a single obligation of MacKeyser, and (vi) any joint or several liability of the Debtors will be deemed one obligation of MacKeyser. On the Effective Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guarantees of collection, payment or performance made by one Debtor as to the obligations of another Debtor will be released and of no further force and effect.

The substantive consolidation effected pursuant to the Plan (x) will not affect the rights of any Holder of a Miscellaneous Secured Claim or the rights of HEP with respect to the collateral securing its Claim and (y) will not, and will not be deemed to, prejudice the Causes of Action, which will survive entry of the Substantive Consolidation Order, as if there had been no substantive consolidation.

b. Substantive Consolidation Order

The Plan will serve as, and will be deemed to be, a motion for entry of an order substantively consolidating the Debtors' Chapter 11 Cases. If no objection to substantive consolidation is timely Filed and served by any Holder of an Impaired Claim affected by the Plan on or before the deadline to object to Confirmation of the Plan, or such other date as may be fixed by the Court, the Substantive Consolidation Order (which may be the Confirmation Order) may be approved by the Court. If any such objections are timely Filed and served, a hearing with respect to the substantive consolidation of the Chapter 11 Cases and the objections thereto will be scheduled by the Court, which hearing may, but is not required to, coincide with the Confirmation Hearing.

2. Corporate Action

a. Merger and Dissolution of Debtors

On the Effective Date, (a) the members of the boards of directors and managers of the Debtors will be deemed to have resigned; (b) the Affiliate Debtors will be deemed merged with and into MacKeyser, without the necessity of any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith; and (c) following such merger, MacKeyser will be deemed dissolved for all purposes, without the necessity of any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith; provided, however, that the Debtors or the Liquidating Trust may execute and file documents and take all other actions as they deem appropriate relating to the foregoing corporate actions and, in such event, all applicable regulatory or governmental agencies will take all steps necessary to allow and effect the prompt merger and dissolution of the Debtors as provided in the Plan, without the payment of any fee, tax or charge and without need for the filing of reports or certificates; provided further, however, that any actions by the Debtors or the Liquidating Trust pursuant to the preceding sentence will not modify, alter or otherwise affect the merger and dissolution of the Debtors as of the Effective Date pursuant to this Section.

The Chapter 11 Cases of the Affiliate Debtors will be closed on the Effective Date upon submission of an appropriate order to the Court under certification of counsel, following which any and all proceedings that could have been brought or otherwise commenced in the Chapter 11

Cases of the Affiliate Debtors will be brought or otherwise commenced in MacKeyser's Chapter 11 Case.

Moreover, on and after the Effective Date, the Debtors (i) will be deemed to have withdrawn their business operations from any state in which they were previously conducting, or are registered or licensed to conduct, their business operations, and will not be required to file any document, pay any sum or take any other action in order to effectuate such withdrawal; and (ii) will not be liable in any manner to any taxing or other authority for franchise, business, license or similar taxes accruing on or after the Effective Date.

Further, after the Effective Date, the Liquidating Trust may, in the name of the Debtors, take such actions as may be necessary or appropriate to accomplish the purposes of the Liquidating Trust, without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, except as provided in the Plan or the Confirmation Order.

b. Cancellation of Existing Securities and Agreements

Except as otherwise provided in the Plan, and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article III of the Plan, any promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Claims or Interests, other than a Claim that is being Reinstated and rendered unimpaired, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Interests will be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under the notes, share certificates and other agreements and instruments governing such Claims and Interests will be discharged; provided, however, that nothing in the foregoing will apply to the Allowed DIP Facility Claim, the DIP Facility Termsheet, the Final DIP Order, the DIP Documents, or any other agreement or document related to any of the foregoing, all of which documents, as modified by the Global Settlement Order, shall remain in full force and effect notwithstanding anything to the contrary in this Plan, until the Allowed DIP Facility Claim is satisfied in full and in Cash. The holders of or parties to such canceled notes, share certificates and other agreements and instruments will have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

c. No Further Action

Each of the matters provided for under the Plan involving the organizational structure of the Debtors or corporate or limited liability company action to be taken by or required of the Debtors will, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan, and will be authorized and approved in all respects without any requirement of further action by any Person, including but not limited to, the Liquidating Trustee, Holders of Claims or Interests against or in the Debtors, or directors, managers or officers of the Debtors.

3. Books and Records; Privilege Matters

a. Legal Representation of the Debtors and Committee After the Effective Date

Upon the Effective Date, the attorney-client relationship between (i) the Debtors and their current counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., and (ii) the Committee and its current counsel, Cooley LLP and Klehr Harrison Harvey Branzburg LLP, will be deemed terminated. No successor to the Debtors and/or the Committee, whether under the Plan or otherwise, including but not limited to the Liquidating Trust and/or the Liquidating Trust Committee will be deemed to succeed to the attorney-client relationship that currently exists between the Debtors and its counsel and the Committee and its counsel. Subject only to the applicable ethical rules governing attorneys, their receipt of confidential information and their relationship with former clients, current counsel for the Debtors will not be precluded from representing any party in any action that might be brought by or against the Liquidating Trust. Similarly, subject only to the applicable ethical rules governing attorneys, their receipt of confidential information and their relationship with former clients, current counsel and other professionals for the Committee will not be precluded from representing the Liquidating Trust or any other party in any action that might be brought by or against any former individual members of the Committee.

b. Transfer of Debtors' Books and Records

On or before the Effective Date, the Debtors will transfer their Books and Records to the Liquidating Trust.

c. Transfer of Evidentiary Privileges; Document Requests

Notwithstanding anything to the contrary in the Plan, on the Effective Date, the Liquidating Trustee will succeed to the evidentiary privileges, including attorney-client privilege, formerly held by the Debtors. Privileged communications may be shared among the Liquidating Trustee and the Liquidating Trust Committee without compromising the privileged nature of such communications, in accordance with the "joint interest" doctrine.

Accordingly, to the extent that documents are requested from current counsel to the Debtors by any Person, after the Effective Date, only the Liquidating Trustee will have the ability to waive such attorney-client or other privileges. In addition, current counsel to the Debtors will have no obligation to produce any documents currently in its possession as a result of or arising in any way out of its representation of the Debtors unless (i) the Person requesting such documents serves its request on the Liquidating Trustee; (ii) the Liquidating Trustee consents in writing to such production and any waiver of the attorney-client or other privilege such production might cause; and (iii) the Liquidating Trustee or the Person requesting such production agrees to pay the reasonable costs and expenses incurred by current counsel for the Debtors in connection with such production.

Similarly, upon the Effective Date, the Liquidating Trust Committee will succeed to the evidentiary privileges, including attorney-client privilege, formerly held by the Committee. Accordingly, to the extent that documents are requested from current counsel to the Committee

by any Person, after the Effective Date, only the Liquidating Trust Committee will have the ability to waive such attorney-client or other privileges. In addition, current counsel to the Committee will have no obligation to produce any documents currently in their possession as a result of or arising in any way out of their representation of the Committee unless (i) the Person requesting such documents serves its request on the Liquidating Trust Committee; (ii) the Liquidating Trust Committee consents in writing to such production and any waiver of the attorney-client privilege or other privilege such production might cause; and (iii) the Liquidating Trust Committee, or the Person requesting such production, agrees to pay the reasonable costs and expenses incurred by current counsel for the Committee in connection with such production.

Upon the second (2nd) anniversary of the termination of the Liquidating Trust Agreement, any and all documents in the possession of the Debtors' current counsel and the Committee's current counsel as a result of or arising in any way out of their representation of the Debtors and/or the Committee, respectively, will be deemed destroyed and no Person will be entitled to obtain such documents.

4. Creditors' Committee and Liquidating Trust Committee

a. Dissolution of the Committee

The Committee will continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and will perform such other duties as it may have been assigned by the Court prior to the Effective Date. On the Effective Date, the Committee will be dissolved and its members will be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Committee's attorneys, financial advisors and other agents will terminate, except with respect to (i) all Professional Fee Claims and (ii) any appeals of the Confirmation Order. All expenses of Committee members and the reasonable fees and expenses of their Professionals through the Effective Date will be paid in accordance with the terms and conditions of the Professional Fee Order, subject to the terms of the Global Settlement. Professionals employed by the Creditors' Committee will be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities, including the preparation, filing and prosecution of final fee applications, subject to the terms of the Global Settlement.

b. Creation of Liquidating Trust Committee and Procedures Related Thereto

The Liquidating Trust Committee will consist of three members: one member appointed by the Committee; one member appointed by HEP; and one member jointly appointed by the Committee and HEP. The Debtors or the Committee will file a notice on a date that is not less than ten (10) days prior to the hearing to consider confirmation of the Plan designating the Persons or Entities that have been selected to serve on the Liquidating Trust Committee. Each member of the Liquidating Trust Committee will be entitled to vote on all matters in accordance with the terms of the Liquidating Trust Agreement. Members of the Liquidating Trust Committee will serve without compensation, but will be entitled to reimbursement of reasonable expenses.

c. Standing of the Liquidating Trust Committee

The Liquidating Trust Committee will have independent standing to appear and be heard in the Court as to any matter relating to the Plan, the Liquidating Trust Agreement or the Estates, including any matter as to which the Court has retained jurisdiction pursuant to Article XI of the Plan.

d. Function and Duration of the Liquidating Trust Committee

The Liquidating Trust Committee will have the rights and responsibilities set forth in the Plan and the Liquidating Trust Agreement, including instructing and supervising the Liquidating Trustee with respect to its responsibilities under the Plan and the Liquidating Trust Agreement. The Liquidating Trust Committee will remain in existence until such time as the final Distributions under the Liquidating Trust Agreement have been made, as set forth more fully in the Liquidating Trust Agreement.

e. Indemnification of Liquidating Trustee and Liquidating Trust Committee

The Indemnified Persons will be held harmless and will not be liable for actions taken or omitted in their capacity as, or on behalf of, the Liquidating Trust, Liquidating Trust Committee or Liquidating Trustee (as applicable), except those acts that are determined by Final Order of the Court to have arisen out of their own intentional fraud, willful misconduct or gross negligence. Each Indemnified Person will be entitled to be indemnified, held harmless and reimbursed for fees and expenses including, without limitation, reasonable attorney's fees, which such Persons and Entities may incur or may become subject to or in connection with any action, suit, proceeding or investigation that is brought or threatened against such Persons or Entities in respect of that Person's or Entity's actions or inactions regarding the implementation or administration of the Plan, or the discharge of their duties under the Plan or Liquidating Trust Agreement, except for any actions or inactions that are determined by Final Order of the Court to have arisen from intentional fraud, willful misconduct or gross negligence. Any Claim of the Indemnified Persons to be indemnified, held harmless or reimbursed will be satisfied solely from the Liquidating Trust Assets, Liquidating Trust Proceeds and any applicable insurance coverage.

f. Recusal of Liquidating Trust Committee Members

A Liquidating Trust Committee member will recuse itself from any decisions or deliberations regarding actions taken or proposed to be taken by the Liquidating Trustee with respect to the Claims, Causes of Action or rights of such Liquidating Trust Committee member, the entity appointing such Liquidating Trust Committee member, or any affiliate of the foregoing.

5. No Revesting of Assets in Debtors

The property of the Debtors' Estates will not be vested in the Debtors on or following the Effective Date, but will be vested in the Liquidating Trust and continue to be subject to the jurisdiction of the Court following confirmation of the Plan until such property is distributed to

Holders of Allowed Claims in accordance with the provisions of the Plan, the Liquidating Trust Agreement and the Confirmation Order.

6. Limited Release of Liens

On the Effective Date, all mortgages, deeds of trust, liens or other security interests against property of the Estates, except for those held by HEP, will be released.

7. Accounts and Reserves

a. Professional Fee Reserve

On or before the Effective Date, the Debtors will transfer to the Liquidating Trust Cash in the Amount of the Professional Fee Estimate, which Cash will be used by the Liquidating Trustee to fund the Professional Fee Reserve. The Cash so transferred will not be used for any purpose other than to pay Allowed Professional Fee Claims and will at all times remain subject to the first-priority perfected security interests and liens of HEP without the necessity for an account control agreement, financing statement or any other action or filing by HEP. The Liquidating Trustee (i) will segregate and will not commingle the Cash held in the Professional Fee Reserve and (ii) subject to the terms and conditions of the Plan and the Liquidating Trust Agreement, will pay each Professional Fee Claim of a Professional employed by the Debtors or the Committee, on or as soon as reasonably practicable after the date such Claim becomes an Allowed Claim, upon entry of a Final Order allowing such Claim. After all Professional Fee Claims are Allowed or Disallowed and the Allowed amounts of such Claims are paid by the Liquidating Trust, any remaining Cash in the Professional Fee Reserve will become a Liquidating Trust Asset. Only Professionals employed in the Chapter 11 Cases by the Debtors or the Committee will be entitled to payment from the Professional Fee Reserve.

Subject to the Liquidating Trust Budget, the Professionals employed by the Debtors and the Committee, as applicable, will be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities, including the preparation, filing and prosecution of final fee applications, upon the submission of invoices to the Liquidating Trustee for payment from the Professional Fee Reserve. Any time or expenses incurred in the preparation, filing and prosecution of final fee applications will be disclosed by each Professional in its final fee application and will be subject to approval of the Court.

b. Administrative Claims Reserve

On or before the Effective Date, the Debtors will transfer to the Liquidating Trust Cash in the Amount of the Administrative Claims Estimate, which Cash will be used by the Liquidating Trustee to fund the Administrative Claims Reserve. The Cash so transferred will not be used for any purpose other than to pay Allowed Administrative Claims (except Professional Fee Claims, which will be paid from the Professional Fee Reserve) and will at all times remain subject to the first-priority perfected security interests and liens of HEP without the necessity for an account control agreement, financing statement or any other action or filing by HEP. The Liquidating Trustee (i) will segregate and will not commingle the Cash held in the Administrative Claims Reserve and (ii) subject to the terms and conditions of the Plan and the Liquidating Trust

Agreement, will pay each Administrative Claim (except Professional Fee Claims, which will be paid from the Professional Fee Reserve) on or as soon as reasonably practicable after the date such Claim becomes an Allowed Claim. After all Administrative Claims (except Professional Fee Claims) are Allowed or Disallowed and the Allowed amounts of such Claims are paid by the Liquidating Trust, any remaining Cash in the Administrative Claims Reserve will become a Liquidating Trust Asset.

c. Other Reserves

The Liquidating Trust will establish and administer any other necessary reserves that may be required under the Plan or Liquidating Trust Agreement, including the Disputed Claims Reserve.

8. Exemption from Certain Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan will not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and the Confirmation Order will direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents without the payment of any such tax or governmental assessment.

9. Applicability of Sections 1145 and 1125(e) of the Bankruptcy Code

Under section 1145 of the Bankruptcy Code, the issuance of the Liquidating Trust Interests under the Plan will be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Liquidating Trustee will take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

10. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trust will retain and may enforce all rights to commence and pursue, as appropriate, the Liquidating Trust Claims, including without limitation any Causes of Action against the Investigation Parties, and the Liquidating Trust's rights to commence, prosecute or settle such Liquidating Trust Claims will be preserved notwithstanding the occurrence of the Effective Date or the dissolution of the Debtors. The Liquidating Trust may pursue such Liquidating Trust Claims, as appropriate, in accordance with the best interests of the Liquidating Trust beneficiaries. No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Liquidating Trust Claims against them as any indication that the Liquidating Trust will not pursue any and all available Liquidating Trust Claims against them. The Liquidating Trust expressly reserves all rights to prosecute any and all Liquidating Trust Claims against any Entity, except as otherwise expressly provided in the Plan. Unless any Liquidating Trust Claims against an Entity are

expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Court order, the Liquidating Trust expressly reserves all Liquidating Trust Claims for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppels (judicial, equitable or otherwise) or laches, will apply to such Liquidating Trust Claims upon, after or as a consequence of the Confirmation or Consummation.

The substantive consolidation of the Debtors and their Estates pursuant to the Confirmation Order and Article V.A of the Plan will not, and will not be deemed to, prejudice any of the Liquidating Trust Claims, which will survive entry of the Confirmation Order for the benefit of the Debtors and their Estates, and, upon the Effective Date, for the benefit of the Liquidating Trust.

11. Effectuating Documents; Further Transactions

The Liquidating Trustee, subject to the terms and conditions of the Plan and the Liquidating Trust Agreement, will be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

D. The Liquidating Trust

1. Establishment and Administration of the Liquidating Trust

(a) On the Effective Date, the Liquidating Trust will be established pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (i) investigating and, if appropriate, pursuing Liquidating Trust Claims, (ii) administering and pursuing the Liquidating Trust Assets, (iii) resolving all Disputed Claims and any Claim objections pending as of the Effective Date and (iv) making Distributions from the Liquidating Trust to Holders of Allowed Claims as provided for in the Plan and/or the Liquidating Trust Agreement.

(b) Upon execution of the Liquidating Trust Agreement, the Liquidating Trustee will be authorized to take all steps necessary to complete the formation of the Liquidating Trust. The Liquidating Trust will be administered by the Liquidating Trustee in accordance with the Liquidating Trust Agreement.

(c) It is intended that the Liquidating Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d) and as a “grantor trust” within the meaning of Sections 671 through 679 of the Internal Revenue Code. In furtherance of this objective, the Liquidating Trustee will, in its business judgment, make continuing best efforts not to unduly prolong the duration of the Liquidating Trust. All Liquidating Trust Assets held by the Liquidating Trust on the Effective Date will be deemed for federal income tax purposes to have been distributed by the Debtors to Holders of Allowed Claims and then contributed by such Holders to the Liquidating Trust in exchange for the Liquidating Trust Interests. All Holders of Allowed Claims have agreed to use the valuation of the Liquidating Trust Assets transferred to the Liquidating Trust as established by the Liquidating Trustee for all federal income tax purposes. The beneficiaries under the

Liquidating Trust will be treated as the deemed owners of the Liquidating Trust. The Liquidating Trust will be responsible for filing information on behalf of the Liquidating Trust as grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

2. Assets of the Liquidating Trust

On the Effective Date, or as soon as reasonably practicable thereafter, the Debtors will transfer and assign to the Liquidating Trust all of their right, title and interest in and to all of the Liquidating Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, all such assets will automatically vest in the Liquidating Trust free and clear of all Claims and liens, subject only to the DIP Liens and HEP Prepetition Liens, the Allowed Claims of the Holders of Liquidating Trust Interests as set forth in the Plan and the expenses of the Liquidating Trust as set forth in the Plan and in the Liquidating Trust Agreement. Thereupon, the Debtors will not have any interest in or with respect to the Liquidating Trust Assets.

To the extent not already transferred and assigned to the Debtors, on the Effective Date, or as soon as reasonably practicable thereafter, HEP will transfer and assign to the Liquidating Trust all of the right, title and interest in and to all of the HEP Actions, which actions, upon transfer, will be subject only to the DIP Liens and HEP Prepetition Liens, the Allowed Claims of the Holders of Liquidating Trust Interests as set forth in the Plan and the expenses of the Liquidating Trust as set forth in the Plan and in the Liquidating Trust Agreement.

3. Other Funds to be Transferred to the Liquidating Trust

Pursuant to Article V.H.1 of the Plan, on or before the Effective Date, the Debtors will transfer to the Liquidating Trust Cash in the amount of the Professional Fee Estimate, which Cash will be used by the Liquidating Trustee to fund the Professional Fee Reserve.

Pursuant to Article V.H.2 of the Plan, on or before the Effective Date, the Debtors will transfer to the Liquidating Trust Cash in the amount of the Administrative Claims Estimate, which Cash will be used by the Liquidating Trustee to fund the Administrative Claims Reserve.

The Liquidating Trust Assets transferred by the Debtors and HEP to the Liquidating Trust will at all times remain subject to the DIP Liens and HEP Prepetition Liens, without the necessity for an account control agreement, financing statement or any other action or filing by HEP.

4. Rights and Powers of the Liquidating Trust and the Liquidating Trustee

(a) The Liquidating Trustee will be deemed the Estates' representative in accordance with section 1123 of the Bankruptcy Code and will have all the rights and powers set forth in the Liquidating Trust Agreement, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Rules, and the right to, with the consent of the Liquidating Trust Committee, (i) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Liquidating Trust Agreement; (ii) prosecute, settle, abandon or compromise any Liquidating Trust Claims; (iii) make Distributions contemplated by the Plan and the Liquidating Trust Agreement; (iv) establish and administer any necessary reserves that may be

required, including the Disputed Claims Reserve, the Administrative Claims Reserve and the Professional Fee Reserve; (v) object to Disputed Claims and, without Court approval, settle, compromise, withdraw or resolve in any manner approved by the Court such objections; (vi) employ and compensate professionals (including professionals previously retained by the Debtors and/or the Committee), provided, however, that any such compensation will be made only out of the Liquidating Trust Assets and Liquidating Trust Proceeds; and (vii) file all federal, state and local tax returns if necessary.

(b) The Liquidating Trustee has full authority to take any steps necessary to administer the Liquidating Trust Agreement, including without limitation, the duty and obligation to liquidate Liquidating Trust Assets, to make Distributions therefrom in accordance with the provisions of the Plan and to pursue, settle or abandon any Liquidating Trust Claims, all in accordance with the Liquidating Trust Agreement.

5. Liquidating Trust Interests

(a) On the Effective Date, each Holder of an Allowed Claim will, by operation of the Plan, receive a Liquidating Trust Interest representing the right of such Holder to receive Distributions from the Liquidating Trust in accordance with the Liquidating Trust Agreement and Liquidating Trust Waterfall. Liquidating Trust Interests will be reserved for Holders of Disputed Claims and issued by the Liquidating Trust to, and held by the Liquidating Trustee in, the Disputed Claims Reserve pending allowance or disallowance of such Claims. No other entity will have any interest, legal, beneficial or otherwise, in the Liquidating Trust Assets upon the assignment and transfer of such assets to the Liquidating Trust.

As set forth in the Liquidating Trust Agreement, Distributions from the Liquidating Trust on account of Liquidating Trust Interests will be made from the Liquidating Trust Assets and Liquidating Trust Proceeds after paying, reserving against or satisfying, among other things, the operating and administrative expenses of the Liquidating Trust, including but not limited to all costs, expenses and obligations incurred by the Liquidating Trustee (or professionals who may be employed by the Liquidating Trustee in administering the Liquidating Trust) in carrying out their responsibilities under the Liquidating Trust Agreement, or in any manner connected, incidental or related thereto, subject to the Liquidating Trust Budget.

(b) The Liquidating Trust Interests will be uncertificated and will be nontransferable except upon death of the Holder or by operation of law. Holders of Liquidating Trust Interests, in such capacity, will have no voting rights with respect to such interests. The Liquidating Trust will have a term of five (5) years from the Effective Date, without prejudice to the rights of the Liquidating Trust Committee to extend such term conditioned upon the Liquidating Trust not becoming subject to the Securities Exchange Act of 1934 (as now in effect or hereafter amended).

6. Appointment of a Liquidating Trustee

(a) The Liquidating Trustee will be jointly designated by the Debtors, the Committee and HEP. The Debtors or the Committee will file a notice on a date that is not less than ten (10) days prior to the hearing to consider confirmation of the Plan designating the

Person who has been selected as Liquidating Trustee. The appointment of the Liquidating Trustee will be approved in the Confirmation Order, and such appointment will be as of the Effective Date. The Liquidating Trustee will have and perform all of the duties, responsibilities, rights and obligations set forth in the Plan and Liquidating Trust Agreement.

(b) The Liquidating Trustee will not be obligated to obtain a bond but may do so, in his sole discretion, in which case the expense incurred by such bonding will be paid by the Liquidating Trust.

(c) The Liquidating Trustee, the members of the Liquidating Trust Committee and their professionals will be exculpated and indemnified pursuant to and in accordance with the terms of the Plan and Liquidating Trust Agreement.

7. Distributions to Holders of Allowed Claims

(a) Distributions to Holders of Allowed Administrative Claims. On or as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) the date an Administrative Claim becomes an Allowed Administrative Claim, the Liquidating Trustee will make the Distribution required to be made under Article III.A.2 of the Plan to the Holder of such Allowed Administrative Claims from the Administrative Claims Reserve or, if there are insufficient funds in the Administrative Claims reserve to make such Distribution, from the Liquidating Trust Proceeds in accordance with the Liquidating Trust Waterfall.

(b) Distributions to Holders of Other Allowed Claims. For all Allowed Claims other than Allowed Administrative Claims, the Liquidating Trustee will make the Distributions required to be made under Article III of the Plan to Holders of such Allowed Claims from the Liquidating Trust Proceeds in accordance with the Liquidating Trust Waterfall. Each such Distribution will be made on the Periodic Distribution Date determined in the discretion of the Liquidating Trustee subject to oversight and reporting by the Liquidating Trust Committee. The Liquidating Trustee will not make any Distributions of Liquidating Trust Assets or Liquidating Trust Proceeds to the beneficiaries under the Liquidating Trust unless the Liquidating Trustee retains and reserves in the Disputed Claims Reserve such amounts as are required under Article VI.H.3 of the Plan.

(c) Distributions After Allowance of a Disputed Claim. Upon a Disputed Claim becoming an Allowed Claim, the Liquidating Trustee will distribute to the Holder thereof, from the Disputed Claims Reserve at the time of the next Periodic Distribution Date, such amount of Cash as would have been distributed to such Holder if its Claim had been an Allowed Claim on the Effective Date.

(d) Final Distributions. The Liquidating Trust will be dissolved and its affairs wound up and the Liquidating Trustee will make the final Distributions, upon the earlier of (i) the date which is five (5) years after the Effective Date; and (ii) that date when, (A) in the reasonable judgment of the Liquidating Trustee, substantially all of the assets of the Liquidating Trust have been liquidated and there are no substantial potential sources of additional Cash for Distribution, and (B) there remain no substantial Disputed Claims. Notwithstanding the foregoing, on or prior to such termination, the Court, upon motion by a party in interest, may

extend the term of the Liquidating Trust for one or more finite terms based upon the particular facts and circumstances present at that time, if an extension is necessary to the liquidating purpose of the Liquidating Trust. The date on which the Liquidating Trustee determines that all obligations under the Plan and Liquidating Trust Agreement have been satisfied is referred to as the “Liquidating Trust Termination Date.” On the Liquidating Trust Termination Date, the Liquidating Trustee will, to the extent not already done, request that the Court enter an order closing the Bankruptcy Cases.

(e) Until the Allowed DIP Facility Claim has been paid in full and in Cash, the Liquidating Trustee will make quarterly distributions from the Liquidating Trust in accordance with the Liquidating Trust Waterfall to the extent more than \$100,000 in Cash is available from Liquidating Trust Assets for distribution.

8. Distributions to Holders of Administrative and Priority Claims

The Liquidating Trust’s formation documents will require that financial statements or similar reports of the Liquidating Trust be sent to all Holders of Liquidating Trust Interests on an annual basis.

9. Reporting Requirement of Liquidating Trust

The Liquidating Trust’s formation documents will require that financial statements or similar reports of the Liquidating Trust be sent to all Holders of Liquidating Trust Interests on an annual basis.

E. Conditions Precedent to Confirmation and Consummation of the Plan

1. Conditions to Confirmation

The following are conditions precedent to confirmation of the Plan, each of which must be satisfied or waived in accordance with Article VIII.C of the Plan:

- a. the Confirmation Order will be in form and substance reasonably acceptable to the Debtors, the Committee and HEP and will, among other things:
 - (i) provide that the Debtors are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the agreements or documents created under or in connection with the Plan; and
 - (ii) provide that, notwithstanding Bankruptcy Rule 3020(e), the Confirmation Order will be immediately effective, subject to the terms and conditions of the Plan; and
- b. the Confirmation Order will have been entered by the Court.

2. Conditions to Effective Date

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in accordance with Article VIII.C of the Plan:

- a. the Confirmation Order will not then be stayed, vacated or reversed and will not have been amended without the agreement of the Debtors, the Committee and HEP;
- b. the Confirmation Order will not then be subject to a pending appeal, and the time to appeal or seek review or rehearing or leave to appeal has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending;
- c. the Liquidating Trust will have been established and the Liquidating Trust Assets will have been transferred to and vested in the Liquidating Trust free and clear of all Claims and Liens, except as specifically provided in the Plan and the Liquidating Trust Agreement;
- d. the Professional Fee Reserve and the Administrative Claims Reserve will have been funded in Cash in full;
- e. the Liquidating Trustee and the Liquidating Trust Committee will have been appointed and assumed their rights and responsibilities under the Plan and the Liquidating Trust Agreement, as applicable; and
- f. all actions, documents and agreements necessary to implement the provisions of the Plan to be effectuated on or prior to the Effective Date will be reasonably satisfactory to the Debtors, the Committee and HEP, and such actions, documents and agreements will have been effected or executed and delivered. The Liquidating Trust Agreement will be completed and in final form and, as applicable, executed by the parties thereto and all conditions precedent contained in any of the foregoing will have been satisfied or waived.

3. Waiver of Conditions

Each of the conditions to the Effective Date set forth in Article VIII.B of the Plan may be waived in whole or in part by the Debtors without any other notice to parties in interest or the Court, provided that the Debtors have received the prior written consent of the Committee and HEP, which consent will not unreasonably be withheld. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of any party to exercise any of its foregoing rights will not be deemed a waiver of any of its other rights, and each such right will be deemed an ongoing right that may be asserted thereby at any time.

4. Consequences of Non-Occurrence of Effective Date

If the Effective Date does not occur within ninety (90) days following the Confirmation Date, or by such later dates after notice and hearing, as is proposed by the Debtors, then upon motion by the Debtors and upon notice to such parties in interest as the Court may direct, (a) the Plan will be null and void in all respects; (b) any settlement of claims will be null and void without further order of the Court; and (c) the time within which the Debtors may assume and assign or reject all Executory Contracts will be extended for a period of thirty (30) days after such motion is granted.

F. Effects of Confirmation

1. Compromise and Settlement of Claims and Controversies

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the classification, Distributions, releases and other benefits provided pursuant to the Plan, on the Effective Date, the provisions of the Plan will constitute a good faith compromise and settlement of all Claims, Interests and controversies resolved pursuant to the Plan or relating to the contractual, legal and subordination rights that a Holder of a Claim or Interest may have with respect to any Claim or Interest, or any Distribution to be made on account of such Claim or Interest. The entry of the Confirmation Order will constitute the Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders of Claims and Interests and is fair, equitable and reasonable.

2. Binding Effect

The Plan will be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, whether or not such Holders will receive or retain any property or interest in property under the Plan, and their respective successors and assigns, including, but not limited to, the Liquidating Trust and all other parties in interest in the Chapter 11 Cases.

3. Discharge of the Debtors

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that, other than as provided in the Final DIP Order, no Claimholder or Interest Holder may, on account of such Claim or Interest, seek or receive any payment or other Distribution from, or seek recourse against, any Debtor or its respective successors, assigns and/or property, except as expressly provided in the Plan.

4. Releases

As discussed in Article III.D.2 hereof, under the Global Settlement, the Debtors, the Committee and HEP (as defined above, the "Settlement Parties") agreed to support the consummation of a chapter 11 liquidating plan that embodied the terms of the Global Settlement, including releases by the Debtors, by the Settlement Parties and by Holders of Claims and Interests. The release and exculpation provisions required by the Global Settlement are

described in this Article IV.F.4 (release provisions) and in Article IV.F.5 (exculpation provisions). These release and exculpation provisions do not apply to the Investigation Parties.

a. Releases by the Debtors

Pursuant to the Plan, as of the Effective Date, the Debtors, and any Person seeking to exercise the rights of the Debtors' Estates, including, without limitation, any successor to the Debtors, any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code or the Liquidating Trust, whether pursuing an action derivatively or otherwise, will be deemed to forever release, waive and discharge all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever (other than for fraud, willful misconduct or gross negligence) in connection with or related to the Debtors, the Chapter 11 Cases or the Plan (other than the rights of the Debtors and the Liquidating Trustee to enforce the Plan and the contracts, instruments, releases and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date, against (a) the Debtors, their Professionals and Court-retained agents and the Debtors' directors and officers employed by or serving the Debtors as of the Petition Date, and (b) any of the successors or assigns of any of the parties identified in the foregoing clause (a).

b. Releases by the Global Settlement Parties

Pursuant to the Plan, as of the Effective Date, the Debtors and the Committee, and their successors and assigns, including the Liquidating Trust and the Liquidating Trust Committee, will be deemed to forever release, waive and discharge all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever (other than for fraud, willful misconduct or gross negligence) in connection with or related to the Debtors, the Chapter 11 Cases or the Plan (other than the rights of the Debtors and the Committee and their successors or assigns to enforce the Global Settlement, the Plan and the contracts, instruments, releases and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date, against (a) the Debtors, their Professionals and Court-retained agents and the Debtors' directors and officers employed by or serving the Debtors as of the Petition Date, and (b) the Committee and its Professionals and, solely in their respective capacities as members or representatives of the Committee, each member of the Committee.

c. Release by Holders of Claims and Interests

“Releasing Parties” are Holders of Claims and Interests that (a) vote to accept the Plan and (b) do not check the appropriate box on such Holders’ ballots to indicate that such Holders opt out of the release(s) described in the paragraph immediately below.

Pursuant to the Plan and to the maximum extent permitted by applicable law, as of the Effective Date, each Releasing Party, solely in its capacity as such, will be deemed to forever release, waive and discharge all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever in connection with or related to the Debtors, the Chapter 11 Cases or the Plan (other than the rights of the Holders of Claims and Interests to enforce the Plan and the contracts, instruments, releases and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date, against the HEP Released Parties.

Entry of the Confirmation Order will constitute the Court’s approval, pursuant to Bankruptcy Rule 9019, of the release described in the paragraph immediately above, which includes by reference each of the related provisions and definitions contained in the Plan, and further, will constitute the Court’s finding that each release described in the paragraph immediately above is: (i) in exchange for good and valuable consideration provided by the HEP Released Parties, a good faith settlement and compromise of such Claims and Interests; (ii) in the best interests of the Debtors and all Holders of Claims and Interests; (iii) fair, equitable and reasonable; (iv) given and made after due notice and opportunity for hearing; and (v) a bar to any of the Releasing Parties asserting any claim, cause of action or liability related thereto, of any kind whatsoever, against any of the HEP Released Parties or their property.

5. Exculpation and Limitation of Liability

Pursuant to the Plan and except as otherwise provided therein, none of (a) the Debtors, (b) the directors or officers of any of the Debtors serving at any time during the pendency of the Chapter 11 Cases, (c) the Professionals or Court-retained agents of the Debtors, (d) the HEP Released Parties, (e) the Committee and its Professionals and, solely in their respective capacities as members or representatives of the Committee, each member of the Committee, (f) the Liquidating Trustee and the Liquidating Trust’s professionals and, solely in their respective capacities as members or representatives of the Liquidating Trust Committee, each member of the Liquidating Trust Committee, or (g) any of the successors or assigns of any of the parties identified in the foregoing clauses (a) through (f), will have or incur, and each will be released and exculpated from, any liability, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively in law or equity to any Holder of a Claim or an Interest, or any other party in interest, or any of their respective members, directors, officers, employees, advisors, attorneys, professionals, agents, partners, stockholders or affiliates, or any of their respective successors or assigns, for

any act or omission in connection with, relating to or arising out of, the Chapter 11 Cases, the Global Settlement, the DIP Documents, the Final DIP Order, the HEP Prepetition Secured Promissory Note, the formulation, negotiation or implementation of the Plan, the solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which are the result of fraud, gross negligence or willful misconduct, and such parties in all respects will be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan.

Further pursuant to the Plan, no Holder of a Claim or an Interest, no other party in interest, none of their respective members, directors, officers, employees, advisors, attorneys, professionals, agents, partners, stockholders or affiliates, and none of their respective successors or assigns, will have any right of action against (a) the Debtors, (b) the directors or officers of any of the Debtors serving at any time during the pendency of the Chapter 11 Cases, (c) the Professionals or Court-retained agents of the Debtors, (d) the HEP Released Parties, (e) the Committee and its Professionals and, solely in their respective capacities as members or representatives of the Committee, each member of the Committee, (f) the Liquidating Trustee and the Liquidating Trust's professionals and, solely in their respective capacities as members or representatives of the Liquidating Trust Committee, each member of the Liquidating Trust Committee, or (g) or any of the successors or assigns of any of the parties identified in the foregoing clauses (a) through (f), for any act or omission in connection with, relating to or arising out of, the Chapter 11 Cases, the Global Settlement, the DIP Documents, the Final DIP Order, the HEP Prepetition Secured Promissory Note, the formulation, negotiation or implementation of the Plan, solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which are the result of fraud, gross negligence or willful misconduct.

6. Injunction

Pursuant to the Plan, Confirmation of the Plan will have the effect of, among other things, permanently enjoining (a) all Entities or Persons that have held, hold or may hold or have asserted, assert or may assert Claims against or Interests in the Estates with respect to any such Claim or Interest, and (b) respecting (vi)(A), (vi)(B), and (vi)(C) of this paragraph, the Estates and the Liquidating Trust, from and after the Effective Date, from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Estates or the Liquidating Trust or any of its or their property or the HEP Released Parties on account of such Claims or Interests; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Estates or the Liquidating Trust or any of its or their property or the HEP Released Parties on account of such Claims or Interests; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Estates or the Liquidating Trust or any of its or their property or the HEP Released Parties on account of such Claims or Interests; (iv) asserting any

right of setoff, directly or indirectly, against any obligation due the Estates or the Liquidating Trust or any of its or their property, except with respect to any right of setoff asserted prior to the entry of the Confirmation Order, whether asserted in a Proof of Claim or otherwise, or as otherwise contemplated or allowed by the Plan; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan; and (vi) prosecuting or otherwise asserting (A) any Claim or Interest, including any right, claim or Cause of Action, released pursuant to the Plan, (B) any form of objection to any Claim that is Allowed by the Plan, or (C) Avoidance Actions against any Holder of a Claim that is Allowed by the Plan. Additionally, unless otherwise explicitly stated in the Plan, this injunction will prohibit the assertion against the HEP Released Parties, the Liquidating Trust, the Liquidating Trustee and the Liquidating Trust Committee of all Claims or Interests, if any, related to the Debtors.

Confirmation of the Plan will further have the effect of permanently enjoining all Persons from obtaining (i) any documents or other materials from current counsel for the Debtors and the Committee that are in the possession of such counsel as a result of or arising in any way out of their representations of the Debtors and/or the Committee, except in accordance with Article V.C of the Plan.

7. Compromises and Settlements

Pursuant to Bankruptcy Rule 9019(a), the Debtors may compromise and settle Claims (a) against them and (b) that they have against other Persons. The Debtors expressly reserve the right (with Court approval, following appropriate notice and opportunity for a hearing) to compromise and settle Claims against them and claims that they may have against other Persons at any time up to and including the Effective Date.

After the Effective Date, such right will pass to the Liquidating Trust and will be governed by the terms of Article VI.H of the Plan and the Liquidating Trust Agreement.

8. Satisfaction of Subordination Rights

All Claims against the Debtors and all rights and claims between or among Claimholders relating in any manner whatsoever to Distributions on account of Claims against the Debtors based upon any subordination rights, whether asserted or unasserted, legal or equitable, will be deemed satisfied by the Distributions under the Plan to Claimholders having such subordination rights, and such subordination rights will be deemed waived, released, discharged and terminated as of the Effective Date. Distributions to the various Classes of Claims under the Plan will not be subject to levy, garnishment, attachment or like legal process by any Claimholder by reason of any subordination rights or otherwise, so that each Claimholder will have and receive the benefit of the Distributions in the manner set forth in the Plan.

G. Other Matters

1. Treatment of Executory Contracts and Unexpired Leases

a. Rejected Contracts and Leases

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, each of the Executory Contracts and Unexpired Leases to which any Debtor is a party will be deemed automatically rejected by the applicable Debtor as of the Effective Date, unless such contract or lease (i) previously has been assumed or rejected by the Debtors, (ii) expired or terminated pursuant to its own terms, (iii) is the subject of a motion to assume or reject pending before the Court as of the Confirmation Date or (iv) is identified on Exhibit B to the Plan as a Contract to be assumed; provided, however, that nothing contained in the Plan will constitute an admission by any Debtor that any such contract or lease is an Executory Contract or Unexpired Lease or that any Debtor or its successors and assigns has any liability thereunder; and, provided further, that the Debtors reserve their right, at any time before the Confirmation Date, to assume any Executory Contract or Unexpired Lease that was not already rejected prior to the Confirmation Date.

b. Rejection Damages Bar Date

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim will be forever barred and will not be enforceable against the applicable Debtor or its Estate, the Liquidating Trust or their respective successors or properties unless a Proof of Claim is filed with the Claims Agent and served on counsel for the Liquidating Trust within thirty (30) days after service of notice of entry of the Confirmation Order.

c. Indemnification Obligations

Subject to the last sentence of this paragraph, any obligations of the Debtors pursuant to their organizational documents, including amendments, entered into any time prior to the Effective Date, to indemnify, reimburse or limit the liability of any Person pursuant to the Debtors' organizational documents, policy of providing employee indemnification, applicable state law or specific agreement in respect of any claims, demands, suits, causes of action or proceedings against such Persons based upon any act or omission related to such Persons' service with, for or on behalf of the Debtors prior to the Effective Date with respect to all present and future actions, suits and proceedings relating to the Debtors will survive confirmation of the Plan and except as set forth in the Plan, remain unaffected thereby, and will not be discharged, irrespective of whether such defense, indemnification, reimbursement or limitation of liability accrued or is owed in connection with an occurrence before or after the Petition Date; provided, however, that all monetary obligations arising on account of such indemnification obligations will be limited solely to available insurance coverage and neither the Liquidating Trust, the Liquidating Trustee nor any of their assets will be liable for any such obligations. This provision for indemnification obligations does not apply to or cover (a) any Claims, suits or actions against a Person that result in a final order determining that such Covered Person is liable for fraud, willful misconduct, gross negligence, bad faith, self-dealing or breach of the duty of loyalty or

(b) the Investigation Parties, to whom any such indemnification obligations shall not survive confirmation of the Plan and any such indemnification obligations to the Investigation Parties shall be discharged pursuant to the Plan.

2. Allowance and Payment of Certain Administrative Claims

a. Professional Fee Claims

(i) Final Fee Applications

All final requests for payment of Professional Fee Claims (the “Final Fee Applications”) must be filed no later than forty-five (45) days after the Effective Date. Objections, if any, to Final Fee Applications of such Professionals must be filed and served on the Liquidating Trust, the Liquidating Trust Committee, counsel for HEP, the requesting Professional and the Office of the United States Trustee no later than twenty (20) days from the date on which each such Final Fee Application is served and filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Court, the Allowed amounts of such Professional Fee Claims will be determined by the Court.

(ii) Employment of Professionals after the Effective Date

From and after the Effective Date, any requirement that professionals comply with sections 327 through 331 of the Bankruptcy Code or any order previously entered by the Court in seeking retention or compensation for services rendered or expenses incurred after such date will terminate.

b. Substantial Contribution Compensation and Expenses Bar Date

Any Person who wishes to make a Substantial Contribution Claim based on facts or circumstances arising after the Petition Date must file an application with the clerk of the Court, on or before the Administrative Claims Bar Date, and serve such application on the Liquidating Trust and the Liquidating Trust Committee and as otherwise required by the Court and the Bankruptcy Code, or be forever barred from seeking such compensation or expense reimbursement. Objections, if any, to the Substantial Contribution Claim must be filed no later than the Administrative Claims Objection Deadline, unless otherwise extended by Order of the Court.

c. Other Administrative Claims

All other requests for payment of an Administrative Claim arising after the Petition Date, other than Professional Fee Claims, must be filed with the Court and served on the Liquidating Trust and the Liquidating Trust Committee no later than the Administrative Claims Bar Date. Unless the Liquidating Trust or any other party in interest objects to an Administrative Claim by the Administrative Claims Objection Deadline, such Administrative Claim will be deemed Allowed in the amount requested. In the event that the Liquidating Trust or any other party in interest objects to an Administrative Claim, the Court will determine the Allowed amount of such Administrative Claim.

3. Modifications and Amendments

The Debtors may alter, amend or modify the Plan or any Exhibits thereto under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date provided that the Debtors have received the prior written consent of the Committee and HEP, which consent will not unreasonably be withheld. After the Confirmation Date and prior to substantial consummation of the Plan as defined in section 1101(2) of the Bankruptcy Code, the Debtors may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; provided, however, that prior notice of such proceedings will be served in accordance with the Bankruptcy Rules or order of the Court.

4. Payment of Statutory Fees

All fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 will be paid on or as soon as practicable after the Effective Date. The Debtors, prior to the Effective Date, and the Liquidating Trust, from and after the Effective Date, will pay statutory fees to the U.S. Trustee in accordance with 28 U.S.C. § 1930 until the Chapter 11 Cases are closed or converted and/or the entry of final decrees. In addition, the Liquidating Trust will file post-confirmation quarterly reports or any pre-confirmation monthly operating reports not filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines. The U.S. Trustee will not be required to file a request for payment of its quarterly fees, which will be deemed an Administrative Claim against the Debtors and their Estates.

5. Revocation, Withdrawal or Non-Consummation

The Debtors reserve the right to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to file subsequent plans. If the Debtors revoke or withdraw the Plan as to any or all of the Debtors, or if Confirmation or consummation of the Plan as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) the Plan will be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan, will be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, will (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person or (iii) constitute an admission of any sort by such Debtors or any other Person.

6. Plan Supplement(s)

Exhibits to the Plan not attached thereto will be filed in one or more Plan Supplements by the Plan Supplement Filing Date. Any Plan Supplement (and amendments thereto) filed by the Debtors will be deemed an integral part of the Plan and will be incorporated by reference as if fully set forth in the Plan. Substantially contemporaneously with their filing, the Plan

Supplements may be viewed at the Debtors' case website (<http://www.americanlegalclaims.com/mackeyser>) or the Court's website (<http://www.deb.uscourts.gov>). Copies of case pleadings, including the Plan Supplements, also may be examined between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding federal holidays, at the Office of the Clerk of the Court, 824 N. Market St., 3rd Floor, Wilmington, Delaware 19801. Finally, copies of case pleadings also may be obtained by written request to the Claims Agent, at Notice_MacKeyser@americanlegalclaims.com. The documents contained in any Plan Supplements will be approved by the Court pursuant to the Confirmation Order.

H. Retention of Jurisdiction

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order, substantial consummation of the Plan and occurrence of the Effective Date, the Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases, the Plan, the Liquidating Trust Agreement and the Liquidating Trust to the fullest extent permitted by law, including, among other things, jurisdiction to:

1. To the extent not otherwise determined by the Plan, to determine (i) the allowance, classification or priority of Claims upon objection by any party in interest entitled to file an objection, or (ii) the validity, extent, priority and nonavoidability of consensual and nonconsensual Liens and other encumbrances against assets of the Estates, Causes of Action, or property of the Estates or the Liquidating Trust;
2. To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any Entity or Person, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order or any other order of the Court, to issue such orders as may be necessary for the implementation, execution, performance and consummation of the Plan and all matters referred to therein, and to determine all matters that may be pending before the Court in the Chapter 11 Cases on or before the Effective Date with respect to any Entity or Person;
3. To protect the assets or property of the Estates and/or the Liquidating Trust, including Causes of Action, from claims against, or interference with, such assets or property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens or other encumbrances on any assets of the Estates;
4. To determine any and all applications for allowance of Professional Fee Claims;
5. To determine any Priority Tax Claims, Priority Non-Tax Claims or Administrative Claims entitled to priority under section 507(a) of the Bankruptcy Code;
6. To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan and the making of Distributions thereunder;

7. To determine any and all motions related to the rejection, assumption or assignment of Executory Contracts or Unexpired Leases or determine any issues arising from the deemed rejection of Executory Contracts and Unexpired Leases set forth in Article VII of the Plan;
8. To enforce the terms of the Global Settlement and the Global Settlement Order;
9. Except as otherwise provided in the Plan, to determine all applications, motions, adversary proceedings, contested matters, actions and any other litigated matters instituted in and prior to the closing of the Chapter 11 Cases, including any remands;
10. To enter a Final Order closing each of the Chapter 11 Cases;
11. To modify the Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out their intent and purposes;
12. To issue such orders in aid of consummation of the Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Entity or Person, to the full extent authorized by the Bankruptcy Code;
13. To determine any tax liability pursuant to section 505 of the Bankruptcy Code;
14. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
15. To resolve any disputes concerning whether an Entity or Person had sufficient notice of the Chapter 11 Cases, the applicable Bar Date, the hearing to consider approval of the Disclosure Statement or the Confirmation Hearing or for any other purpose;
16. To resolve any dispute or matter arising under or in connection with any order of the Court entered in the Chapter 11 Cases;
17. To authorize, as may be necessary or appropriate, sales of assets as necessary or desirable and resolve objections, if any, to such sales;
18. To resolve any disputes concerning any release, injunction, exculpation or other waiver or protection provided in the Plan;
19. To approve, if necessary, any Distributions, or objections thereto, under the Plan;
20. To approve, as may be necessary or appropriate, any Claims settlement entered into or offset exercised by the Liquidating Trust;

21. To resolve any dispute or matter arising under or in connection with the Liquidating Trust;

22. To order the production of documents, disclosures or information, or to appear for deposition demanded pursuant to Bankruptcy Rule 2004; and

23. To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code.

ARTICLE V

VOTING REQUIREMENTS; ACCEPTANCE AND CONFIRMATION OF THE PLAN

A. General

The Bankruptcy Code requires that, in order to confirm the Plan, the Court must make a series of findings concerning the Plan and the Debtors, including that (i) the Plan has classified Claims in a permissible manner; (ii) the Plan complies with applicable provisions of the Bankruptcy Code; (iii) the Plan has been proposed in good faith and not by any means forbidden by law; (iv) the disclosure required by section 1125 of the Bankruptcy Code has been made; (v) the Plan has been accepted by the requisite votes of Holders of Claims (except to the extent that cramdown is available under section 1129(b) of the Bankruptcy Code); (vi) the Plan is feasible and confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors unless such liquidation or reorganization is proposed in the Plan; (vii) the Plan is in the “best interests” of all Holders of Claims in an Impaired Class by providing to such Holders on account of their Claims property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holders would receive or retain in a chapter 7 liquidation, unless each Holder of a Claim in such Class has accepted the Plan; and (viii) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Court at the hearing on confirmation, have been paid or the Plan provides for the payment of such fees on the Effective Date.

B. Parties in Interest Entitled to Vote

Pursuant to the Bankruptcy Code, only Classes of Claims that are “impaired” (as defined in section 1124 of the Bankruptcy Code) under the Plan are entitled to vote to accept or reject the Plan. A Class is impaired if the legal, equitable or contractual rights to which the Claims of that Class entitled the Holders of such Claims are modified, other than by curing defaults and reinstating the Claims. Classes that are not impaired are not entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes that receive no distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan.

C. Classes Impaired and Entitled to Vote under the Plan

The following Classes are Impaired under the Plan and entitled to vote on the Plan:

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Right</u>
2	Priority Non-Tax Claims	Impaired	Entitled to Vote
3	HEP Prepetition Secured Claim	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote

Acceptances of the Plan are being solicited only from Holders of Claims in Classes 2, 3 and 4 that will or may receive consideration under the Plan. Holders of Claims and Interests in Classes 5, 6, 7 and 8 are deemed to reject the Plan. Holders of Claims in Class 1 are deemed to accept the Plan and are not entitled to vote.

D. Voting Procedures and Requirements

1. Ballots

The Solicitation Procedures Order sets December 8, 2014 as the record date for voting on the Plan (the “Record Date”). Accordingly, only Holders of record as of the Record Date that are otherwise entitled to vote under the Plan will receive a Ballot and may vote on the Plan.

In voting for or against the Plan, please use only the Ballot sent to you with this Disclosure Statement. If you are a Holder of a Claim in Classes 2, 3 or 4 and did not receive a Ballot, your Ballot is damaged or lost or you have any questions concerning voting procedures, please contact the Voting Agent at (904) 517-1442 or at Notice_MacKeyser@americanlegalclaims.com.

2. Returning Ballots

If you are entitled to vote to accept or reject the Plan, you should read carefully, complete, sign and return your Ballot, with original signature, in the enclosed envelope.

TO BE COUNTED, YOUR BALLOT WITH YOUR ORIGINAL SIGNATURE INDICATING YOUR ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED NO LATER THAN 4:00 P.M. (EASTERN TIME) ON JANUARY 23, 2015 (THE “VOTING DEADLINE”).

3. Voting

Pursuant to section 105(a) of the Bankruptcy Code, Bankruptcy Rules 2002(a)(7) and 3003(c)(2) and the Bar Date Order, any creditors whose claims (a) are scheduled in the Debtors’ Schedules as disputed, contingent or unliquidated and which are not the subject of a timely-filed proof of claim, or a proof of claim deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any order of the Court, or otherwise deemed timely filed under applicable law; or (b) are not scheduled and are not the subject of a timely-filed proof of claim, or a proof of claim deemed timely filed with the Bankruptcy Court pursuant to either the

Bankruptcy Code or any order of the Court, or otherwise deemed timely filed under applicable law (collectively, the “Non-Voting Claims”), will be denied treatment as creditors with respect to such claims for purposes of (a) voting on the Plan, (b) receiving distributions under the Plan and (c) receiving notices, other than by publication, regarding the Plan.

For purposes of voting, the amount of a Claim used to calculate acceptance or rejection of the Plan under section 1126 of the Bankruptcy Code will be determined in accordance with the following hierarchy:

- a. if an order has been entered by the Court determining the amount of such Claim, whether pursuant to Bankruptcy Rule 3018 or otherwise, then in the amount prescribed by the order;
- b. if no such order has been entered, then in the liquidated amount contained in a timely-filed proof of claim that is not the subject of an objection as of the Claims Objection Deadline; and
- c. if no such proof of claim has been timely filed, then in the liquidated, noncontingent and undisputed amount contained in the Debtors’ Schedules.

For purposes of voting, the following conditions will apply to determine the amount and/or classification of a Claim:

- a. if a Claim is partially liquidated and partially unliquidated, such Claim will be allowed for voting purposes only in the liquidated amount;
- b. if a scheduled or filed Claim has been paid, such Claim will be disallowed for voting purposes; and
- c. the holder of a timely-filed proof of claim that is filed in a wholly unliquidated, contingent, disputed and/or unknown amount, and is not the subject of an objection as of the Claims Objection Deadline, is entitled to vote in the amount of \$1.00.

Pursuant to the Solicitation Procedures Order, the deadline for filing and serving motions pursuant to Bankruptcy Rule 3018(a) seeking temporary allowance of claims for the purpose of accepting or rejecting the Plan will be January 9, 2015 at 4:00 p.m. (Eastern Time) (the “Rule 3018(a) Motion Deadline”).

E. Acceptance of Plan

As a condition to confirmation, the Bankruptcy Code requires that each class of impaired claims vote to accept the Plan, except under certain circumstances. See “Confirmation Without Necessary Acceptances; Cramdown” below. A plan is accepted by an impaired class of claims if holders of at least two-thirds in dollar amount and more than one-half in number of claims of those that vote in such class vote to accept the plan. Only those holders of claims who actually

vote count in these tabulations. Holders of claims who fail to vote are not counted as either accepting or rejecting a plan.

In addition to this voting requirement, section 1129 of the Bankruptcy Code requires that a plan be accepted by each holder of a claim or interest in an impaired class or that the plan otherwise be found by a court to be in the best interests of each holder of a claim or interest in such class. See “Best Interests Test” below. Moreover, each impaired class must accept the plan for the plan to be confirmed without application of the “fair and equitable” and “unfair discrimination” tests set forth in section 1129(b) of the Bankruptcy Code discussed below. See “Confirmation Without Necessary Acceptances; Cramdown” below.

F. Confirmation Without Necessary Acceptances; Cramdown

In the event that any impaired class of claims or interests does not accept a plan, a debtor nevertheless may move for confirmation of the plan. A plan may be confirmed, even if it is not accepted by all impaired classes, if the plan has been accepted by at least one impaired class of claims, and the plan meets the “cramdown” requirements set forth in section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code requires that a court find that a plan (i) “does not discriminate unfairly” and (ii) is “fair and equitable,” with respect to each non-accepting impaired class of claims or interests.

Here, because Classes 5, 6, 7 and 8 are deemed to reject the Plan, the Debtors will seek confirmation of the Plan from the Court by satisfying the “cramdown” requirements set forth in section 1129(b) of the Bankruptcy Code. The Debtors believe that such requirements are satisfied as no Claim or Interest Holder junior to those in Classes 5-8 will receive any property under the Plan.

1. No Unfair Discrimination

A plan “does not discriminate unfairly” if (a) the legal rights of a nonaccepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are similar to those of the nonaccepting class, and (b) no class receives payments in excess of that which it is legally entitled to receive for its claims or interests. The Debtors believe that under the Plan all impaired Classes of Claims and Interests are treated in a manner that is consistent with the treatment of other Classes of Claims and Interests that are similarly situated, if any, and no class of Claims or Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims or Allowed Interests in such Class. Accordingly, the Debtors believe the Plan does not discriminate unfairly as to any Impaired Class of Claims or Interests.

2. Fair and Equitable Test

With respect to a dissenting class of claims or interests, the “fair and equitable” standard requires that a plan provide that either the claims or interests in each class received everything to which they are legally entitled or that classes junior in priority to the class receive nothing. The strict requirement of the allocation of full value to dissenting classes before any junior class can receive distribution is known as the “absolute priority rule.”

The Bankruptcy Code establishes different “fair and equitable” tests for holders of secured claims, unsecured claims and interests, which may be summarized as follows:

a. *Secured Claims.* Either (i) each holder of a claim in an impaired class of secured claims retains its liens securing its secured claim and it receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, (ii) each holder of a claim in an impaired class of secured claims realizes the indubitable equivalent of its allowed secured claim or (iii) the property securing the claim is sold free and clear of liens, with such liens to attach to the proceeds and the treatment of such liens on proceeds as provided in clause (i) or (ii) of this subparagraph.

b. *Unsecured Claims.* Either (i) each holder of a claim in an impaired class of unsecured claims receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the chapter 11 plan, subject to the applicability of the judicial doctrine of contributing new value.

c. *Equity Interests.* Either (i) each holder of an equity interest in an impaired class of interests will receive or retain under the chapter 11 plan property of a value equal to the greater of (a) the fixed liquidation preference or redemption price, if any, of such stock or (b) the value of the stock or (ii) the holders of interests that are junior to the stock will not receive any property under the chapter 11 plan, subject to the applicability of the judicial doctrine of contributing new value.

As discussed above, the Debtors believe that the distributions provided under the Plan satisfy the absolute priority rule.

ARTICLE VI

FEASIBILITY AND BEST INTERESTS OF CREDITORS

A. Best Interests Test

Before the Plan may be confirmed, the Court must find the Plan provides, with respect to each Impaired Class, that each Holder of a Claim in such Class either (i) has accepted the Plan or (ii) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount such Holder would receive or retain if the Debtors liquidated under chapter 7 of the Bankruptcy Code.

Under the Plan, Classes 2-8 are Impaired. Classes 5-8 will not receive or retain any property under either the Plan or in a chapter 7 liquidation. Classes 2, 3 and 4 are Impaired, but likely will receive a distribution under both the Plan and in a chapter 7 liquidation. To the extent that one or more of these Classes does not unanimously vote in favor of the Plan, the Holders in such Class must receive at least as much value under the Plan as they would in a chapter 7 liquidation in order for the Plan to be confirmable by the Court. As discussed in more detail below, Holders of Class 2—Priority Non-Tax Claims and Class 4—General Unsecured Claims would receive a lower recovery in a chapter 7 liquidation than under the Plan. Moreover, the

failure to confirm the Plan likely would lead to material delays in distributions to both Classes of Claims, further reducing the effective recoveries to Holders in such Classes.

As discussed in Article III.D.2 above, the parties to the Global Settlement agreed to support a plan of liquidation consistent with the terms of the settlement termsheet. As such, it is anticipated that the sole Holder of the Class 3—HEP Prepetition Secured Claim, HEP, will vote in favor of the Plan, thereby making it unnecessary to establish that HEP would receive at least as much value under the Plan as it would receive in a chapter 7 liquidation.

Although the Debtors anticipate that most Holders of Class 2—Priority Non-Tax Claims and Class 4—General Unsecured Claims will vote in favor of the Plan, it is doubtful that every such Holder will do so. As such, in order to confirm the Plan, the Debtors must establish that the Claim Holders in such Classes will receive at least as much value under the Plan as they would in a chapter 7 liquidation.

On the Effective Date of the Plan, the primary assets available for liquidation will be the Debtors' various causes of action. The Debtors' various causes of action will be prosecuted either by the Liquidating Trustee, in the event of a Plan, or by a chapter 7 trustee. Even if a chapter 7 trustee were able to prosecute these causes of action as efficiently as the Liquidating Trustee, recoveries to Holders of Claims in Classes 2 and 4 would be greater under a Plan than if the Debtors were liquidated under chapter 7 for a variety of reasons, including that:

1. Under the Plan, the pool of litigation assets available for liquidation would be greater than in a chapter 7 liquidation. In particular, under the Global Settlement, HEP has agreed to assign its direct causes of action against Pierre Keyser, Victoria Keyser, Erica Perreira, Erik Larsen and Sean Lyman, as well as related rights under any applicable Debtor insurance policies, to the Liquidating Trust. These causes of action and rights would not be assigned by HEP in the event of a chapter 7 liquidation.

2. Under the Plan, all of the Debtors' cash as of the Effective Date, other than (a) cash required to fund the Administrative Claims Reserve and the Professional Fee Reserve and (b) asset sale proceeds being held in escrow for the benefit of holders of Permitted Senior Liens (as defined in the Final DIP Order), would be available to fund the Liquidating Trust. If the Debtors' Chapter 11 Cases instead were converted to cases under chapter 7, such cash would pass to the chapter 7 trustee—but the cash would be HEP's cash collateral and the chapter 7 trustee would not have access to such cash without Court order providing adequate protection to HEP (which likely would not be possible under the circumstances). If this initial funding were not available—as it likely would not be in a chapter 7 liquidation—the fees and expenses incurred by the chapter 7 estate would be paid out of recoveries from the litigation actions, thereby reducing the assets available for distribution to Claim Holders. Further, without any initial funding, the ability of a chapter 7 trustee to prosecute the Debtors' various causes of action likely would be impaired.

3. Under a Plan, HEP has agreed to partially subordinate both its secured DIP Facility Claim and secured HEP Prepetition Secured Claim to Administrative Claims, Priority Claims—and potentially even General Unsecured Claims—as set forth

in Article III.D.2 of the Disclosure Statement and the Global Settlement Order. Absent this agreement, creditors would be paid according to the priority scheme established by the Bankruptcy Code, which requires that secured claims (including DIP Facility Claim and secured HEP Prepetition Secured Claim) be paid before Administrative Claims; Administrative Claims be paid before Priority Claims; and Priority Claims be paid before General Unsecured Claims. Thus, even assuming that a chapter 7 trustee were able to effectively prosecute the Debtors' causes of action, holders of Priority and General Unsecured Claims would be forced to wait until senior classes were paid in full before receiving any recoveries.

In sum, for the reasons set forth above, the Debtors believe that Holders of Claims and Interests in Classes 2 and 4 will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Holders would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

B. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successors to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan. The Plan provides for the merger and dissolution of the Debtors, and the transfer of the Debtors' assets to the Liquidating Trust for the benefit of Creditors. The Debtors will not be conducting any business operations after the Effective Date.

As such, provided that the Plan is confirmed and consummated, the Estates will no longer exist to be subject to future reorganization or liquidation. Accordingly, the Debtors believe that the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

ARTICLE VII

EFFECT OF CONFIRMATION

A. Binding Effect of Confirmation

Confirmation will bind the Debtors and all Holders of Claims and Interests to the provisions of the Plan, whether or not the Claim or Interest of any such Holder is Impaired under the Plan and whether or not any such Holder of a Claim or Interest has accepted the Plan.

B. Good Faith

Confirmation of the Plan will constitute a finding that: (i) the Plan has been proposed in good faith and in compliance with applicable provisions of the Bankruptcy Code; and (ii) all solicitations of acceptances or rejections of the Plan have been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

ARTICLE VIII

CERTAIN RISK FACTORS TO BE CONSIDERED

THE PLAN AND ITS IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT AND THE PLAN, BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation. No representations concerning or related to the Debtors, the Chapter 11 Cases or the Plan are authorized by the Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision.

A. Plan May Not Be Accepted

There can be no assurance that the requisite acceptances to confirm the Plan will be obtained. Thus, while the Debtors believe the Plan is confirmable under the standards set forth in section 1129 of the Bankruptcy Code, there is no guarantee that the Plan will be accepted by the requisite Classes entitled to vote on the Plan.

B. Certain Bankruptcy Law Considerations

Even if the Holders of Claims who are entitled to vote accept the Plan, the Court, which may exercise substantial discretion as a court of equity, may choose not to confirm the Plan. Section 1129 of the Bankruptcy Code requires, among other things, that the value of distributions to dissenting Holders of Claims or Interests may not be less than the value such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtors believe the Plan meets such requirement, there can be no assurance the Court will reach the same conclusion.

C. Distributions to Holders of Allowed Claims Under The Plan

As noted above, the primary assets available for liquidation by the Liquidating Trust—and therefore to fund the Plan—will be the Debtors' various causes of actions. Litigation is inherently speculative and uncertain in nature and there is no guarantee that the Liquidating Trust will be able to obtain any recoveries on account of such actions. If the Liquidating Trust is not successful in obtaining recoveries on the causes of action transferred to it by the Debtors and HEP, there likely will be no recovery for Creditors from the Liquidating Trust.

In any case, a substantial amount of time may elapse between the Effective Date and the receipt of distributions because of the time required to achieve recovery of certain assets and final resolution of Disputed Claims.

D. Conditions Precedent to Consummation of the Plan

The Plan provides for certain conditions that must be satisfied (or waived) prior to confirmation of the Plan and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. As of the date of this Disclosure Statement, there can be no assurance that any or all of the conditions in the Plan will be satisfied (or waived). Accordingly, there can be no assurance that the Plan will be confirmed by the Court. Further, if the Plan is confirmed, there can be no assurance that the Plan will be consummated.

E. Certain Tax Considerations

There are a number of material income tax considerations, risks and uncertainties associated with consummation of the Plan. Holders of Claims and other interested parties should read carefully the discussion of certain federal income tax consequences of the Plan set forth below.

ARTICLE IX

CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to the Debtors and to Holders of Claims and Interests. This discussion is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the Internal Revenue Service (“IRS”), all as in effect on the date hereof.

Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims, each Holder’s status and method of accounting and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are uncertain. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Further, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtors and the Holders of Claims and Interests.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or the Holders of Claims or Interests in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S. federal income tax laws (including, for example, insurance companies, financial institutions, real estate investment trusts, tax-exempt organizations, small business investment companies, regulated investment companies, foreign taxpayers, persons whose functional currency is not the U.S. dollar, persons subject to the alternative minimum tax, and persons holding Claims or Interests as part of a “straddle,” “hedge,” “constructive sale” or “conversion transaction” with other investments). This discussion does not address the tax consequences to Holders of Claims who did not acquire such Claims at the issue price on original issue. No aspect of foreign, state, local or estate and gift taxation is addressed.

EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE PLAN.

A. Tax Consequences to the Debtors

Pursuant to the Tax Code and subject to certain exceptions, a taxpayer generally must recognize income from the cancellation of indebtedness ("COD Income") to the extent that such taxpayer's indebtedness is discharged for an amount less than the indebtedness' adjusted issue price determined in the manner described below. Generally, the amount of COD Income, subject to certain statutory and judicial exceptions, is the excess of (i) the adjusted issue price of the discharged indebtedness less (ii) the sum of the fair market value (determined at the date of the exchange) of the consideration, if any, given in exchange for such discharged indebtedness.

Section 108(a)(1)(A) of the Tax Code provides an exception to the recognition of COD Income where a taxpayer discharging indebtedness is under the jurisdiction of a court in a case under title 11 of the Bankruptcy Code and where the discharge is granted, or is effected pursuant to a plan approved, by a U.S. Bankruptcy Court (the "Bankruptcy Exception"). Under the Bankruptcy Exception, instead of recognizing COD Income, the taxpayer is required, pursuant to Section 108(b) to reduce certain of that taxpayer's tax attributes to the extent of the amount of COD Income. The attributes of the taxpayer generally are reduced in the following order: net operating losses, general business and minimum tax credit carryforwards, capital loss carryforwards, the basis of the taxpayer's assets and, finally, foreign tax credit carryforwards (collectively, "Tax Attributes"). If the amount of COD Income exceeds the amount of Tax Attributes available to be reduced, the excess still is excluded from income. Pursuant to Section 108(b)(4)(A), the reduction of Tax Attributes does not occur until the end of the taxable year after such Tax Attributes have been applied to determine the tax in the year of discharge or, in the case of asset basis reduction, the first day of the taxable year following the taxable year in which the COD Income is realized. Section 108(e)(2) provides a further exception to the recognition of COD Income upon the discharge of debt, providing that a taxpayer will not recognize COD Income to the extent that the taxpayer's satisfaction of the debt would have given rise to a deduction for United States federal income tax purposes.

B. Tax Consequences to Creditors

1. Holders of Claims

Generally, a Holder of a Claim should in most, but not all circumstances, recognize gain or loss equal to the difference between the "amount realized" by such Holder in exchange for its Claim and such Holder's adjusted tax basis in the Claim. The "amount realized" is equal to the sum of the cash and the fair market value of any other consideration received under a plan of reorganization in respect of a Holder's Claim. The tax basis of a Holder in a Claim will generally be equal to the Holder's cost. To the extent applicable, the character of any recognized gain or loss (*e.g.*, ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the Holder, the nature of the Claim in the Holder's hands, the purpose and circumstances of its acquisition, the Holder's holding period of the Claim, and the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the

Claim. Generally, if the Claim is a capital asset in the Holder's hands, any gain or loss realized generally will be characterized as capital gain or loss, and will constitute long-term capital gain or loss if the Holder has held such Claim for more than one year.

A Holder who received Cash (or potentially other consideration) in satisfaction of its Claims may recognize ordinary income or loss to the extent that any portion of such consideration is characterized as accrued interest. A Holder who did not previously include in income accrued but unpaid interest attributable to its Claim, and who receives a distribution on account of its Claim pursuant to the Plan, will be treated as having received interest income to the extent that any consideration received is characterized for United States federal income tax purposes as interest, regardless of whether such Holder realizes an overall gain or loss as a result of surrendering its Claim. A Holder who previously included in its income accrued but unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such accrued but unpaid interest is not satisfied, regardless of whether such Holder realizes an overall gain or loss as a result of the distribution it may receive under the Plan on account of its Claim.

2. Non-United States Persons

A Holder of a Claim that is a non-United States Person generally will not be subject to United States federal income tax with respect to property (including money) received in exchange for such Claim pursuant to the Plan, unless (i) such Holder is engaged in a trade or business in the United States to which income, gain or loss from the exchange is "effectively connected" for United States federal income tax purposes, or (ii) if such Holder is an individual, such Holder is present in the United States for 183 days or more during the taxable year of the exchange and certain other requirements are met.

C. Tax Treatment of the Liquidating Trust

Upon the Effective Date, the Liquidating Trust will be established for the benefit of Holders of Allowed Claims, whether Allowed on or after the Effective Date.

1. Classification of the Liquidating Trust

The Liquidating Trust is intended to qualify as a liquidating trust for federal income tax purposes. In general, a liquidating trust is not a separate taxable entity but rather is treated for federal income tax purposes as a "grantor" trust (*i.e.*, a pass-through entity). The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Liquidating Trust has been structured with the intention of complying with such general criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties (including the Liquidating Trustee and the Holders of beneficial interests in the Liquidating Trust) are required to treat for federal income tax purposes the Liquidating Trust as a grantor trust of which the Holders of Allowed Claims are the owners and grantors. While the following discussion assumes that the Liquidating Trust would be so treated for federal income tax purposes, no ruling has been requested from the IRS concerning the tax status of the Liquidating Trust as a grantor trust. Accordingly, there can be no assurance that the IRS would not take a contrary position to the classification of the Liquidating Trust as a grantor trust. If the IRS were to challenge

successfully such classification, the federal income tax consequences to the Liquidating Trust and the Holders of Claims could vary from those discussed herein.

2. General Tax Reporting by the Trust and Beneficiary

For all federal income tax purposes, all parties (including the Liquidating Trustee and the Holders of beneficial interests in the Liquidating Trust) will be required to treat the transfer of assets to the Liquidating Trust, in accordance with the terms of the Plan, as a transfer of those assets directly to the Holders of Allowed Claims followed by the transfer of such assets by such Holders to the Liquidating Trust. Consistent therewith, all parties are required to treat the Liquidating Trust as a grantor trust of which such Holders are to be owners and grantors. Thus, such Holders (and any subsequent Holders of interests in the Liquidating Trust) will be treated as the direct owners of an undivided beneficial interest in the assets of the Liquidating Trust for all federal income tax purposes. Accordingly, each Holder of a beneficial interest in the Liquidating Trust will be required to report on its federal income tax return(s) the Holder's allocable share of all income, gain, loss, deduction or credit recognized or incurred by the Liquidating Trust.

The federal income tax reporting obligation of a Holder of a beneficial interest in the Liquidating Trust is not dependent upon the Liquidating Trust distributing any cash or other proceeds. Therefore, a Holder of a beneficial interest in the Liquidating Trust may incur a federal income tax liability regardless of the fact that the Liquidating Trust has not made, or will not make, any concurrent or subsequent distributions to the Holder. If a Holder incurs a federal tax liability but does not receive distributions commensurate with the taxable income allocated to it in respect of its beneficial interests in the Liquidating Trust it holds, the Holder may be allowed a subsequent or offsetting loss.

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

All payments to Creditors and Interest Holders are subject to any applicable withholding (including employment tax withholding). Under the Internal Revenue Code, interest, dividends and other reportable payments may, under certain circumstances, be subject to "backup withholding" then in effect. Backup withholding generally applies if the Holder (a) fails to furnish his or her social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is his correct number and that he is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax if an appropriate refund claim is filed with the IRS. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

3. Allocations of Taxable Income and Loss

Allocations of taxable income of the Liquidating Trust among Holders of Claims will be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of its respective assets to the Holders of the beneficial interests in the Liquidating Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Liquidating Trust assets.

After the Effective Date, any amount a Holder receives as a distribution from the Liquidating Trust in respect of its beneficial interest in the Liquidating Trust should not be included, for federal income tax purposes, in the Holder's amount realized in respect of its Allowed Claim but should be separately treated as a distribution received in respect of such Holder's beneficial interest in the Liquidating Trust.

In general, a Holder's aggregate tax basis in its undivided beneficial interest in the assets transferred to the Liquidating Trust will equal the fair market value of such undivided beneficial interest as of the Effective Date and the Holder's holding period in such assets will begin the day following the Effective Date. Distributions to any Holder of an Allowed Claim will be allocated first to the original principal portion of such Claim as determined for federal tax purposes, and then, to the extent the consideration exceeds such amount, to the remainder of such Claim. However, there is no assurance that the IRS will respect such allocation for federal income tax purposes.

The tax book value of the Liquidating Trust assets for this purpose will equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements. Uncertainties with regard to federal income tax consequences of the Plan may arise due to the inherent nature of estimates of value that will impact tax liability determinations.

As soon as practicable after the Effective Date, the Liquidating Trustee (to the extent that it deems it necessary or appropriate in the reasonable exercise of its discretion) will, in good faith, value the Liquidating Trust Assets, and will apprise the Holders of beneficial interests in the Liquidating Trust of such valuation. The valuation is required to be used consistently by all parties (including the Debtors, the Trustee and the Holders) for all federal income tax purposes. The Court will resolve any dispute regarding the valuation of the Assets.

The Liquidating Trust's taxable income will be allocated to the Holders of beneficial interests in the Liquidating Trust in accordance with each such Holder's Pro Rata share of the Liquidating Trust's interests. The character of items of income, deduction and credit to any Holder and the ability of such Holder to benefit from any deductions or losses may depend on the particular situation of such Holder.

Events subsequent to the date of this Disclosure Statement, such as the enactment of additional tax legislation, could also change the federal income tax consequences of the Plan and the transactions contemplated thereunder.

D. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIM HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

ARTICLE X

RECOMMENDATION AND CONCLUSION

This Disclosure Statement was approved by the Court after notice and a hearing. The Court has determined that this Disclosure Statement contains information adequate to permit holders of Claims to make an informed judgment about the Plan. Such approval, however, does not mean that the Court recommends either acceptance or rejection of the Plan.

The Debtors believe that confirmation and consummation of the Plan is in the best interests of the Debtors, their estates and their creditors. The Plan provides for an equitable distribution to creditors. The Debtors believe that any alternative to confirmation of the Plan, such as liquidation under chapter 7 of the Bankruptcy Code, could result in significant delay, litigation and additional costs, as well as a reduction in the distributions to Holders of Claims in certain Classes. Consequently, the Debtors urge all eligible Holders of Impaired Claims to vote to ACCEPT the Plan, and to complete and return their Ballots so that they will be RECEIVED by the Voting Agent on or before the Voting Deadline.

Dated: Wilmington, Delaware
November 10, 2014

MACKEYSER HOLDINGS, LLC, et al.,
Debtors and Debtors-in-Possession

By: DRAFT
Thomas J. Allison
Chief Executive Officer

COLE, SCHOTZ, MEISEL, FORMAN
& LEONARD, P.A.

By: DRAFT
David R. Hurst (I.D. No. 3743)
Marion M. Quirk (I.D. No. 4136)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
(302) 652-3131

*Counsel for the Debtors and
Debtors-in-Possession*

EXHIBIT A

Joint Plan of Liquidation

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

-----	X	
	:	
In re:	:	Chapter 11
	:	
MACKEYSER HOLDINGS, LLC, <u>et al.</u> ,	:	Case No. 14-11550 (CSS)
	:	
Debtors.	:	Jointly Administered
	:	
-----	X	

**JOINT PLAN OF LIQUIDATION PURSUANT TO CHAPTER 11
OF THE BANKRUPTCY CODE PROPOSED BY THE DEBTORS AND
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**
David R. Hurst (I.D. No. 3743)
Marion M. Quirk (I.D. No. 4136)
500 Delaware Ave., Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131

*Counsel for the Debtors and
Debtors-in-Possession*

COOLEY LLP
Lawrence Gottlieb
Michael Klein
Robert Winning
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 479-6000

- and -

**KLEHR HARRISON HARVEY
BRANZBURG LLP**
Richard Michael Beck
919 Market Street, Suite 1000
Wilmington, Delaware 19801
Telephone: (302) 426-1189

*Counsel to the Official Committee of
Unsecured Creditors*

Dated: Wilmington, Delaware
November 10, 2014

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
ARTICLE I	
DEFINITIONS AND RULES OF INTERPRETATION	1
A. Rules of Construction	1
B. Definitions	1
C. Rules of Interpretation	15
D. Computation of Time.....	16
E. Governing Law	16
ARTICLE II	
CLASSIFICATION OF CLAIMS AND INTERESTS	16
A. Introduction.....	16
B. Unclassified Claims	17
1. DIP Facility Claim.....	17
2. Administrative Claims	17
3. Priority Tax Claims.....	17
C. Unimpaired Class of Claims	17
1. Class 1: Miscellaneous Secured Claims	17
D. Impaired Classes of Claims	17
1. Class 2: Priority Non-Tax Claims.....	17
2. Class 3: HEP Prepetition Secured Claim	17
3. Class 4: General Unsecured Claims.....	17
4. Class 5: Intercompany Claims	17
5. Class 6: Subordinated 510(c) Claims.....	17
6. Class 7: Subordinated 510(b) Claims	17
E. Impaired Class of Interests.....	17
1. Class 8: Interests	17
ARTICLE III	
TREATMENT OF CLAIMS AND INTERESTS	18
A. Unclassified Claims	18
1. DIP Facility Claim.....	18
2. Administrative Claims	18
3. Priority Tax Claims.....	18
B. Unimpaired Claims	19
1. Class 1: Miscellaneous Secured Claims	19
C. Impaired Claims.....	19
1. Class 2: Priority Non-Tax Claims.....	19
2. Class 3: HEP Prepetition Secured Claim	19
3. Class 4: General Unsecured Claims.....	20
4. Class 5: Intercompany Claims	20
5. Class 6: Subordinated 510(c) Claims.....	20
6. Class 7: Subordinated 510(b) Claims	20
D. Interests	20
1. Class 8: Interests	20
E. Special Provision Regarding Unimpaired Claims	20

F.	Allowed Claims	21
G.	Special Provisions Regarding Insured Claims	21

ARTICLE IV

ACCEPTANCE OR REJECTION OF THE PLAN	22	
A.	Acceptance by an Impaired Class	22
B.	Presumed Acceptances by Unimpaired Classes.....	22
C.	Classes Deemed to Reject Plan.....	22
D.	Impaired Classes of Claims Entitled to Vote	22
E.	Vacant Classes	22
F.	Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code	22

ARTICLE V

MEANS FOR IMPLEMENTATION OF THE PLAN.....	23	
A.	Substantive Consolidation	23
1.	Consolidation of the Chapter 11 Estates	23
2.	Substantive Consolidation Order	23
B.	Corporate Action.....	23
1.	Merger and Dissolution of Debtors.....	23
2.	Cancellation of Existing Securities and Agreements.....	24
3.	No Further Action.....	25
4.	Effectuating Documents; Further Transactions	25
C.	Books and Records; Privilege Matters.....	25
1.	Legal Representation of the Debtors and Committee After the Effective Date... 25	
2.	Transfer of Debtors’ Books and Records.....	26
3.	Transfer of Evidentiary Privileges; Document Requests	26
D.	Creditors’ Committee and Liquidating Trust Committee	27
1.	Dissolution of the Committee	27
2.	Creation of Liquidating Trust Committee and Procedures Related Thereto..... 27	
3.	Standing of the Liquidating Trust Committee	27
4.	Function and Duration of the Liquidating Trust Committee	27
5.	Indemnification of Liquidating Trustee and Liquidating Trust Committee..... 28	
6.	Recusal of Liquidating Trust Committee Members.....	28
E.	The Liquidating Trust	28
1.	Establishment and Administration of the Liquidating Trust.....	28
2.	Assets of the Liquidating Trust.....	29
3.	Other Funds to be Transferred to the Liquidating Trust	29
4.	Rights and Powers of the Liquidating Trust and the Liquidating Trustee	29
5.	Liquidating Trust Interests.....	30
6.	Appointment of a Liquidating Trustee.....	31
7.	Distributions to Holders of Allowed Claims	31
8.	Reporting Requirement of Liquidating Trust	32
F.	No Revesting of Assets in Debtors	32
G.	Limited Release of Liens	32
H.	Accounts and Reserves	32
1.	Professional Fee Reserve	32
2.	Administrative Claims Reserve	33
3.	Other Reserves.....	33
I.	Exemption from Certain Transfer Taxes	33
J.	Applicability of Sections 1145 and 1125(e) of the Bankruptcy Code	34
K.	Preservation of Causes of Action.....	34

L.	Effectuating Documents; Further Transactions	35
ARTICLE VI		
PROVISIONS GOVERNING DISTRIBUTIONS		
A.	Limitations on Distributions on Allowed Claims	35
B.	Disbursing Agent	35
C.	Delivery of Distributions and Undeliverable or Unclaimed Distributions	35
1.	Delivery of Distributions in General.....	35
2.	Undeliverable and Unclaimed Distributions.....	36
D.	Means of Cash Payment	37
E.	Interest on Claims	37
F.	Withholding and Reporting Requirements	37
G.	Setoffs	37
H.	Procedure for Treating and Resolving Disputed, Contingent and/or Unliquidated Claims	38
1.	Objection Deadline; Prosecution of Objections.....	38
2.	No Distributions Pending Allowance	38
3.	Disputed Claims Reserve.....	39
4.	Distributions After Allowance.....	39
5.	De Minimis Distributions	39
6.	Fractional Dollars	39
7.	Allocation of Plan Distributions Between Principal and Interest	40
8.	Distribution Record Date	40
ARTICLE VII		
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....		
A.	Rejected Contracts and Leases.....	40
B.	Rejection Damages Bar Date	40
C.	Indemnification Obligations	41
ARTICLE VIII		
CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN		
A.	Conditions to Confirmation	41
B.	Conditions to Effective Date.....	42
C.	Waiver of Conditions.....	42
D.	Consequences of Non-Occurrence of Effective Date	42
ARTICLE IX		
ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS.....		
A.	Professional Fee Claims.....	43
1.	Final Fee Applications	43
2.	Employment of Professionals after the Effective Date.....	43
B.	Substantial Contribution Compensation and Expenses Bar Date	43
C.	Other Administrative Claims	43
ARTICLE X		
EFFECTS OF CONFIRMATION		
A.	Compromise and Settlement of Claims and Controversies	44
B.	Binding Effect.....	44
C.	Discharge of the Debtors	44
D.	Releases	44

1.	Releases by the Debtors	44
2.	Releases by the Global Settlement Parties	45
3.	Release by Holders of Claims and Interests	45
E.	Exculpation and Limitation of Liability	46
F.	Injunction	47
G.	Compromises and Settlements	48
H.	Satisfaction of Subordination Rights	48
ARTICLE XI		
	RETENTION OF JURISDICTION	48
A.	Retention of Jurisdiction by the Court	48
B.	Retention of Non-Exclusive Jurisdiction by the Court	50
C.	Failure of Court to Exercise Jurisdiction	50
ARTICLE XII		
	MISCELLANEOUS PROVISIONS	51
A.	Modifications and Amendments	51
B.	Severability of Plan Provisions	51
C.	Successors and Assigns	51
D.	Payment of Statutory Fees	51
E.	Revocation, Withdrawal or Non-Consummation	52
F.	Service of Documents	52
G.	Plan Supplement(s)	53

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Title</u>
A	Liquidating Trust Agreement
B	Contracts To Be Assumed Under Plan
C	Non-Exclusive List of Retained Claims and Causes of Action

Note: To the extent that the foregoing Exhibits are not attached to this Plan, such Exhibits will be filed with the Court in Plan Supplement(s) filed on or before the date(s) set for the filing of such documents and forms of documents.

INTRODUCTION¹

MacKeyser Holdings, LLC and the twenty-two (22) of its direct and indirect subsidiaries that are debtors and debtors-in-possession in the above-captioned Chapter 11 Cases and the Official Committee of Unsecured Creditors propose the following plan of liquidation. The Plan contemplates the liquidation of the Debtors and the resolution of outstanding Claims against and Interests in the Debtors pursuant to section 1121(a) of the Bankruptcy Code. The Debtors and the Committee are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

For a discussion of the Debtors' history, businesses, properties, operations, the Chapter 11 Cases, risk factors, a summary of this Plan and certain other related matters, reference is hereby made to the Disclosure Statement that is being distributed herewith. In the event of any inconsistencies between the Plan and the Disclosure Statement, the terms and provisions of the Plan shall control.

All Holders of Claims that are eligible to vote on the Plan are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019 and Article XII.A of this Plan, the Debtors reserve the right to alter, amend, modify (one or more times), revoke or withdraw the Plan prior to its substantial consummation.

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

A. Rules of Construction

For purposes of this Plan, except as expressly provided herein or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine.

B. Definitions

1.1 "503(b)(9) Claim" means a Claim arising under section 503(b)(9) of the Bankruptcy Code against the Debtors, which were to be filed against the Debtors on or before the 503(b)(9) Claims Bar Date.

¹ Capitalized terms used in this Introduction shall have the meanings ascribed to such terms in Article I hereof.

1.2 “503(b)(9) Claims Bar Date” means November 14, 2014 at 5:00 p.m. (Eastern Time) as established by the Bar Date Order.

1.3 “Administrative Claim” means a Claim for payment of an administrative expense of a kind specified in sections 503(b) or 1114(e)(2) of the Bankruptcy Code and entitled to priority in payment under sections 507(a)(2) or 507(b) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (such as wages, salaries or commissions for services and payments for goods and other services and leased premises) and Claims by Governmental Units for taxes accruing after the Petition Date (but excluding Claims related to taxes accruing on or before the Petition Date); (b) Professional Fee Claims; (c) all fees and charges assessed against the Estates under 28 U.S.C. § 1930; (d) obligations designated as Administrative Claims pursuant to an order of the Court; and (e) 503(b)(9) Claims; provided, however, that HEP shall not be required to File an Administrative Claim(s) with respect to the “Post-Closing DIP Fees” and/or the “Settlement DIP Fees” (each as defined in the Global Settlement Order) approved by the Global Settlement Order, and HEP shall have and shall be deemed to have Allowed Administrative Claims on account of such “Post-Closing DIP Fees” and “Settlement DIP Fees,” which Claims shall be included in HEP’s Allowed DIP Facility Claim.

1.4 “Administrative Claims Bar Date” means for Administrative Claims, other than 503(b)(9) Claims and Professional Fee Claims: (a) November 14, 2014 at 5:00 p.m. (Eastern Time), for Administrative Claims that accrued for the period subsequent to the Petition Date through September 30, 2014; and (b) for Administrative Claims that accrued after September 30, 2014, the date that falls on the thirtieth (30th) day following the Effective Date, in each case by which Holders of Administrative Claims shall File with the Claims Agent and serve on the Debtors or the Liquidating Trustee, as applicable, requests for payment, in writing, together with supporting documents, substantially complying with the Bar Date Order, the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; provided, however, that HEP shall not be required to File an Administrative Claim(s) with respect to the “Post-Closing DIP Fees” and/or the “Settlement DIP Fees” (each as defined in the Global Settlement Order) approved by the Global Settlement Order, and HEP shall have and shall be deemed to have Allowed Administrative Claims on account of such “Post-Closing DIP Fees” and “Settlement DIP Fees,” which Claims shall be included in HEP’s Allowed DIP Facility Claim.

1.5 “Administrative Claims Estimate” means the amount set forth in the Plan Supplement that represents the estimated amount, exclusive of Professional Fee Claims, of all unpaid Claims that will be Allowed Administrative Claims.

1.6 “Administrative Claims Objection Deadline” means the deadline for filing objections to requests for payment of Administrative Claims filed on or before the Administrative Claims Bar Date, which deadline shall be 120 days after the Effective Date, unless otherwise extended by order of the Court.

1.7 “Administrative Claims Reserve” means the reserve of Cash funded by the Debtors and maintained by the Liquidating Trust for the benefit of Holders of Allowed Administrative Claims (exclusive of Holders of Professional Fee Claims, the reserve for which

Holders shall be the Professional Fee Reserve) in an amount equal to the Administrative Claims Estimate.

1.8 “Affiliate” means “affiliate” as defined in section 101(2) of the Bankruptcy Code.

1.9 “Affiliate Debtor” means all of the Debtors, except MacKeyser.

1.10 “Allowed” means, when used in reference to a Claim within a particular Class, an Allowed Claim in the specified Class or of a specified type.

1.11 “Allowed Claim” means a Claim or any portion thereof (a) that has been allowed by a Final Order of the Court, (b) that either (x) has been Scheduled as a liquidated, non-contingent and undisputed Claim in an amount greater than zero in the Schedules, or (y) is the subject of a timely filed Proof of Claim and, as to both (x) and (y), either (i) no objection to its allowance has been filed (either by way of objection or amendment to the Schedules) on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Court or (ii) any objection to its allowance has been settled, waived through payment or withdrawn, or has been denied by a Final Order, or (c) that is expressly allowed in a liquidated amount (x) in the Plan or (y) after the Effective Date, by the Liquidating Trustee in writing; provided, however, that with respect to an Administrative Claim, “Allowed Claim” means an Administrative Claim as to which a timely written request for payment has been made in accordance with applicable bar dates for such requests set by the Court (if such written request is required) in each case as to which (a) the Debtors or the Liquidating Trustee, as applicable, or any other party in interest (x) has not filed an objection on or before the Administrative Claims Objection Deadline or the expiration of such other applicable period fixed by the Court or (y) has interposed a timely objection and such objection has been settled, waived through payment or withdrawn, or has been denied by Final Order, or (b) after the Effective Date, the Liquidating Trustee has expressly allowed in a liquidated amount in writing. For purposes of computing Distributions under this Plan, a Claim that has been deemed “Allowed” shall not include interest, fees, costs or charges on such Claim from and after the Petition Date, except as provided in section 506(b) of the Bankruptcy Code or as otherwise expressly set forth in this Plan.

1.12 “Avoidance Actions” means any and all claims and causes of action of the Debtors arising under chapter 5 of the Bankruptcy Code, including, without limitation, sections 544, 545, 547, 548, 549 and 550 thereof, or their state law analogs.

1.13 “Ballot” means each of the ballot forms distributed with the Disclosure Statement to Holders of Impaired Claims entitled to vote under Article IV.D hereof in connection with the solicitation of acceptances of the Plan.

1.14 “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as such title has been, or may be, amended from time to time, to the extent that any such amendment is applicable to these Chapter 11 Cases.

1.15 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms and the Local Rules, as each has been, or may be, amended from time to time, to the extent that any such amendment is applicable to these Chapter 11 Cases.

1.16 “Bar Date” means, with respect to any particular Claim, the specific date set by the Court as the last day for Filing Proofs of Claim against the Debtors in these Chapter 11 Cases for that specific Claim.

1.17 “Bar Date Order” means the Order Pursuant to Sections 105(a), 501, 502, 503 and 1111(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and Local Rules 1009-2 and 2002-1(e), (I) Establishing Bar Dates for Filing Claims Against the Debtors and (II) Approving Form and Manner of Notice Thereof [Docket No. 530].

1.18 “Books and Records” means any and all books and records of any of the Debtors, including any and all documents and any and all computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books and records or data, along with books and records of any Debtor maintained by or in the possession of third parties, wherever located.

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

1.20 “Case Interest Rate” means the federal judgment rate provided in 28 U.S.C. § 1961 in effect on the Petition Date, which rate is ___%.

1.21 “Cash” means legal tender of the United States of America or equivalents thereof.

1.22 “Causes of Action” means any and all claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and Claims, whether known or unknown, reduced to judgment or not reduced to judgment, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, in law, equity or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Bankruptcy Cases, through and including the Effective Date, that any Debtor and/or Estate may hold against any Person or Entity, except those Persons and Entities released pursuant to Article X.D.1 of the Plan. A non-exclusive list of retained Causes of Action is set forth on Exhibit C hereto.

1.23 “Chapter 11 Cases” means the chapter 11 cases commenced by the Debtors and jointly administered under case number 14-11550 (CSS) in the Court.

1.24 “Claim” means a claim against any Debtor, whether or not asserted, as such term is defined in section 101(5) of the Bankruptcy Code.

1.25 “Claimholder” means the holder of a Claim.

1.26 “Claims Agent” means American Legal Claims Service or any successor thereto.

1.27 “Claims Objection Deadline” means the last day for filing objections to Claims (other than Disallowed Claims for which no objection or request for estimation is required),

which day shall be three hundred and sixty-five (365) days after the Effective Date, or such later date as may be ordered by the Court.

1.28 “Class” means each category or group of Holders of Claims or Interests that has been designated as a class in Article III of this Plan.

1.29 “Collateral” means any property or interest in property of a Debtor’s Estate subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

1.30 “Committee” means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases.

1.31 “Confirmation” means the entry of the Confirmation Order, subject to all conditions specified in Article VIII.A having been satisfied or waived pursuant to Article VIII.C.

1.32 “Confirmation Date” means the date of entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

1.33 “Confirmation Hearing” means the hearing(s) before the Court to consider confirmation of the Plan and related matters pursuant to section 1128 of the Bankruptcy Code, as such hearing(s) may be adjourned or continued from time to time.

1.34 “Confirmation Order” means the order entered by the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.35 “Consummation” means the occurrence of the Effective Date.

1.36 “Contingent” means, with reference to a Claim, a Claim that has not accrued or is not otherwise payable and the accrual of which, or the obligation to make payment on which, is dependent upon a future event that may or may not occur.

1.37 “Court” means the United States Bankruptcy Court for the District of Delaware or such other court as may have jurisdiction over the Chapter 11 Cases.

1.38 “Creditor” means any Person that holds a Claim against one or more of the Debtors.

1.39 “Debtors” means, together, MacKeyser and the Affiliate Debtors.

1.40 “DIP Documents” has the meaning ascribed to such term in the Final DIP Order.

1.41 “DIP Facility Termsheet” means that certain Debtor-in-Possession Term Sheet, dated as of June 22, 2014, as amended, modified, restated or supplemented.

1.42 “DIP Facility Claim” means the Allowed Claim by HEP arising under or as a result of the DIP Facility Termsheet and/or the Final DIP Order.

1.43 “DIP Liens” has the meaning ascribed to such term in the Final DIP Order.

1.44 “Disallowed” means, when used in reference to a Claim, a Claim or any portion thereof that (a) has been disallowed by a Final Order, (b) is Scheduled at zero or as contingent, disputed or unliquidated and as to which no Proof of Claim has been filed by the Bar Date or deemed timely filed with the Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, (c) is not Scheduled, and as to which (i) no Proof of Claim has been filed by the Bar Date or deemed timely filed with the Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, and (ii) no request for payment of an Administrative Claim has been filed by the Administrative Claims Bar Date or deemed timely filed with the Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, or (d) after the Effective Date, has been disallowed in a written agreement by and between the Liquidating Trustee and the Holder of such Claim.

1.45 “Disbursing Agent” means (a) on or prior to the Effective Date, the Debtors, and (b) after the Effective Date, the Liquidating Trustee; provided, however, that the Debtors or the Liquidating Trustee may, in their discretion, retain a third party to act as Disbursing Agent.

1.46 “Disclosure Statement” means the written disclosure statement (including all exhibits and schedules thereto) that relates to the Plan, as the same may be amended, supplemented, revised or modified from time to time, as approved by the Court pursuant to the Disclosure Statement Approval Order.

1.47 “Disclosure Statement Approval Order” means the Final Order approving, among other things, the adequacy of the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code.

1.48 “Disputed” means, when used in reference to a Claim, a Claim or any portion thereof that is neither an Allowed Claim nor a Disallowed Claim.

1.49 “Disputed Claim Amount” means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) the liquidated amount set forth in the Proof of Claim relating to a Disputed Claim; (ii) an amount agreed to by the Debtors or the Liquidating Trustee, as applicable, and the Holder of such Disputed Claim; or (iii) if a request for estimation is filed by any party, the amount at which such Claim is estimated by the Court; (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) an amount agreed to by the Debtors or the Liquidating Trustee, as applicable, and the Holder of such Disputed Claim or (ii) the amount estimated by the Court with respect to such Disputed Claim; or (c) if the Claim is a Disallowed Claim, zero.

1.50 “Disputed Claims Reserve” means the reserve established and maintained by the Liquidating Trust pursuant to and in accordance with the terms of the Liquidating Trust Agreement for the payment of Disputed Claims that become Allowed Claims after the Effective Date. The Disputed Claims Reserve need not be maintained by the Liquidating Trust in a segregated account.

1.51 “Distribution” means the distributions to be made by the Disbursing Agent in accordance with the Plan of, as the case may be: (a) Cash or (b) any other consideration or

residual value distributed to Holders of Allowed Claims under the terms and provisions of the Plan.

1.52 “Distribution Date” means the Effective Date or the date, occurring as soon as practicable after the Effective Date, on which the initial Distributions are made to Holders of Allowed Claims.

1.53 “Distribution Record Date” means the record date for the purpose of determining Holders of Allowed Claims entitled to receive Distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date designated in the Confirmation Order or any subsequent Court order.

1.54 “Effective Date” means the first Business Day on which all conditions to the consummation of the Plan set forth in Article VIII.B hereof have been satisfied or waived in accordance with Article VIII.C.

1.55 “Effective Date Free Cash” means all Cash of the Debtors as of the Effective Date, other than (a) Cash required to fund the Administrative Claims Reserve and the Professional Fee Reserve and (b) asset sale proceeds being held in escrow for the benefit of holders of Permitted Senior Liens (as defined in the Final DIP Order) unless and until released from escrow by Final Order of the Court or pursuant to agreement among the holder(s) of such Permitted Senior Liens, the Debtors, the Committee and HEP.

1.56 “Entity” has the meaning ascribed to such term in section 101(15) of the Bankruptcy Code.

1.57 “Estate(s)” means, individually, the estate of any Debtor in these Chapter 11 Cases and, together, the estates of the Debtors created under section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases on the Petition Date.

1.58 “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.

1.59 “Exhibit” means an exhibit attached either to this Plan or the Disclosure Statement.

1.60 “Face Amount” means (i) when used in reference to a Disputed or Disallowed Claim, the Disputed Claim Amount, and (ii) when used in reference to an Allowed Claim, the Allowed amount of such Claim.

1.61 “File,” “Filed” or “Filing” means, respectively, file, filed or filing with the Court or its authorized designee in these Chapter 11 Cases.

1.62 “Final DIP Order” means the Final Order (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364, (II) Granting Liens and Superpriority Claims to Postpetition Lenders Pursuant to 11 U.S.C. §§ 364 and 507, (III) Authorizing Use of Cash Collateral Pursuant to 11 U.S.C. § 363, and (IV) Providing

Adequate Protection to Prepetition Secured Lenders Pursuant to 11 U.S.C. §§ 361, 362, 363, 364, and 507 [Docket No. 157], as amended by the Global Settlement Order.

1.63 “Final Order” means an order of the Court (x) as to which the time to appeal, petition for certiorari, or move for reargument, rehearing or new trial has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument, rehearing or new trial shall then be pending; (y) as to which any right to appeal, petition for certiorari, reargue, rehear or retry shall have been waived in writing; or (z) in the event that an appeal, writ of certiorari, reargument, rehearing or new trial has been sought, as to which (i) such order of the Court shall have been affirmed by the highest court to which such order is appealed, (ii) certiorari has been denied as to such order, or (iii) reargument or rehearing or new trial from such order shall have been denied, and the time to take any further appeal, petition for certiorari or move for reargument, rehearing or new trial shall have expired without such actions having been taken.

1.64 “General Bar Date” means November 14, 2014 at 5:00 p.m. (Eastern Time) for Claims arising on or before the Petition Date, including General Unsecured Claims, Priority Non-Tax Claims and 503(b)(9) Claims, as established by the Bar Date Order.

1.65 “General Unsecured Claim” means a Claim against any or all of the Debtors that is not a DIP Facility Claim, Administrative Claim, Priority Tax Claim, Miscellaneous Secured Claim, Priority Non-Tax Claim, HEP Prepetition Secured Claim, Intercompany Claim, Subordinated 510(b) Claim or Subordinated 510(c) Claim.

1.66 “Global Settlement” means the settlement by and among the Debtors, HEP and the Committee which was approved by the Global Settlement Order.

1.67 “Global Settlement Order” means the Order (A) Authorizing Entry Into and Performance Under the Compromise and Settlement by and Among the Debtors, the Official Committee of Unsecured Creditors, and Certain of the Debtors’ Secured Lenders Pursuant to 11 U.S.C. § 363(b) and Rule 9019 of the Federal Rules of Bankruptcy Procedure and (B) Approving Supplement to Final DIP Order [Docket No. 568]

1.68 “Global Settlement Parties” means the Debtors, HEP and the Committee, and their successors or assigns, including the Liquidating Trust and the Liquidating Trust Committee.

1.69 “Governmental Unit” has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

1.70 “HEP” means Health Evolution Partners Fund I (AIVI), L.P. (f/k/a Health Evolution Partners Growth (AIV I), LP), Series F of Health Evolution Partners Co-Invest, LLC, Series G of Health Evolution Partners Co-Invest, LLC, and the affiliates of each of the foregoing.

1.71 “HEP Actions” means HEP’s direct and derivative causes of action against Pierre Keyser, Victoria Keyser, Erica Perreira, Erik Larsen and Sean Lyman, as well as related rights to or under any Debtor insurance policies.

1.72 “HEP Prepetition Liens” has the meaning ascribed to such term in the Final DIP Order.

1.73 “HEP Prepetition Secured Claim” means the Allowed Claim of HEP arising under the HEP Prepetition Secured Promissory Note, which Claim has been Allowed in the fixed amount of \$2,250,093.27 pursuant to the Global Settlement Order.

1.74 “HEP Prepetition Secured Promissory Note” means that certain Secured Promissory Note, dated as of May 29, 2014, among MacKeyser, as borrower, and Health Evolution Partners Fund I, L.P. and Series F of Health Evolution Partners Co-Invest, LLC.

1.75 “HEP Released Parties” means HEP and its current participants, officers, directors, principals, agents, attorneys and predecessors-in-interest; Jay Rose; and Adam Grossman.

1.76 “Holder” means an Entity holding a Claim, Interest or Liquidating Trust Interest.

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

1.78 “Impaired Class” means a Class of Claims or Interests that is Impaired.

1.79 “Indemnified Person” means the (i) Liquidating Trustee, (ii) Liquidating Trust Committee, and (iii) members of the Liquidating Trust Committee in their capacities as such, and (iv) with respect to any of the foregoing, any such Person’s current equity holders, including shareholders, partnership interest holders and limited liability company unit holders, Affiliates, partners, subsidiaries, members, officers, directors, managers serving on a board of managers, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals, together with their respective predecessors, successors and assigns (in each case, solely in their capacity as such).

1.80 “Initial Liquidating Trust Funding Amount” means an amount of Cash to be provided by the Debtors, as initial funding for the Liquidating Trust, which amount shall be the lesser of (i) \$150,000 and (ii) the Effective Date Free Cash.

1.81 “Insider” has the meaning ascribed to such term in section 101(31) of the Bankruptcy Code.

1.82 “Insured Claim” means any Claim or portion of a Claim that is insured under the Debtors’ insurance policies, but only to the extent of such coverage.

1.83 “Intercompany Claims” means any Claim held by a Debtor against another Debtor, including, without limitation: (i) any account reflecting intercompany book entries by a Debtor with respect to another Debtor, (ii) any Claim not reflected in such book entries that is held by a Debtor against another Debtor, and (iii) any derivative Claim asserted by or on behalf of one Debtor against another Debtor.

1.84 “Interests” means the legal interests, equitable interests, contractual interests, equity interests or ownership interests, or other rights of any Person in the Debtors, including all capital stock, stock certificates, common stock, preferred stock, partnership interests, limited liability company or membership interests, rights, treasury stock, options, warrants, contingent

warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtors, partnership interests in the Debtors' stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights, subscription rights and liquidation preferences, puts, calls, awards or commitments of any character whatsoever relating to any such equity, common stock, preferred stock, ownership interests or other shares of capital stock of the Debtors or obligating the Debtors to issue, transfer or sell any shares of capital stock whether or not certificated, transferable, voting or denominated stock or a similar security.

1.85 “Investigation Parties” means (i) [Essilor of America, Inc. and its affiliates]; (ii) WCEC, LLC, Barry Katzman, MD, Inc. and/or Dr. Barry Katzman and their respective affiliates; (iii) Pierre Keyser, Erica Perreira, Erik Larsen and Sean Lyman, and individuals and entities affiliated therewith; and (iv) Kroll Inc.

1.86 “IRS” means the Internal Revenue Service.

1.87 “Lien” has the meaning ascribed to such term in section 101(37) of the Bankruptcy Code.

1.88 “Liquidating Trust” means the trust described in Article V.E of the Plan to be established under Delaware trust law that shall effectuate the wind down of the Debtors and make Distributions pursuant to the terms of the Plan and Liquidating Trust Agreement. With respect to any action required or permitted to be taken by the Liquidating Trust, the term includes the Liquidating Trustee or any other person authorized to take such action in accordance with the Liquidating Trust Agreement.

1.89 “Liquidating Trust Agreement” means the agreement, substantially in the form attached hereto as Exhibit A, establishing the Liquidating Trust in conformity with the provisions of the Plan, which shall be approved in the Confirmation Order and entered into by the Debtors, on behalf of the beneficiaries, and the Liquidating Trustee on the Effective Date pursuant to the terms of the Plan.

1.90 “Liquidating Trust Assets” means (i) the HEP Actions; (ii) the Liquidating Trust Claims; (iii) the Debtors' rights and interests in WCEC, LLC; (iv) the Debtors' rights related to (i)-(iii) under any applicable insurance policies; (v) the Effective Date Free Cash; and (vi) all other assets of the Debtors as of the Effective Date; provided, however, that the Liquidating Trust Assets shall not include (a) Cash required to fund the Administrative Claims Reserve and the Professional Fee Reserve and (b) unless otherwise ordered by the Court, asset sale proceeds being held in escrow for the benefit of holders of Permitted Senior Liens (as defined in the Final DIP Order) unless and until released from escrow by Final Order of the Court or pursuant to agreement among the holder(s) of such Permitted Senior Liens, the Debtors, the Committee and HEP.

1.91 “Liquidating Trust Budget” means the budget for the operation of the Liquidating Trust agreed to by the Debtors, HEP and the Committee, which budget is attached to the Liquidating Trust Agreement as Exhibit B.

1.92 “Liquidating Trust Budget Amount” means the total funding to be provided for the operation of the Liquidating Trust in accordance with the Liquidating Trust Budget, which amount includes the Initial Liquidating Trust Funding Amount.

1.93 “Liquidating Trust Claims” means all Causes of Action except Non-Insider Preference Actions.

1.94 “Liquidating Trust Committee” means the committee created hereunder and appointed pursuant to the terms of the Liquidating Trust Agreement that shall provide oversight and direction to the Liquidating Trustee in accordance with the terms of the Liquidating Trust Agreement.

1.95 “Liquidating Trust Interests” means the uncertificated beneficial interests in the Liquidating Trust representing the right of Holders of Allowed Claims to receive Distributions from the Liquidating Trust in accordance with the Liquidating Trust Agreement and the Liquidating Trust Waterfall.

1.96 “Liquidating Trust Proceeds” means the Cash proceeds generated by the Liquidating Trust after the Effective Date of the Plan.

1.97 “Liquidating Trust Termination Date” has the meaning ascribed to such term in Article V.E.7 of the Plan.

1.98 “Liquidating Trust Waterfall” means the priority of payment of Holders of Allowed Claims from the Liquidating Trust Proceeds, which shall be as follows: (i) first, Allowed Administrative Claims, to the extent that such claims have not been satisfied from the Administrative Claims Reserve; (ii) second, to the repayment of the Initial Liquidating Trust Funding Amount to HEP, which shall satisfy in part the Allowed DIP Facility Claim; (iii) third, until the Liquidating Trust Budget Amount is paid in full, 50% to pay the Allowed DIP Facility Claim and 50% to pay the Liquidating Trust Budget Amount; (iv) fourth, until the Allowed DIP Facility Claim is paid in full, 80% to pay the Allowed DIP Facility Claim and 20% to pay Allowed Priority Claims (or, if all Allowed Priority Claims have been paid in full, Allowed General Unsecured Claims); (v) fifth, until HEP has received \$500,000 on account of the Allowed HEP Prepetition Secured Claim, 65% to pay the Allowed HEP Prepetition Secured Claim and 35% to pay Allowed Priority Claims (or, if all Allowed Priority Claims have been paid in full, Allowed General Unsecured Claims); (vi) sixth, until HEP has received \$1,000,000 on account of the Allowed HEP Prepetition Secured Claim, 50% to pay the Allowed HEP Prepetition Secured Claim and 50% to pay Allowed Priority Claims (or, if all Allowed Priority Claims have been paid in full, Allowed General Unsecured Claims); (vii) seventh, until the Allowed HEP Prepetition Secured Claim is paid in full, 35% to pay the Allowed HEP Prepetition Secured Claim and 65% to pay Allowed Priority Claims (or, if all Allowed Priority Claims have been paid in full, Allowed General Unsecured Claims); and (viii) eighth, after the Allowed HEP Prepetition Secured Claim is paid in full, 100% to pay Allowed Priority Claims (or, if all Allowed Priority Claims have been paid in full, Allowed General Unsecured Claims).

1.99 “Liquidating Trustee” means the person jointly appointed by the Debtors, the Committee and HEP in accordance with Article V.E.6 hereof to administer the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement.

1.100 “Local Rules” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

1.101 “MacKeyser” means MacKeyser Holdings, LLC.

1.102 “Miscellaneous Secured Claim” means a Claim, other than the HEP Prepetition Secured Claim or a DIP Facility Claim, (a) that is secured by a Lien on property in which an Estate has an interest, which Lien is valid, perfected and enforceable under applicable law or by reason of a Final Order, or (b) that is subject to setoff under section 553 of the Bankruptcy Code and such right of setoff has been asserted by the holder of such right prior to the Confirmation Date in a properly filed motion for relief from the automatic stay, to the extent of the value of the Claimholder’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

1.103 “Non-Insider Preference Actions” means Causes of Action arising under section 547 of the Bankruptcy Code or its state law analogs against Persons or Entities that are not insiders (as such term is defined in section 101(31) of the Bankruptcy Code) of the Debtors.

1.104 “Objection(s)” means any objection, application, motion, complaint or other legal proceeding seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim).

1.105 “Official Bankruptcy Forms” means the Official Bankruptcy Forms, prescribed by the Judicial Conference of the United States, the observance and use of which is required pursuant to Bankruptcy Rule 9009, as such forms may be amended, revised or supplemented from time to time.

1.106 “Ordinary Course Professionals” means those professionals authorized to be paid by the Debtors pursuant to the 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. 135].

1.107 “Periodic Distribution Date” means the date selected by the Liquidating Trustee, as approved by the Liquidating Trust Committee, for making a Distribution to Holders of Allowed Claims in accordance with Article IV of the Liquidating Trust Agreement.

1.108 “Permissible Investments” means (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, (c) demand deposits or certificates of deposit at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, or (d) such other investments as the Court may approve from time to time.

1.109 “Person” has the meaning ascribed to such term in section 101(41) of the Bankruptcy Code.

1.110 “Petition Date” means June 20, 2014, the date on which the Debtors filed their petitions for relief commencing the Chapter 11 Cases.

1.111 “Plan” means this chapter 11 plan of liquidation proposed by the Plan Proponents, including all exhibits and schedules attached hereto or otherwise incorporated herein, as such Plan may be altered, amended, modified or supplemented from time to time, including in accordance with its terms, the Bankruptcy Code and the Bankruptcy Rules.

1.112 “Plan Proponents” means the Debtors and the Committee.

1.113 “Plan Supplement” means the compilation(s) of documents and forms of documents, including any exhibits to the Plan not included herewith, that the Debtors shall file with the Court on or before the Plan Supplement Filing Date.

1.114 “Plan Supplement Filing Date” means the date on which the Plan Supplement shall be filed with the Court, which date shall be at least five (5) days prior to the Voting Deadline or such other date as may be approved by the Court without further notice to parties in interest.

1.115 “Priority Claims” means, collectively, Priority Non-Tax Claims and Priority Tax Claims.

1.116 “Priority Non-Tax Claim” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

1.117 “Priority Tax Claim” means any Claim accorded priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

1.118 “Professional” means any professional employed by the Debtors or the Committee in the Chapter 11 Cases pursuant to sections 327, 328, 363 or 1103 of the Bankruptcy Code and any professionals seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code, other than Ordinary Course Professionals.

1.119 “Professional Fee Bar Date” means the deadline for Filing all applications for Professional Fee Claims, which shall be forty-five (45) days after the Effective Date, as set forth in Article IX.A.1 herein.

1.120 “Professional Fee Claim” means a Claim of a Professional pursuant to sections 327, 328, 330, 331 or 503(b) for compensation or reimbursement of costs and expenses relating to services performed after the Petition Date and prior to and including the Effective Date.

1.121 “Professional Fee Estimate” means (i) with respect to any Professional, a good-faith estimate of such Professional’s anticipated accrued unpaid Professional Fee Claims as of

the Effective Date to be provided by each Professional in writing to the Debtors prior to the commencement of the Confirmation Hearing, or in the absence of such a writing, to be prepared by the Debtors, and (ii) collectively, the sum of all individual Professional Fee Estimates, which Professional Fee Estimate shall be consistent with and not exceed the budget attached as Exhibit 3 to the Global Settlement Order in all respects.

1.122 “Professional Fee Order” means the Administrative Order Under 11 U.S.C. §§ 105(a), 331, Fed. R. Bankr. P. 2016 and Del. Bankr. L.R. 2016-2 Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Committee Members [Docket No. 306].

1.123 “Professional Fee Reserve” means the reserve of Cash funded by the Debtors and maintained by the Liquidating Trust for the benefit of Holders of Allowed Professional Fee Claims in an amount equal to the Professional Fee Estimate, which Professional Fee Reserve shall be consistent with and not exceed the budget attached as Exhibit 3 to the Global Settlement Order in all respects.

1.124 “Proof of Claim” means the proof of claim that must be filed before the applicable Bar Date, which term shall include a request for payment of an administrative expense claim.

1.125 “Pro Rata” means, at any time, the proportion that the Face Amount of a Claim in a particular Class bears to the aggregate Face Amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) in such Class, unless the Plan provides otherwise.

1.126 “Rejection Bar Date” means the deadline by which a counterparty to a rejected Executory Contract or an Unexpired Lease of the Debtors must file a Proof of Claim for damages resulting from the rejection of such Executory Contract or Unexpired Lease by the Debtors, which deadline shall be the later of: (a) the General Bar Date; (b) thirty (30) days after the entry of an order by the Court authorizing such rejection; or (c) such other date, if any, as the Court may fix in the order authorizing such rejection.

1.127 “Releasing Parties” means each Holder of a Claim or Interest that (a) votes to accept the Plan and (b) does not check the appropriate box on such Holder’s ballot to indicate that such Holder opts out of the release(s) set forth in Article X.D.3. of this Plan.

1.128 “Scheduled” means, with respect to any Claim, the status and amount, if any, of that Claim as set forth in the Schedules.

1.129 “Schedules” mean the schedules of assets and liabilities, schedules of executory contracts and statements of financial affairs Filed by each Debtor pursuant to section 521 of the Bankruptcy Code, Bankruptcy Rule 1007 and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended from time to time in accordance with Bankruptcy Rule 1009 or any orders of the Court.

1.130 “Solicitation Procedures Order” means the [Order (A) Approving Disclosure Statement; (B) Scheduling Hearing on Confirmation of Plan; (C) Establishing Deadlines and Procedures for (I) Filing Objections to Confirmation of Plan, (II) Claim Objections and

(III) Temporary Allowance of Claims for Voting Purposes; (D) Determining Treatment of Certain Unliquidated, Contingent or Disputed Claims for Notice, Voting and Distribution Purposes; (E) Setting Record Date; (F) Approving (I) Solicitation Packages and Procedures for Distribution, (II) Form of Notice of Hearing on Confirmation and Related Matters and (III) Forms of Ballots; (G) Establishing Voting Deadline and Procedures for Tabulation of Votes; and (H) Granting Related Relief].

1.131 “Subordinated 510(b) Claim” means any Claim subordinated pursuant to section 510(b) of the Bankruptcy Code, including pursuant to a final order of the Court.

1.132 “Subordinated 510(c) Claim” means any Claim that has been subordinated pursuant to section 510(c) of the Bankruptcy Code, including pursuant to a final order of the Court, or is for punitive or exemplary damages or for a fine or penalty, to the extent permitted by applicable law.

1.133 “Substantial Contribution Claim” means a Claim under subsections 503(b)(3), (b)(4) or (b)(5) of the Bankruptcy Code for compensation or reimbursement of expenses incurred in making a substantial contribution in the Chapter 11 Cases.

1.134 “Substantive Consolidation Order” means the order of the Court, which may be the Confirmation Order, authorizing substantive consolidation of the Estates pursuant to Article V.A hereof.

1.135 “Tax” or “Taxes” means all income, gross receipts, sales, use, transfer, payroll, employment, franchise, profits, property, excise or other similar taxes, estimated import duties, fees, stamp taxes and duties, value added taxes, levies, assessments or charges of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax, or additional amounts imposed by any taxing authority with respect thereto.

1.136 “Unclaimed Distributions” means any undeliverable or unclaimed Distributions.

1.137 “Unexpired Lease(s)” means a lease to which any Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

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

1.139 “U.S. Trustee Fees” means fees payable pursuant to 28 U.S.C. § 1930.

1.140 “Voting Deadline” means January 23, 2015, at 4:00 p.m. (Eastern time), the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted, as set forth by the Solicitation Procedures Order.

C. Rules of Interpretation

For purposes of the Plan, (a) any reference in the Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and

conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (b) any reference in the Plan to an existing document or exhibit Filed or to be Filed means such document or exhibit as it may have been or may be amended, modified or supplemented, (c) unless otherwise specified, all references in the Plan to Sections, Articles, Schedules and Exhibits are references to Sections, Articles, Schedules and Exhibits of or to the Plan, (d) the words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the Plan in its entirety rather than to a particular portion of the Plan, (e) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan, and (f) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

D. Computation of Time

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

E. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) and except as otherwise provided herein or therein, the laws of (i) the State of Delaware shall govern the construction and implementation of the Plan and any agreements, documents and instruments executed in connection with the Plan and (ii) the laws of the state of incorporation of each Debtor shall govern corporate governance matters with respect to such Debtor, in either case without giving effect to the principles of conflicts of law thereof.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

A. Introduction

All Claims and Interests, except the DIP Facility Claim, Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described below, have not been classified.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim also is placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

B. Unclassified Claims

1. **DIP Facility Claim**
2. **Administrative Claims**
3. **Priority Tax Claims**

C. Unimpaired Class of Claims

1. **Class 1: Miscellaneous Secured Claims**

Class 1 consists of all Miscellaneous Secured Claims. Each Holder of an Allowed Miscellaneous Secured Claim shall be placed in a separate subclass, and each subclass shall be treated as a separate class for Distribution purposes.

D. Impaired Classes of Claims

1. **Class 2: Priority Non-Tax Claims**

Class 2 consists of all Priority Non-Tax Claims.

2. **Class 3: HEP Prepetition Secured Claim**

Class 3 consists of the HEP Prepetition Secured Claim.

3. **Class 4: General Unsecured Claims**

Class 4 consists of all General Unsecured Claims.

4. **Class 5: Intercompany Claims**

Class 5 consists of all Intercompany Claims.

5. **Class 6: Subordinated 510(c) Claims**

Class 6 consists of all Subordinated 510(c) Claims.

6. **Class 7: Subordinated 510(b) Claims**

Class 7 consists of all Subordinated 510(b) Claims.

E. Impaired Class of Interests

1. **Class 8: Interests**

Class 8 consists of all Interests.

ARTICLE III

TREATMENT OF CLAIMS AND INTERESTS

A. Unclassified Claims

1. DIP Facility Claim

The Holder of the Allowed DIP Facility Claim shall receive the Liquidating Trust Proceeds allocated to the Holder of the DIP Facility Claim under the Liquidating Trust Waterfall and the Global Settlement Order. The Liquidating Trust Assets transferred by the Debtors and HEP to the Liquidating Trust and the Liquidating Trust Proceeds shall at all times remain subject to the DIP Liens (to the extent that such assets and proceeds were subject to the DIP Liens prior to the Effective Date) without the necessity for an account control agreement, financing statement or any other action or filing by the Holder of the Allowed DIP Facility Claim; provided, however, that the Liquidating Trust shall take all commercially reasonable best efforts to enter into an account control agreement in favor of HEP with respect to the Liquidating Trust Assets and Liquidating Trust Proceeds, and shall reimburse HEP for any reasonable costs it may incur in asserting, filing and perfecting such DIP Liens on HEP's behalf on or after the Effective Date. As set forth in paragraph 17 of the Global Settlement Order, the indemnification provisions as set forth in paragraph 25 of the Final DIP Order and in the DIP Documents shall survive confirmation of this Plan and payment in full and in Cash of the Allowed DIP Facility Claim.

2. Administrative Claims

On or as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) the date such Administrative Claim becomes an Allowed Administrative Claim, a Holder of an Allowed Administrative Claim (other than a Professional) shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, shall have agreed upon in writing; provided, however, that Allowed Administrative Claims with respect to liabilities incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto (x) on or prior to the Effective Date, by the Debtors, and (y) after the Effective Date, by the Disbursing Agent. Allowed Professional Fee Claims shall be paid from the Professional Fee Reserve pursuant to Article V.H.1 of the Plan.

3. Priority Tax Claims

Except to the extent that an Allowed Priority Tax Claim has been paid prior to the Distribution Date, a Holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim, (i) deferred Cash payments over a period not exceeding five years after the Petition Date in an aggregate principal amount equal to the Face Amount of such Allowed Priority Tax Claim, plus

interest on the unpaid portion thereof at the Case Interest Rate from the Effective Date through the date of payment thereof, or (ii) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

B. Unimpaired Claims

1. Class 1: Miscellaneous Secured Claims

On or as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) the date such Miscellaneous Secured Claim becomes an Allowed Miscellaneous Secured Claim, at the option of the Debtors or the Liquidating Trustee, as applicable, a Holder of an Allowed Miscellaneous Secured Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Miscellaneous Secured Claim, (a) Cash from the Debtors equal to the value of such Allowed Miscellaneous Secured Claim, (b) a return of the Holder's Collateral securing the Miscellaneous Secured Claim, (c) such treatment required under section 1124(2) of the Bankruptcy Code for such Claim to be rendered Unimpaired or (d) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

Any Holder of a Miscellaneous Secured Claim shall retain its Lien in the Collateral or the proceeds of the Collateral (to the extent that such Collateral is sold by the Debtors or the Liquidating Trustee free and clear of such Lien) to the same extent and with the same priority as such Lien held as of Petition Date until such time as (A) the Holder of such Miscellaneous Secured Claim (i) has been paid Cash equal to the value of its Allowed Miscellaneous Secured Claim, (ii) has received a return of the Collateral securing the Miscellaneous Secured Claim or (iii) has been afforded such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, shall have agreed upon in writing; or (B) such purported Lien has been determined by an order of the Court to be invalid or otherwise avoidable.

C. Impaired Claims

1. Class 2: Priority Non-Tax Claims

Except to the extent that an Allowed Priority Non-Tax Claim has been paid prior to the Distribution Date, a Holder of an Allowed Priority Non-Tax Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Non-Tax Claim, (i) deferred Cash payments over a period not exceeding five years after the Petition Date in an aggregate principal amount equal to the Face Amount of such Allowed Priority Non-Tax Claim, plus interest on the unpaid portion thereof at the Case Interest Rate from the Effective Date through the date of payment thereof, or (ii) such other treatment as to which such Holder and the Debtors or the Liquidating Trustee, as applicable, shall have agreed upon in writing.

2. Class 3: HEP Prepetition Secured Claim

The Holder of the Allowed HEP Prepetition Secured Claim shall receive the Liquidating Trust Proceeds allocated to the Holder of the HEP Prepetition Secured Claim under the Liquidating Trust Waterfall and the Global Settlement Order. The Liquidating Trust Assets

transferred by the Debtors and HEP to the Liquidating Trust and the Liquidating Trust Proceeds shall at all times remain subject to the HEP Prepetition Liens (to the extent that such assets and proceeds were subject to the HEP Prepetition Liens prior to the Effective Date) without the necessity for an account control agreement, financing statement or any other action or filing by the Holder of the Allowed HEP Prepetition Secured Claim; provided, however, that the Liquidating Trust shall take all commercially reasonable best efforts to enter into an account control agreement in favor of HEP with respect to the Liquidating Trust Assets and Liquidating Trust Proceeds, and shall reimburse HEP for any reasonable costs it may incur in asserting, filing and perfecting such DIP Liens on HEP's behalf on or after the Effective Date.

3. Class 4: General Unsecured Claims

Each Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of, and in exchange for, such Allowed General Unsecured Claim, its Pro Rata share of the Liquidating Trust Proceeds allocated to Holders of General Unsecured Claims under the Liquidating Trust Waterfall.

4. Class 5: Intercompany Claims

In connection with, and as a result of, the substantive consolidation of the Debtors' Estates and the Chapter 11 Cases, on the Effective Date, all Intercompany Claims shall be eliminated and the Holders of Intercompany Claims shall not be entitled to, and shall not receive or retain, any property or interest in property on account of such Claims.

5. Class 6: Subordinated 510(c) Claims

On or after the Effective Date, all Subordinated 510(c) Claims shall be deemed eliminated, cancelled and/or extinguished and each Holder thereof shall not be entitled to, and shall not receive or retain, any property or interest in property on account of such Claims.

6. Class 7: Subordinated 510(b) Claims

On or after the Effective Date, all Subordinated 510(b) Claims shall be deemed eliminated, cancelled and/or extinguished and each Holder thereof shall not be entitled to, and shall not receive or retain, any property or interest in property on account of such Claims.

D. Interests

1. Class 8: Interests

On the Effective Date, all Interests shall be cancelled and each Holder thereof shall not be entitled to, and shall not receive or retain, any property or interest in property on account of such Interests.

E. Special Provision Regarding Unimpaired Claims

Except as otherwise provided in the Plan, the Confirmation Order, any other order of the Court or any document or agreement enforceable pursuant to the terms of the Plan, nothing shall

affect the rights and defenses, both legal and equitable, of the Debtors and/or the Liquidating Trust with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

F. Allowed Claims

Notwithstanding any provision herein to the contrary, the Disbursing Agent shall only make Distributions to Holders of Allowed Claims. No Holder of a Disputed Claim shall receive any Distribution on account thereof until (and then only to the extent that) its Disputed Claim becomes an Allowed Claim. The Debtors and/or the Liquidating Trustee may, in their discretion, withhold Distributions otherwise due hereunder to any Claimholder until the Claims Objection Deadline, to enable a timely objection thereto to be filed. Any Holder of a Claim that becomes an Allowed Claim after the Effective Date shall receive its Distribution in accordance with the terms and provisions of the Plan and/or the Liquidating Trust Agreement, as applicable.

G. Special Provisions Regarding Insured Claims

Distributions under the Plan to each Holder of an Insured Claim shall be in accordance with the treatment provided under the Plan for the Class in which such Insured Claim is classified; provided, however, that the maximum amount of any Distribution under the Plan on account of an Allowed Insured Claim shall be limited to an amount equal to: (a) the applicable deductible or self-insured retention under the relevant insurance policy minus (b) any reimbursement obligations of the Debtors to the insurance carrier for sums expended by the insurance carrier on account of such Claim (including defense costs); provided further, however, that, to the extent that a Claimholder has an Allowed Insured Claim, the amount of which exceeds the total coverage available from the relevant insurance policies of the Debtors, such Claimholder shall have an Allowed General Unsecured Claim in the amount by which such Allowed Insured Claim exceeds the coverage available from the relevant Debtor's insurance policies. Nothing in this Section shall constitute a waiver of any Cause of Action the Debtors may hold against any Person, including the Debtors' insurance carriers, or is intended to, shall or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to any Distribution such Holder may receive under the Plan; provided, however, that the Debtors do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

The Plan shall not expand the scope of, or alter in any other way, the obligations of the Debtors' insurers under their policies, and the Debtors' insurers shall retain any and all defenses to coverage that such insurers may have. The Plan shall not operate as a waiver of any other Claims the Debtors' insurers have asserted or may assert in any Proof of Claim or the Debtors' rights and defenses to such Proofs of Claim.

ARTICLE IV

ACCEPTANCE OR REJECTION OF THE PLAN

A. Acceptance by an Impaired Class

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

B. Presumed Acceptances by Unimpaired Classes

Class 1 is Unimpaired by the Plan. Under section 1126(f) of the Bankruptcy Code, such Claimholders are conclusively presumed to accept the Plan, and the votes of such Claimholders shall not be solicited.

C. Classes Deemed to Reject Plan

Holders of Claims in Classes 5, 6 and 7 and Interest Holders in Class 8 are not entitled to receive or retain any property under the Plan. Under section 1126(g) of the Bankruptcy Code, such Claim and Interest Holders are deemed to reject the Plan, and the votes of such Claimholders and Interest Holders shall not be solicited.

D. Impaired Classes of Claims Entitled to Vote

Because Claims in Classes 2, 3 and 4 are Impaired under the Plan and Holders of such Claims shall receive or retain property under the Plan, Holders of Claims in Classes 2, 3 and 4 are entitled to vote and shall be solicited with respect to the Plan.

E. Vacant Classes

Any Class or sub-Class of Claims or Interests that is not occupied as of the date of the commencement of the Confirmation Hearing by at least one Allowed Claim or Allowed Interest, as applicable, or at least one Claim or Interest, as applicable, temporarily Allowed under Bankruptcy Rule 3018, shall not be included for purposes of (i) voting on the acceptance or rejection of the Plan and (ii) determining acceptance or rejection of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

F. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code

Because Classes 5, 6, 7 and 8 are deemed to reject the Plan, the Debtors shall (i) seek confirmation of the Plan from the Court by employing the “cramdown” procedures set forth in section 1129(b) of the Bankruptcy Code and/or (ii) modify the Plan in accordance with Article XII.A hereof. The Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan or any Plan Exhibit or schedule, including to amend or modify the Plan or such exhibits or schedules to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

ARTICLE V

MEANS FOR IMPLEMENTATION OF THE PLAN

A. Substantive Consolidation

1. Consolidation of the Chapter 11 Estates

The Plan contemplates and is predicated upon entry of an order substantively consolidating the Debtors' Estates and Chapter 11 Cases for all purposes, including voting, Distribution and Confirmation. On the Effective Date, (i) all Intercompany Claims between the Debtors shall be eliminated, (ii) all assets and liabilities of the Affiliate Debtors shall be merged or treated as if they were merged with the assets and liabilities of MacKeyser, (iii) any obligation of a Debtor and any guarantee thereof by another Debtor shall be deemed to be one obligation of MacKeyser, and any such guarantee shall be eliminated, (iv) the issued and outstanding shares of stock and membership interests of the Affiliate Debtors shall be cancelled, (v) each Claim Filed or to be Filed against any Debtor shall be deemed Filed only against MacKeyser and shall be deemed a single Claim against and a single obligation of MacKeyser, and (vi) any joint or several liability of the Debtors shall be deemed one obligation of MacKeyser. On the Effective Date, and in accordance with the terms of the Plan and the consolidation of the assets and liabilities of the Debtors, all Claims based upon guarantees of collection, payment or performance made by one Debtor as to the obligations of another Debtor shall be released and of no further force and effect.

The substantive consolidation effected pursuant to this Article V.A.1 of the Plan (x) shall not affect the rights of any Holder of a Miscellaneous Secured Claim or the rights of HEP with respect to the collateral securing its Claim and (y) shall not, and shall not be deemed to, prejudice the Causes of Action, which shall survive entry of the Substantive Consolidation Order, as if there had been no substantive consolidation.

2. Substantive Consolidation Order

The Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Debtors' Chapter 11 Cases. If no objection to substantive consolidation is timely Filed and served by any Holder of an Impaired Claim affected by the Plan as provided herein on or before the deadline to object to Confirmation of the Plan, or such other date as may be fixed by the Court, the Substantive Consolidation Order (which may be the Confirmation Order) may be approved by the Court. If any such objections are timely Filed and served, a hearing with respect to the substantive consolidation of the Chapter 11 Cases and the objections thereto shall be scheduled by the Court, which hearing may, but is not required to, coincide with the Confirmation Hearing.

B. Corporate Action

1. Merger and Dissolution of Debtors

On the Effective Date, (a) the members of the boards of directors and managers of the Debtors shall be deemed to have resigned; (b) the Affiliate Debtors shall be deemed merged with

and into MacKeyser, without the necessity of any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith; and (c) following such merger, MacKeyser shall be deemed dissolved for all purposes, without the necessity of any other or further actions to be taken by or on behalf of the Debtors or payments to be made in connection therewith; provided, however, that the Debtors or the Liquidating Trust may execute and file documents and take all other actions as they deem appropriate relating to the foregoing corporate actions and, in such event, all applicable regulatory or governmental agencies shall take all steps necessary to allow and effect the prompt merger and dissolution of the Debtors as provided herein, without the payment of any fee, tax or charge and without need for the filing of reports or certificates; provided further, however, that any actions by the Debtors or the Liquidating Trust pursuant to the preceding sentence shall not modify, alter or otherwise affect the merger and dissolution of the Debtors as of the Effective Date pursuant to this Section.

The Chapter 11 Cases of the Affiliate Debtors shall be closed on the Effective Date upon submission of an appropriate order to the Court under certification of counsel, following which any and all proceedings that could have been brought or otherwise commenced in the Chapter 11 Cases of the Affiliate Debtors shall be brought or otherwise commenced in MacKeyser's Chapter 11 Case.

Moreover, on and after the Effective Date, the Debtors (i) shall be deemed to have withdrawn their business operations from any state in which they were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum or take any other action in order to effectuate such withdrawal; and (ii) shall not be liable in any manner to any taxing or other authority for franchise, business, license or similar taxes accruing on or after the Effective Date.

Further, after the Effective Date, the Liquidating Trust may, in the name of the Debtors, take such actions as may be necessary or appropriate to accomplish the purposes of the Liquidating Trust, without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, except as provided in the Plan or the Confirmation Order.

2. Cancellation of Existing Securities and Agreements

Except as otherwise provided in the Plan, and in any contract, instrument or other agreement or document created in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article III hereof, any promissory notes, share certificates, whether for preferred or common stock (including treasury stock), other instruments evidencing any Claims or Interests, other than a Claim that is being Reinstated and rendered unimpaired, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Interests shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under the notes, share certificates and other agreements and instruments governing such Claims and Interests shall be discharged; provided, however, that nothing in the foregoing shall apply to the Allowed DIP Facility Claim, the DIP Facility Termsheet, the Final DIP Order, the DIP Documents, or any other agreement or document related to any of the foregoing, all of which

documents, as modified by the Global Settlement Order, shall remain in full force and effect notwithstanding anything to the contrary in this Plan, until the Allowed DIP Facility Claim is satisfied in full and in Cash. The holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

3. No Further Action

Each of the matters provided for under the Plan involving the organizational structure of the Debtors or corporate or limited liability company action to be taken by or required of the Debtors shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement of further action by any Person, including but not limited to, the Liquidating Trustee, Holders of Claims or Interests against or in the Debtors, or directors, managers or officers of the Debtors.

4. Effectuating Documents; Further Transactions

Any appropriate officer of MacKeyser shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The secretary of MacKeyser shall be authorized to certify or attest to any of the foregoing actions.

C. Books and Records; Privilege Matters

1. Legal Representation of the Debtors and Committee After the Effective Date

Upon the Effective Date, the attorney-client relationship between (i) the Debtors and their current counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., and (ii) the Committee and its current counsel, Cooley LLP and Klehr Harrison Harvey Branzburg LLP, shall be deemed terminated. No successor to the Debtors and/or the Committee, whether under this Plan or otherwise, including but not limited to the Liquidating Trust and/or the Liquidating Trust Committee shall be deemed to succeed to the attorney-client relationship that currently exists between the Debtors and its counsel and the Committee and its counsel. Subject only to the applicable ethical rules governing attorneys, their receipt of confidential information and their relationship with former clients, current counsel for the Debtors shall not be precluded from representing any party in any action that might be brought by or against the Liquidating Trust. Similarly, subject only to the applicable ethical rules governing attorneys, their receipt of confidential information and their relationship with former clients, current counsel and other professionals for the Committee shall not be precluded from representing the Liquidating Trust or any other party in any action that might be brought by or against any former individual members of the Committee.

2. Transfer of Debtors' Books and Records

On or before the Effective Date, the Debtors shall transfer their Books and Records to the Liquidating Trust.

3. Transfer of Evidentiary Privileges; Document Requests

Notwithstanding anything to the contrary herein, on the Effective Date, the Liquidating Trustee shall succeed to the evidentiary privileges, including attorney-client privilege, formerly held by the Debtors. Privileged communications may be shared among the Liquidating Trustee and the Liquidating Trust Committee without compromising the privileged nature of such communications, in accordance with the "joint interest" doctrine.

Accordingly, to the extent that documents are requested from current counsel to the Debtors by any Person, after the Effective Date, only the Liquidating Trustee shall have the ability to waive such attorney-client or other privileges. In addition, current counsel to the Debtors shall have no obligation to produce any documents currently in its possession as a result of or arising in any way out of its representation of the Debtors unless (i) the Person requesting such documents serves its request on the Liquidating Trustee; (ii) the Liquidating Trustee consents in writing to such production and any waiver of the attorney-client or other privilege such production might cause; and (iii) the Liquidating Trustee or the Person requesting such production agrees to pay the reasonable costs and expenses incurred by current counsel for the Debtors in connection with such production.

Similarly, upon the Effective Date, the Liquidating Trust Committee shall succeed to the evidentiary privileges, including attorney-client privilege, formerly held by the Committee. Accordingly, to the extent that documents are requested from current counsel to the Committee by any Person, after the Effective Date, only the Liquidating Trust Committee shall have the ability to waive such attorney-client or other privileges. In addition, current counsel to the Committee shall have no obligation to produce any documents currently in their possession as a result of or arising in any way out of their representation of the Committee unless (i) the Person requesting such documents serves its request on the Liquidating Trust Committee; (ii) the Liquidating Trust Committee consents in writing to such production and any waiver of the attorney-client privilege or other privilege such production might cause; and (iii) the Liquidating Trust Committee, or the Person requesting such production, agrees to pay the reasonable costs and expenses incurred by current counsel for the Committee in connection with such production.

Upon the second (2nd) anniversary of the termination of the Liquidating Trust Agreement, any and all documents in the possession of the Debtors' current counsel and the Committee's current counsel as a result of or arising in any way out of their representation of the Debtors and/or the Committee, respectively, shall be deemed destroyed and no Person shall be entitled to obtain such documents.

D. Creditors' Committee and Liquidating Trust Committee

1. Dissolution of the Committee

The Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Court prior to the Effective Date. On the Effective Date, the Committee shall be dissolved and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Committee's attorneys, financial advisors and other agents shall terminate, except with respect to (i) all Professional Fee Claims and (ii) any appeals of the Confirmation Order. All expenses of Committee members and the reasonable fees and expenses of their Professionals through the Effective Date shall be paid in accordance with the terms and conditions of the Professional Fee Order, subject to the terms of the Global Settlement. Professionals employed by the Creditors' Committee shall be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities, including the preparation, filing and prosecution of final fee applications, subject to the terms of the Global Settlement.

2. Creation of Liquidating Trust Committee and Procedures Related Thereto

The Liquidating Trust Committee shall consist of three members: one member appointed by the Committee; one member appointed by HEP; and one member jointly appointed by the Committee and HEP. The Debtors or the Committee shall file a notice on a date that is not less than ten (10) days prior to the hearing to consider confirmation of the Plan designating the Persons or Entities that have been selected to serve on the Liquidating Trust Committee. Each member of the Liquidating Trust Committee shall be entitled to vote on all matters in accordance with the terms of the Liquidating Trust Agreement. Members of the Liquidating Trust Committee shall serve without compensation, but shall be entitled to reimbursement of reasonable expenses.

3. Standing of the Liquidating Trust Committee

The Liquidating Trust Committee shall have independent standing to appear and be heard in the Court as to any matter relating to the Plan, the Liquidating Trust Agreement or the Estates, including any matter as to which the Court has retained jurisdiction pursuant to Article XI of the Plan.

4. Function and Duration of the Liquidating Trust Committee

The Liquidating Trust Committee shall have the rights and responsibilities set forth in the Plan and the Liquidating Trust Agreement, including instructing and supervising the Liquidating Trustee with respect to its responsibilities under this Plan and the Liquidating Trust Agreement. The Liquidating Trust Committee shall remain in existence until such time as the final Distributions under the Liquidating Trust Agreement have been made, as set forth more fully in the Liquidating Trust Agreement.

5. Indemnification of Liquidating Trustee and Liquidating Trust Committee

The Indemnified Persons shall be held harmless and shall not be liable for actions taken or omitted in their capacity as, or on behalf of, the Liquidating Trust, Liquidating Trust Committee or Liquidating Trustee (as applicable), except those acts that are determined by Final Order of the Court to have arisen out of their own intentional fraud, willful misconduct or gross negligence. Each Indemnified Person shall be entitled to be indemnified, held harmless and reimbursed for fees and expenses including, without limitation, reasonable attorney's fees, which such Persons and Entities may incur or may become subject to or in connection with any action, suit, proceeding or investigation that is brought or threatened against such Persons or Entities in respect of that Person's or Entity's actions or inactions regarding the implementation or administration of this Plan, or the discharge of their duties under the Plan or Liquidating Trust Agreement, except for any actions or inactions that are determined by Final Order of the Court to have arisen from intentional fraud, willful misconduct or gross negligence. Any Claim of the Indemnified Persons to be indemnified, held harmless or reimbursed shall be satisfied solely from the Liquidating Trust Assets, Liquidating Trust Proceeds and any applicable insurance coverage.

6. Recusal of Liquidating Trust Committee Members

A Liquidating Trust Committee member shall recuse itself from any decisions or deliberations regarding actions taken or proposed to be taken by the Liquidating Trustee with respect to the Claims, Causes of Action or rights of such Liquidating Trust Committee member, the entity appointing such Liquidating Trust Committee member, or any affiliate of the foregoing.

E. The Liquidating Trust

1. Establishment and Administration of the Liquidating Trust

(a) On the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (i) investigating and, if appropriate, pursuing Liquidating Trust Claims, (ii) administering and pursuing the Liquidating Trust Assets, (iii) resolving all Disputed Claims and any Claim objections pending as of the Effective Date and (iv) making Distributions from the Liquidating Trust to Holders of Allowed Claims as provided for in the Plan and/or the Liquidating Trust Agreement.

(b) Upon execution of the Liquidating Trust Agreement, the Liquidating Trustee shall be authorized to take all steps necessary to complete the formation of the Liquidating Trust. The Liquidating Trust shall be administered by the Liquidating Trustee in accordance with the Liquidating Trust Agreement.

(c) It is intended that the Liquidating Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4(d) and as a "grantor trust" within the meaning of Sections 671 through 679 of the Internal Revenue Code. In furtherance of this objective, the Liquidating Trustee shall, in its business judgment, make continuing best efforts not to unduly prolong the duration of the

Liquidating Trust. All Liquidating Trust Assets held by the Liquidating Trust on the Effective Date shall be deemed for federal income tax purposes to have been distributed by the Debtors to Holders of Allowed Claims and then contributed by such Holders to the Liquidating Trust in exchange for the Liquidating Trust Interests. All Holders of Allowed Claims have agreed to use the valuation of the Liquidating Trust Assets transferred to the Liquidating Trust as established by the Liquidating Trustee for all federal income tax purposes. The beneficiaries under the Liquidating Trust shall be treated as the deemed owners of the Liquidating Trust. The Liquidating Trust shall be responsible for filing information on behalf of the Liquidating Trust as grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

2. Assets of the Liquidating Trust

On the Effective Date, or as soon as reasonably practicable thereafter, the Debtors shall transfer and assign to the Liquidating Trust all of their right, title and interest in and to all of the Liquidating Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Liquidating Trust free and clear of all Claims and liens, subject only to the DIP Liens and HEP Prepetition Liens, the Allowed Claims of the Holders of Liquidating Trust Interests as set forth in the Plan and the expenses of the Liquidating Trust as set forth herein and in the Liquidating Trust Agreement. Thereupon, the Debtors shall not have any interest in or with respect to the Liquidating Trust Assets.

To the extent not already transferred and assigned to the Debtors, on the Effective Date, or as soon as reasonably practicable thereafter, HEP shall transfer and assign to the Liquidating Trust all of the right, title and interest in and to all of the HEP Actions, which actions, upon transfer, shall be subject only to the DIP Liens and HEP Prepetition Liens, the Allowed Claims of the Holders of Liquidating Trust Interests as set forth in the Plan and the expenses of the Liquidating Trust as set forth herein and in the Liquidating Trust Agreement.

3. Other Funds to be Transferred to the Liquidating Trust

Pursuant to Article V.H.1 of the Plan, on or before the Effective Date, the Debtors shall transfer to the Liquidating Trust Cash in the amount of the Professional Fee Estimate, which Cash shall be used by the Liquidating Trustee to fund the Professional Fee Reserve.

Pursuant to Article V.H.2 of the Plan, on or before the Effective Date, the Debtors shall transfer to the Liquidating Trust Cash in the amount of the Administrative Claims Estimate, which Cash shall be used by the Liquidating Trustee to fund the Administrative Claims Reserve.

The Liquidating Trust Assets transferred by the Debtors and HEP to the Liquidating Trust shall at all times remain subject to the DIP Liens and HEP Prepetition Liens, without the necessity for an account control agreement, financing statement or any other action or filing by HEP.

4. Rights and Powers of the Liquidating Trust and the Liquidating Trustee

(a) The Liquidating Trustee shall be deemed the Estates' representative in accordance with section 1123 of the Bankruptcy Code and shall have all the rights and powers

set forth in the Liquidating Trust Agreement, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Rules and the right to, with the consent of the Liquidating Trust Committee, (i) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Liquidating Trust Agreement; (ii) prosecute, settle, abandon or compromise any Liquidating Trust Claims; (iii) make Distributions contemplated by the Plan and the Liquidating Trust Agreement; (iv) establish and administer any necessary reserves that may be required, including the Disputed Claims Reserve, the Administrative Claims Reserve and the Professional Fee Reserve; (v) object to Disputed Claims and, without Court approval, settle, compromise, withdraw or resolve in any manner such objections; (vi) employ and compensate professionals (including professionals previously retained by the Debtors and/or the Committee), provided, however, that any such compensation shall be made only out of the Liquidating Trust Assets and Liquidating Trust Proceeds; and (vii) file all federal, state and local tax returns if necessary.

(b) The Liquidating Trustee has full authority to take any steps necessary to administer the Liquidating Trust Agreement, including without limitation, the duty and obligation to liquidate Liquidating Trust Assets, to make Distributions therefrom in accordance with the provisions of this Plan and to pursue, settle or abandon any Liquidating Trust Claims, all in accordance with the Liquidating Trust Agreement.

5. Liquidating Trust Interests

(a) On the Effective Date, each Holder of an Allowed Claim shall, by operation of the Plan, receive a Liquidating Trust Interest representing the right of such Holder to receive Distributions from the Liquidating Trust in accordance with the Liquidating Trust Agreement and Liquidating Trust Waterfall. Liquidating Trust Interests shall be reserved for Holders of Disputed Claims and issued by the Liquidating Trust to, and held by the Liquidating Trustee in, the Disputed Claims Reserve pending allowance or disallowance of such Claims. No other entity shall have any interest, legal, beneficial or otherwise, in the Liquidating Trust Assets upon the assignment and transfer of such assets to the Liquidating Trust.

As set forth in the Liquidating Trust Agreement, Distributions from the Liquidating Trust on account of Liquidating Trust Interests shall be made from the Liquidating Trust Assets and Liquidating Trust Proceeds after paying, reserving against or satisfying, among other things, the operating and administrative expenses of the Liquidating Trust, including but not limited to all costs, expenses and obligations incurred by the Liquidating Trustee (or professionals who may be employed by the Liquidating Trustee in administering the Liquidating Trust) in carrying out their responsibilities under the Liquidating Trust Agreement, or in any manner connected, incidental or related thereto, subject to the Liquidating Trust Budget.

(b) The Liquidating Trust Interests shall be uncertificated and shall be nontransferable except upon death of the Holder or by operation of law. Holders of Liquidating Trust Interests, in such capacity, shall have no voting rights with respect to such interests. The Liquidating Trust shall have a term of five (5) years from the Effective Date, without prejudice to the rights of the Liquidating Trust Committee to extend such term conditioned upon the

Liquidating Trust not becoming subject to the Securities Exchange Act of 1934 (as now in effect or hereafter amended).

6. Appointment of a Liquidating Trustee

(a) The Liquidating Trustee shall be jointly designated by the Debtors, the Committee and HEP. The Debtors or the Committee shall file a notice on a date that is not less than ten (10) days prior to the hearing to consider confirmation of the Plan designating the Person who has been selected as Liquidating Trustee. The appointment of the Liquidating Trustee shall be approved in the Confirmation Order, and such appointment shall be as of the Effective Date. The Liquidating Trustee shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Plan and Liquidating Trust Agreement.

(b) The Liquidating Trustee shall not be obligated to obtain a bond but may do so, in his sole discretion, in which case the expense incurred by such bonding shall be paid by the Liquidating Trust.

(c) The Liquidating Trustee, the members of the Liquidating Trust Committee and their professionals shall be exculpated and indemnified pursuant to and in accordance with the terms of the Plan and Liquidating Trust Agreement.

7. Distributions to Holders of Allowed Claims

(a) Distributions to Holders of Allowed Administrative Claims. On or as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) the date an Administrative Claim becomes an Allowed Administrative Claim, the Liquidating Trustee shall make the Distribution required to be made under Article III.A.2 of the Plan to the Holder of such Allowed Administrative Claims from the Administrative Claims Reserve or, if there are insufficient funds in the Administrative Claims reserve to make such Distribution, from the Liquidating Trust Proceeds in accordance with the Liquidating Trust Waterfall.

(b) Distributions to Holders of Other Allowed Claims. For all Allowed Claims other than Allowed Administrative Claims, the Liquidating Trustee shall make the Distributions required to be made under Article III of the Plan to Holders of such Allowed Claims from the Liquidating Trust Proceeds in accordance with the Liquidating Trust Waterfall. Each such Distribution shall be made on the Periodic Distribution Date determined in the discretion of the Liquidating Trustee subject to oversight and reporting by the Liquidating Trust Committee. The Liquidating Trustee shall not make any Distributions of Liquidating Trust Assets or Liquidating Trust Proceeds to the beneficiaries under the Liquidating Trust unless the Liquidating Trustee retains and reserves in the Disputed Claims Reserve such amounts as are required under Article VI.H.3 of the Plan.

(c) Distributions After Allowance of a Disputed Claim. Upon a Disputed Claim becoming an Allowed Claim, the Liquidating Trustee shall distribute to the Holder thereof, from the Disputed Claims Reserve at the time of the next Periodic Distribution Date, such amount of Cash as would have been distributed to such Holder if its Claim had been an Allowed Claim on the Effective Date.

(d) Final Distributions. The Liquidating Trust shall be dissolved and its affairs wound up and the Liquidating Trustee shall make the final Distributions, upon the earlier of (i) the date which is five (5) years after the Effective Date; and (ii) that date when, (A) in the reasonable judgment of the Liquidating Trustee, substantially all of the assets of the Liquidating Trust have been liquidated and there are no substantial potential sources of additional Cash for Distribution, and (B) there remain no substantial Disputed Claims. Notwithstanding the foregoing, on or prior to such termination, the Court, upon motion by a party in interest, may extend the term of the Liquidating Trust for one or more finite terms based upon the particular facts and circumstances present at that time, if an extension is necessary to the liquidating purpose of the Liquidating Trust. The date on which the Liquidating Trustee determines that all obligations under the Plan and Liquidating Trust Agreement have been satisfied is referred to as the “Liquidating Trust Termination Date.” On the Liquidating Trust Termination Date, the Liquidating Trustee shall, to the extent not already done, request that the Court enter an order closing the Bankruptcy Cases.

(e) Until the Allowed DIP Facility Claim has been paid in full and in Cash, the Liquidating Trustee shall make quarterly distributions from the Liquidating Trust in accordance with the Liquidating Trust Waterfall to the extent more than \$100,000 in Cash is available from Liquidating Trust Assets for distribution.

8. Reporting Requirement of Liquidating Trust

The Liquidating Trust’s formation documents shall require that financial statements or similar reports of the Liquidating Trust be sent to all Holders of Liquidating Trust Interests on an annual basis.

F. No Revesting of Assets in Debtors

The property of the Debtors’ Estates shall not be vested in the Debtors on or following the Effective Date, but shall be vested in the Liquidating Trust and continue to be subject to the jurisdiction of the Court following confirmation of the Plan until such property is distributed to Holders of Allowed Claims in accordance with the provisions of the Plan, the Liquidating Trust Agreement and the Confirmation Order.

G. Limited Release of Liens

On the Effective Date, all mortgages, deeds of trust, liens or other security interests against property of the Estates, except for those held by HEP, shall be released.

H. Accounts and Reserves

1. Professional Fee Reserve

On or before the Effective Date, the Debtors shall transfer to the Liquidating Trust Cash in the Amount of the Professional Fee Estimate, which Cash shall be used by the Liquidating Trustee to fund the Professional Fee Reserve. The Cash so transferred shall not be used for any purpose other than to pay Allowed Professional Fee Claims and shall at all times remain subject to the first-priority perfected security interests and liens of HEP without the necessity for an

account control agreement, financing statement or any other action or filing by HEP. The Liquidating Trustee (i) shall segregate and shall not commingle the Cash held in the Professional Fee Reserve and (ii) subject to the terms and conditions of the Plan and the Liquidating Trust Agreement, shall pay each Professional Fee Claim of a Professional employed by the Debtors or the Committee, on or as soon as reasonably practicable after the date such Claim becomes an Allowed Claim, upon entry of a Final Order allowing such Claim. After all Professional Fee Claims are Allowed or Disallowed and the Allowed amounts of such Claims are paid by the Liquidating Trust, any remaining Cash in the Professional Fee Reserve shall become a Liquidating Trust Asset. Only Professionals employed in the Chapter 11 Cases by the Debtors or the Committee shall be entitled to payment from the Professional Fee Reserve.

Subject to the Liquidating Trust Budget, the Professionals employed by the Debtors and the Committee, as applicable, shall be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities, including the preparation, filing and prosecution of final fee applications, upon the submission of invoices to the Liquidating Trustee for payment from the Professional Fee Reserve. Any time or expenses incurred in the preparation, filing and prosecution of final fee applications shall be disclosed by each Professional in its final fee application and shall be subject to approval of the Court.

2. Administrative Claims Reserve

On or before the Effective Date, the Debtors shall transfer to the Liquidating Trust Cash in the Amount of the Administrative Claims Estimate, which Cash shall be used by the Liquidating Trustee to fund the Administrative Claims Reserve. The Cash so transferred shall not be used for any purpose other than to pay Allowed Administrative Claims (except Professional Fee Claims, which shall be paid from the Professional Fee Reserve) and shall at all times remain subject to the first-priority perfected security interests and liens of HEP without the necessity for an account control agreement, financing statement or any other action or filing by HEP. The Liquidating Trustee (i) shall segregate and shall not commingle the Cash held in the Administrative Claims Reserve and (ii) subject to the terms and conditions of the Plan and the Liquidating Trust Agreement, shall pay each Administrative Claim (except Professional Fee Claims, which shall be paid from the Professional Fee Reserve) on or as soon as reasonably practicable after the date such Claim becomes an Allowed Claim. After all Administrative Claims (except Professional Fee Claims) are Allowed or Disallowed and the Allowed amounts of such Claims are paid by the Liquidating Trust, any remaining Cash in the Administrative Claims Reserve shall become a Liquidating Trust Asset.

3. Other Reserves

The Liquidating Trust shall establish and administer any other necessary reserves that may be required under the Plan or Liquidating Trust Agreement, including the Disputed Claims Reserve.

I. Exemption from Certain Transfer Taxes

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee,

intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents without the payment of any such tax or governmental assessment.

J. Applicability of Sections 1145 and 1125(e) of the Bankruptcy Code

Under section 1145 of the Bankruptcy Code, the issuance of the Liquidating Trust Interests under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Liquidating Trustee shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

K. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trust shall retain and may enforce all rights to commence and pursue, as appropriate, the Liquidating Trust Claims, including without limitation any Causes of Action against the Investigation Parties, and the Liquidating Trust's rights to commence, prosecute or settle such Liquidating Trust Claims shall be preserved notwithstanding the occurrence of the Effective Date or the dissolution of the Debtors. The Liquidating Trust may pursue such Liquidating Trust Claims, as appropriate, in accordance with the best interests of the Liquidating Trust beneficiaries. No Entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Liquidating Trust Claims against them as any indication that the Liquidating Trust shall not pursue any and all available Liquidating Trust Claims against them. The Liquidating Trust expressly reserves all rights to prosecute any and all Liquidating Trust Claims against any Entity, except as otherwise expressly provided in the Plan. Unless any Liquidating Trust Claims against an Entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Court order, the Liquidating Trust expressly reserves all Liquidating Trust Claims for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppels (judicial, equitable or otherwise) or laches, shall apply to such Liquidating Trust Claims upon, after or as a consequence of the Confirmation or Consummation.

The substantive consolidation of the Debtors and their Estates pursuant to the Confirmation Order and Article V.A of this Plan shall not, and shall not be deemed to, prejudice any of the Liquidating Trust Claims, which shall survive entry of the Confirmation Order for the benefit of the Debtors and their Estates, and, upon the Effective Date, for the benefit of the Liquidating Trust.

L. Effectuating Documents; Further Transactions

The Liquidating Trustee, subject to the terms and conditions of this Plan and the Liquidating Trust Agreement, shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

ARTICLE VI

PROVISIONS GOVERNING DISTRIBUTIONS

A. Limitations on Distributions on Allowed Claims

Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date or become Allowed Claims thereafter shall be made by the Disbursing Agent pursuant to the terms and conditions of this Plan and the Liquidating Trust Agreement. Notwithstanding any other provision of the Plan to the contrary, no Distribution shall be made on account of any Allowed Claim or portion thereof that (i) has been satisfied after the Petition Date; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a Proof of Claim has not been timely filed; or (iii) is evidenced by a Proof of Claim that has been amended by a subsequently filed Proof of Claim.

B. Disbursing Agent

The Disbursing Agent shall make all Distributions required under this Plan, subject to the terms and provisions of this Plan and the Liquidating Trust Agreement. If the Disbursing Agent is an independent third party designated to serve in such capacity, such Disbursing Agent shall receive, without further Court approval, reasonable compensation from the Liquidating Trust for distribution services rendered pursuant to the Plan and reimbursement of reasonable out-of-pocket expenses. No Disbursing Agent shall be required to give any bond or surety or other security for the performance of its duties. The Disbursing Agent shall be authorized and directed to rely upon the Debtors' books and records and the Liquidating Trust's representatives and professionals in determining Allowed Claims not entitled to Distributions under the Plan in accordance with the terms and conditions of this Plan.

C. Delivery of Distributions and Undeliverable or Unclaimed Distributions

1. Delivery of Distributions in General

Distributions to Holders of Allowed Claims shall be made by the Disbursing Agent (a) at the addresses set forth on the Proofs of Claim filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is filed or if the Debtors have been notified of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related Proof of Claim, after sufficient evidence of such addresses as may be requested by the Disbursing Agent is provided, (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Disbursing Agent has not received a written notice of a change of address, (d) at the addresses set forth in

the other records of the Debtors or the Disbursing Agent at the time of the Distribution or (e) in the case of the Holder of a Claim that is governed by an agreement and is administered by an agent or servicer, at the addresses contained in the official records of such agent or servicer.

In making Distributions under the Plan, the Disbursing Agent may rely upon the accuracy of the Claims register maintained by the Claims Agent in the Chapter 11 Cases, as modified by any Final Order of the Court disallowing Claims in whole or in part.

2. Undeliverable and Unclaimed Distributions

If the Distribution to any Holder of an Allowed Claim is returned to the Disbursing Agent as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such Holder unless and until the Disbursing Agent is notified in writing of such Holder's then-current address and such Holder provides sufficient evidence of such address as may be requested by the Disbursing Agent, at which time all missed Distributions shall be made to such Holder without interest, subject to the time limitations set forth below. Amounts in respect of undeliverable Distributions made by the Disbursing Agent shall be returned to the Disbursing Agent until such Distributions are claimed. The Disbursing Agent shall segregate and, with respect to Cash, deposit in a segregated account designated as an unclaimed Distribution reserve undeliverable and unclaimed Distributions for the benefit of all such similarly-situated Persons until such time as a Distribution becomes deliverable or is claimed, subject to the time limitations set forth below.

Any Holder of an Allowed Claim that does not assert a claim pursuant to this Plan for an undeliverable or unclaimed Distribution within three (3) months after the date such Distribution was returned undeliverable shall be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed Distribution against the Debtors and their Estates, the Liquidating Trustee, the Liquidating Trust, the Liquidating Trust Committee and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its or their property. In the case of undeliverable or unclaimed Distributions on account of Administrative Claims, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall revert to the Administrative Claims Reserve. In the case of undeliverable or unclaimed Distributions on account of Liquidating Trust Interests, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall revert to the Liquidating Trust, and all title to and all beneficial interests in the Liquidating Trust Assets represented by any such undeliverable Distributions shall revert to and/or remain in the Liquidating Trust and shall be distributed in accordance with Article IV of the Liquidating Trust Agreement and the Plan. The reversion of such Cash to the Administrative Claims Reserve or the Liquidating Trust, as applicable, shall be free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be treated in accordance with the terms of this Plan and the Liquidating Trust Agreement. Nothing contained in this Plan or the Liquidating Trust Agreement shall require the Debtors, the Liquidating Trust, the Liquidating Trustee or any Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

D. Means of Cash Payment

Cash payments made pursuant to this Plan shall be in U.S. dollars and shall be made at the option and in the sole discretion of the Disbursing Agent by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by the Disbursing Agent. In the case of foreign creditors, Cash payments may be made, at the option of the Disbursing Agent, in such funds and by such means as are necessary or customary in a particular jurisdiction.

E. Interest on Claims

Unless otherwise specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no Claimholder shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

F. Withholding and Reporting Requirements

In accordance with section 346 of the Bankruptcy Code and in connection with the Plan and all Distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all withholding and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority. The Disbursing Agent shall be authorized to take any and all actions necessary and appropriate to comply with such requirements.

All Distributions hereunder shall be subject to withholding and reporting requirements. As a condition of making any Distribution under the Plan, each Entity holding an Allowed Claim is required to provide any information necessary in writing, including returning W-9 statements, to effect the necessary information reporting and withholding of applicable taxes with respect to Distributions to be made under the Plan as the Disbursing Agent may request. The Disbursing Agent shall be entitled in its sole discretion to withhold any Distributions to a Holder of an Allowed Claim who fails to provide tax identification or social security information within the timeframe requested in writing by the Disbursing Agent to such Holder of an Allowed Claim, which timeframe shall not be less than 30 days. The Distribution to any Holder of an Allowed Claim that fails to timely respond to the Disbursing Agent shall be treated as an undeliverable or unclaimed Distribution pursuant to Article VI.C.2 of the Plan.

Notwithstanding any other provision of this Plan, each entity receiving a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution.

G. Setoffs

Subject to the terms and conditions of the Liquidating Trust Agreement, the Debtors and/or the Liquidating Trust may, but shall not be required to, set off against any Claim and the payments or other Distributions to be made under the Plan on account of the Claim, claims of any nature whatsoever that the Debtors may have against the Holder thereof, provided that any such right of setoff that is exercised shall be allocated, first, to the principal amount of the related

Claim, and thereafter to any interest portion thereof, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors and/or the Liquidating Trust of any such claim that the Debtors may have against such Holder.

H. Procedure for Treating and Resolving Disputed, Contingent and/or Unliquidated Claims

1. Objection Deadline; Prosecution of Objections

Except as set forth in the Plan with respect to Professional Fee Claims and Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims by the Claims Objection Deadline, as the same may be extended by the Court. If an objection has not been filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the Court, the Claim to which the Proof of Claim or Scheduled Claim relates shall be treated as an Allowed Claim if such Claim has not been Allowed earlier. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those persons or entities that have requested notice in the Chapter 11 Cases in accordance with Bankruptcy Rule 2002.

Subject to any reporting to the Liquidating Trust Committee that may be required under the Liquidating Trust Agreement, and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, on and after the Effective Date, the Liquidating Trust shall have the authority to: (1) file, withdraw or litigate to judgment objections to and requests for estimation of Claims; (2) settle or compromise any Disputed Claim without any further notice to or action, order or approval by the Court; and (3) administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Court; provided, however, that the objection to and settlement of Professional Fee Claims shall not be subject to this Article VI.H, but rather shall be governed by Article IX.A of the Plan. In the event that any objection filed by the Debtors or the Committee remains pending as of the Effective Date, the Liquidating Trustee shall be deemed substituted for the Debtors or the Committee, as applicable, as the objecting party.

The Liquidating Trust shall be entitled to assert all of the Debtors' rights, claims, defenses, offsets, rights of recoupment, setoffs, rights of disallowance, subrogation, recharacterization and/or equitable subordination and counter-claims with respect to Claims.

2. No Distributions Pending Allowance

Notwithstanding any other provision of the Plan or the Liquidating Trust Agreement, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtors or the Liquidating Trust on account of a Cause of Action, no payments or Distributions shall be made with respect to all or any portion of such Claim

unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Court or such other court having jurisdiction over the matter.

3. Disputed Claims Reserve

On the Distribution Date and on each subsequent Periodic Distribution Date, the Liquidating Trust shall withhold on a Pro Rata basis from property that would otherwise be distributed to Holders of Claims entitled to Distributions under the Plan on such date, in a separate Disputed Claims Reserve, such amounts or property as may be necessary to equal one hundred percent (100%) of Distributions to which Holders of such Disputed Claims would be entitled under this Plan if such Disputed Claims were allowed in their Disputed Claims Amount. The Liquidating Trust may request, if necessary, estimation for any Disputed Claim that is contingent or unliquidated, or for which the Liquidating Trust determines to reserve less than the face amount. The Liquidating Trust shall withhold the applicable Disputed Claims Reserve with respect to such Claims based upon the estimated amount of each such Claim as estimated by the Court. If the Liquidating Trust elects not to request such an estimation from the Court with respect to a Disputed Claim that is contingent or unliquidated, the Liquidating Trust shall withhold the applicable Disputed Claims Reserve based upon the good faith estimate of the amount of such Claim by the Liquidating Trust. If practicable, the Liquidating Trust shall invest any Cash that is withheld as the Disputed Claims Reserve in an appropriate manner to ensure the safety of the investment, in accordance with Section 3.5 of the Liquidating Trust Agreement. Nothing in this Plan, the Disclosure Statement or the Liquidating Trust Agreement shall be deemed to entitle the Holder of a Disputed Claim to postpetition interest on such Claim, however.

4. Distributions After Allowance

Payments and Distributions to Holders of Disputed Claims that ultimately become Allowed Claims shall be made in accordance with provisions of the Liquidating Trust Agreement that govern Distributions to Holders of Allowed Claims (Article IV of the Liquidating Trust Agreement).

5. De Minimis Distributions

The Liquidating Trust shall not be required to make any distributions to Holders of Allowed Claims aggregating less than fifty dollars (\$50.00). Cash that otherwise would be payable under the Plan to Holders of Liquidating Trust Interests but for this Article VI.H.5 shall remain Liquidating Trust Assets to be used in accordance with the Liquidating Trust Agreement. Cash that otherwise would be payable under the Plan to Holders of Administrative Claims but for this Article VI.H.5 shall remain in the Administrative Claims Reserve.

6. Fractional Dollars

Any other provision of this Plan notwithstanding, the Disbursing Agent shall not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under this Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

7. Allocation of Plan Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a Distribution under this Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

8. Distribution Record Date

The Disbursing Agent shall have no obligation to recognize the transfer of or sale of any participation in any Allowed Claim that occurs after the close of business on the Distribution Record Date. Instead, the Disbursing Agent shall be entitled to recognize and deal for all purposes under this Plan with only those record Holders stated on the official Claims register or the Debtors' Books and Records, as applicable, as of the close of business on the Distribution Record Date.

ARTICLE VII

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Rejected Contracts and Leases

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, each of the Executory Contracts and Unexpired Leases to which any Debtor is a party shall be deemed automatically rejected by the applicable Debtor as of the Effective Date, unless such contract or lease (i) previously has been assumed or rejected by the Debtors, (ii) expired or terminated pursuant to its own terms, (iii) is the subject of a motion to assume or reject pending before the Court as of the Confirmation Date or (iv) is identified on Exhibit B hereto as a Contract to be assumed; provided, however, that nothing contained in this Plan shall constitute an admission by any Debtor that any such contract or lease is an Executory Contract or Unexpired Lease or that any Debtor or its successors and assigns has any liability thereunder; and, provided further, that the Debtors reserve their right, at any time before the Confirmation Date, to assume any Executory Contract or Unexpired Lease that was not already rejected prior to the Confirmation Date. The Confirmation Order shall constitute an order of the Court approving the rejections described in this Article VII.A, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date.

B. Rejection Damages Bar Date

If the rejection of an Executory Contract or Unexpired Lease pursuant to Article VII.A above gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the applicable Debtor or its Estate, the Liquidating Trust or their respective successors or properties unless a Proof of Claim is filed with the Claims Agent and served on counsel for the Liquidating Trust within thirty (30) days after service of notice of entry of the Confirmation Order.

C. Indemnification Obligations

Subject to the last sentence of this Article VII.C, any obligations of the Debtors pursuant to their organizational documents, including amendments, entered into any time prior to the Effective Date, to indemnify, reimburse or limit the liability of any Person pursuant to the Debtors' organizational documents, policy of providing employee indemnification, applicable state law or specific agreement in respect of any claims, demands, suits, causes of action or proceedings against such Persons based upon any act or omission related to such Persons' service with, for or on behalf of the Debtors prior to the Effective Date with respect to all present and future actions, suits and proceedings relating to the Debtors shall survive confirmation of the Plan and except as set forth herein, remain unaffected thereby, and shall not be discharged, irrespective of whether such defense, indemnification, reimbursement or limitation of liability accrued or is owed in connection with an occurrence before or after the Petition Date; provided, however, that all monetary obligations under this Article VII.C shall be limited solely to available insurance coverage and neither the Liquidating Trust, the Liquidating Trustee nor any of their assets shall be liable for any such obligations. Any Claim based on the Debtors' obligations set forth in this Article VII.C shall not be a Disputed Claim or subject to any objection in either case by reason of section 502(e)(1)(B) of the Bankruptcy Code. This provision for indemnification obligations shall not apply to or cover (a) any Claims, suits or actions against a Person that result in a final order determining that such Covered Person is liable for fraud, willful misconduct, gross negligence, bad faith, self-dealing or breach of the duty of loyalty or (b) the Investigation Parties, to whom any such indemnification obligations shall not survive confirmation of the Plan and any such indemnification obligations to the Investigation Parties shall be discharged pursuant to the Plan.

ARTICLE VIII

CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

A. Conditions to Confirmation

The following are conditions precedent to confirmation of the Plan, each of which must be satisfied or waived in accordance with Article VIII.C of the Plan:

1. the Confirmation Order shall be in form and substance reasonably acceptable to the Debtors, the Committee and HEP and shall, among other things:
 - (a) provide that the Debtors are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the agreements or documents created under or in connection with the Plan; and
 - (b) provide that, notwithstanding Bankruptcy Rule 3020(e), the Confirmation Order shall be immediately effective, subject to the terms and conditions of the Plan; and
2. the Confirmation Order shall have been entered by the Court.

B. Conditions to Effective Date

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in accordance with Article VIII.C of the Plan:

1. the Confirmation Order shall not then be stayed, vacated or reversed and shall not have been amended without the agreement of the Debtors, the Committee and HEP;
2. the Confirmation Order shall not then be subject to a pending appeal, and the time to appeal or seek review or rehearing or leave to appeal has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending;
3. the Liquidating Trust shall have been established and the Liquidating Trust Assets shall have been transferred to and vested in the Liquidating Trust free and clear of all Claims and Liens, except as specifically provided in the Plan and the Liquidating Trust Agreement;
4. the Professional Fee Reserve and the Administrative Claims Reserve shall have been funded in Cash in full;
5. the Liquidating Trustee and the Liquidating Trust Committee shall have been appointed and assumed their rights and responsibilities under the Plan and the Liquidating Trust Agreement, as applicable; and
6. all actions, documents and agreements necessary to implement the provisions of the Plan to be effectuated on or prior to the Effective Date shall be reasonably satisfactory to the Debtors, the Committee and HEP, and such actions, documents and agreements shall have been effected or executed and delivered. The Liquidating Trust Agreement shall be completed and in final form and, as applicable, executed by the parties thereto and all conditions precedent contained in any of the foregoing shall have been satisfied or waived.

C. Waiver of Conditions

Each of the conditions to the Effective Date set forth in Article VIII.B of the Plan may be waived in whole or in part by the Debtors without any other notice to parties in interest or the Court, provided that the Debtors have received the prior written consent of the Committee and HEP, which consent shall not unreasonably be withheld. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Debtors regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of any party to exercise any of its foregoing rights shall not be deemed a waiver of any of its other rights, and each such right shall be deemed an ongoing right that may be asserted thereby at any time.

D. Consequences of Non-Occurrence of Effective Date

If the Effective Date does not occur within ninety (90) days following the Confirmation Date, or by such later dates after notice and hearing, as is proposed by the Debtors, then upon motion by the Debtors and upon notice to such parties in interest as the Court may direct, (a) the Plan shall be null and void in all respects; (b) any settlement of claims shall be null and void without further order of the Court; and (c) the time within which the Debtors may assume and

assign or reject all Executory Contracts shall be extended for a period of thirty (30) days after such motion is granted.

ARTICLE IX

ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS

A. Professional Fee Claims

1. Final Fee Applications

All final requests for payment of Professional Fee Claims (the “Final Fee Applications”) must be filed no later than forty-five (45) days after the Effective Date. Objections, if any, to Final Fee Applications of such Professionals must be filed and served on the Liquidating Trust, the Liquidating Trust Committee, counsel for HEP, the requesting Professional and the Office of the United States Trustee no later than twenty (20) days from the date on which each such Final Fee Application is served and filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Court, the Allowed amounts of such Professional Fee Claims shall be determined by the Court.

2. Employment of Professionals after the Effective Date

From and after the Effective Date, any requirement that professionals comply with sections 327 through 331 of the Bankruptcy Code or any order previously entered by the Court in seeking retention or compensation for services rendered or expenses incurred after such date shall terminate.

B. Substantial Contribution Compensation and Expenses Bar Date

Any Person who wishes to make a Substantial Contribution Claim based on facts or circumstances arising after the Petition Date must file an application with the clerk of the Court, on or before the Administrative Claims Bar Date, and serve such application on the Liquidating Trust and the Liquidating Trust Committee and as otherwise required by the Court and the Bankruptcy Code, or be forever barred from seeking such compensation or expense reimbursement. Objections, if any, to the Substantial Contribution Claim must be filed no later than the Administrative Claims Objection Deadline, unless otherwise extended by Order of the Court.

C. Other Administrative Claims

All other requests for payment of an Administrative Claim arising after the Petition Date, other than Professional Fee Claims, must be filed with the Court and served on the Liquidating Trust and the Liquidating Trust Committee no later than the Administrative Claims Bar Date. Unless the Liquidating Trust or any other party in interest objects to an Administrative Claim by the Administrative Claims Objection Deadline, such Administrative Claim shall be deemed Allowed in the amount requested. In the event that the Liquidating Trust or any other party in interest objects to an Administrative Claim, the Court shall determine the Allowed amount of such Administrative Claim.

ARTICLE X

EFFECTS OF CONFIRMATION

A. Compromise and Settlement of Claims and Controversies

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the classification, Distributions, releases and other benefits provided pursuant to the Plan, on the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies resolved pursuant to the Plan or relating to the contractual, legal and subordination rights that a Holder of a Claim or Interest may have with respect to any Claim or Interest, or any Distribution to be made on account of such Claim or Interest. The entry of the Confirmation Order shall constitute the Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders of Claims and Interests and is fair, equitable and reasonable.

B. Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, whether or not such Holders shall receive or retain any property or interest in property under the Plan, and their respective successors and assigns, including, but not limited to, the Liquidating Trust and all other parties in interest in the Chapter 11 Cases.

C. Discharge of the Debtors

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation shall not discharge Claims against the Debtors; provided, however, that, other than as provided in the Final DIP Order, no Claimholder or Interest Holder may, on account of such Claim or Interest, seek or receive any payment or other Distribution from, or seek recourse against, any Debtor or its respective successors, assigns and/or property, except as expressly provided in this Plan.

D. Releases

1. Releases by the Debtors

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, and any Person seeking to exercise the rights of the Debtors' Estates, including, without limitation, any successor to the Debtors, any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code or the Liquidating Trust, whether pursuing an action derivatively or otherwise, shall be deemed to forever release, waive and discharge all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever (other than for fraud, willful misconduct or gross negligence) in connection with or related to the Debtors, the Chapter 11 Cases or the Plan (other than the rights of the Debtors and the Liquidating Trustee to enforce the Plan and the contracts, instruments, releases and other agreements or documents delivered

thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date, against (a) the Debtors, their Professionals and Court-retained agents and the Debtors' directors and officers employed by or serving the Debtors as of the Petition Date, and (b) any of the successors or assigns of any of the parties identified in the foregoing clause (a); provided, however, that no Investigation Party shall be released hereunder; provided further, however, that nothing in this Article X.D.1 shall be a waiver of any defense, offset or objection to any Claim filed against the Debtors and their Estates by any Person.

2. Releases by the Global Settlement Parties

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors and the Committee, and their successors or assigns, including the Liquidating Trust and the Liquidating Trust Committee, shall be deemed to forever release, waive and discharge all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever (other than for fraud, willful misconduct or gross negligence) in connection with or related to the Debtors, the Chapter 11 Cases or the Plan (other than the rights of the Debtors and the Committee and their successors or assigns to enforce the Global Settlement, the Plan and the contracts, instruments, releases and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date, against (a) the Debtors, their Professionals and Court-retained agents and the Debtors' directors and officers employed by or serving the Debtors as of the Petition Date, and (b) the Committee and its Professionals and, solely in their respective capacities as members or representatives of the Committee, each member of the Committee; provided, however, that no Investigation Party shall be released hereunder.

3. Release by Holders of Claims and Interests

As of the Effective Date, to the maximum extent permitted by applicable law, for good and valuable consideration, the adequacy of which is hereby confirmed, each Releasing Party, solely in its capacity as such, shall be deemed to forever release, waive and discharge all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever in connection with or related to the Debtors, the Chapter 11 Cases or the Plan (other than the rights of the Holders of Claims and Interests to enforce the Plan and the contracts, instruments, releases and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date, against the HEP Released Parties.

Entry of the Confirmation Order shall constitute the Court's approval, pursuant to Bankruptcy Rule 9019, of the release described in this Article X.D.3., which includes by reference each of the related provisions and definitions contained in this Plan, and further, shall constitute its finding that each release described in this Article X.D.3. is: (i) in exchange for good and valuable consideration provided by the HEP Released Parties, a good faith settlement and compromise of such Claims and Interests; (ii) in the best interests of the Debtors and all Holders of Claims and Interests; (iii) fair, equitable and reasonable; (iv) given and made after due notice and opportunity for hearing; and (v) a bar to any of the Releasing Parties asserting any claim, cause of action or liability related thereto, of any kind whatsoever, against any of the HEP Released Parties or their property.

E. Exculpation and Limitation of Liability

Except as otherwise specifically provided in this Plan, none of (a) the Debtors, (b) the directors or officers of any of the Debtors serving at any time during the pendency of the Chapter 11 Cases, (c) the Professionals or Court-retained agents of the Debtors, (d) the HEP Released Parties, (e) the Committee and its Professionals and, solely in their respective capacities as members or representatives of the Committee, each member of the Committee, (f) the Liquidating Trustee and the Liquidating Trust's professionals and, solely in their respective capacities as members or representatives of the Liquidating Trust Committee, each member of the Liquidating Trust Committee, or (g) or any of the successors or assigns of any of the parties identified in the foregoing clauses (a) through (f), shall have or incur, and each is hereby released and exculpated from, any liability, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively in law or equity to any Holder of a Claim or an Interest, or any other party in interest, or any of their respective members, directors, officers, employees, advisors, attorneys, professionals, agents, partners, stockholders or affiliates, or any of their respective successors or assigns, for any act or omission in connection with, relating to or arising out of, the Chapter 11 Cases, the Global Settlement, the DIP Documents, the Final DIP Order, the HEP Prepetition Secured Promissory Note, the formulation, negotiation or implementation of the Plan, the solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which are the result of fraud, gross negligence or willful misconduct, and such parties in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan; provided, however, that no Investigation Party shall be released hereunder.

Notwithstanding any other provision of the Plan, no Holder of a Claim or an Interest, no other party in interest, none of their respective members, directors, officers, employees, advisors, attorneys, professionals, agents, partners, stockholders or affiliates, and none of their respective successors or assigns, shall have any right of action against (a) the Debtors, (b) the directors or officers of any of the Debtors serving at any time during the pendency of the Chapter 11 Cases, (c) the Professionals or Court-retained agents of the Debtors, (d) the HEP Released Parties, (e) the Committee and its Professionals and, solely in their respective capacities as members or representatives of the Committee, each member of the Committee, (f) the Liquidating Trustee and

the Liquidating Trust's professionals and, solely in their respective capacities as members or representatives of the Liquidating Trust Committee, each member of the Liquidating Trust Committee, or (g) or any of the successors or assigns of any of the parties identified in the foregoing clauses (a) through (f), for any act or omission in connection with, relating to or arising out of, the Chapter 11 Cases, the Global Settlement, the DIP Documents, the Final DIP Order, the HEP Prepetition Secured Promissory Note, the formulation, negotiation or implementation of the Plan, solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which are the result of fraud, gross negligence or willful misconduct; provided, however, that no Investigation Party shall receive the benefit of this paragraph.

F. Injunction

Confirmation of this Plan shall have the effect of, among other things, permanently enjoining (a) all Entities or Persons that have held, hold or may hold or have asserted, assert or may assert Claims against or Interests in the Estates with respect to any such Claim or Interest, and (b) respecting (vi)(A), (vi)(B), and (vi)(C) of this Article X.F, the Estates and the Liquidating Trust, from and after the Effective Date, from taking any of the following actions (other than actions to enforce any rights or obligations under the Plan): (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Estates or the Liquidating Trust or any of its or their property or the HEP Released Parties on account of such Claims or Interests; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Estates or the Liquidating Trust or any of its or their property or the HEP Released Parties on account of such Claims or Interests; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Estates or the Liquidating Trust or any of its or their property or the HEP Released Parties on account of such Claims or Interests; (iv) asserting any right of setoff, directly or indirectly, against any obligation due the Estates or the Liquidating Trust or any of its or their property, except with respect to any right of setoff asserted prior to the entry of the Confirmation Order, whether asserted in a Proof of Claim or otherwise, or as otherwise contemplated or allowed by the Plan; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan; and (vi) prosecuting or otherwise asserting (A) any Claim or Interest, including any right, claim or Cause of Action, released pursuant to the Plan, (B) any form of objection to any Claim that is Allowed by the Plan, or (C) Avoidance Actions against any Holder of a Claim that is Allowed by the Plan. Additionally, unless otherwise explicitly stated in the Plan, the injunction contemplated by this Section shall prohibit the assertion against the HEP Released Parties, the Liquidating Trust, the Liquidating Trustee and the Liquidating Trust Committee of all Claims or Interests, if any, related to the Debtors.

Confirmation of this Plan shall further have the effect of permanently enjoining all Persons from obtaining (i) any documents or other materials from current counsel for the Debtors and the Committee that are in the possession of such counsel as a result of or arising in

any way out of their representations of the Debtors and/or the Committee, except in accordance with Article V.C of this Plan.

G. Compromises and Settlements

Pursuant to Bankruptcy Rule 9019(a), the Debtors may compromise and settle Claims (a) against them and (b) that they have against other Persons. The Debtors expressly reserve the right (with Court approval, following appropriate notice and opportunity for a hearing) to compromise and settle Claims against them and claims that they may have against other Persons at any time up to and including the Effective Date.

After the Effective Date, such right shall pass to the Liquidating Trust and shall be governed by the terms of Article VI.H of the Plan and the Liquidating Trust Agreement.

H. Satisfaction of Subordination Rights

All Claims against the Debtors and all rights and claims between or among Claimholders relating in any manner whatsoever to Distributions on account of Claims against the Debtors based upon any subordination rights, whether asserted or unasserted, legal or equitable, shall be deemed satisfied by the Distributions under the Plan to Claimholders having such subordination rights, and such subordination rights shall be deemed waived, released, discharged and terminated as of the Effective Date. Distributions to the various Classes of Claims hereunder shall not be subject to levy, garnishment, attachment or like legal process by any Claimholder by reason of any subordination rights or otherwise, so that each Claimholder shall have and receive the benefit of the Distributions in the manner set forth in the Plan.

ARTICLE XI

RETENTION OF JURISDICTION

A. Retention of Jurisdiction by the Court

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order, substantial consummation of the Plan and occurrence of the Effective Date, the Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases, the Plan, the Liquidating Trust Agreement and the Liquidating Trust to the fullest extent permitted by law, including, among other things, jurisdiction to:

1. To the extent not otherwise determined by the Plan, to determine (i) the allowance, classification or priority of Claims upon objection by any party in interest entitled to file an objection, or (ii) the validity, extent, priority and nonavoidability of consensual and nonconsensual Liens and other encumbrances against assets of the Estates, Causes of Action, or property of the Estates or the Liquidating Trust;

2. To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any Entity or Person, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order or any other order of the Court, to

issue such orders as may be necessary for the implementation, execution, performance and consummation of the Plan and all matters referred to herein, and to determine all matters that may be pending before the Court in the Chapter 11 Cases on or before the Effective Date with respect to any Entity or Person;

3. To protect the assets or property of the Estates and/or the Liquidating Trust, including Causes of Action, from claims against, or interference with, such assets or property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens or other encumbrances on any assets of the Estates;

4. To determine any and all applications for allowance of Professional Fee Claims;

5. To determine any Priority Tax Claims, Priority Non-Tax Claims or Administrative Claims entitled to priority under section 507(a) of the Bankruptcy Code;

6. To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan and the making of Distributions hereunder;

7. To determine any and all motions related to the rejection, assumption or assignment of Executory Contracts or Unexpired Leases or determine any issues arising from the deemed rejection of Executory Contracts and Unexpired Leases set forth in Article VII of the Plan;

8. To enforce the terms of the Global Settlement and the Global Settlement Order;

9. Except as otherwise provided herein, to determine all applications, motions, adversary proceedings, contested matters, actions and any other litigated matters instituted in and prior to the closing of the Chapter 11 Cases, including any remands;

10. To enter a Final Order closing each of the Chapter 11 Cases;

11. To modify the Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out their intent and purposes;

12. To issue such orders in aid of consummation of the Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Entity or Person, to the full extent authorized by the Bankruptcy Code;

13. To determine any tax liability pursuant to section 505 of the Bankruptcy Code;

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

15. To resolve any disputes concerning whether an Entity or Person had sufficient notice of the Chapter 11 Cases, the applicable Bar Date, the hearing to consider approval of the Disclosure Statement or the Confirmation Hearing or for any other purpose;
16. To resolve any dispute or matter arising under or in connection with any order of the Court entered in the Chapter 11 Cases;
17. To authorize, as may be necessary or appropriate, sales of assets as necessary or desirable and resolve objections, if any, to such sales;
18. To resolve any disputes concerning any release, injunction, exculpation or other waiver or protection provided in the Plan;
19. To approve, if necessary, any Distributions, or objections thereto, under the Plan;
20. To approve, as may be necessary or appropriate, any Claims settlement entered into or offset exercised by the Liquidating Trust;
21. To resolve any dispute or matter arising under or in connection with the Liquidating Trust;
22. To order the production of documents, disclosures or information, or to appear for deposition demanded pursuant to Bankruptcy Rule 2004; and
23. To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code.

B. Retention of Non-Exclusive Jurisdiction by the Court

Notwithstanding anything else in the Plan, the Court shall retain non-exclusive jurisdiction over all Liquidating Trust Claims prosecuted by the Liquidating Trust.

C. Failure of Court to Exercise Jurisdiction

If the Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in Article XI.A of the Plan, the provisions of this Article XI shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

ARTICLE XII

MISCELLANEOUS PROVISIONS

A. Modifications and Amendments

The Debtors may alter, amend or modify the Plan or any Exhibits thereto under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date provided that the Debtors have received the prior written consent of the Committee and HEP, which consent shall not unreasonably be withheld. After the Confirmation Date and prior to substantial consummation of the Plan as defined in section 1101(2) of the Bankruptcy Code, the Debtors may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Court.

B. Severability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Court to be invalid, void or unenforceable, then the Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

C. Successors and Assigns

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

D. Payment of Statutory Fees

All fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid on or as soon as practicable after the Effective Date. The Debtors, prior to the Effective Date, and the Liquidating Trust, from and after the Effective Date, shall pay statutory fees to the U.S. Trustee in accordance with 28 U.S.C. § 1930 until the Chapter 11 Cases are closed or converted and/or the entry of final decrees. In addition, the Liquidating Trust shall file post-confirmation quarterly reports or any pre-confirmation monthly operating reports not filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines. The U.S. Trustee shall

not be required to file a request for payment of its quarterly fees, which shall be deemed an Administrative Claim against the Debtors and their Estates.

E. Revocation, Withdrawal or Non-Consummation

The Debtors reserve the right to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to file subsequent plans. If the Debtors revoke or withdraw the Plan as to any or all of the Debtors, or if Confirmation or consummation of the Plan as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person or (iii) constitute an admission of any sort by such Debtors or any other Person.

F. Service of Documents

Any notice, request or demand required or permitted to be made or provided to or upon a Debtor, HEP, the Committee, the Liquidating Trust or the Liquidating Trust Committee shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail or (v) facsimile transmission, (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, and (d) addressed as follows:

The Debtors

MacKeyser Holdings, LLC
10624 Eastern Avenue #965
Henderson, Nevada 89052
Attn: Thomas J. Allison, Chief Executive Officer

with a copy to:

David R. Hurst, Esq.
Cole, Schotz, Meisel, Forman & Leonard, P.A.
500 Delaware Ave., Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117

HEP

Ron E. Meisler, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Chicago, IL 60606
Telephone: (312) 407-0700
Facsimile: (312) 407-0411

- and -

Sarah E. Pierce, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
920 N. King Street, Lbby 7
Wilmington, DE 19801
Telephone: (302) 651-3000
Facsimile: (302) 651-3001

Committee, Liquidating Trust Committee

Lawrence Gottlieb, Esq.
Michael Klein, Esq.
Robert Winning, Esq.
Cooley LLP
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 479-6000
Facsimile: (212) 479-6275

Liquidating Trustee

[ADD]

G. Plan Supplement(s)

Exhibits to the Plan not attached hereto shall be filed in one or more Plan Supplements by the Plan Supplement Filing Date. Any Plan Supplement (and amendments thereto) filed by the Debtors shall be deemed an integral part of the Plan and shall be incorporated by reference as if fully set forth herein. Substantially contemporaneously with their filing, the Plan Supplements may be viewed at the Debtors' case website (<http://www.americanlegalclaims.com/mackeyser>) or the Court's website (<http://www.deb.uscourts.gov>). Copies of case pleadings, including the Plan Supplements, also may be examined between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding federal holidays, at the Office of the Clerk of the Court, 824 N. Market St., 3rd Floor, Wilmington, Delaware 19801. Finally, copies of case pleadings also may be obtained by written request to the Claims Agent, at Notice_MacKeyser@americanlegalclaims.com. The documents contained in any Plan Supplements shall be approved by the Court pursuant to the Confirmation Order.

Dated: Wilmington, Delaware
November 10, 2014

MACKEYSER HOLDINGS, LLC, et al.,
Debtors and Debtors-in-Possession

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

By: ***DRAFT*** _____
Thomas J. Allison
Chief Executive Officer

By: ***DRAFT*** _____
Stephen J. McCormack, Ph.D.
Chairman

COLE, SCHOTZ, MEISEL, FORMAN
& LEONARD, P.A.

COOLEY LLP

By: ***DRAFT*** _____
David R. Hurst (I.D. No. 3743)
Marion M. Quirk (I.D. No. 4136)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
(302) 652-3131

By: ***DRAFT*** _____
Lawrence Gottlieb
Michael Klein
Robert Winning
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 479-6000

*Counsel for the Debtors and
Debtors-in-Possession*

- and -

KLEHR HARRISON HARVEY
BRANZBURG LLP

Richard Michael Beck
919 Market Street, Suite 1000
Wilmington, Delaware 19801
Telephone: (302) 426-1189

*Counsel to the Official Committee of
Unsecured Creditors*

EXHIBIT A

Liquidating Trust Agreement

[To be filed on or before Plan Supplement Filing Date]

EXHIBIT B

Contracts To Be Assumed Under Plan

[To be filed on or before Plan Supplement Filing Date]

EXHIBIT CNon-Exclusive List of Retained Claims and Causes of Action

The following is a non-exclusive list of potential or actual parties against whom the Debtors could assert or have asserted a claim or cause of action, which claims and causes of action are being transferred to the Liquidating Trust under the Plan and pursuant to the authority of section 1123(b)(3)(B) of the Bankruptcy Code, subject to any release, exculpations and/or indemnifications in the Plan, the Global Settlement Order or the Final DIP Order. Defined terms not defined herein are used as defined in the Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors to which this Exhibit C is attached. The Plan Proponents reserve their rights to modify this list to amend parties or otherwise update this list, but disclaim any obligation to do so. In addition to possible causes of action and claims against the persons or entities listed herein, the Debtors may have, in the ordinary course of business, causes of action, claims or rights against vendors or others with whom they deal in the ordinary course of business (“Ordinary Course Claims”) to the extent such causes of action, claims or rights have not been assigned to a third party. The Liquidating Trust and the Liquidating Trustee reserve their right to enforce, sue on, settle or compromise (or decline to do any of the foregoing) the Ordinary Course Claims and all other claims and causes of action of the Debtors and the Estates, including but not limited to the specific claims and causes of action described below, subject to any release, exculpations and/or indemnifications in the Plan, the Global Settlement Order or the Final DIP Order.

1. All claims and causes of action of the Debtors arising before the Effective Date (regardless of whether arising before or after the Petition Date) against any persons or entities, including but not limited to (a) claims and causes of action for breach of contract, negligence, professional negligence, breach of fiduciary duty or other duties, or fraud, against the Debtors’ officers, directors, accountants and/or auditors prior to the Petition Date; and (b) claims and causes of action against insurance companies and brokers arising in connection with directors and officers, fidelity, general liability, property, workers compensation and any other insurance coverages and policies, including but not limited to claims under the insurance coverages and policies, and claims and causes of action for breach of contract, fraud, negligent misrepresentation, professional negligence, and breach of the duty of good faith and fair dealing.

2. Claims and causes of action, including but not limited to those based on avoidance actions and powers, against any and all parties listed on Statement 3.c to each of the Debtors’ Statements of Financial Affairs (including any amendments thereto) as receiving payments from one or more of the Debtors in the one (1) year preceding the Petition Date.

3. Claims and causes of action against (i) [Essilor of America, Inc. and its affiliates]; (ii) WCEC, LLC, Barry Katzman, MD, Inc. and/or Dr. Barry Katzman and their respective affiliates; (iii) Pierre Keyser, Erica Perreira, Erik Larsen and Sean Lyman, and individuals and entities affiliated therewith; (iv) Kroll Inc.; and (v) Wisconsin Vision, Inc. and its affiliates.

4. Claims and causes of action against any and all former directors, officers and insiders of one or more of the Debtors.

5. Any and all outstanding accounts receivable balances owed to one or more of the Debtors.
6. Any and all present and former utility service providers holding pre- or post-petition deposits.
7. Any and all pending federal and state tax actions and appeals.
8. Any and all pending prepetition litigation, including any prepetition litigation for which the Debtors maintain insurance coverage.
9. Any and all rights and claims under contracts, leases, loan agreements, syndications, or any other agreement not cancelled pursuant to the Plan, including but not limited to collection actions and claims.
10. Any and all objections to claims asserted under section 502 of the Bankruptcy Code against one or more of the Debtors, whether based upon claims filed on the Debtors' claims registry or equitably asserted.
11. Any and all objections to claims asserted under section 503(b) of the Bankruptcy Code against one or more of the Debtors, whether based upon claims filed on the Debtors' claims registry or equitably asserted.
12. Any and all objections to secured claims against one or more of the Debtors, whether based upon claims filed on the Debtors' claims registry or otherwise asserted.
13. Any and all objections to claims asserted under section 507 of the Bankruptcy Code against one or more of the Debtors, whether based upon claims filed on the Debtors' claims registry or otherwise asserted.
14. The Liquidating Trust and the Liquidating Trustee expressly reserve all rights, defenses and counterclaims against any person or entity that has asserted or could assert a claim against the Debtors.

ALL OF THE ABOVE PERSONS OR ENTITIES INCLUDE THEIR AGENTS, EMPLOYEES, PROFESSIONALS, REPRESENTATIVES, OFFICERS, DIRECTORS, MEMBERS, PARTNERS, SUCCESSORS, AFFILIATES AND ASSIGNS. THE PLAN PROPONENTS EXPRESSLY RESERVE THE RIGHT TO AMEND OR SUPPLEMENT THIS LIST AT ANY TIME PRIOR TO THE CONFIRMATION HEARING.

EXHIBIT B

Debtors' Corporate Structure

Mackeyser Holdings, LLC Structure Chart

