

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION

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IN RE: Chapter 11  
PROTECTIVE PRODUCTS OF AMERICA, Case No.: 10-10711-JKO  
INC., *et al.*,  
Debtor. Jointly Administered

**COMMITTEE OF UNSECURED CREDITORS' NOTICE OF FILING OF REDLINED  
PLAN AND DISCLOSURE STATEMENT**

The Official Committee of Unsecured Creditors (the "Committee") of Protective Products of America, Inc., et al. (collectively, the "Debtors"), files the attached redlined version of the *Third Amended Plan Of Liquidation For The Debtors Proposed By The Official Committee Of Unsecured Creditors* (the "Plan Redline") and the *Third Amended Disclosure Statement Under 11 U.S.C. § 1125 In Support Of The Third Amended Plan Of Liquidation For The Debtors Proposed By The Official Committee Of Unsecured Creditors* (the "Disclosure Redline"). The Plan Redline marks changes to the *Second Amended Plan Of Liquidation For The Debtors Proposed By The Official Committee Of Unsecured Creditors* dated as of December 20, 2010 [D.E. #361]. The Disclosure Redline changes to the *Second Amended Disclosure Statement Under 11 U.S.C. § 1125 In Support Of The Second Amended Plan Of Liquidation For The Debtors* dated as of December 20, 2010 [D.E. #362].

**I HEREBY CERTIFY** that on this 28th day of December, 2010, a copy of the foregoing was served via CM/ECF to those parties who have consented to electronic notice.

**I HEREBY CERTIFY** that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

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~~THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT.~~

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re: Case No. 10-10711-BKC-JKO  
PPOA HOLDING, INC., *et al.*,<sup>1</sup> Chapter 11 Cases  
Debtors. (Jointly Administered)

**~~SECOND~~THIRD AMENDED DISCLOSURE STATEMENT  
UNDER 11 U.S.C. § 1125 IN SUPPORT OF THE ~~SECOND~~THIRD AMENDED  
PLAN OF LIQUIDATION FOR THE DEBTORS  
PROPOSED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: December 22, 2010

~~Dated: December 20, 2010~~

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<sup>1</sup> The name and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) PPOA Holding, Inc. f/k/a Protective Products of America, Inc. (9709); (ii) CPC Holding Corporation of America (8086); (iii) CP Corporation of America, Inc. f/k/a Ceramic Protection Corporation of America (7305); (iv) PPI International Corp. f/k/a Protective Products International Corp. (7373); and (v) PPNC, LLC f/k/a Protective Products of North Carolina, LLC (0927). The address for the Debtors is c/o Ahearn Jasco & Company, P.A., Attn. Frank E. Jaumot, CPA, 190 Southeast 19<sup>th</sup> Avenue, Pompano Beach, Florida 33060.

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## Introduction

The Official Committee of Unsecured Creditors (the “Committee”)<sup>2</sup> of PPOA Holding, Inc., f/k/a Protective Products of America, Inc. (“PPOA Holding”); CPC Holding Corporation of America (“CPC Holding”); CP Corporation of America, Inc. f/k/a Ceramic Protection Corporation of America (“CPC Corp.”); PPI International Corp. f/k/a Protective Products International Corp. (“PPI”); PPNC, LLC f/k/a Protective Products of North Carolina, LLC (“PPNC”) (collectively, the “Debtors”) submits this ~~Second~~Third Amended Disclosure Statement (the “Disclosure Statement”) pursuant to section 1125 of the Bankruptcy Code in support of the ~~Second~~Third Amended Plan of Liquidation for the Debtors Proposed by the Official Committee of Unsecured Creditors (the “Plan”), attached hereto as **Exhibit A**.

This Disclosure Statement sets forth certain information regarding the prepetition operations and financial history of the Debtors, events leading to the Debtors’ bankruptcy, significant events that have occurred during the Bankruptcy Cases, and the means for implementing a liquidation of the Debtors’ remaining assets. This Disclosure Statement also describes terms and provisions of the Plan, certain alternatives to the Plan, 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. Additionally, this Disclosure Statement discusses the confirmation process and the voting procedures and requirements for voting on the Plan.

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN AND IS INTENDED TO AID AND SUPPLEMENT REVIEW OF THE PLAN. HOWEVER, THIS DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN. FURTHER, THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED PROVISIONS SET FORTH IN THE PLAN AND THE PLAN EXHIBITS. IF THERE IS A CONFLICT BETWEEN THE PLAN OR THE PLAN EXHIBITS AND THIS DISCLOSURE STATEMENT, THE PROVISIONS OF THE PLAN AND THE PLAN EXHIBITS WILL GOVERN. ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND THE PLAN EXHIBITS, AS WELL AS TO READ CAREFULLY THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

### **A. Summary of Distributions and Releases Under the Plan**

The Plan provides for, among other things, the collection of the Debtors’ portion of certain income tax refunds, the pursuit of certain litigation, including but not limited to Avoidance Actions and Causes of Action, and the distribution of the Creditor Trust Assets.

<sup>2</sup> Except as otherwise provided in this Disclosure Statement, capitalized terms used herein have the meanings ascribed to them in the Plan, including the Glossary of Defined Terms attached to the Plan as Exhibit A. In the event of any conflict between the terms of the Disclosure Statement and the terms of the Plan, the Plan shall control. Any capitalized term used in this Disclosure Statement that is not defined in the Plan or this Disclosure Statement shall have the meaning ascribed to that term in the Bankruptcy Code or Bankruptcy Rules, whichever is applicable.

Under the Plan, holders of General Unsecured Claims will receive a Pro Rata Share of Cash proceeds of the Creditor Trust Assets. The Cash available to pay Allowed General Unsecured Claims is provided from the liquidation of all of the Creditor Trust Assets. The Committee estimates that the actual recovery for holders of Allowed General Unsecured Claims will be approximately \$2,669,559, as set forth in the liquidation analysis of the Debtors' bankruptcy estates (the "Liquidating Analysis"), attached hereto as **Exhibit B**. The Committee believes that the recovery pursuant to the Plan is more than the recovery such holders would realize upon liquidation of these cases under chapter 7 of the Bankruptcy Code. The Committee also believes that the additional administrative expenses of a chapter 7 trustee and its professionals would dilute the Distribution available to General Unsecured Creditors.

Articles 8.2 and 8.3 of the Plan contain certain limited release and exculpation provisions. Specifically, the release provisions contained in Article 8.2 of the Plan provide for certain limited releases by the Debtors (on behalf of themselves and their respective Estates) to (i) their CRO; (ii) the Committee and (iii) Professionals from all claims, causes of actions, and other liabilities arising during the Bankruptcy Cases before the Effective Date from any act or omission in connection with, including, but not limited to, the Sale Transaction, the CIBC Adversary Proceeding, the Plan, and this Disclosure Statement. In addition, Article 8.4 of the Plan provides for a mutual release in favor of CIBC and the Estates and an injunction of claims of third parties against CIBC. For a more complete description of the breadth and limitations of these provisions please review Articles 8.2, 8.3, and 8.4 of the Plan and Article 10.3 of the Disclosure Statement.

#### **B. Filing of the Debtors' Bankruptcy Cases**

On January 13, 2010, the Debtors filed voluntary petitions under chapter 11 petitions of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their property and assets as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

#### **C. Purpose of Disclosure Statement**

This Disclosure Statement is submitted in accordance with section 1125 of the Bankruptcy Code for the purpose of soliciting acceptances of the Plan from holders of certain Classes of Claims and Equity Interests. Acceptances of the Plan are being sought only from Claimholders whose Claims are "impaired" (as that term is defined in Bankruptcy Code section 1124) by the Plan and who are receiving or retaining property under the Plan. Holders of Claims that are not impaired are deemed to have accepted the Plan. Holders of Claims or Equity Interests that are not receiving or retaining any property under the Plan are deemed to have rejected the Plan.

The Committee has prepared this Disclosure Statement pursuant to Bankruptcy Code section 1125, which requires that a copy of the Plan, or a summary thereof, be submitted to all holders of Claims against, and Equity Interests in, the Debtors, along with a written disclosure statement containing adequate information about the Debtors of a kind, and in sufficient detail, as far as is reasonably practicable, that would enable a hypothetical, reasonable investor typical of holders of Claims or Equity Interests to make an informed judgment in exercising their right to vote on the Plan.

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This Disclosure Statement was approved by the Bankruptcy Court on December \_\_, 2010. Such approval is required by the Bankruptcy Code, and does not constitute a judgment by the Bankruptcy Court as to the desirability of the Plan or the value or suitability of any consideration offered under the Plan. Such approval does indicate, however, that the Bankruptcy Court has determined that the Disclosure Statement meets the requirements of Bankruptcy Code section 1125 and contains adequate information to permit holders of Claims or Equity Interests whose acceptance of the Plan is solicited to make an informed judgment regarding acceptance or rejection of the Plan.

**D. Disclaimers**

THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN, OR A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN. THE MATERIAL CONTAINED IN THIS DISCLOSURE STATEMENT IS INTENDED SOLELY FOR THE USE OF HOLDERS OF CLAIMS AND EQUITY INTERESTS IN EVALUATING THE PLAN AND VOTING TO ACCEPT OR REJECT THE PLAN. ACCORDINGLY, THIS DISCLOSURE STATEMENT AND PLAN MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN THE DETERMINATION OF HOW TO VOTE ON, OR WHETHER TO OBJECT TO, THE PLAN.

FURTHER, THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC") OR ANY STATE REGULATORY AUTHORITY. NEITHER THE SEC NOR ANY STATE REGULATORY AUTHORITY HAS PASSED ON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN, AND ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL. THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND IS NOT NECESSARILY IN ACCORDANCE WITH THE REQUIREMENTS OF FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS.

NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, NO PROVISION OF THE DISCLOSURE STATEMENT, PLAN OR THE CONFIRMATION ORDER SHALL (I) DISCHARGE OR RELEASE THE DEBTORS OR ANY OTHER PERSON OR ENTITY FROM ANY RIGHT, CLAIM, CAUSE OF ACTION, OR POWER OR INTEREST HELD OR ASSERTABLE BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR (II) ENJOIN, IMPAIR OR DELAY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION FROM COMMENCING OR CONTINUING ANY CLAIMS, CAUSES OF ACTION, PROCEEDINGS OR INVESTIGATIONS AGAINST THE DEBTORS OR ANY OTHER PERSON OR ENTITY IN ANY NON-BANKRUPTCY FORUM.

THE CONTENTS OF THIS DISCLOSURE STATEMENT MAY NOT BE INTERPRETED AS PROVIDING ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE. HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE URGED TO CONSULT WITH

THEIR OWN ADVISORS WITH RESPECT TO THIS DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY.

THE LIQUIDATION OF THE DEBTORS PURSUANT TO THE PLAN IS SUBJECT TO NUMEROUS CONDITIONS AND VARIABLES, AND THERE CAN BE NO ABSOLUTE ASSURANCE THAT THE PLAN, AS CONTEMPLATED, WILL BE EFFECTUATED.

EXCEPT WHERE SPECIFICALLY NOTED, THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN AUDITED AND MAY NOT HAVE BEEN PREPARED IN ACCORDANCE WITH ACCOUNTING PRINCIPLES GENERALLY ACCEPTED IN THE UNITED STATES.

CERTAIN STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE BASED ON ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. FORWARD-LOOKING STATEMENTS ARE PROVIDED IN THIS DISCLOSURE STATEMENT PURSUANT TO THE SAFE HARBOR ESTABLISHED UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995 AND SHOULD BE EVALUATED IN THE CONTEXT OF THE ESTIMATES, ASSUMPTIONS, UNCERTAINTIES, AND RISKS DESCRIBED HEREIN.

IN PREPARING THIS DISCLOSURE STATEMENT, THE COMMITTEE RELIED ON CERTAIN FINANCIAL DATA DERIVED FROM INFORMATION PROVIDED TO THE COMMITTEE BY THE DEBTORS THAT WAS AVAILABLE AT THE TIME OF PREPARATION. ALTHOUGH THE ATTORNEYS EMPLOYED BY THE COMMITTEE HAVE PREPARED THIS DISCLOSURE STATEMENT BASED UPON FACTUAL INFORMATION AND ASSUMPTIONS CONCERNING FINANCIAL, BUSINESS, AND ACCOUNTING DATA DERIVED FROM INFORMATION PROVIDED TO THE COMMITTEE BY THE DEBTORS, THEY HAVE NOT INDEPENDENTLY VERIFIED SUCH INFORMATION AND MAKE NO REPRESENTATIONS AS TO THE ACCURACY THEREOF. THE ATTORNEYS AND OTHER PROFESSIONALS EMPLOYED BY THE COMMITTEE OR THE DEBTORS SHALL HAVE NO LIABILITY FOR THE INFORMATION CONTAINED OR DISCUSSED IN THIS DISCLOSURE STATEMENT.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND ANY OTHER ACTIONS OR CLAIMS, NEITHER THE FILING OF THE PLAN NOR ANY STATEMENT OR PROVISION CONTAINED IN THE PLAN OR IN THE DISCLOSURE STATEMENT, NOR THE TAKING BY ANY PARTY IN INTEREST OF ANY ACTION WITH RESPECT TO THE PLAN, SHALL CONSTITUTE, OR BE CONSTRUED AS, AN ADMISSION OF ANY FACT OR LIABILITY AGAINST INTEREST, OR BE, OR BE DEEMED TO BE, A STIPULATION OR WAIVER OF ANY RIGHTS ANY PARTY IN INTEREST MAY HAVE AGAINST ANY OTHER PARTY IN INTEREST, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.

IN THE EVENT THAT THE PLAN IS NOT CONFIRMED OR FAILS TO BECOME EFFECTIVE, NEITHER THE PLAN NOR THIS DISCLOSURE STATEMENT, NOR ANY STATEMENT CONTAINED IN THE PLAN OR IN THIS DISCLOSURE STATEMENT,

SHALL BE USED OR RELIED ON IN ANY MANNER IN ANY SUIT, ACTION, PROCEEDING OR CONTROVERSY, WITHIN, OUTSIDE, OR WITHOUT THE DEBTORS' BANKRUPTCY CASES, INVOLVING THE DEBTORS OR ANY OTHER ENTITY OR PARTY IN INTEREST.

IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT AND THE PLAN IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR EQUITY INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE TAX CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

THE COMMITTEE BELIEVES THAT THE PLAN AND THE PROPOSED TREATMENT OF CLAIMS ARE IN THE BEST INTERESTS OF HOLDERS OF CLAIMS, AND THEREFORE URGE ALL CREDITORS WHO ARE ENTITLED TO VOTE TO ACCEPT THE PLAN.

**E. Hearing on Confirmation of the Plan**

The Bankruptcy Court has set ~~February~~, March 1, 2011 at ~~10:00~~ 1:30 p.m. prevailing Eastern Time as the date and time for the hearing to determine whether the Plan has been accepted by the requisite number of holders of Claims and whether the other requirements for confirmation of the Plan have been satisfied. If the Plan is rejected by one or more Impaired Classes of Claims, the Bankruptcy Court may still confirm the Plan, or a modification thereof, under Bankruptcy Code section 1129(b) (commonly referred to as a "cramdown") if it determines, among other things, that the Plan does not discriminate unfairly and is fair and equitable with respect to the rejecting Class or Classes of Claims Impaired under the Plan. The procedures and requirements for voting on the Plan are described in more detail below.

**E. Sources of Information**

Except as otherwise expressly indicated, the portions of this Disclosure Statement describing the Debtors, their business, properties and management have been prepared from information furnished by the Debtors. The Debtors' books and records were seized by the FBI during its raid of the Debtors' offices located at Sunrise, Florida, after the arrest of Mr. Caldwell and Mr. Giordanella sometime in January of 2010. The Plan Proponent, therefore, relied primarily on information supplied by the Debtors' Professionals and CRO, Frank Jamout.

Certain of the materials contained in this Disclosure Statement are taken directly from other readily accessible documents or are digests of other documents. While the Committee has made every effort to retain the meaning of such other documents or portions that have been summarized, any reliance on information contained in such other documents should depend on a thorough review of the documents themselves. **In the event of a discrepancy between this**



**Disclosure Statement and the actual terms of a document, the actual terms of the document shall govern and apply.**

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified, and neither the delivery of this Disclosure Statement nor any exchange of rights made in connection with it shall, under any circumstances, create an implication that there has been no change in the facts set forth herein since the date of this Disclosure Statement.

No statements concerning the Debtors, the value of the Remaining Assets, or the value of any benefit offered to the holders of Claims or Equity Interests under the Plan should be relied on other than as set forth in this Disclosure Statement. In arriving at a decision, parties should not rely on any representation or inducement made to secure their acceptance or rejection that is contrary to information contained in this Disclosure Statement, and any such additional representations or inducements should be immediately reported to both (i) counsel for the Debtors, Jordi Guso, Esq., Berger Singerman P.A., 200 South Biscayne Boulevard, 10th Floor, Miami, Florida 33131 [(305) 755-9500] and (ii) counsel for the Committee, George P. Angelich, Arent Fox LLP, 1675 Broadway, New York, NY 10019-5820 [(212) 484-3900].

## **ARTICLE 1**

### **EXPLANATION OF CHAPTER 11**

#### **1.1 Overview of Chapter 11**

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor in possession attempts to reorganize, or provide for an orderly liquidation of, its business and financial affairs for the benefit of the debtor, its creditors, and other parties in interest.

The commencement of a chapter 11 case creates an estate comprising all of the debtor's legal and equitable interests in property as of the date the petition is filed. Unless the Bankruptcy Court orders the appointment of a trustee, Bankruptcy Code sections 1101, 1107 and 1108 provide that a chapter 11 debtor may continue to operate its business and control the assets of its estate as a "debtor in possession."

The filing of a chapter 11 petition also triggers the automatic stay under Bankruptcy Code section 362. The automatic stay essentially halts all attempts to collect prepetition claims from the debtor or to otherwise interfere with the debtor's business or its bankruptcy estate.

Formulation of a plan of reorganization or liquidation is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying the claims of creditors against, and interests of equity security holders in, the debtor. Unless a trustee is appointed, only the debtor may file a plan during the first 120 days of a chapter 11 case. This 120 day period is called the "Exclusive Period." After the Exclusive Period has expired, a creditor, an official committee, or any other party in interest may file a plan, unless the debtor files a plan within the Exclusive Period.



## 1.2 Plan, Right to Vote, and Requirements of Confirmation

After a plan has been filed, the holders of claims against, or equity interests in, a debtor are permitted to vote on whether to accept or reject the plan. Chapter 11 does not require that each holder of a claim against, or equity interest in, a debtor vote in favor of a plan in order for the plan to be confirmed. At a minimum, however, a plan must be accepted by a majority in number and two-thirds in dollar amount of those claims actually voting from at least one class of claims impaired under the plan. The Bankruptcy Code also defines acceptance of a plan by a class of equity interests as acceptance by holders of two-thirds of the number of shares actually voted.

Classes of claims or equity interests that are not “impaired” under a plan of reorganization are conclusively presumed to have accepted the plan, and therefore are not entitled to vote. A class is “impaired” if the plan modifies the legal, equitable, or contractual rights attaching to the claims or equity interests of that class. Modification for purposes of impairment does not include curing defaults and reinstating maturity or payment in full in cash. Conversely, classes of claims or equity interests that receive or retain no property under a plan of reorganization are conclusively presumed to have rejected the plan, and therefore are not entitled to vote.

Even if all classes of claims and equity interests accept a plan of reorganization, the Bankruptcy Court may nonetheless deny confirmation. Bankruptcy Code section 1129 sets forth the requirements for confirmation and, among other things, requires that a plan be in the “best interests” of impaired and dissenting creditors and holders of equity interests and that the plan be feasible. The “best interests” test generally requires that the value of the consideration to be distributed to impaired and dissenting creditors and interest holders under a plan may not be less than those parties would receive if the debtor were liquidated under a hypothetical liquidation occurring under chapter 7 of the Bankruptcy Code. A plan must also be determined to be “feasible,” which generally requires a finding that there is a reasonable probability that the debtor will be able to perform the obligations incurred under the plan and that the debtor will be able to continue operations without the need for further financial reorganization or liquidation.

The Bankruptcy Court may confirm a plan of reorganization or liquidation even though fewer than all of the classes of impaired claims and equity interests accept it. The Court may do so under the “cramdown” provisions of Bankruptcy Code section 1129(b). In order for a plan to be confirmed under the cramdown provisions, despite the rejection of a class of impaired claims or interests, the proponent of the plan must show, among other things, that the plan does not discriminate unfairly and that it is fair and equitable with respect to each impaired class of claims or equity interests that has not accepted the plan.

The Bankruptcy Court must further find that the economic terms of the particular plan meet the specific requirements of Bankruptcy Code section 1129(b) with respect to the subject objecting class. If the proponent of the plan proposes to seek confirmation of the plan under the provisions of Bankruptcy Code section 1129(b), the proponent must also meet all applicable requirements of Bankruptcy Code section 1129(a) (except section 1129(a)(8)). Those requirements include the requirements that (i) the plan comply with applicable Bankruptcy Code provisions and other applicable law, (ii) that the plan be proposed in good faith, and (iii) that at least one impaired class of creditors or holders of equity interest has voted to accept the plan.

## ARTICLE 2

### VOTING PROCEDURES AND CONFIRMATION REQUIREMENTS

#### 2.1 Ballots and ~~Voting~~ Deadline for Filing Ballots Accepting or Rejecting Plan

On ~~December~~ December, 2010, the Bankruptcy Court entered an order approving the Disclosure Statement and solicitation and voting procedures with respect to the Plan (the "Solicitation Procedures Order"). Pursuant to the Solicitation Procedures Order, the Bankruptcy Court approved the form of ballots, ballot instructions, the nature of soliciting votes on the Plan and the manner in which such votes are to be balloted. A Ballot for voting to accept or reject the Plan is enclosed with this Disclosure Statement, and has been mailed to Claimholders (or their authorized representative) entitled to vote. In addition to their right to vote to accept or reject the Plan, holders of Unsecured Claims of Subordinated Debentures are entitled to make the Election to Opt Out of the Bondholder Settlement. After carefully reviewing the Plan and Disclosure Statement, including all exhibits, each Claimholder (or its authorized representative) entitled to vote should indicate its vote on the enclosed Ballot.

The Bankruptcy Court has directed that, in order to be counted for voting purposes, Ballots for the acceptance or rejection of the Plan must be received no later than ~~February 18,~~ February 18, 2011 at 4:00 p.m. ~~prevailing~~ (Prevailing Eastern Time) (the "~~Voting~~ Deadline for Filing Ballots Accepting or Rejecting Plan") by Genovese, Joblove & Battista, P.A., 100 S.E. Second Street, 44th Floor, Miami, Florida 33131, Attn. Glenn D. Moses, Esq., Fax. (305) 349-2310 or email gmoses@gjb-law.com (the "Tabulation Agent"). Instructions for filling out and submitting your ballot to the Committee will be contained on the Ballot. Please review and follow those instructions carefully.

All Claimholders (or their authorized representative) entitled to vote must:

1. carefully review the Ballot and corresponding instructions,
2. execute the Ballot, and
3. return it to the address indicated on the ballot by the ~~Voting~~ Deadline for Filing Ballots Accepting or Rejecting Plan for the Ballot to be considered.

**BALLOTS MUST BE RECEIVED BY THE TABULATION AGENT NO LATER THAN ~~February 18,~~ FEBRUARY 18, 2011 AT 4:00 P.M. (PREVAILING EASTERN TIME). ANY BALLOTS RECEIVED AFTER THE ~~VOTING~~ DEADLINE FOR FILING BALLOTS ACCEPTING OR REJECTING PLAN WILL NOT BE COUNTED. IF YOUR BALLOT IS DAMAGED OR LOST, YOU MAY REQUEST A REPLACEMENT BALLOT BY SENDING A WRITTEN REQUEST TO THE TABULATION AGENT ~~AT 100 S.E. SECOND STREET, 44TH FLOOR, MIAMI, FLORIDA 33131, ATTN. GLENN D. MOSES, ESQ.~~**

#### 2.2 Claimholders Entitled to Vote

Unless otherwise specified in the Solicitation Procedures Order, any holder of a Claim or Equity Interest whose Claim or Equity Interest is Impaired under the Plan is entitled to vote if either (i)

the Debtors have scheduled the Claim in their Schedules of Assets and Liabilities and such Claim is not scheduled as disputed, contingent, or unliquidated or (ii) the holder of a Claim has filed a proof of claim on or before the Bar Date or such other applicable Bar Date. **Returning the ballot to the Tabulation Agent does not constitute filing a proof of claim or equity interest.**

Any holder of a Claim to which an objection has been timely filed pursuant to the Solicitation Procedures Order (and such objection is still pending on the ~~Voting~~ [Deadline for Filing Ballots Accepting or Rejecting Plan](#)) is not entitled to vote, unless the Bankruptcy Court, on motion filed by such party whose Claim is subject to an objection, temporarily allows the Claim in a specific amount for the purpose of accepting or rejecting the Plan. Such motion must be heard and determined by the Bankruptcy Court before the Confirmation Hearing on the Plan. Further, a vote may be disregarded if the Bankruptcy Court determines that the acceptance or rejection by a holder of a Claim or Equity Interest was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code.

Under Bankruptcy Code section 1126(f), a class that is not Impaired under a chapter 11 plan, and each holder of a Claim or Equity Interest in such class, are conclusively presumed to have accepted the chapter 11 plan. Under Bankruptcy Code section 1126(g), a class is deemed to have rejected a chapter 11 plan if the holders of Claims or Equity Interests in such class do not receive or retain any property under the chapter 11 plan on account of such Claims or Equity Interests. Holders of Claims or Equity Interests that are unimpaired under the Plan, or that are not entitled to receive or retain any property under the Plan, are not entitled to vote to accept or reject the Plan. Thus, the Plan Proponent will not be soliciting votes from such holders of Claims or Equity Interests.

### 2.3 Bar Date for Filing Proofs of Claim

The Bankruptcy Court established May 18, 2010 as the deadline for filing proofs of claim ~~and proof of interests~~ in the Bankruptcy Case (called the “Bar Date”) with ~~four~~ [three](#) exceptions: (i) in the event that the Debtors amend their Schedules of Assets and Liabilities, the Debtors must give notice of such amendment to the Claimholder affected thereby, and the affected Claimholder shall have the later of the Bar Date or thirty (30) days from the date on which notice of such amendment was given to file a proof of claim; (ii) in the event that a Claim arises with respect to the Debtors’ rejection of an Executory Contract or unexpired lease, the Claimholder shall have the later of the Bar Date or thirty (30) days after the effective date of any order authorizing the rejection of the Executory Contract or unexpired lease to file a proof of claim; and (iii) the deadline for filing a proof of claim by any governmental unit (as defined by section 101(27) of the Bankruptcy Code) holding or wishing to assert Claims against the Debtors was on or before July 12, 2010. These deadlines along with procedures for filing proofs of claim are described in the Bar Date Notice, a copy of which may be obtained by contacting the Debtors’ counsel:

Berger Singerman. P.A  
200 South Biscayne Blvd., Suite 1000  
Miami, FL 33131  
Telephone: (305) 755-9500

Facsimile: (305) 714-4340  
Email: jguso@bergersingerman.com  
Attn: Jordi Guso, Esquire

#### 2.4 Definition of Impairment

Under Bankruptcy Code section 1124, a class of Claims or Equity Interests is impaired under a plan of reorganization unless, with respect to each Claim or Equity Interests of such class, the Plan:

- (a) leaves unaltered the legal, equitable, and contractual rights of the holder of such claim or equity interest; or
- (b) notwithstanding any contractual provision or applicable law that entitles the holder of a claim or equity interest to receive accelerated payment of such claim or equity interest after the occurrence of a default:
  - (i) cures any such default that occurred before or after the commencement of the case under the Bankruptcy Code, other than a default of a kind specified in Bankruptcy Code section 365(b)(2) or of a kind that section 365(b)(2) expressly does not require to be cured;
  - (ii) reinstates the maturity of such claim or equity interest as it existed before the default;
  - (iii) compensates the holder of such claim or equity interest for damages incurred as a result of reasonable reliance on such contractual provision or applicable law;
  - (iv) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to Bankruptcy Code section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and
  - (v) does not otherwise alter the legal, equitable, or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

#### 2.5 Classes Impaired Under the Plan

Priority Unsecured Non-Tax Claims in Class – 1 are not Impaired under the Plan. Under Bankruptcy Code section 1126(f), holders of Claims in those Classes are conclusively presumed to have accepted the Plan, and are therefore not entitled to vote to accept or reject the Plan.

Except for the Priority Unsecured Non-Tax Claims in Class – 1, all classified Claims and Equity Interests are Impaired under the Plan. Holders of Claims in the Impaired Classes are entitled to vote to accept or reject the Plan, except as provided in the following paragraph.

Holders of Subordinated Claims in Class – 5 shall not receive any Distributions, nor retain any interest in the Estate Property or the Creditor Trust Assets, on account of such Claims under the Plan, except and to the extent as provided in Section 4.5 of the Plan. In addition, Holders of Equity Interests in Class – 6 will not retain their Equity Interests, and no Distributions on account of such Equity Interests will be made under the Plan, except and to the extent as provided in Section 4.6 of the Plan. Both Holders of Subordinated Claims and Holders of Equity Interests are Impaired under this Plan and, under Bankruptcy Code section 1126(g), conclusively deemed to have rejected the Plan because it is anticipated that Holders of Subordinated Claims and Holders of Equity Interests will not receive or retain anything under the Plan. Thus, the Proponent will not solicit their votes.

## 2.6 Vote Required for Class Acceptance

The Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the Claims of that class that actually cast ballots for acceptance or rejection of the Plan; that is, acceptance takes place only if creditors holding Claims constituting at least two-thirds in dollar amount of the total amount of Claims and more than one-half in number of the creditors actually voting cast their ballots in favor of acceptance.

The Bankruptcy Code defines acceptance of a plan by a class of Equity Interests as acceptance by holders of at least two-thirds in amount of the allowed Equity Interests of that class.

## 2.7 Information on Voting and Ballots

### 2.7.1 Transmission of Ballots to Holders and Claims and Equity Interests

Ballots are being forwarded to all Claimholders in accordance with the Bankruptcy Rules, the Disclosure Statement Approval Order and the Solicitation Procedures Order. Those Claimholders whose Claims are unimpaired under the Plan are conclusively presumed to have accepted the Plan under Bankruptcy Code section 1126(f), and therefore need not vote on the Plan. Under Bankruptcy Code section 1126(g), Claimholders who do not either receive or retain any property under the Plan are deemed to have rejected the Plan.

### 2.7.2 Transmission of Ballots to Holders of Unsecured Claims of Subordinated Debentures (Class – 3)

Class – 3 is Impaired and entitled to vote to accept or reject the Plan.

As provided in Section 4.3 of the Plan, in order to make the Election to Opt Out of the Bondholder Settlement in accordance with the terms of the Plan, each holder of Unsecured Claims of Subordinated Debentures must comply with the voting procedures and indicate their intent to opt out by marking their Ballot accordingly and checking the appropriate box. Merely voting to accept or reject the Plan (or not voting at all) is not sufficient to opt out of the

Bondholder Settlement. Rather, each holder of Unsecured Claims of Subordinated Debentures must make the Election to Opt Out of the Bondholder Settlement and comply with the voting procedures, or each holder of Unsecured Claims of Subordinated Debentures will be deemed to have accepted the Bondholder Settlement.

If a holder of Unsecured Claims of Subordinated Debentures makes the Election to Opt Out of the Bondholder Settlement in accordance with the terms of the Plan and the voting procedures, the Plan Proponent anticipates that, through litigation, such holder's Unsecured Claims of Subordinated Debentures will be recharacterized, subordinated, and/or disallowed, and therefore, such holder will receive no Distribution under the Plan.

### 2.7.3 Ballot Tabulation Procedures

Pursuant to the Solicitation Procedures Order, the amount and classification of a Claim and the procedures that will be used to tabulate acceptances and rejections of the Plan shall be exclusively as follows: any timely received Ballot that contains sufficient information to permit the identification of the Claimholder and is cast as an acceptance or rejection of the Plan be counted and be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan, subject to the following exceptions and clarifications for tabulation and voting purposes only:

- (a) If a Claim is deemed allowed in accordance with the Plan, such Claim is allowed for voting purposes in the deemed allowed amount set forth in the Plan;
- (b) If a Claim for which a proof of claim has been timely filed is marked as unliquidated, the Claim will be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, for that portion of such Claim that is not unliquidated, or, if the entire Claim is reflected as unliquidated, then such Claim will be counted for purposes of determining whether a sufficient number of the Allowed Claims in such Class has voted to accept the Plan but the allowed amount of the Claim for voting purposes will be \$0, subject to the right of such holder to file a motion for temporary allowance;
- (c) If a Claim has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, such Claim is temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- (d) If a Claim is listed in the Schedules of Assets and Liabilities as contingent, unliquidated, or disputed and a proof of claim was not (i) filed by the applicable deadline to file proofs of claim or (ii) deemed timely filed by an order of the Bankruptcy Court prior to the ~~Voting~~ [Deadline for Filing Ballots Accepting or Rejecting Plan](#), the Claim will be disallowed in its entirety for voting purposes;
- (e) For all Persons or entities who timely filed a proof of claim reflecting a Claim or portion of a Claim that is contingent, the Claim shall be disallowed in its entirety for voting purposes, subject to the right of such holder to file a motion for temporary allowance;



- (f) Objections to Claims for voting purposes must be filed no later than ~~January 4, 2011~~, January 4, 2011 and such Claims will be temporarily disallowed for voting purposes only and not for the purposes of the allowance or distribution, except to the extent and in the manner as may be set forth in the objection, including, without limitation, classification as to proper Debtor and priority of claim, subject to the right of such holder to file a motion for temporary allowance;
- (g) If a Ballot is properly completed, executed and timely filed, but does not indicate an acceptance or rejection of the Plan, or indicates both an acceptance and rejection of the Plan, the Ballot will not be counted;
- (h) If a Ballot does not indicate the class of Claims in which it is cast, the Committee is authorized to determine the appropriate class and to tabulate the Ballot based on that determination;
- (i) If a Ballot submitted by a Class – 3 holder fails to indicate that such holder has made the Election to Opt Out of the Bondholder Settlement, such holder will be deemed to have accepted the Bondholder Settlement;
- (j) The Committee is authorized to tabulate votes on a consolidated basis for all Debtors;
- (k) If a proof of claim has been timely filed and has not been objected to before the Confirmation Hearing, the voted amount of that Claim shall be the liquidated amount specified in the proof of claim; and
- (l) If no proof of claim has been timely filed, the voted amount of a Claim shall be equal to the amount listed for the particular Claim in the Schedules of Assets and Liabilities, as and if amended, to the extent such Claim is not listed as contingent, unliquidated, or disputed, and the Claim shall be placed in the appropriate Class based on the Debtors' records and consistent with the Schedules of Assets and Liabilities.

Ballots that fall within the following categories will not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected, except as specified:

- (a) Any Ballot received after the ~~Voting~~ Deadline for Filing Ballots Accepting or Rejecting Plan unless the Committee or the Court shall have granted an extension in writing of the ~~Voting~~ Deadline for Filing Ballots Accepting or Rejecting Plan with respect to such Ballot;
- (b) Any Ballot that is illegible or contains insufficient information to permit the identification of the Claimholder;
- (c) 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;

- (d) Any duplicate Ballot will only be counted once;
- (e) Any Ballot submitted by facsimile transmission;
- (f) Any Ballot that is unsigned, or signed by someone other than the holder of the Claim (or its authorized representative); or
- (g) Any acceptance or rejection submitted on something other than the Ballot form provided by the Committee and approved pursuant to the Solicitation Procedures Order.

The Committee believes that the foregoing proposed procedures provide for a fair and equitable voting process. As mentioned above, if any Creditor seeks to challenge the allowance of its Claim for voting purposes, such Creditor must serve on counsel for the Committee and file with the Bankruptcy Court a motion requesting the temporary allowance of such Claim in a different amount for purposes of voting to accept or reject the Plan no later than ~~\_\_\_\_\_~~, February 18, 2011 (the "Motion for Temporary Allowance Deadline"). The Ballot of any Creditor filing such a motion shall not be counted unless temporarily allowed by the Bankruptcy Court for voting purposes, after notice and a hearing.

Whenever two or more Ballots are cast voting the same claim prior to the ~~Voting~~ Deadline for Filing Ballots Accepting or Rejecting Plan, the latest dated Ballot received prior to the ~~Voting~~ Deadline for Filing Ballots Accepting or Rejecting Plan will be deemed to reflect the voter's intent and thus to supersede any prior Ballots, provided, however, that where an ambiguity exists as to which Ballot reflects the voter's intent, the Committee reserves the right to contact the Creditor and calculate the vote according to such voter's written instructions. This procedure is without prejudice to the Committee's right to object to the validity of the second Ballot on any basis permitted by law and, if the objection is sustained, to count the first Ballot for all purposes. This procedure of counting the last Ballot is consistent with practice under various state and federal corporate and securities laws. Furthermore, the Committee proposes that in their sole discretion they can agree to allow a Creditor to change its vote after the ~~Voting~~ Deadline for Filing Ballots Accepting or Rejecting Plan without further order of the Court.

Claim splitting is not permitted and Creditors who vote must vote all of their Claims within a particular class to either accept or reject the Plan.

#### 2.7.4 Execution of Ballots by Representatives

Federal Rule of Bankruptcy Procedure 3018(c) requires that an acceptance or rejection of a chapter 11 plan shall be in writing, identify the plan accepted or rejected, be signed by the holder of a Claim or Equity Interest or their authorized agent. The Ballot approved by the Solicitation Procedures Order requires the identification of Persons signing in a fiduciary or representative capacity. To be counted, completed Ballots signed by trustees, executors, administrators, guardians, attorneys-in-fact, officers of corporations, or others acting in a fiduciary or representative capacity must indicate their capacity when signing. At the Committee's request, Ballot signatories must submit proper evidence satisfactory to the requesting Committee of their



authority to so act. Failure to indicate the capacity of the signatory to the ballot may result in the Ballot being deemed invalid and not counted.

#### 2.7.5 Waivers of Defects and Other Irregularities Regarding Ballots

Unless otherwise directed by the Bankruptcy Court, all questions concerning the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots will be determined by the Committee in their sole discretion, whose determination will be final and binding. Any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Committee (or the Bankruptcy Court) determines. Neither the Committee nor any other Person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor will any of them incur any liability for failure to provide such notification; provided, however, that the Committee will indicate on the ballot summary the Ballots, if any, that were not counted, and will provide the original of such Ballots with the original of the ballot summary at the Confirmation Hearing. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until any irregularities have been cured or waived. Unless otherwise directed by the Bankruptcy Court, Ballots previously furnished, and as to which any irregularities have not subsequently been cured or waived, will be invalidated.

#### 2.7.6 Withdrawal of Ballots and Revocation

Except as otherwise directed by the Bankruptcy Court after notice and a hearing, any holder of a Claim (or its authorized representative) in an Impaired Class who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal of their original Ballot to the Tabulation Agent at any time before the ~~Voting~~ Deadline for Filing Ballots Accepting or Rejecting Plan. In addition, and except as otherwise directed by the Bankruptcy Court after notice and a hearing, any holder of Unsecured Claims of Subordinated Debentures who has delivered a valid Ballot for the acceptance or rejection of the Plan and made the Election to Opt Out of the Bondholder Settlement may withdraw the Election to Opt Out of the Bondholder Settlement by delivering a written notice of withdrawal of their original Ballot to the Tabulation Agent at any time before the ~~Voting~~ Deadline for Filing Ballots Accepting or Rejecting Plan.

To be valid, a notice of withdrawal must:

- (a) contain the description of the Claims to which it relates and the aggregate principal amount represented by such Claims;
- (b) be signed by the Claimholder (or its authorized representative) in the same manner as the Ballot; and
- (c) be received by the Tabulation Agent in a timely manner at the address specified in the ballot instructions for the submission of Ballots.

The Committee expressly reserves the absolute right to contest the validity of any such withdrawals of Ballots.

Unless otherwise directed by the Bankruptcy Court, a purported notice of withdrawal of Ballots that is not received in a timely manner by the Tabulation Agent will not be effective to withdraw a previously furnished Ballot.

Any Claimholder (or its authorized representative) who has previously submitted a properly completed Ballot before the ~~Voting~~ Deadline [for Filing Ballots Accepting or Rejecting Plan](#) may revoke such Ballot and change its vote by submitting a subsequent, properly completed Ballot for acceptance or rejection of the Plan as long as it is received by the Tabulation Agent before the ~~Voting~~ Deadline [for Filing Ballots Accepting or Rejecting Plan](#). In addition, if a Claimholder submits a valid notice of withdrawal before the ~~Voting~~ Deadline [for Filing Ballots Accepting or Rejecting Plan](#), such holder may submit a new Ballot, and such Ballot will be counted so long as it is received by the Tabulation Agent before the ~~Voting~~ Deadline [for Filing Ballots Accepting or Rejecting Plan](#) and is otherwise submitted in accordance with the Disclosure Statement Approval Order.

## 2.8 Confirmation of Plan

### 2.8.1 Solicitation of Acceptances

The Committee is soliciting your vote.

NO REPRESENTATIONS OR ASSURANCES, IF ANY, CONCERNING THE DEBTORS OR THE PLAN ARE AUTHORIZED BY THE COMMITTEE, OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE BY ANY PERSON TO SECURE YOUR VOTE, OTHER THAN THOSE CONTAINED IN THIS DISCLOSURE STATEMENT, SHOULD NOT BE RELIED ON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO THE COMMITTEE'S COUNSEL FOR APPROPRIATE ACTION.

THIS IS A SOLICITATION SOLELY BY THE COMMITTEE, AND IS NOT A SOLICITATION BY ANY SHAREHOLDER, ATTORNEY, ACCOUNTANT, OR OTHER PROFESSIONAL FOR THE COMMITTEE OR THE DEBTORS. THE REPRESENTATIONS, IF ANY, MADE IN THIS DISCLOSURE STATEMENT ARE THOSE OF THE COMMITTEE AND ARE BASED ON INFORMATION FURNISHED BY THE DEBTORS AND NOT OF ANY SHAREHOLDERS OR PROFESSIONALS, EXCEPT AS MAY BE OTHERWISE SPECIFICALLY AND EXPRESSLY INDICATED.

Under the Bankruptcy Code, a vote for acceptance or rejection of a plan may not be solicited unless the Claimant has received a copy of a disclosure statement approved by the Bankruptcy Court prior to, or concurrently with, such solicitation. This solicitation of votes on the Plan is governed by Bankruptcy Code section 1125(b). Violation of Bankruptcy Code section 1125(b) may result in sanctions by the Bankruptcy Court, including disallowance of any improperly solicited vote.

### 2.8.2 Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires a bankruptcy court, after appropriate notice, to hold a hearing on confirmation of a plan. The Confirmation Hearing has been scheduled for March 1, 2011 at 1:30 p.m. (prevailing Eastern Time) before the Honorable John K. Olson United States Bankruptcy Judge, at the United States Bankruptcy Court, Room 301, 299 E. Broward Boulevard, Fort Lauderdale, Florida 33301. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing or any adjourned hearing.

### 2.8.3 Objections to Confirmation

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Any objection to Confirmation must:

1. be made in writing;
2. conform to the Bankruptcy Rules and the Local Rules;
3. set forth the name of the objector and the nature and amount of Claims held or asserted by the objector against the Debtors, the basis for the objection and the specific grounds therefor;
4. be filed with the Bankruptcy Court electronically;
5. if practicable, be accompanied by a proposed modification to the Plan that would resolve such objection; and
6. be served in accordance with Section 14.2 of the Plan.

All objections to the Plan must be actually received no later than February 18, 2011. All objections to Confirmation are governed by Bankruptcy Rule 9014.

### 2.8.4 Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Bankruptcy Court shall determine whether the requirements set forth in section 1129 of the Bankruptcy Code have been satisfied with respect to the Plan, in which event the Bankruptcy Court shall enter an order confirming the Plan. For the Plan to be confirmed, the following requirements must be satisfied:

- (a) The Plan complies with the applicable provisions of the Bankruptcy Code;
- (b) The Committee has complied with the applicable provisions of the Bankruptcy Code;

- (c) The Plan has been proposed in good faith and not by any means forbidden by law;
- (d) Any payment or distribution made or promised by the Committee, the Debtors, or by a Person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Bankruptcy Cases or the Plan and incident to the Bankruptcy Cases, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;
- (e) The Committee has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a Creditor Trustee under the Plan; the appointment to, or continuance in, such office of such individual is consistent with the interests of holders of Claims and Equity Interests and with public policy; and the Committee has disclosed the identity of any insider that will be employed or retained by the Creditor Trustee and the nature of any compensation for such insider;
- (f) Any government regulatory commission with jurisdiction (after confirmation of the Plan) over the rates of the Debtors has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval;
- (g) With respect to each impaired Class of Claims or Equity Interests, either each holder of a Claim or Equity Interest of the Class has accepted the Plan, or will receive or retain under the Plan on account of that Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated on such date under chapter 7 of the Bankruptcy Code. If Bankruptcy Code section 1111(b)(2) applies to the Claims of a Class, each holder of a Claim of that Class will receive or retain under the Plan on account of that Claim property of a value, as of the Effective Date, that is not less than the value of that holder's interest in the Debtors' interest in the property that secures that claim;
- (h) Except to the extent the Plan meets the requirements of section 1129(b) of the Bankruptcy Code, each Class of Claims or Equity Interests has either accepted the Plan or is not Impaired under the Plan;
- (i) Except to the extent that the holder of a particular Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claim, and Priority Unsecured Tax Claims has agreed to a different treatment of such Claim, such Claims shall be paid in full within twenty-one (21) days after the later of (a) the Allowance Date or (b) the Effective Date of the Plan;
- (j) If a Class of Claims or Equity Interests is Impaired under the Plan, at least one such Class of Claims or Equity Interests has accepted the Plan, determined

without including any acceptance of the Plan by any insider holding a Claim or Equity Interest in such Class; and

(k) Confirmation of the Plan is not likely to be followed by the liquidation or the need for further reorganization of the Debtors or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.

The Committee believes that the Plan satisfies all of the confirmation requirements set forth in section 1129 of the Bankruptcy Code and that the Plan was proposed in good faith and not by any means forbidden by law. The Committee further believes that it has complied, or will have complied, with all the requirements of the Bankruptcy Code governing confirmation of the Plan.

In addition, and after considering the effect that a chapter 7 liquidation would have on the proceeds ultimately available for Distribution to Creditors in the Bankruptcy Cases, including (a) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, (b) additional costs associated with the rapid transfer or cessation of operations at the facilities and the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the “forced sale” atmosphere that would prevail, and (c) the substantial increases in claims that would be satisfied on a priority basis, the Committee has determined that Confirmation of the Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would receive pursuant to liquidation of the Debtors under chapter 7.

The Committee also believes that the value of any distributions to each Class of Allowed Claims in a chapter 7 case, including secured Claims, would be less than the value of distributions under the Plan because such distributions in a chapter 7 case would not occur for a substantial period of time. In this regard, it is possible that distribution of the proceeds of the liquidation could be delayed for one or more years after the completion of such liquidation to resolve Claims and prepare for distributions. In the event litigation was necessary to resolve Claims asserted in a chapter 7 case, the delay could be prolonged and Administrative Claims increased. The Liquidation Analysis, attached hereto as Exhibit B, is an estimate of the proceeds that may be generated as a result of a hypothetical chapter 7 liquidation of the Debtors. The Liquidation Analysis is prepared by the Debtors and is based on a number of significant assumptions. The Liquidation Analysis does not purport to be a valuation of the Debtors’ assets and is not necessarily indicative of the values that may be realized in an actual liquidation.

Further, pursuant to the requirements of section 1129(a)(11) of the Bankruptcy Code, the Plan contemplates that all assets of the Debtors ultimately will be disposed of and all proceeds of the Creditor Trust Assets will be distributed to the Creditors pursuant to the terms of the Plan. Since no further reorganization of the Debtors will be possible, the Committee believes that the Plan meets the feasibility requirement. The Committee also believes that sufficient funds will exist to make all payments required by the Plan.

#### 2.8.5 Acceptances Necessary to Confirm the Plan

Voting on the Plan by each holder of a Claim (or its authorized representative) is important. Chapter 11 of the Bankruptcy Code does not require that each holder of a Claim vote in favor of

the Plan in order for the Court to confirm the Plan. Generally, to be confirmed under the acceptance provisions of Bankruptcy Code section 1126(a), the Plan must be accepted by each Class of Claims that is impaired under the Plan by parties holding at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims of such Class actually voting in connection with the Plan. Even if all Classes of Claims accept the Plan, the Bankruptcy Court may refuse to confirm the Plan.

#### 2.8.6 Cramdown

In the event that any impaired Class of Claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Committee if, as to each impaired Class that has not accepted the Plan, the Plan “does not discriminate unfairly” and is “fair and equitable.” A plan of liquidation does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives more than it is legally entitled to receive for its claims or equity interests. “Fair and equitable” has different meanings for holders of secured and unsecured claims and equity interests.

With respect to a secured claim, “fair and equitable” means either (i) the impaired secured creditor retains its liens to the extent of its allowed claim and receives deferred cash payments at least equal to the allowed amount of its claims with a present value as of the effective date of the plan at least equal to the value of such creditor’s interest in the property securing its liens; (ii) property subject to the lien of the impaired secured creditor is sold free and clear of that lien, with that lien attaching to the proceeds of sale, and such lien proceeds must be treated in accordance with clauses (i) and (iii) hereof; or (iii) the impaired secured creditor realizes the “indubitable equivalent” of its claim under the plan.

With respect to an unsecured claim, “fair and equitable” means either (i) each impaired creditor receives or retains property of a value equal to the amount of its allowed claim, or (ii) the holders of claims and equity interests that are junior to the claims of the dissenting class will not receive any property under the plan.

With respect to equity interests, “fair and equitable” means either (i) each impaired equity interest receives or retains, on account of that equity interest, property of a value equal to the greater of the allowed amount of any fixed liquidation preference to which the holder is entitled, any fixed redemption price to which the holder is entitled, or the value of the equity interest, or (ii) the holder of any equity interest that is junior to the equity interest of that class will not receive or retain under the plan, on account of that junior equity interest, any property.

In view of the deemed rejection by certain Classes and the possible rejection of the Plan by certain of the Voting Classes, the Committee intends to seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code. In the event that at least one Class of Impaired Claims or Equity Interests rejects or is deemed to have rejected the Plan, the Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable and does not discriminate unfairly against any rejecting impaired Class of Claims or Equity Interests. To the extent that any of the Voting Classes vote to reject the Plan, the Committee believes that the Plan does not discriminate unfairly and is fair and equitable with respect to each impaired Class of



Claims and Equity Interests. Further, the Committee expressly reserves the right to modify the Plan.

### ARTICLE 3

#### BACKGROUND OF THE DEBTORS

##### 3.1 Description of Debtors' Business

###### 3.1.1 Background

The Debtors are operating their business and managing their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

PPOA Holding, f/k/a Protective Products of America, Inc., formerly Ceramic Protection Corporation, was a publicly traded company on the Toronto Stock Exchange ("TSX"), and together with its subsidiaries (collectively, the "Company"), was engaged in the design, manufacture and marketing of advanced products used to provide ballistic protection for personnel and vehicles in the military and law enforcement markets. On January 14, 2010, the TSX advised PPOA Holding that trading was suspended and that TSX was in the process of reviewing delisting the shares. On January 20, 2010, the Company received a notice from the TSX, informing it that, based on the Company's failure to meet the continued listing requirements (by virtue of its bankruptcy filing (S. 708, The Toronto Stock Exchange Company Manual) and the financial condition and/or operating results of the Company (S. 709, 710(a)(i), The Toronto Stock Exchange Company Manual), the Continued Listings Committee of the TSX determined to delist the Company's common shares effective at the close of the market on February 19, 2010.

PPOA Holding was originally formed on November 1, 1995, in Alberta, Canada, through the amalgamation of two Canadian companies, and on February 26, 1996, the name was changed to Ceramic Protection Corporation. Prior to 2004, Ceramic Protection Corporation's principal business activities were the manufacture and distribution of alumina and alumina-bonded silicon carbide products and the distribution of polyethylene materials to the industrial wear management and ballistic protection markets.

In 2004, Ceramic Protection Corporation acquired Alanx Wear Solutions, Inc., a manufacturer of boron carbide and silicon carbide products for personal armor systems and industrial wear management applications, and in 2005, Ceramic Protection Corporation expanded its sales of armor products to include ceramic personal armor plates and vehicle armor panels.

In May 2006, Ceramic Protection Corporation acquired PPI, located in Sunrise, Florida. This acquisition expanded the Company's product portfolio to include a variety of soft armor products and provided the Company with an increased geographic scope and the opportunity for significant growth in the military and police armor markets. Following the acquisition of PPI, Ceramic Protection Corporation expanded its sales and marketing efforts to military and law enforcement channels and received several significant orders, including an order valued at \$36.2 million for Modular Tactical Vests ("MTVs") from the United States Marine Corp. In 2007,

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Ceramic Protection Corporation received orders totaling \$63.0 million from various branches of the U.S. military.

On January 2, 2008, Ceramic Protection Corporation acquired the production facility and manufacturing assets of ForceOne, LLC, in North Carolina. This acquisition added to the Company's soft armor capabilities and enabled the Company to better control its production and delivery schedules of soft armor vests for the U.S. military.

On July 31, 2008, PPOA Holding completed its U.S. domestication process and incorporated in the State of Delaware under its new name Protective Products of America, Inc.

The Company was an industry leader in the design, manufacture, and sale of high performance and high quality products used for ballistic protection. The Company's product portfolio included lightweight ceramic armor for vehicles and military personnel, composite based products and concealable soft body armor products for law enforcement and the MTV ballistic system for military personnel in many high performance applications, such as handling ballistic threats.

PPOA Holding's subsidiary, PPI was an ISO 9001:2008 certified manufacturer. Further, the Company was one of very few companies able to provide customers with an integrated personnel armoring system of ceramic plates, soft ballistic material and vests for law enforcement and the military.

As of the Petition Date, the Company had 95 employees, with the vast majority located at their Sunrise, Florida facility. As of the Sale Closing Date (as defined and further discussed herein), all employees were terminated and immediately rehired by the Purchaser.

### 3.2 Corporate Information and Debtors' Relationship to Subsidiaries and Affiliates

#### 3.2.1 The Debtors

The Debtors are:

- Protective Products of America, Inc., a Delaware corporation;
- Protective Products International Corp., a Florida corporation;
- CPC Holding Corporation of America, a Delaware corporation;
- Ceramic Protection Corporation of America, a Delaware corporation; and
- Protective Products of North Carolina, LLC, a North Carolina limited liability company.



### 3.2.2 Corporate Structure

As of the Petition Date, the Debtors operated their business principally through PPI. PPI is not publicly traded. PPI is wholly-owned by PPOA Holding. A list of the stockholders of PPOA Holding as of the Petition Date was filed on January 27, 2010.

### 3.3 Former Officers and Directors of the Debtors

As of the Petition Date, management of the Debtors consisted of the following five individuals:

R. Patrick Caldwell – CEO and Director. Mr. Caldwell became CEO in July 2009 and joined PPOA Holding in January 2009 as Senior Vice President, Sales and Marketing. Prior to joining PPOA Holding, Mr. Caldwell served as Deputy Assistant Director, Office of Protective Operations, U.S. Secret Service and spent 27 years in the U.S. Secret Service in a number of key positions, including Special Agent in charge of the Vice Presidential Protective Division. Mr. Caldwell also served in the United States Marine Corp. and received the Silver Star for Valor and the Purple Heart for services in Vietnam.

Brian L. Stafford – Chairman of the Board. Mr. Stafford also served as acting CEO of the Company for the period March 18, 2009 through July, 2009. Prior to joining PPOA Holding, Mr. Stafford served as the 20th Director of the U.S. Secret Service. During his 31 year career, Mr. Stafford safeguarded Presidents Nixon, Ford, Carter, Regan, Bush and Clinton and served as the agency's lead executive under both President William Jefferson Clinton and President George W. Bush. Consistent with the dual missions of the Secret Service, Mr. Stafford served in both investigative and protective capacities, including Special Agent in Charge of the Presidential Protective Division. Mr. Stafford served in the U.S. Army and was awarded the Bronze Star after a tour of duty in Vietnam.

Neil E. Schwartzman – Chief Operating Officer or Chief Administrative Officer of the Debtors, as applicable. Mr. Schwartzman first joined PPOA Holding in April 2007, initially as PPOA Holding's Chief Information Officer. Mr. Schwartzman became Chief Operating Officer in July, 2009. Mr. Schwartzman has over 25 years of experience, including serving for five years as Vice President of Information Technology for The GEO Group, Inc. In addition, he held positions at The Sports Authority, Sunglass Hut International, Michaels Arts and Crafts and ICH Corporation.

Jason Williams – Chief Financial Officer – Mr. Williams became the CFO in May 2008. He joined PPOA Holding in August 2007 as the Corporate Controller. Prior to joining PPOA Holding, Mr. Williams held the position of Director, Reporting and Analysis and Corporate Controller for PharmNet Development Group, Inc., a publicly traded contract research organization. Mr. Williams' experience includes more than seven years as a financial principal and regulatory consultant in the financial services industry. Mr. Williams is a Certified Public Accountant (inactive) in the State of Florida.

Deon Vaughan – Senior Vice President, General Counsel and Secretary. Ms. Vaughan joined the Company in March 2008. Prior to joining PPOA Holding, Ms. Vaughan served as Vice President, Deputy General Counsel and Compliance Officer at Owens Corning, a NYSE-listed

global manufacturing company. During her ten year tenure at Owens Corning, Ms. Vaughan spent three years as Vice President, Audit and three years as the Vice President of Environment, Health, Safety and Regulatory law. Ms. Vaughan's experience also includes private practice at Squire, Sanders & Dempsey, LLP.

#### 3.4 Remaining Officers and Directors of Debtors

Effective as of the Sale Closing Date, all directors, other than Frank E. Jaumot, and all officers resigned. The sole remaining officer and director of the Debtors is Mr. Jaumot. On March 25, 2010, the Court entered an order authorizing the retention of Mr. Jaumot as Chief Restructuring Officer ("CRO") of the Debtors. [D.E. # 166], nunc pro tunc to March 5, 2010.

Mr. Jaumot is a director of each of the Debtors. Mr. Jaumot has been a director since January of 2009. He chaired the board's Audit Committee. He is familiar with the Debtors, their capital structure and operations. Mr. Jaumot is also a certified public accountant and a partner in the firm Ahearn Jasco & Company. He joined the certified public accounting firm of Ahearn, Jasco and Company, P.A. in 1991, and has served as its Director of Accounting and Auditing since. Since September 2004, he has served as a director of MasTec, Inc., a specialty contractor engaged in the building, installation, maintenance and upgrade of communications and utility infrastructure. Since April 2009, he has been a member of the Board of Directors of Bimini Capital Management, Inc., a mortgage REIT based in Vero Beach, Florida.

As the CRO, working collaboratively with the Debtors' other professionals, Mr. Jaumot has attended to all administrative and ministerial duties required of the Debtors during the pendency of these bankruptcy cases. His duties include:

- To currently serve as a director of the Company.
- To supervise and oversee the Orderly Liquidation (as defined in the Engagement Letter). In this capacity, he shall have the authority: (a) to open and close bank accounts for the Company, (b) to transfer funds of the Company, (c) to cause the Company to modify, amend, terminate and/or enforce any of its any contractual rights; (c) to cause the Company to enter into any agreement or contract that is reasonably necessary to the completion of the Orderly Liquidation; (d) to cause the Company to comply with all Guidelines of the Office of the United States Trustee, (e) to cause the Company to pursue, settle or compromise any litigation, controversy or other dispute involving the Company, (f) to cause the Company to exercise the Company's rights under the Company's agreements and other agreements in favor of the Company; (g) to cause the Company to prepare one or more plans of reorganization, or to take any all action in the Chapter 11 Cases.

Mr. Jaumot is paid a \$10,000 retainer and also paid on an hourly basis at \$385 per hour, provided, however, that Mr. Jaumot's aggregate compensation shall not exceed \$15,000.00 per week, plus expenses.

### 3.5 Assets and Capital Structure Overview

Since the beginning of 2007, PPOA Holding, f/k/a Protective Products of America, Inc., formerly Ceramic Protection Corporation, has relied primarily on debt and equity financing to fund its operations.

The Company had a line of credit with CIBC providing borrowing capacity of the lesser of CAD\$11.0 million (\$9.1 million as of December 31, 2008) or the aggregate balance of 75% of its eligible accounts receivable; and 50% of its eligible raw material and finished goods inventory or 40% of its total commitment (the "Borrowing Base"), as defined, in an agreement dated September 21, 2004 (the "Credit Agreement"). The line of credit was collateralized by all of the Company's receivables and inventory, the assignment of insurance and a general security agreement.

Effective May 25, 2006, the Company obtained a term loan of \$25.0 million to facilitate its acquisition of PPI. The Company paid off the term loan in full during the quarter ended June 30, 2008.

In August and September 2007, Ceramic Protection Corporation completed a private placement and issued \$5.1 million in principal value of subordinated, nonconvertible debentures ("Sub NC Debentures"). Specifically, the Company issued (i) two Sub NC Debentures for aggregate proceeds of \$3.4 million (\$1.7 million per debenture) with two of its directors, Messrs. Giordanella and Moeller on August 29, 2007, and (ii) one Sub NC Debenture for aggregate proceeds of \$1.7 million with a significant stockholder on September 28, 2007. The Sub NC Debentures carry an interest rate of 12% per annum, payable monthly, for a two-year term. For the year ended December 31, 2008, the Company paid \$0.2 million in interest in connection with each of the Sub NC Debentures. No principal payments have been made on the Sub NC Debentures since their issuance.

On February 4, 2008, Ceramic Protection Corporation completed a private placement and issued \$6.0 million of subordinated, convertible debentures ("Sub C Debentures"), of which \$2.4 million was placed with certain officers and directors of the Company. The Sub C Debentures carry an interest rate of 10% per annum, payable monthly, for a three-year term with a conversion price of the Canadian dollar equivalent of \$6.57, or 913,242 shares of common stock. For the year ended December 31, 2008, the Company paid a total of \$0.2 million in interest on the Sub C Debentures held by related parties. No principal payments have been made on the Sub C Debentures since their issuance.

In addition, Ceramic Protection Corporation completed a public offering of 3,530,000 shares of its common stock at a price of CAD\$4.25 per share for net proceeds of \$14.1 million on March 6, 2008. The net proceeds were used to reduce indebtedness under the Company's credit facility and for general working capital purposes.

Both the Sub NC Debentures and Sub C Debentures contain subordination and other restrictive provisions that prohibit payment of interest and principal to holders in the event of the Company's default under its senior credit facility with CIBC. Holders of Sub NC Debentures

entered into Subordination Agreements with CIBC which provide further restrictions on the holders' ability to take action relative to the subordinate nature of the debt.

As of December 31, 2008, the Company's shareholders' equity was \$3.5 million and as subsequently determined by the Company, the Company was not in compliance with certain of its covenants including the covenant requiring it to maintain minimum shareholders' equity of \$4.0 million.

Since the issuance of the Sub NC Debentures and Sub C Debentures, the Company has been in default with CIBC during certain fiscal quarters, and remained in default at December 31, 2009, and never made any principal payment under the Subordinated Debentures. Due to the defaults with CIBC, the Company's credit agreement with CIBC has been amended several times since its inception.

Pursuant to an amended and restated credit facility dated as of January 30, 2009, as amended, amongst CIBC, as lender, PPOA Holding, as borrower, and CPC, PPI, CPC Holding and PPNC as guarantors (the borrower and guarantors collectively, the "Obligors"), the senior secured revolving loan facility to PPOA Holding was \$5,158,547.20 (the "Credit Facility"). As of January 12, 2010, borrowings under the Credit Facility totaled approximately \$7,602,760.

CIBC asserted first priority liens on, and security interests in, substantially all of the Obligors' assets, tangible and intangible, real and personal, and the proceeds and recoveries of the foregoing (collectively, the "Collateral"). As such, CIBC asserted a perfected first-priority security interest in the Collateral, including Cash Collateral.

In January 2009, the Company and CIBC entered into a Forbearance Agreement which was subsequently amended in July 2009. The First Amending Agreement to the Forbearance Agreement provided that CIBC will not exercise any remedies with respect to existing defaults by PPOA Holding under the Amended and Restated Credit Agreement until the earliest of (i) October 31, 2009, (ii) any other default by PPOA Holding under the Amended and Restated Credit Agreement, or (iii) any breach by PPOA Holding of the Forbearance Agreement. PPOA Holding and CIBC executed a Second Amending Agreement to the Forbearance Agreement in December 2009, wherein CIBC provided an additional \$700,000 in financing to PPOA Holding and extended its forbearance through January 8, 2010.

For the fiscal year ended December 31, 2007, the Debtors, on a consolidated basis, generated sales of approximately \$80.2 million, including sales of approximately \$73.7 million from Debtors' continuing operations, and reported net loss of approximately \$10.1 million, including a net loss of approximately \$1.4 million from the Debtors' continuing operations. For the fiscal year ended December 31, 2008, the Debtors, on a consolidated basis, generated sales of approximately \$97.4 million, including sales of approximately \$85.4 million from the Debtors' continuing operations and reported a net loss of approximately \$69.2 million including a net loss of approximately \$31.1 million from the Debtors' continuing operations. The increase in losses in 2008 was attributable to (i) the closing of the Delaware facility resulting in impairment charges of approximately \$27.7 million; and (ii) as a result in the overall decline of the Debtors'

business, an additional impairment of goodwill and intangible assets of approximately \$28.3 million.

As of September 30, 2009, the Debtors, on a consolidated basis, reported approximately \$26.6 million in assets, and approximately \$29.1 million liabilities, which are summarized as follows:

Assets:

Cash, accounts receivable, inventory	\$9.6 million
Income taxes receivable	\$5.0 million
Property, plant and equipment	\$2.0 million
Other assets	\$10.0 million

Liabilities:

Secured Bank indebtedness	\$6.6 million
Accounts payable and other accrued liability	\$6.8 million
Sub NC Debentures	\$5.4 million
Sub C Debentures	\$6.2 million

### 3.6 Scheduled Assets and Liabilities

The following are assets and liabilities pursuant to the Debtors' Schedules of Assets and Liabilities.

	<b>PPOA Holding</b>	<b>PPI</b>	<b>PPNC</b>	<b>CPC Holding</b>	<b>CPC Corp.</b>
<sup>3</sup> Schedule B Personal Property	<sup>4</sup> \$0	\$9,804,890	\$0	\$403,973	\$2,679,414
<sup>5</sup> Schedule D Secured Claims	\$7,602,759	\$0	\$0	\$0	\$0
Schedule E Unsecured Priority Claims	\$4,571	\$1,687,058	\$0	\$0	\$10,958
<sup>6</sup> Schedule F Unsecured Nonpriority Claims	<sup>7</sup> \$13,782,467	\$7,287,344	\$23,624	\$757	\$526,481

<sup>3</sup>Excludes intercompany receivables.

<sup>4</sup>Excludes book value of CPC Holding.

<sup>5</sup>The secured claim of CIBC is only counted one time under PPOA Holding.

<sup>6</sup>Excludes intercompany claims.

<sup>7</sup>Excludes claims jointly owed by PPI.

### 3.7 Events Leading to Chapter 11

The Debtors commenced these cases in order to gain much needed breathing room to facilitate an orderly sale of their enterprise, as more particularly described in subsection 1, below.

During the past three (3) years, the Debtors relied primarily on debt and equity financing to provide liquidity for their operations. Due to their lack of profitability and the general condition of the financial markets in the U.S., the Debtors' ability to obtain additional financing on favorable terms was limited.

During 2007 and 2008, the Debtors incurred significant losses at their Newark, Delaware ceramics manufacturing facility. These losses, combined with significantly less favorable opportunities for awards under certain ceramic armor bids, indicated that the carrying value of certain assets may not be recoverable. On January 27, 2009, the Debtors completed the sale of substantially all of the Delaware assets for \$3.2 million in cash. The proceeds from this sale were used to reduce indebtedness outstanding on the line of credit to CIBC.

The Debtors' contract with the U.S. Marine Corps was substantially completed during the third quarter in 2009. As a result of the Debtors' inability to replace prior year contracts that had been substantially fulfilled with new contract awards, the Debtors' revenues from the U.S. military were substantially lower in 2009 than those in 2008.

### 3.8 Pre-Petition Efforts to Market the Company

The Debtors marketed the assets for over six months prior to the commencement of these cases. Beginning on June 16, 2009, the Debtors retained Bayshore Partners, LLC ("Bayshore"), the broker dealer affiliate of Farlie Turner & Co., to assist the Debtors in evaluating their strategic options with respect to the sale or recapitalization of their businesses and related assets both as a going concern outside of bankruptcy or in the context of a potential chapter 11 bankruptcy filing.

Bayshore, among other things, prepared a confidential investment memorandum (the "CIM") to assist in marketing the Debtors' assets for sale or in raising additional debt or equity capital. The CIM contains detailed information on the Debtors' business, strategy, market position, growth opportunities, and historical and projected financial performance.

Bayshore conducted an extensive marketing process, contacting over 100 parties, including potential strategic buyers operating within the Debtors' industry as well as private equity firms, various lending institutions and the Debtors' existing debt and equity security holders. As a result of these efforts, approximately 28 parties entered into confidentiality agreements with the Debtors and were provided with the CIM. Bayshore was significantly involved in various due diligence activities including creating management presentations, assembling data requests, and answering specific requests by potential buyers and capital providers. Several parties conducted extensive due diligence, visited the Debtors' facilities, and had discussions with various members of the management team and board of directors. Thereafter, Bayshore transmitted detailed bid instructions to interested parties and six (6) parties submitted written indications of interest contemplating the acquisition of substantially all of the Debtors' assets to be effected in



a bankruptcy setting, while two (2) parties indicated an interest in providing subordinated debt capital to the Debtors outside of bankruptcy.

After analyzing the offers, the Debtors in consultation with their advisors and CIBC, determined that offer provided by Sun Capital Partners Group V, Inc. (“Sun Capital”) had the greatest value to the Debtors and their key constituents. On December 21, 2009, the Debtors and Sun Capital executed a non-binding letter of intent (the “Letter of Intent”), pursuant to which Sun Capital proposed to acquire, subject to due diligence, certain of the Debtors’ assets for approximately \$8,000,000 in cash plus the assumption of specified liabilities. Importantly, the Letter of Intent permitted the Debtors to retain certain assets, including their interest in several tax refunds valued by the Debtors at approximately \$5.5 million.

To ensure that the assets were appropriately marketed and that the Debtors receive the highest and best price, the Letter of Intent contemplated that the assets would ultimately be sold through a Court approved auction and sale process under section 363 of the Bankruptcy Code.

### 3.9 Post-Petition Sale

On January 13, 2010 the Debtors, as sellers, and Protective Products Enterprises, Inc., an affiliate of Sun Capital (“PPE”), as purchaser, entered into the Asset Purchase Agreement (the “APA”), which provided for the sale of certain assets identified in the APA (the “Acquired Assets”) to PPE, or to a higher bidder pursuant to the bidding procedures, as well as assumption and assignment of certain unexpired leases and executory contracts.

On January 20, 2010, the United States Department of Justice (the “DOJ”) made public an indictment of Mr. Caldwell and twenty-one executives and employees of different companies in the military and law enforcement products industry, charging them in a criminal indictment with violating the Foreign Corrupt Practices Act (“FCPA”). No charges have been filed against the Company, and Mr. Caldwell was the only employee of the Company to be implicated in the DOJ’s investigation. The Company immediately commenced an internal investigation by its Audit Committee (comprised solely of independent directors) into the allegations against Mr. Caldwell. The Audit Committee determined after its investigation that the Company was in compliance with the FPCA. Mr. Caldwell was placed on administrative leave from his position as Chief Executive Officer and as a member of the Board of Directors, which PPE claimed violated the APA and constituted grounds to renegotiate the agreement. The Company’s Chief Operating Officer, Neil Schwartzman, assumed the position of Acting Chief Executive Officer, effective January 20, 2010.

PPE also commenced an investigation into the allegations against Mr. Caldwell and prepared a report summarizing their conclusions. Following the indictment, PPE and the Debtors executed an Amended and Restated Asset Purchase Agreement, pursuant to which there was a substantial purchase price adjustment attributable to the circumstances surrounding Mr. Caldwell’s arrest.

At the auction held February 18, 2010, PPE was the successful bidder. On February 18, 2010, the Committee filed a limited objection [D.E. 128] (the “Limited Objection”) to the Debtors’ First Day Emergency Motion for Entry of a Final Order Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and

Granting Related Relief [D.E. 19] (the “Sale Motion”), opposing certain terms and provisions of the proposed sale transaction. On February 22, 2010, the Court entered an order approving the sale transaction [D.E. 133].

On March 5, 2010 (the “Sale Closing Date”), the Debtors completed the sale of substantially all of their assets to PPE pursuant to a Second Amended and Restated Asset Purchase Agreement dated as of February 19, 2010 (as amended, the “Asset Purchase Agreement”) and approved by order of the Bankruptcy Court entered on February 22, 2010. Under the amended arrangements, the purchase price for the acquired assets consisted of (i) \$10,700,000 in cash, which was adjusted to account for the Debtors’ operational needs between the sale approval and sale closing, (ii) the assumption of certain liabilities, and (iii) the contribution of \$50,000 in respect of cure amounts owed to certain of the Debtors’ contract counterparties. The Debtor also retained, 42.858% of income tax refunds in excess of \$2 million (the first \$2 million of such refunds being payable to PPE).

After the Sale Closing Date, PPE requested that the Debtors’ counsel represent it with respect to certain matters [D.E. 208].

As a result of the closing under the Asset Purchase Agreement, the Company expected that its secured lender, CIBC, would be paid in full and that the remaining proceeds of the sale (subject to an escrow for state taxes) and payment of costs relating to the sale, would be available for payment of administrative expenses and distribution to the Debtors’ other creditors. In accordance with the Sale Order, \$9 million was held in escrow on account of CIBC’s claim pending resolution of certain issues concerning the allocation of the purchase price between encumbered and unencumbered assets.

In connection with the closing of the Asset Purchase Agreement, and pending the approval of formal novations or assignments relating to contracts between PPI and various government agencies for the provision of goods and services, PPI and PPE entered into a Subcontract Agreement pursuant to which, among other things, the PPE agreed to provide such goods and services on behalf of PPI for a maximum period of six months from the closing and terminated in September 2010 by its own terms.

#### **ARTICLE 4**

#### **FINANCIAL INFORMATION**

The Debtors issued audited financial statements for calendar year 2008. The Debtors also prepared unaudited financial statements year-to-date for November 30, 2009.

#### **ARTICLE 5**

#### **LEGAL PROCEEDINGS**

The following is a summary of material litigation involving the Debtors that existed as of the Petition Date, including potential claims and causes of action that arose as a result of the filing of the Bankruptcy Cases.



5.1 Lyon Financial Services, Inc. d/b/a Bancorp Manifest Funding Services v. Ceramic Protection Corporation of America d/b/a CPC of America.

The matter was filed in the Superior Court of the State of Delaware, New Castle County, Delaware, Case No. 09C-08-148 JEB, an action arising out of an alleged breach of contract. The matter was voluntarily dismissed without prejudice on June 8, 2010.

5.2 Michael Frank v. Farlie Turner & Co., LLC, et al. (the "Ontario Action")

The Ontario Action was commenced, as a proceeding under the Class Proceedings Act, 1992, S.O. 1992, by Michael Frank as the Plaintiff (on his own behalf and on behalf of the other class members consisting of all persons who voluntarily or involuntarily disposed of share of Protective Products of America, Inc. during the period from and including August 14, 2009 to and including March 5, 2010) against Farlie, Turner & Co., LLC, Bayshore Partners, LLC, R. Patrick Caldwell, Stephen Giordanella, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torykin, Sr., Charles E. Peters, Jr., and Deon Vaughan (collectively, the "Defendants") in the Ontario Superior Court of Justice, Ontario, Canada, on December 6, 2010.

Defendants Bayshore Partners, LLC were the Debtors' Investment Bankers and Frank Jamout is the Debtors' CRO. Defendants Neil E. Schwartzman and Jason A. Williams were employed by the Debtors on the Petition Date.

The Statement of Claim asserts numerous claims, including misrepresentations related to business and affairs of Protective Products of America, Inc., negligent, reckless or fraudulent failure to make proper disclosures in connection with certain events, conspiracy to conceal from the Plaintiffs certain information, and intentional and unlawful interference with the Plaintiffs' economic relations with and interests in Protective Products of America, Inc., and seeks damages in the amount of \$100 million, punitive damages in the amount of \$20 million, plus interest and costs.

5.3 Avoidance Actions

During the 90-day period immediately preceding the Petition Date, the Debtors made various payments and other transfers to creditors on account of antecedent debts. In addition, during the one-year period before the Petition Date, the Debtors made certain transfers to, or for the benefit of, certain "insider" creditors. Avoidance Actions are any and all Causes of Action and rights to recover or avoid transfers or to avoid any lien under Chapter 5 of the Bankruptcy Code or otherwise, including, but not limited to, sections 506, 510, 522, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code, and the proceeds thereof, or otherwise to exercise the avoidance powers provided under the Bankruptcy Code.

The Debtors' Schedules of Assets and Liabilities identify creditors whose Claims are disputed, and the Debtors' Statements of Financial Affairs identify the parties who received payments and transfers from the Debtors, which payments and transfers may be avoidable under the Bankruptcy Code.

#### 5.4 Other Claims

The Estates may have other claims against the Debtors' officers and directors, insiders, affiliates, and prepetition advisors. The investigation by PPE may also disclose such claims and the Ontario Action may include claims that are property of the estates. The D&O Policy is in effect and there may be claims brought under that policy post-confirmation following due investigation. All of the Estates' Causes of Actions are preserved for post-confirmation litigation as provided in the following paragraph and elsewhere under the Plan and Disclosure Statement.

#### 5.5 Preservation of Litigation Rights and Investigations

Under the Plan, the Creditor Trustee retains all rights of, and on behalf of, the Debtors and the Creditor Trust to commence and pursue any and all Causes of Action, including but not limited to (i) Avoidance Actions and (ii) claims against PPE, Farlie, Turner & Co., LLC, Bayshore Partners, LLC, any and all current and/or former officers and directors of the Debtors, ~~including but not limited to R. Patrick Caldwell, Stephen Giordanella, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torykin, Sr., Charles E. Peters, Jr., and Deon Vaughan~~, and any of their affiliates, insiders, successors, and subsequent transferees, for, among other things, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence, misrepresentation, or breach of contract, subject to the Release and Exculpation contained in Sections 8.2 and 8.3 of the Plan, regardless of whether or not such Causes of Action are specifically enumerated herein, in the Disclosure Statement, or elsewhere, and all such rights shall not be deemed modified, waived, released in any manner, nor shall confirmation of the Plan or the Confirmation Order act as *res judicata* or limit the Creditor Trustee's rights to commence and pursue any and all Causes of Action to the extent the Creditor Trustee deems appropriate. Causes of Action and Avoidance Actions may, but need not, be pursued by the Debtors prior to the Effective Date and by the Creditor Trustee after the Effective Date, to the extent warranted.

For the avoidance of doubt, any and all Causes of Action, including but not limited to (i) Avoidance Actions and (ii) claims against PPE, Farlie, Turner & Co., LLC, Bayshore Partners, LLC, any and all current and/or former officers and directors of the Debtors, ~~including but not limited to R. Patrick Caldwell, Stephen Giordanella, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torykin, Sr., Charles E. Peters, Jr., and Deon Vaughan~~ and any of their affiliates, insiders, successors, and subsequent transferees, for, among other things, breach of fiduciary duty ~~or~~, aiding and abetting breach of fiduciary duty, negligence, misrepresentation, or breach of contract, subject to the Release and Exculpation contained in Sections 8.2 and 8.3 of the Plan, that the Debtors or the Estate had (or had power to assert) immediately prior to confirmation of the Plan will transfer to the Creditor Trust and the Creditor Trustee may commence or continue, in any appropriate court or tribunal, any suit or other proceeding for the enforcement of such Causes of Actions. In connection with the sale to PPE, PPE acquired certain Causes of Action against counterparties to Assumed Contracts, as set forth on Schedule 2.1(ii) of the Asset Purchase Agreement. **EXCEPT AS PROVIDED IN THE ASSET PURCHASE AGREEMENT AND THE SALE ORDER, THE PLAN DOES NOT, AND IS NOT INTENDED TO, RELEASE ANY SUCH CAUSES OF ACTION OR AVOIDANCE**

**ACTIONS, OR OBJECTIONS TO PROOFS OF CLAIM. ALL SUCH RIGHTS ARE SPECIFICALLY RESERVED IN FAVOR OF THE DEBTORS, THE ESTATES, THE CREDITOR TRUST AND THE CREDITOR TRUSTEE.**

Creditors should understand that the Creditor Trustee may assert certain Causes of Action, including Avoidance Actions, against them. As such, Creditors are cautioned not to rely on (i) the absence of the listing of any legal right, claim, Causes of Action or Avoidance Actions against a particular creditor in the Disclosure Statement, Plan, Schedules of Assets and Liabilities, Statement of Financial Affairs, or Plan Supplement; or (ii) the absence of litigation or demand prior to the Effective Date of the Plan as any indication that the Debtors or the Creditor Trustee do not possess or do not intend to prosecute a particular Causes of Action if a particular Creditor votes to accept the Plan.

Unless a Cause of Action against a Creditor or other Entity is expressly waived, relinquished, released, compromised, or settled in this Plan, or any Final Order, the Debtors expressly reserve any and all Causes of Action, including Avoidance Actions, for later enforcement and prosecution by the Creditor Trustee (including, without limitation, those not specifically identified herein, in the Plan, Disclosure Statement, Plan Supplement, or otherwise, or which the Debtors may presently be unaware of, or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time, or facts or circumstances which may change or be different from those which the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to any such Cause of Action or Avoidance Action upon or after the confirmation or consummation or implementation of this Plan. In addition, the Creditor Trustee expressly reserves the right to pursue and/or adopt any Causes of Action, including Avoidance Actions, alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, subject to the provisions of this Plan or any Final Order.

It is not intended and it should not be assumed (nor shall it be deemed) that because any existing or potential Cause of Action or Avoidance Action has not yet been identified or pursued by the Debtors, or any other Estates' fiduciary, or are not set forth in the Plan, Disclosure Statement, Plan Supplement, or otherwise, that any such Cause of Action or Avoidance Action has been waived or expunged.

## **ARTICLE 6**

### **POST-BANKRUPTCY OPERATIONS AND SIGNIFICANT EVENTS IN BANKRUPTCY**

### 6.1 Post-Bankruptcy Operations

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

### 6.2 First Day Orders

On or shortly after the Petition Date, the Debtors filed a number of motions designed to allow them to continue operating their business in the ordinary course without unnecessary disruption as a result of the bankruptcy filings. Pursuant to those motions, the Bankruptcy Court entered orders that, among other things, granted the Debtors the authority to:

- establish certain notice, case management and administrative procedures;
- retain Berger Singerman, P.A. as their general bankruptcy counsel;
- retain Bayshore Partners, LLC, an affiliate of Farlie Turner & Co., as Investment Bankers to the Debtors;
- establish procedures for payment of Professionals;
- pay prepetition accrued wages, salaries, medical benefits, and reimbursable employee expenses and to administer the Debtors' benefit plans in the ordinary course;
- maintain insurance policies, including payment of premiums when due;
- maintain existing bank accounts, business forms and cash management structure;
- establish notice and hearing procedure for claims and stock trading in PPOA Holding;
- obtain postpetition financing;
- pay certain domestic critical vendors; and
- authorize auction procedures for the sale of all of the Debtors' assets.

The Bankruptcy Court also entered an order directing the Bankruptcy Cases to be jointly administered.

### 6.3 The Official Committee of Unsecured Creditors

On January 27, 2010, the United States Trustee filed an Appointment and Notice of Appointment of Joint Committee of Creditors Holding Unsecured Claims. Pursuant to this notice, the following members were appointed:

1. Todd Lair, President, Leading Technology Composites, Inc.
2. Scott L. Spitzer, Senior Vice President, General Counsel, Bowne & Co., Inc.<sup>8</sup>
3. Tim Fiess, Credit Manager, TVP, Inc. d/b/a Top Value Fabrics

#### 6.4 Employment of Professionals

Pursuant to orders entered by the Bankruptcy Court, the following Professionals were retained:

Professional	Retained as:
Berger Singerman, P.A.	Debtors' Bankruptcy Counsel
Bayshore Partners, LLC	Debtors' Investment Bankers
Ernst & Young, LLP	Debtors' Tax Advisors
Arent Fox, LLP	Creditors' Committee Co-Counsel
Genovese Joblove & Battista, P.A.	Creditors' Committee Co-Counsel

The Professionals retained by the Estates are required to prepare monthly invoices and file quarterly fee applications pursuant to the Fee Procedures Order entered by the Bankruptcy Court and are entitled to receive monthly payment of fees and expenses subject to a twenty percent (20%) holdback for fees.

#### 6.5 Schedules and Statement of Financial Affairs

The Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs on February 3, 2010. On April 7, 2010, the Debtors filed amended Schedules of Assets and Liabilities, amending schedule F for PPOA Holding and schedule B for PPI.

#### 6.6 Other Significant Actions

##### 6.6.1 DIP Credit Facility and CIBC Claim

On January 21, 2010, the Court entered an interim order [Docket No. 52] (the "Interim DIP Financing Order") granting the DIP Financing Motion on an interim basis and setting a deadline by which the Committee may commence an action against Canadian Imperial Bank of Canada ("CIBC"), which deadline subsequently was extended by the Court to expire on May 28, 2010 and further extended to June 3, 2010 on consent of the Parties (the "Challenge Deadline").

The DIP Lender was granted a first priority lien on substantially all the Debtors' assets. As more particularly described in the DIP Credit Agreement and the DIP Order, the DIP Credit Facility is secured by a first priority lien and security interest on all of the Debtors' existing and future

<sup>8</sup> Bowne & Co., Inc. was represented on the Committee by Receivable Management Services ("RMS") through Steve Sass, Esq. and Kelli Bohuslav-Kail, Esq.

acquired property and interests of any nature whatsoever, real and personal, tangible and intangible, including accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, commercial tort claims, inventory, rolling stock, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, and tax refunds of the Debtors (the “DIP Collateral”).

Amounts owed by the Debtors to the DIP Lender pursuant to the DIP Credit Facility have been granted super-priority administrative claim status, with priority over any administrative expenses of the kind specified in, among other sections, sections 105, 326, 330, 331, 503(b), 506(c), 507(a), 507(b), and 726 of the Bankruptcy Code.

The Debtors did not draw under the DIP Credit Facility, but used existing Cash Collateral to fund their operations.

The Court approved an asset purchase agreement and competitive bidding procedures by Order dated February 22, 1020 (the “Sale Order”) [D.E. No. 133]. The transaction contemplated by the Sale Order closed on March 5, 2010, and the Debtors discontinued their operations thereafter.

Pursuant to paragraph 18 of the Sale Order, the Debtors put \$9,000,000 from the proceeds of the sale into escrow (the “Escrow Funds”), to which CIBC’s liens attached with the same validity and priority as CIBC’s liens upon the assets sold by the Debtors, subject to the Committee’s right to challenge CIBC’s liens and claims prior to the Challenge Deadline.

On April 8, 2010, the Committee and the Debtors entered into that certain Stipulation Concerning the Investigation, Assertion and Prosecution of Certain of the Debtors’ and Estates’ Claims and Causes of Action and Assertions Against CIBC on Behalf of the Committee, Debtors, and Debtors’ Estates (the “Standing Stipulation”).

On April 9, 2010, CIBC, through its counsel, Shutts & Bowen LLP, commenced an adversary proceeding by filing a complaint (the “Complaint”) against the Debtors and the Committee in the Bankruptcy Court, Adv. Pro. No. 10-02832-JKO (the “CIBC Adversary Proceeding”).

Thereafter, the Parties to the CIBC Adversary Proceeding engaged in certain discovery and negotiations.

As of June 1, 2010, the aggregate amount of CIBC’s claim against the Debtors was \$8,462,858.04, exclusive of certain legal fees and expenses in the estimated aggregate amount of \$30,000 (the “Pre June 1 Fees”).

On June 3, 2010, the Parties entered into the CIBC Conditional Payment Stipulation, pursuant to which the parties agreed to make a conditional payment to CIBC from the Escrow Funds, subject to certain reservations of rights. Further, the Committee requested and CIBC agreed, pursuant to the CIBC Conditional Payment Stipulation, to make the CIBC Payment and reallocate and gift these funds from CIBC’s collateral and solely for the benefit of holders of Allowed General Unsecured Claims and to extend the Committee’s (a) Challenge Deadline, (b) time to file a responsive pleading to the Complaint, and (c) time to supplement the Committee’s Motion to Vacate the Interim DIP Financing Order (collectively, the “Deadlines”).



On June 4, 2010 the Court approved the CIBC Conditional Payment Stipulation and on that same day, the Debtors paid to CIBC via wire transfer a sum of \$8,471,192.01 (the sum of the CIBC Pre-Petition Secured Claim and CIBC Post-Petition Secured Claim Pre June 1, 2010), pursuant to the terms of the CIBC Conditional Payment Stipulation. The CIBC Payment has yet to be made by CIBC.

#### 6.7 Expiration of the Debtors' Exclusivity Periods

By order of the Bankruptcy Court dated August 17, 2010 [D.E. 286], the exclusive period within which only the Debtors may file a chapter 11 plan was extended through and including August 31, 2010, and the Debtors' exclusive period within which to seek and obtain solicitations for the Plan was extended through and including October 31, 2010 (the "Exclusivity Periods"). The Debtors did not file a plan and did not extend the Exclusivity Periods, and, therefore, the Exclusivity Periods terminated thereafter. Upon expiration of the Debtors' Exclusivity Periods, any party in interest could file a plan.

During the Debtors' Exclusivity Periods, the Committee worked cooperatively with the Debtors in an attempt to draft and file a consensual joint plan of liquidation for the Debtors. However, throughout the course of various plan negotiations, it became clear that the goals and concerns of the Committee diverged from those of the Debtors with respect to, among other things, the plan's treatment of Unsecured Claims of Subordinated Debentures asserted against these Estates. Once the Debtors' Exclusivity Periods ran out, the Committee prepared its own plan of liquidation for the Debtors that it believes meets the needs of all creditors and other parties in interest, including, but not limited to, the General Unsecured Creditors.

After the negotiations between the Debtors and the Committee came to an impasse, the parties filed their respective plans and disclosure statements on November 3, 2010. Since that time, the Committee has been negotiating with the Debtors, CIBC, UST, and SEC in attempt to resolve any and all issues and concerns of these parties.

On Friday afternoon, December 17, 2010, the Debtors informed the Committee of their intentions to withdraw their competing plan and disclosure statement. Thus, the Committee's Plan is the only plan of liquidation for the Debtors that is going forward.

#### 6.8 Summary of Claims

The Bar Date for filing proofs of claim in the Bankruptcy Cases was May 18, 2010, with the exception of proofs of claims filed by Governmental Units, which had to be filed on or before July 12, 2010.

Administrative Expense Claims will be comprised of amounts due to the Lender, if any, under the DIP Credit Facility and fees and expenses incurred by the Estates' Professionals. These Administrative Expense Claims are estimated to be approximately \$394,643 on the Effective Date.

The Unsecured Priority Claims, which are comprised of Unsecured Priority Tax and Non-Tax Claims, are estimated to be approximately \$347,167 on the Effective Date.



The Unsecured Claims are estimated to be approximately \$21,620,673 (exclusive of Intercompany Claims) based on the Debtors' Schedules and Liabilities, and as further provided in the Liquidation Analysis. This estimate may differ materially from the ultimate amount of Allowed Unsecured Claims as the reconciliation of claims will be performed by the Creditor Trustee. Further, objections by the Creditor Trustee to any Disputed Claims may or may not be sustained by the Court, or may be sustained only in part, and the estimate does not include any rejection damages for Executory Contracts rejected during the Bankruptcy Cases or to be rejected under the Plan (for which a proof of claim is yet to be filed).

In addition, CIBC contends that it has a contractual right for indemnification from the Estates in the event certain claims are brought against CIBC by third parties. To date, no such claims have been brought and none are anticipated. Thus, any such indemnification claim is contingent at best. However, if an indemnification claim is asserted by CIBC, or any other party in interest, against the Estates and are allowed, such indemnification claims could increase the claims pool substantially, dilute Distributions to holders of other Allowed General Unsecured Claims, potentially result in no Distributions, or possibly conversion or dismissal of these Bankruptcy Cases. Notwithstanding the foregoing, as a result of the release and injunction of claims of third parties against CIBC being granted to CIBC under the Plan, CIBC will not have any indemnification Claims against the Estates.

## **ARTICLE 7**

### **DESCRIPTION OF THE PLAN**

#### **7.1 Introduction**

A summary of the principal provisions of the Plan and the treatment of Classes of Claims and Equity Interests is outlined below. The summary is entirely qualified by the Plan. This Disclosure Statement is only a summary of the terms of the Plan; it is the Plan (and not the Disclosure Statement) that governs the rights and obligations of the parties.

#### **7.2 Designation of Claims and Equity Interests/ Impairment**

Pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code, the following is a designation of the classes of Claims and Equity Interests under this Plan for purposes of voting, distribution, and implementation of the terms of this Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claims, and Priority Unsecured Tax Claims have not been classified and are excluded from the following Classes. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest, or portion thereof, qualifies within the description of that Class, and is classified in another Class(es) to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such other Class(es). In addition, a Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class, subject to Section 10.1 of this Plan. Notwithstanding anything to the contrary in the Plan, no Distribution shall be made on account of any Claim that is not an Allowed Claim.

7.3 Classification

Claims against and Equity Interests in the Debtors are classified as follows:

Class – 1 – Priority Unsecured Non-Tax Claims in Sub-Classes:

**PPA – 1**, consisting of all priority unsecured non-tax claims against PPOA Holding;  
**PPI – 1**, consisting of all priority unsecured non-tax claims against PPI; and  
**CPC Corp. – 1**, consisting of all priority unsecured non-tax claims against CPC Corp.

Class – 2 – Secured Claim of CIBC:

**PPA – 2**, consisting of all secured claims of CIBC against PPOA Holding.

Class – 3 – Unsecured Claims of Subordinated Debentures:

**PPA – 3**, consisting of all unsecured claims of subordinated debentures against PPOA Holding.

Class – 4 – General Unsecured Claims in Sub-Classes:

**PPA – 4**, consisting of all general unsecured claims against PPOA Holding;

**PPI – 4**, consisting of all general unsecured claims against PPI;

**PPNC – 4**, consisting of all general unsecured claims against PPNC;

**CPC Holding – 4**, consisting of all general unsecured claims against CPC Holding; and

**CPC Corp. – 4**, consisting of all general unsecured claims against CPC Corp.

Class – 5 – Subordinated Claims in Sub-Classes:

**PPA – 5**, consisting of all subordinated claims against PPOA Holding;

**PPI – 5**, consisting of all subordinated claims against PPI;

**PPNC – 5**, consisting of all subordinated claims against PPNC;

**CPC Holding – 5**, consisting of all subordinated claims against CPC Holding; and

**CPC Corp. – 5**, consisting of all subordinated claims against CPC Corp.

Class – 6 – Equity Interests in Sub-Classes:

**PPA – 6**, consisting of all equity interests in PPOA Holding;

**PPI – 6**, consisting of all equity interests in PPI;

**PPNC – 6**, consisting of all equity interests in PPNC;

**CPC Holding – 6**, consisting of all equity interests in CPC Holding; and

**CPC Corp. – 6**, consisting of all equity interests in CPC Corp.

#### 7.4 Unimpaired Classes

Priority Unsecured Non-Tax Claims in Class – 1 are not Impaired under the Plan. Under Bankruptcy Code section 1126(f), holders of Claims in those Classes are conclusively presumed to have accepted the Plan, and are not entitled to vote to accept or reject the Plan.

#### 7.5 Impaired Classes

Except for the Priority Unsecured Non-Tax Claims in Class – 1, all classified Claims and Equity Interests are Impaired under the Plan. Holders of Claims in the Impaired Classes are entitled to vote to accept or reject the Plan, except as provided in the following paragraph.

Holders of Subordinated Claims in Class – 5 shall not receive any Distributions, nor retain any interest in the Estate Property or the Creditor Trust Assets, on account of such Claims under the Plan, except and to the extent as provided in Section 4.5 of the Plan. In addition, holders of Equity Interests in Class – 6 will not retain their Equity Interests, and no Distributions on account of such Equity Interests will be made under the Plan, except and to the extent as provided in Section 4.6 of the Plan. Both holders of Subordinated Claims and holders of Equity Interests are Impaired under this Plan and, under Bankruptcy Code section 1126(g), conclusively deemed to have rejected the Plan because holders of Subordinated Claims and holders of Equity Interests will not receive or retain anything under the Plan. Thus, the Plan Proponent will not solicit the votes of Class – 5 and Class – 6.

#### 7.6 Treatment of Claims and Interests

##### 7.6.1 Treatment of Unclassified Claims and Applicable Bar Dates

(a) Payment of Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claims, and Allowed Priority Unsecured Tax Claims and Applicable Bar Dates

Administrative Expense Claims are any right to payment constituting a cost or expense of administration of Bankruptcy Cases under sections 330, 503(b), and 1114(e)(2) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code, including, without limitation, (a) any actual and necessary costs and expenses of preserving the Debtors' Estates, (b) any actual and necessary costs and expenses of operating the Debtors' businesses, (c) any indebtedness or obligations incurred or assumed by the Debtors during the Bankruptcy Cases, and (d) Professional Compensation Claims; (e) all obligations designated as Allowed Administrative Expense Claims pursuant to an order of the Bankruptcy Court; and (f) any fee or charge assessed against the Debtors' Estates under section 1930 of chapter 123 of

Title 28 of the United States Code; provided, however, such Administrative Expense Claims must be filed by the Administrative Expense Claim Bar Date or the Professional Compensation Bar Date, as applicable.

Professional Compensation Claims are (a) a Claim under 11 U.S.C. §§ 326, 327, 328, 330, 331, 503(b), or 1103; and (b) any reasonable, actual and necessary claims or requests for payment of legal fees and expenses of CIBC's counsel, Shutts & Bowen LLP. All applications or other requests for payment of Professional Compensation Claims arising on or before the Effective Date must be filed with the Bankruptcy Court and served on counsel for the Debtors, the UST, and counsel for the Committee no later than twenty-one (21) days prior to the Confirmation Hearing Date, or such other date established by order of the Court (the "Professional Compensation Bar Date"). Any Professional Compensation Claims for which an application or other request for payment is not filed by the Professional Compensation Bar Date, as may be supplemented by filing an amended application or request for payment at any time prior to the hearing on approval of such Professional Compensation Claims (which may include estimated fees and expenses up through the Effective Date), shall be discharged and forever barred from asserting such Professional Compensation Claim against the Debtors, the Estates, the Creditor Trust, or their respective property. The Court's approval is required prior to any payment of the Professional Compensation Claims.

Administrative Tax Claims are Administrative Expense Claims held by a Governmental Unit for taxes (and for any interest related to such taxes) for any tax year or period, all or any portion of that accrued or became due on or after the Petition Date through and including the Effective Date. Any application or other request for payment of an Administrative Tax Claim must have been timely and properly filed with the Bankruptcy Court and served on counsel for the Debtors, the UST, and the Committee on or before the Administrative Expense Claim Bar Date. Any Administrative Tax Claim for which an application or other request for payment was not timely and properly filed by the Administrative Expense Claim Bar Date shall be discharged and forever barred.

The Creditor Trustee shall pay Allowed Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claim, within twenty-one (21) days after the later of (a) the Allowance Date or (b) the Effective Date of the Plan as follows: (i) first, from the balance of any retainers held by Professionals until fully exhausted; (ii) second, from the Debtors' Cash before the Effective Date; and (iii) after the Effective Date, from the Net Administrative and Priority Unsecured Tax Claim Fund; provided, however, that if the Net Administrative and Priority Unsecured Tax Claim Fund is not sufficient, the Creditor Trustee shall fund the Net Administrative and Priority Unsecured Tax Claim Fund from the Creditor Trust Assets, in the full amount of the Allowed Administrative Expense Claims.

Priority Unsecured Tax Claims shall be satisfied in full at the election of the Creditor Trustee, as follows:

(i) Cash Payment

Any Priority Unsecured Tax Claim may be satisfied by the payment of Cash to the holder of such Claim in the amount of its Priority Unsecured Tax Claim plus accrued

interest after the Confirmation Date at the Tax Interest Rate on the later of the Allowance Date or the Effective Date of the Plan; or

(ii) Other Agreements

Any Priority Unsecured Tax Claim may be satisfied pursuant to an agreement reached with the holder of such Claim.

If the Net Administrative and Priority Unsecured Tax Claim Fund is not sufficient, the Creditor Trustee shall fund the Net Administrative and Priority Unsecured Tax Claim Fund from the Creditor Trust Assets, in the full amount of the Allowed Priority Unsecured Tax Claims.

(b) UST Fees

The Creditor Trustee shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), within ten (10) days after the Effective Date, for pre-confirmation periods. The Creditor Trustee shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements made by the Creditor Trustee until the earlier of the closing of this case by the issuance of a final decree by the Bankruptcy Court or upon the entry of an order by the Bankruptcy Court dismissing or converting this case to another chapter under the United States Bankruptcy Code. After the Confirmation Date, the Creditor Trustee shall file a quarterly post-confirmation operating report which shall include, among other things, all payments made under the Plan and payments made in the ordinary course of business. The post-confirmation operating report shall be filed quarterly until the court enters a final decree, dismisses the case, or converts the case to another chapter under the United States Bankruptcy Code.

7.6.2 Classification and Treatment of Classified Claims and Equity Interests

(a) General

It is not possible to predict precisely the total amount of Claims in a particular Class or the Distributions that will be ultimately paid to holders of Claims in the different Classes because of the variables involved in the calculations (including the results of the claims objection process). Notwithstanding, the estimates specified for each Class are based on information known to the Committee (and as provided by the Debtors) on the date of this Disclosure Statement.

(b) Treatment of Priority Unsecured Non-Tax Claims (Class – 1) – Unimpaired

Priority Unsecured Non-Tax Claims in Class – 1 are entitled to priority in payment under sections 507(a)(2)-(7) and 507(a)(9)-(10) of the Bankruptcy Code. The Creditor Trustee shall pay Allowed Priority Unsecured Non-Tax Claims within twenty-one (21) days after the later of (a) the Allowance Date or (b) the Effective Date of the Plan.

Class – 1 is not Impaired under this Plan and, therefore, is conclusively deemed to have accepted the Plan.

(c) Treatment of Secured Claim of CIBC (Class – 2) – Impaired

Under the Plan, (a) CIBC shall receive an Allowed Claim equal to \$8,471,192.01 (the amount already paid to CIBC pursuant to the CIBC Conditional Payment Stipulation that was approved by that certain Order of the Court dated as of June 4, 2010); (b) CIBC’s outstanding accrued reasonable attorneys’ fees and expenses on account of its Allowed Claim shall be paid in full prior to the Effective Date; (c) CIBC shall be granted a release from all claims against CIBC relating to its pre- and post-petition lending relationship with the Debtors; and (d) CIBC shall receive no other Distribution under the Plan, from the Creditor Trust, or otherwise; provided, however, (a) CIBC shall fully perform its obligations under the CIBC Conditional Payment Stipulation, including transferring the CIBC Payment to the attorneys to the Committee in accordance with Section 6.10 of the Plan.

Upon payment in full of the CIBC Claim, all Liens securing such claim and related documents shall be canceled and extinguished and of no further force or effect. In addition, upon receipt of CIBC Payment, all obligations of CIBC shall terminate, and no further extensions of credit whether direct or under any letter of credit issued in favor of any party shall occur. CIBC is authorized and directed to perform all acts reasonably required and/or reasonably requested by the Debtors or the Creditor Trustee to cancel and/or extinguish any Liens and/or security interests filed in any public records at no additional cost.

Class – 2 is Impaired and entitled to vote to accept or reject this Plan.

(d) Treatment of Unsecured Claims of Subordinated Debentures (Class – 3) – Impaired

Unsecured Claims of Subordinated Debentures are Unsecured Claims held by holders of subordinated debentures issued by the Debtors, including, but not limited to, (i) subordinated, nonconvertible debentures (“Sub NC Debentures”) issued by the Debtors in August and September 2007 and/or (ii) subordinated, convertible debentures (“Sub C Debentures”) issued by the Debtors in February 2008 (collectively, “Subordinated Debentures”), as scheduled by, or asserted against, the Debtors on or before the Bar Date.

Based on documentation provided by the Debtors in connection with the Subordinated Debentures, it appears that the Subordinated Debentures Holders were provided with an alleged security interest in certain property and assets of Ceramic Protection Corporation. However, Ceramic Protection Corporation, pursuant to that certain Plan of Arrangement, completed the process of domestication, incorporated under the General Corporation Law of the State of Delaware, U.S., and changed its name to Protective Products of America, Inc., a United States entity. In order to protect their allegedly secured interests in the assets of Protective Products of America, Inc., Subordinated Debentures Holders were required to file that certain UCC-1 Financing Statement. Based on review and examination of all of the UCC-1 Financing Statements filed against each of the Debtors, there is not one UCC-1 Financing Statement filed in favor of any of the Subordinated Debentures Holders. Thus, Subordinated Debentures

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Holders do not have a valid, perfected security interest in the property of the Estates and their claims are unsecured. Further, the Debtors listed Unsecured Claims of Subordinated Debentures as unsecured claims in their Schedules of Assets and Liabilities. The Plan Proponent will object to any proofs of claims filed by any Subordinated Debentures Holder improperly claiming a secured status of their claims to ensure that such claims are properly classified as unsecured claims.

Pursuant to Schedule F of the Schedules of Assets and Liabilities of PPOA Holding, Inc. f/k/a Protective Products of America, Inc. (9709), the total combined amount of Unsecured Claims of Subordinated Debentures is approximately \$11,996,089.67 (as scheduled), and Subordinated Debentures Holders are as follows:

(i) Holders of Sub C Debentures:

Polar Caps Securities - \$1,138,723.94

Balinhard Capital Corporation - \$1,082,039.02 (POC No. 48 - \$1,082,039.02 (asserted as secured))

Stephen Giordanella Revocable Trust - \$1,082,039.02 (POC No. 31 - \$3,029,329 (asserted as secured))

Randal Perkins Living Trust - \$1,064,227.98 (POC No. 37 - \$1,158,333.27 (asserted as secured))

BMO Nesbitt Burns, Inc. in trust for Amethyst Arbitrage Fund – \$585,325.39 (POC No. 29 - \$595,833.30 (\$550,000 asserted as secured and \$45,833.30 asserted as unsecured))

BMO Nesbitt Burns, Inc. in trust for Amethyst Arbitrage Fund – \$478,902.59 (POC No. 23 - \$450,000 (asserted as secured))

The Lee Family Trust - \$425,691.19 (POC No. 28 - \$425,691.19)

Brian L. Stafford Trust (Trust dated 2/7/2005) - \$216,407.81

Henry Hugh Shelton - \$162,305.86 (POC No. 19 - \$214,549.06)

Salomon & Flor Melgen, TBE - \$159,634.21 (POC No. 39 - \$159,634.21 (asserted as secured))

Jeffrey R. Knight, TTEE – \$31,926.83 (POC No. 30 - \$31,926.836)

(ii) Holders of Sub NC Debentures:

Balinhard Capital Corporation - \$1,868,561.29 (POC No. 47 – \$1,868,561.28 (asserted as secured))



Stephen Giordanella Revocable Trust - \$1,868,561.29 (POC No. 31 - \$3,029,329 (asserted as secured))

Fairholme Associates, LP - \$174,554.36

Fairholme Holdings, Ltd - \$606,630.26

Fairholme Partners, LP - \$635,722.66

Fairholme Ventures II, LLC - \$414,835.97

For reasons explained below, it is the Plan Proponent's position that Subordinated Debentures Holders are subject to recharacterization and subordination and, in addition to their status as unsecured creditors, should not receive any distribution until all allowed General Unsecured Claims are paid in full. As an attempt to avoid disputes and litigation and to fully and finally resolve Unsecured Claims of Subordinated Debentures, the Plan Proponent will grant each holder of an Unsecured Claims of Subordinated Debentures an Allowed Claim, as provided in the settlement and compromise (the "Bondholder Settlement"), subject to the terms of Section 4.3 of the Plan.

Unless a holder of Unsecured Claims of Subordinated Debentures affirmatively makes the election to "opt out" of the Bondholder Settlement (the "Election to Opt Out of the Bondholder Settlement"), each holder of Unsecured Claims of Subordinated Debentures shall be bound and conclusively deemed to accept the Bondholder Settlement as follows:

The Bondholder Settlement: Each holder of Unsecured Claims of Subordinated Debentures shall, subject to Sections 6.3 and 7.15 of the Plan, have a fixed Allowed Claim, not subject to recharacterization or subordination, that is equal to 25% of the face value of their (a) scheduled claim or (b) timely filed proof of claim, whichever is lesser (the "Allowed Compromised Subordinated Debentures Unsecured Claim"). Each holder of an Allowed Compromised Subordinated Debentures Unsecured Claim shall be entitled to receive their Pro Rata Share of their beneficial interests in the Creditor Trust in full and complete satisfaction of such Class – 3 Claim.

For the avoidance of any doubt, each holder of an Allowed Compromised Subordinated Debentures Unsecured Claim shall not receive any Distribution in excess of the amount of Allowed Compromised Subordinated Debentures Unsecured Claim and any Claim to such excess amount shall be deemed waived, expunged and forever extinguished without further order of the Bankruptcy Court.

Notwithstanding the foregoing, and as provided in Sections 6.3 and 7.15 of the Plan, no Cause of Action shall be settled, released, waived, or discharged against any holder of Unsecured Claims of Subordinated Debentures in their capacity as an officer or director (current or former) of the Debtors. For the avoidance of any doubt, all Causes of Action against the officers and directors (current or former) of the Debtors are hereby preserved.

If a holder of Unsecured Claims of Subordinated Debentures makes the Election to Opt Out of the Bondholder Settlement in accordance with the terms of the Plan and the voting procedures, such holder of Unsecured Claims of Subordinated Debentures shall be treated as follows:

Opt Out Election of the Bondholder Settlement: Each holder of Unsecured Claims of Subordinated Debentures who makes the Election to Opt Out of the Bondholder Settlement shall be entitled to receive their Pro Rata Share of their beneficial interests in the Creditor Trust, subject to (a) any objections to the allowance of such Claims, as provided under the Plan, including Section 10.1 of the Plan; (b) all claims of the Debtors and the Estates, including Causes of Action, setoff, offset, or other defenses, or counterclaims; and (c) all claims by the Creditor Trustee for recharacterization and/or subordination of Unsecured Claims of Subordinated Debentures – which claims and objection (a) through (c) shall be preserved under the Plan, and filed, commenced and prosecuted by the Creditor Trustee as soon as practicable after the Effective Date. If Unsecured Claims of Subordinated Debentures are disallowed, subordinated and/or recharacterized, such Claims shall then (i) receive no Distribution and/or (ii) be reclassified and treated, whichever is applicable, as provided under the Plan.

In order to make the Election to Opt Out of the Bondholder Settlement in accordance with the terms of the Plan, each holder of Unsecured Claims of Subordinated Debentures must comply with the voting procedures and indicate their intent to opt out by marking their Ballot accordingly and checking the appropriate box. Merely voting to accept or reject the Plan (or not voting at all) is not sufficient to opt out of the Bondholder Settlement. Rather, each holder of Unsecured Claims of Subordinated Debentures must make the Election to Opt Out of the Bondholder Settlement and comply with the voting procedures, or each holder of Unsecured Claims of Subordinated Debentures will be deemed to have accepted the Bondholder Settlement.

If a holder of Unsecured Claims of Subordinated Debentures makes the Election to Opt Out of the Bondholder Settlement in accordance with the terms of the Plan and the voting procedures, the Plan Proponent anticipates that, through litigation, such holder's Unsecured Claims of Subordinated Debentures will be recharacterized, subordinated, and/or disallowed, and therefore, such holder will receive no Distribution under the Plan.

Example: If all holders of Unsecured Claims of Subordinated Debentures vote to accept the Plan and do not make the Election to Opt Out of the Plan Settlement, the total amount of the Allowed Compromised Subordinated Debentures Unsecured Claims will be fixed at approximately \$2,999,022 (25% of \$11,996,089.67 (as scheduled), as provided on the attached Liquidation Analysis, or the actual amount equal to no more than 25% of the face value of such claims).

The Plan Settlement is fair and reasonable. Upon information and belief, there is sufficient basis to seek recharacterization and/or subordination of Unsecured Claims of Subordinated Debentures under the applicable law. *See Estes v. N & D Props., Inc. (In re N & D Props., Inc.)*, 799 F.2d 726, 733 (11th Cir. 1986) (“Shareholder loans may be deemed capital contributions in one of two circumstances: where the trustee proves initial under-capitalization or where the trustee proves that the loans were made when no other disinterested lender would have extended credit.”); *Menotte v. NLC Holding Corp. (In re First NLC Fin. Servs., LLC)*, 415 B.R. 874, 878-79 (Bankr.

S.D. Fla. 2009) (“At least five Circuit Courts of Appeals, including the Eleventh Circuit, recognize the power of bankruptcy courts to recharacterize debt as equity.”).

Certain holders of Subordinated Debentures are *insiders* and upon information and belief, certain conduct may give rise to subordination of their claims under Section 510(b). However, for purposes of the Disclosure Statement, the foregoing analysis addresses only the legal and factual issues associated with “recharacterization” of claims of Subordinated Debentures. Although no one single fact supports the conclusion that these claims should be recharacterized or subordinated, the totality of circumstances and the economic reality of the surrounding circumstances lead to the conclusion that the cash advances in question were intended to be capital contributions.

At the time the Subordinated Debentures were issued (and thereafter), CIBC had perfected first-priority security interest in substantially all of the Company’s assets, and the Company continued to incur substantial operating losses and experienced an overall business decline. It is most likely that at all relevant times, the Company’s capitalization was inadequate and the Company was ineligible to obtain loans from unaffiliated lenders. Further, since the Subordinated Debentures were issued, the Debtors were in default under the CIBC Pre-Petition Credit Facility and never made any principal payment under the Subordinated Debentures.

In addition, following the Company’s domestication process pursuant to a Plan of Arrangement, Subordinated Debentures Holders failed not only to protect their allegedly “secured” interests in the United States but also failed to demand repayment, which under the applicable case law indicates that the advances were never intended to be bona fide loans. As a result, the Bankruptcy Court would most likely determine that the capital contributions that give rise to the Subordinated Debentures Holders’ claims are in substance equity and therefore recharacterize these claims as equity, subordinate in priority to the claims of general unsecured creditors. *See In re First NLC Fin. Servs.*, 415 B.R. at 880 (“Under appropriate circumstances, this Court has authority to recharacterize loans that are in substance equity, regardless of whether the putative lender was or was not a shareholder of the debtor at the time of the transaction.”) (emphasis added).

In short, the Plan Settlement essentially provides Subordinated Debentures Holders with an opportunity to voluntarily agree to the proposed treatment of the Unsecured Claims of Subordinated Debentures to ensure that they are entitled to receive their Pro Rata Share of their beneficial interests in the Creditor Trust, as opposed to no recovery in the event that the Unsecured Claims of Subordinated Debentures are recharacterized, subordinated, or disallowed.

Under the circumstances, the Plan Settlement not only is fair and equitable and does not unfairly discriminate against Subordinated Debentures Holders but also provides a reasonable offer of compromise to resolve the potential disputes that could arise if a settlement is not reached at this point. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, and in consideration for the classification, proposed treatment and distribution, and other benefits provided to Subordinated Debentures Holders under the Plan (as described above), upon the Effective Date, the provisions of the Plan, including the Plan Settlement, shall constitute a good

faith compromise and settlement of the Unsecured Claims of Subordinated Debentures and/or controversies resolved pursuant to the Plan.

Class – 3 is Impaired and entitled to vote to accept or reject the Plan.

(e) Treatment of General Unsecured Claims (Class – 4) – Impaired

Each holder of an Allowed General Unsecured Claim shall receive their Pro Rata Share of the beneficial interests in the Creditor Trust and as beneficiary of the Creditor Trust shall receive, on a Distribution Date, their Pro Rata Share of net Cash derived from the Creditor Trust Assets available for Distribution on each such Distribution Date as provided under the Plan and the Creditor Trust Agreement, as full and complete satisfaction of their Claims against the Creditor Trust.

Class – 4 is Impaired and is entitled to vote to accept or reject this Plan.

(f) Treatment of Subordinated Claims (Class – 5) – Impaired

The holders of Allowed Subordinated Claims junior in priority to the holders of all other Allowed Claims shall not receive any Distributions, nor retain any interest in the Estate Property or the Creditor Trust Assets, on account of such Claims, except and to the extent that all other Allowed Claims are first paid in full (with interest from the Petition Date at the Federal Judgment Rate that is in effect on the Effective Date), and only after the Creditor Trust has been fully and completely administered and all fees, expenses and costs of any kind and nature have been paid in full, including any reserves established by the Creditor Trustee in his sole discretion, in which case Allowed Subordinated Claims shall be entitled to receive Pro Rata Distribution of any remaining cash available in the Creditor Trust as provided in the Creditor Trust.

Class – 5 is Impaired under this Plan and, under Bankruptcy Code section 1126(g), conclusively is deemed to have rejected the Plan. The Proponent will not solicit their votes.

(g) Treatment of Equity Interests (Class – 6) – Impaired

On the Effective Date, holders of Equity Interests in Class – 6 shall be deemed automatically cancelled and extinguished without further act or action under any applicable agreement, law, regulation, order or rule, and no Distributions on account of such Equity Interests will be made under the Plan, except and to the extent that all Allowed Claims, including Allowed Subordinated Claims, are first paid in full, in which case Allowed Subordinated Claims shall be entitled to receive Pro Rata Distribution of any remaining cash available in the Creditor Trust, only after the Creditor Trust has been fully and completely administered and all fees, expenses and costs of any kind and nature have been paid in full, including any reserves established by the Creditor Trustee in his sole discretion.

Class – 6 is Impaired under this Plan and, under Bankruptcy Code section 1126(g), conclusively deemed to have rejected the Plan. The Proponent will not solicit their votes.

### 7.7 Assumption of Certain Executory Contracts Under the Plan

Pursuant to the terms of the Asset Purchase Agreement, certain executory contracts were assumed and assigned to PPE and certain other executory contracts were rejected. The Notice of Filing Final Schedule of Assumed and Rejected Executory Contracts was filed by the Debtors on March 9, 2010 [D.E. # 152]. Further, the Motion to Reject Executory Contracts was filed on April 6, 2010 [D.E. # 176]. The Court granted the Motion to Reject Executory Contracts by entering an Order on May 4, 2010 [D.E. # 211], authorizing rejection of contracts set forth on the attached Exhibit A as of March 5, 2010, and establishing the bar date for filing a proof of claim for damages arising from the rejection of the contracts as follows: (i) within 30 days after the entry of the order, or (ii) within the Bar Date set by this Court, whichever is later.

Cure costs associated with the assumed contracts were paid in connection with the closing on the sale to PPE.

Should PPE chose to assume the real property lease for the facility located at 1649 NW 136th Ave., Building J, Sunrise, FL, any cure costs associated with the assumption of that lease will be borne by PPE.

### 7.8 Assumption or Rejection of Certain Executory Contracts

Except as set forth in Section 5.3, Executory Contracts or unexpired leases, if any, that were not previously assumed or rejected shall be rejected and terminated as of the Confirmation Date, and such rejected Executory Contracts and unexpired leases shall no longer represent the binding obligations of the Debtors (or the Creditor Trust, or Creditor Trustee) on or after the Effective Date. Entry of the Confirmation Order shall constitute approval of such rejections under sections 365 and 1123 of the Bankruptcy Code.

### 7.9 Rejection Claims

Any Claim arising out of the rejection of an Executory Contract pursuant to the Confirmation Order must be filed with the Bankruptcy Court on or before the **Rejection Claim Bar Date**, and shall be served on counsel for the Debtors, the UST, and the Committee. Any such Claims not properly filed on or before the **Rejection Claim Bar Date** shall be discharged and forever barred. Each Allowed Claim arising from the rejection of an Executory Contract shall be treated as an Allowed General Unsecured Claim.

### 7.10 Insurance Policies

To the extent that any and all insurance policies, including any D&O Policies, are considered Executory Contracts, then notwithstanding anything contained in the Plan to the contrary, such insurance policies, including the D&O Policies, shall be deemed assumed and assigned to the Creditor Trust. Unless otherwise determined by the Bankruptcy Court, pursuant to a Final Order, no payments are required to cure any defaults of the Debtors existing as of the Confirmation Date with respect to each such policy, including the D&O Policies. For the avoidance of any doubt, all rights under any insurance policy, including the D&O Policies, that is not an Executory Contract, and all rights under any other insurance policies under which the Debtors may be beneficiaries, shall be preserved and shall vest with the Creditor Trust and shall

remain in full force and effect after the Effective Date for the term thereof; and nothing herein shall alter or adversely affect the rights of any non-Debtor beneficiaries of or covered Persons or Entities under such insurance policies, including the D&O Policies. Further, for the avoidance of any doubt, the Creditor Trustee may bring or assert Causes of Action under the D&O Policies as a “Bankruptcy Trustee” or “Liquidator or comparable authority of the Company,” as those terms are used in the D&O Policies.

#### 7.11 Reservation of Rights

Nothing contained in the Plan shall constitute an admission that any such contract or lease is in fact an Executory Contract or that any Debtor has any liability thereunder.

Nothing in the Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, Claims, Causes of Action, or other rights of the Debtors under any executory or non-executory contract or any unexpired or expired lease.

Nothing in the Plan shall increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtors under any executory or non-executory contract or any unexpired or expired lease.

## ARTICLE 8

### MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN

#### 8.1 Introduction and Vesting of Remaining Assets in the Creditor Trust

On the Effective Date, except as otherwise expressly provided in the Plan, title to all Estate Property and Remaining Assets (including specifically rights to collect the Debtors’ Income Tax Refunds, the Debtors’ existing insurance policies, including the D&O Policies and any claims arising thereunder, and all Causes of Action and Avoidance Actions) shall vest in the Creditor Trust free and clear of all Liens, encumbrances, or interests of any kind. The Debtors are a party to the Asset Purchase Agreement. The Creditor Trust shall succeed to all rights and interests provided to the Debtors and the Estates under the Asset Purchase Agreement.

The Committee shall have the power and authority to enter into the Creditor Trust Agreement on the Effective Date.

Thus, the Plan will be implemented through, among other things, a Distribution of the proceeds of the Creditor Trust Assets. The following discussion outlines the general terms of the contemplated reorganization of the Debtors’ and certain actions that will be taken to close the transactions contemplated by the Plan.

#### 8.2 Purpose of the Creditor Trustee

The Creditor Trustee shall be the “representative of the estates” as contemplated by §1123(b)(3)(B) of the Bankruptcy Code for all purposes, including to bring or assert Causes of Action under the D&O Policies as a “Bankruptcy Trustee” or “Liquidator or comparable authority of the Company,” as those terms are used in the D&O Policies. The Creditor Trustee



will hold and monetize all the Creditor Trust Assets in accordance with the provisions of this Plan. Although the Creditor Trustee was not selected by the UST, will not be supervised by the UST, the UST has standing to appear and participate in all aspects of the cases and to seek removal of the Creditor Trustee. The Creditor Trustee, if required by the United States Trustee, shall be bonded in favor of the Creditor Trust for the funds held in the Creditor Trust. Such bond shall be cancelable on thirty (30) days notice to the UST and all costs and expenses related to the bond shall be paid by the Creditor Trust.

### 8.3 Reservation of Rights

Under the Plan, the Creditor Trustee retains any and all rights of, and on behalf of, the Debtors, the Estates, and the Creditor Trust to commence and pursue any and all Causes of Action, including, without limitation, Avoidance Actions, setoff, offset and recoupment rights, regardless of whether or not such rights are specifically enumerated in the Plan, Disclosure Statement, Plan Supplement, or elsewhere, and all such rights shall not be deemed modified, waived, released in any manner, nor shall confirmation of the Plan or the Confirmation Order act as *res judicata* or limit any of such rights of Creditor Trustee to commence and pursue any and all Causes of Action, including, without limitation, Avoidance Actions, setoff, offset and recoupment rights, to the extent the Creditor Trustee deems appropriate. Any and all Causes of Action, including, without limitation, Avoidance Actions, setoff, offset and recoupment rights, may, but need not, be pursued by the Debtors prior to the Effective Date and by the Creditor Trustee after the Effective Date, to the extent warranted.

Any and all Causes of Action, including, without limitation, Avoidance Actions, setoff, offset and recoupment rights, that may be pursued by the Debtors prior to the Effective Date and by the Creditor Trustee after the Effective Date, also include, without limitation, any other Causes of Action, whether legal, equitable, or statutory in nature, arising out of, or in connection with, the Debtors' businesses or operations, including, without limitation, the following: possible claims against vendors, landlords, sublessees, assignees, customers, or suppliers for warranty, indemnity, back charge/set-off issues, overpayment, or duplicate payment issues, and collections/accounts receivable matters; deposits or other amounts owed by any creditor, lessor, utility, supplier, vendor, landlord, sublessee, assignee, or other Entity; claims against landlords, sublessees and assignees arising from the various leases, subleases, and assignment agreement relating thereto, including, without limitation, claims for overcharges relating to taxes, common area maintenance, and other similar charges; financial reporting; environmental and product liability matters; actions against insurance carriers relating to coverage, indemnity, or other matters; counterclaims and defenses relating to any Claims or other obligations; contract or tort claims which may exist or subsequently arise; and any and all Avoidance Actions pursuant to any applicable section of the Bankruptcy Code arising from any transaction involving or concerning the Debtors.

Unless a Cause of Action or Avoidance Action against a Creditor or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan, or any Final Order, the Debtors expressly reserve any and all Causes of Action, including, without limitation, Avoidance Actions, setoff, offset and recoupment rights, for later enforcement and prosecution by the Creditor Trustee (including, without limitation, any Cause of Action set forth in the Plan Supplement, or not specifically identified herein, in the Disclosure Statement, or otherwise, or



which the Debtors may presently be unaware of, or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time, or facts or circumstances which may change or be different from those which the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such any and all Causes of Action, including, without limitation, Avoidance Actions, setoff, offset and recoupment rights, upon or after the confirmation or consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order. In addition, the Creditor Trust expressly reserves the right to pursue or adopt any and all Causes of Action, including, without limitation, Avoidance Actions, setoff, offset and recoupment rights, alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, subject to the provisions of this Plan or any Final Order.

The Debtors and the Creditor Trustee do not intend, and it should not be assumed (nor shall it be deemed) that because any existing or potential Causes of Action, including, without limitation, Avoidance Actions, setoff, offset and recoupment rights, have not yet been identified or pursued by the Debtors or are not set forth herein, in the Disclosure Statement, or otherwise, that any and all Causes of Action, including, without limitation, Avoidance Actions, setoff, offset and recoupment rights, has been waived or expunged.

#### 8.4 Books and Records

On the Effective Date, the books and records (in any form, including all electronic records) that the Debtors are in possession of shall be transferred to the Creditor Trust. The Creditor Trustee shall be free, in his or her discretion, to abandon, destroy, or otherwise dispose of those books and records beginning one (1) year after the Effective Date upon a motion to, and approval by, the Court (with requisite notice given to the UST, SEC, and the Federal Bureau of Investigation), notwithstanding any applicable laws, rules, or regulations that would have required the Debtors to retain such books and records. Further, the Creditor Trustee shall succeed in all of the Debtors' rights to access, and therefore shall have access to, the Debtors' books and records that were transferred to, and/or are currently in possession of, the Purchaser, pursuant to the Asset Purchase Agreement, or the Federal Bureau of Investigation. The Purchaser shall not dispose of any books and records without consulting with and giving notice to the Creditor Trustee.

#### 8.5 Debtors' Continued Cooperation

On or after the Effective Date, the Debtors' Chief Restructuring Officer ("CRO") shall provide reasonable and timely cooperation to effectuate the provisions of the Plan as the Creditor Trustee might otherwise reasonably request, including, but not limited to, executing such documents to carry out the terms of the Plan. To the extent the CRO fully and promptly cooperates, the Creditor Trustee shall pay the reasonable and documented out of pocket expenses incurred by the CRO as a result of providing such cooperation. Further, the Creditor Trustee is permitted to engage the CRO as a Post-Confirmation Professional and the CRO may simultaneously serve as CRO and as a Post-Confirmation Professional. The CRO may be terminated by the Creditor Trustee on five (5) days written notice.

## 8.6 Creditor Trustee's Powers and Authority

The Creditor Trustee shall have the power and authority to perform the acts described in the Creditor Trust Agreement (subject to approval by the Court where applicable), in addition to any powers granted by law or conferred to it by any other provision of the Plan, including without limitation any set forth herein, provided however, that enumeration of the following powers shall not be considered in any way to limit or control the power and authority of the Creditor Trustee to act as specifically authorized by any other provision of this Plan, the Creditor Trust Agreement, and/or any applicable law, and to act in such manner as the Creditor Trustee may deem necessary or appropriate to take any act deemed appropriate by the Creditor Trustee, including, without limitation, to discharge all obligations assumed by the Creditor Trustee or provided herein and to conserve and protect the Creditor Trust or to confer on the Creditors the benefits intended to be conferred upon them by this Plan. The Creditor Trustee shall have the power and authority without further approval by the Court to liquidate the Creditor Trust Assets, to hire and pay professional fees and expenses of counsel and other advisors, to prosecute and settle objections to Disputed Claims and Disputed Equity Interests, to prosecute and settle any Causes of Action and Avoidance Actions, and otherwise take any action as shall be necessary to administer the cases and effect the closing of the cases, including, without limitation, as follows:

- Open and maintain accounts in accordance with section 345 of the Bankruptcy Code.
- Perfect and secure the Creditor Trustee's right, title and interest to the assets comprising the Creditor Trust Assets.
- Manage, protect and monetize the Net Administrative and Priority Claims Fund and the Creditor Trust Assets and distribute the net proceeds as described herein.
- Take all actions necessary to terminate the Debtors' SEC reporting requirements.
- Grant options to purchase or contracts to sell, the Creditor Trust Assets or any part or parts thereof.
- Release, convey or assign any right, title or interest in the Creditor Trust Assets.
- Purchase insurance, including "tail" coverage, to protect the Creditor Trustee and the Creditor Trust Assets from liability or for any other purpose.
- Deposit estate funds, draw checks and make disbursements thereof.
- Employ and retain, and discharge and dismiss, appraisers, financial advisors, attorneys, accountants, auctioneers, agents and such other professionals as the Creditor Trustee may deem necessary or appropriate to assist in fulfilling the purposes of the Plan, including payment to its professionals, in connection with any ongoing litigation being pursued or conducted by the Creditor Trustee, and to pay reasonable charges, commissions and compensation to all of the foregoing.

- Exercise any and all powers granted to the Creditor Trustee by any agreements, by common law or any statute which serves to increase the extent of the powers granted to the Creditor Trustee hereunder.
- Take such other action as the Creditor Trustee may determine to be necessary or desirable to carry out the purposes of this Plan.
- Commence or prosecute, for its own account or in the name of the Debtors any Causes of Action and Avoidance Actions, as well as any lawsuit or other legal or equitable action, including filing objections to Claims, in any court of competent jurisdiction which are necessary to carry out the terms and conditions of the Plan.
- Settle, compromise or adjust pursuant to the standards of Bankruptcy Rule 9019 (which shall be deemed to apply to all Post-Confirmation settlements) any disputes or controversies in favor of, or against, the Creditor Trustee.
- Appoint, remove and act through agents, managers and employees and confer upon them such power and authority as may be necessary or advisable.
- Commence and prosecute all Causes of Action and Avoidance Action which can be brought by a trustee or the Debtors under the Bankruptcy Code or any other law, theory or other manner and prosecute or defend all appeals on behalf of the Debtors or the Creditor Trustee.
- Obtain a bond in favor of the Creditor Trust for the funds held in the Creditor Trust.
- Prepare and file tax returns, as mandated by applicable state and federal law, and collect income tax refunds.
- In general, without in any manner limiting any of the foregoing, deal with the Creditor Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith, whether similar to, or different from, the ways above specified at any time or times hereafter.

#### 8.7 Privileges

All of the Debtors' privileges, including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "Privileges") shall be transferred, assigned and delivered to the Creditor Trust, without waiver, limitation or release, and shall vest with the Creditor Trust. The Creditor Trustee shall hold and be the beneficiary of all Privileges and entitled to assert all Privileges. No Privilege shall be waived by disclosures to the Creditor Trustee of the Debtors' documents, information or communications subject to any privilege, protection or immunity or protections from disclosure jointly held by the Debtors and the Committee.

### 8.8 Federal Income Tax Treatment of the Creditor Trust

For federal income tax purposes, it is intended that the Creditor Trust be classified as a liquidating trust under Treasury Regulation section 301.7701-4 and that such trust be owned by its beneficiaries. Accordingly, for federal income tax purposes, it is intended that the beneficiaries be treated as if they had received a Distribution of an undivided interest in the Creditor Trust Assets and then contributed such interests to the Creditor Trust. Thus, the beneficiaries of the Creditor Trust shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Creditor Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes. The Creditor Trust Agreement shall (i) state that the primary purpose of the Creditor Trust is to liquidate the Creditor Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, its liquidating purpose and (ii) contain a fixed or determinable termination date that is not more than five (5) years from the date of creation of the Creditor Trust, which termination date may be extended for one or more finite terms subject to the approval of the Bankruptcy Court upon a finding that the extension is necessary to its liquidating purpose. Each such extension must be approved by the Bankruptcy Court within two (2) months before the beginning of the extended term.

The Creditor Trustee shall be responsible for filing all federal, state and local tax returns for the Creditor Trust. The Creditor Trustee shall file all federal tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4. The Creditor Trustee also will annually send to each beneficiary of the Creditor Trust a separate statement regarding the receipts and expenditures of the Creditor Trust as relevant for U.S. federal income tax purposes and will instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such holder's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. The Creditor Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Creditor Trust that is required by any governmental unit.

Nothing in this Plan shall compel the Creditor Trustee to treat any Income Tax Refund(s) obtained pursuant to Tax Code section 6411 as unrestricted cash until completion of the associated audit by the relevant authorities.

### 8.9 Tax Reporting for Creditor Trust

On or before the Effective Date, the Debtors shall provide the Creditor Trustee with a good-faith valuation of the Income Tax Refunds as of the Effective Date. As soon as practical after the Effective Date, the Creditor Trustee shall determine the fair market value, as of the Effective Date, of all other Creditor Trust Assets, and shall make all such values (including the Income Tax Refunds value) available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Creditor Trust (including, without limitation, the Debtors, the Creditor Trustee, and beneficiaries of the Creditor Trust) for all United States federal income tax purposes.

Allocations of Creditor Trust taxable income among the beneficiaries of the Creditor Trust shall be determined by reference to the manner in which an amount of cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Creditor Trust had distributed all its assets (valued at their tax book value) to beneficiaries of the Creditor Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent Distributions from the Creditor Trust. Similarly, taxable loss of the Creditor Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Creditor Trust Assets. The tax book value of the Creditor Trust Assets for purpose of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Creditor Trustee of a private letter ruling if the Creditor Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Creditor Trustee), the Creditor Trustee shall (A) timely elect to treat any Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9, and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Creditor Trustee, the Debtors, and the beneficiaries of the Creditor Trust) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

The Creditor Trustee shall be responsible for payment, out of the Creditor Trust Assets, of any Taxes imposed on the trust or its assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such Taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such Taxes shall be (A) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (B) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

The Creditor Trustee shall have full and exclusive authority and responsibility with respect to all Income Tax Refunds to the same extent as if the Creditor Trustee were, as applicable, the Debtors, debtors, or debtors-in-possession, including the filing of tax returns (including amended tax returns), or requests for refunds for one or more of the Debtors. Without limiting the foregoing, each of the Debtors shall execute, on or prior to the Effective Date, a power of attorney authorizing the Creditor Trustee to correspond with any tax authority on behalf of such Debtor and to sign, collect, negotiate, settle, and administer the Income Tax Refunds, tax payments and tax returns. The Debtors (and the Creditor Trustee, as assignee) shall be entitled to the amount of the Income Tax Refunds.

#### 8.10 CIBC Payment

No later than three (3) business days after the Confirmation Date, CIBC shall indefeasibly pay to the attorneys for the Committee the CIBC Payment, which is the sum of one hundred thousand dollars (\$100,000.00). The CIBC Payment is a reallocation and gift from CIBC's collateral solely for the benefit of holders of Allowed General Unsecured Claims and which shall be free of Liens, encumbrances, or interests of any kind and not subject to offset, reduction, set off or limitation of any kind.

Further, CIBC shall have no right to assert a claim against the CIBC Payment and shall have no entitlement under any circumstances to receive any Distribution from the Estates based on the CIBC Payment. Upon ~~receipt of the CIBC Payment~~ Effective Date, the CIBC Adversary Proceeding and the CIBC Application to Allow Administrative Expense Claims shall be deemed dismissed with prejudice. In the event that this provision of the Plan is inconsistent with the Court's Order Approving CIBC Conditional Payment Stipulation, the Order Approving CIBC Conditional Payment Stipulation is hereby amended and superseded. If CIBC fails to make the CIBC Payment, the Creditor Trustee expressly has authority and standing under the Plan and pursuant to the Confirmation Order to commence and prosecute any action against CIBC, and any related party, to collect the CIBC Payment.

#### 8.11 Nominal Continued Corporate Existence

From and after the Effective Date, and notwithstanding any applicable non-bankruptcy law to the contrary, the Debtors shall remain in existence for the sole purpose of winding up the Debtors' business and transferring the Estate Property and Remaining Assets to the Creditor Trust, and for all other purposes, the Debtors shall be deemed dissolved and neither the Debtors or the Estates nor the Creditor Trust shall be liable for any state or local annual or other corporation excise or similar tax.

Upon the Effective Date each of Debtors' cases, except the lead case PPOA Holding, Inc., f/k/a/ Protective Products of America, Inc. (9790), Case No. 10-10711, shall be closed pursuant to the Confirmation Order. Upon the completion of such liquidation and the entry of the Final Order, the Creditor Trustee may file a certificate of dissolution as to each of the Debtors. The Creditor Trustee shall not be compelled to dissolve the Debtors if doing so would unduly burden the Creditor Trustee. No order shall be required to effectuate such dissolution and all state agencies shall accept a copy of this Plan and the Confirmation Order as sufficient to effectuate such dissolution without need for payment of any kind.

On the Effective Date, except as otherwise specifically provided for in the Plan, the obligations of, and Claims against, the Debtors and their Estates arising under, evidenced by, or relating to any agreements, contracts, indentures, certificates of designation, bylaws, certificates or articles of incorporation, shall be terminated and extinguished, including but not limited to the obligations of the Debtors to indemnify any Entity or Person, including those who served as an officer or director of the Debtors, to the extent provided in any of the Debtors' corporate governance documents or by written or other agreement or applicable law. Notwithstanding the



foregoing, this provision will not limit or modify any indemnification obligations approved by the Court.

#### 8.12 Resignation of the Debtors' Officers and Directors

Effective as of the Sale Closing Date, all directors, other than Frank E. Jaumot, and all officers resigned. The sole remaining officer and director of the Debtors is Mr. Jaumot. On the Effective Date, all of the Debtors' officers and directors shall be deemed to have resigned without the necessity of any further action or writing, and they shall be relieved from any of their responsibilities, duties and obligations that arise after the Effective Date to the Debtors or holders of Claims or Equity Interests under the Plan or applicable law. After the Effective Date, the Creditor Trustee shall serve as the sole officer and director of each of the Debtors for all purposes. For the avoidance of any doubt, this provision is not a release from any liability of any of the Debtors' officers and directors for any actions or omissions or breaches of fiduciary duty that occurred prior to the Effective Date.

#### 8.13 Substantive Consolidation and Waiver of All Intercompany Claims

The Bankruptcy Cases, the Debtors and their respective Estates shall be deemed to be substantively consolidated for purposes of voting, distribution, and implementation of the terms of this Plan. As a result of the substantive consolidation, the assets and liabilities of the Debtors shall be pooled and all Claims shall be satisfied from the assets of a single consolidated estate. Any Claim filed or asserted against one or more of the Debtors based upon a guaranty, indemnity, co-signature, surety or otherwise, against another Debtor shall be treated as combined into a single Claim against the consolidated estate of the Debtors and shall be entitled to Distributions only with respect to such single Claim. For purposes of determining the availability of any right of setoff under Bankruptcy Code section 553, the Debtors will be treated as one entity so that (subject to the other provisions of Bankruptcy Code section 553) debts due to any of the Debtors may be offset against the debts owed by any of the Debtors. Further, holders of Allowed Claims who assert identical Claims against multiple Debtors shall be entitled to a single satisfaction of such Claims. In addition, all Intercompany Claims (including such Claims arising from the rejection of any Executory Contract) shall be eliminated, waived, and forever expunged.

The substantive consolidation of the Estates for such limited purposes has no prejudicial effect on Creditors of the Estates. Further, substantive consolidation is not only reasonable but also appropriate under the circumstances of these Bankruptcy Cases. Specifically, the Debtors' assets were sold and acquired as a bundle by the Purchaser, as specifically provided under in Section 2.1 of the Asset Purchase Agreement, and the Purchaser did not assign or allocate the Purchase Price among the Estates. Thus, it is impossible to allocate any value for the Acquired Assets among the Estates. Moreover, the Debtors' books and records were seized by the FBI during its raid of the Debtors' offices located at Sunrise, Florida, after the arrests of Mr. Caldwell and Mr. Giordanella. Consequently, any attempted allocation of values of the Debtors' assets will be practically impossible.



The substantive consolidation of the Debtors shall not constitute or effectuate a merger of the corporate or other legal identities of the Debtors, and their respective corporate and other legal identities shall remain intact, except as otherwise specified in the Plan.

#### 8.14 Cancellation of Existing Securities

On the Effective Date, except as otherwise specifically provided for in the Plan, (i) the Existing Securities shall be canceled and (ii) the obligations of, Claims against, and Equity Interests in the Debtors arising under, evidenced by, or relating to any agreements, contracts, indentures, certificates of designation, bylaws, certificates or articles of incorporation, or similar documents governing the Existing Securities shall be released and forever discharged.

#### 8.15 Dissolution of the Committee

On the first (1st) Business Date following the Effective Date, and provided that the Creditor Trust has become effective pursuant to the Plan, the Committee shall be dissolved and the Committee, its members, and professionals retained by the Committee in accordance with section 1103 of the Bankruptcy Code will be released and discharged from their respective fiduciary obligations, duties, and responsibilities arising from or related to the Bankruptcy Cases, except with respect to (i) prosecuting applications for professionals' compensation; (ii) asserting, disputing and participating in the resolution of Professional Compensation Claims; and (iii) prosecuting or participating in any appeal of the Confirmation Order or any request for reconsideration thereof. Upon the conclusion of (i) through (iii), the Committee shall be immediately dissolved, released, and discharged. The professionals retained by the Committee and the members thereof shall not be entitled to compensation or reimbursement of expenses for any services rendered or expenses incurred after the first (1st) Business Day on behalf of the Committee following the Effective Date, except for services rendered and expenses incurred, as approved by the Court, in connection with (i) prosecuting applications for professionals' compensation; (ii) asserting, disputing and participating in the resolution of Professional Compensation Claims; and (iii) prosecuting or participating in any appeal of the Confirmation Order or any request for reconsideration thereof.

#### 8.16 Engagement of Post-Confirmation Professional and Compensation

The Creditor Trustee shall be compensated based on his reasonable and customary hourly rate. The Creditor Trustee may engage Post-Confirmation Professionals, such as counsel, financial advisors and other professionals engaged by the Debtors and/or Committee during the Chapter 11 Cases, to represent him in connection with his duties hereunder. The Creditor Trustee and the Post-Confirmation Professionals shall be paid 90% of their fees and 100% of their expenses on a monthly basis prior to filing fee applications. Post-Confirmation Professionals shall file fee applications no less frequently than every 180 days seeking approval of fees and expenses to be awarded by the Bankruptcy Court, including approval of the amounts previously paid on a monthly basis. Upon the filing of each such application, the Post-Confirmation Professionals shall be entitled to request the payment of some or all of any pending holdbacks in fees.

### ARTICLE 9

**RETENTION, ENFORCEMENT, COMPROMISE, OR ADJUSTMENT OF THE CAUSES OF ACTION BELONGING TO THE DEBTORS AND THE ESTATES**

9.1 Right to Enforce, Compromise, or Adjust Causes of Action

The Creditor Trustee shall have and retain the full power, authority, and standing to commence, prosecute, compromise, or otherwise resolve any Causes of Action. All proceeds derived from such Causes of Action shall revert in the Creditor Trust.

9.2 Maintenance of Causes of Action

The Debtors transfer and assign to the Creditor Trust, all rights to commence and pursue, or decline to pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal including in an adversary proceeding or contested matter filed in one or more of the Bankruptcy Cases. The Debtors, through the Creditor Trustee, reserve and shall retain the foregoing Causes of Action notwithstanding the rejection of any Executory Contract during the Bankruptcy Cases. In accordance with Bankruptcy Code section 1123(b)(3), any Causes of Action that the respective Debtors may hold against any Entity shall vest in the Debtors or the Creditor Trust, as the case may be. The Creditor Trustee, as the Debtors' successor and the representative of the Creditor Trust, shall have the exclusive right, authority, standing and sole discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw, or litigate to judgment any and all such Causes of Action, and to decline to do any of the foregoing in the Creditor Trustee's business judgment without the consent or approval of any third party and without any further notice to or action, order, or approval of the Bankruptcy Court.

9.3 Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Creditor or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, the Debtors expressly reserve such Cause of Action for later enforcement by the Creditor Trustee and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral, estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Cause of Action on or after the Confirmation of the Plan. In addition, the Creditor Trustee expressly reserves the right to pursue or adopt Causes of Action or Avoidances Action not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits.

**ARTICLE 10**

**DISCHARGE, INJUNCTION, LIMITED RELEASE, EXCULPATION AND INDEMNIFICATION PROVISIONS**

10.1 Discharge

Except as otherwise provided in the Plan, the rights granted in the Plan and the treatment of all Claims and Equity Interests shall be in exchange for, and in satisfaction of, all Claims of any

nature whatsoever against the Estates and the Estate Property, whether such Claims arose before or during the Bankruptcy Case or in connection with implementation of the Plan. **Pursuant to § 1141(d)(3) of the Bankruptcy Code, confirmation of this Plan will not discharge the Debtors.**

#### 10.2 Injunction Enjoining Holders of Claims Against, and Equity Interests In, Estates

Except as otherwise expressly provided in the Plan, after the Effective Date, all Persons who have been, are, or may be holders of Claims against, or Equity Interests in, the Debtors' Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets arising on or before the Effective Date shall be enjoined from taking any of the following actions against or affecting the Estates and the Estate Property regarding such Claims or Equity Interests (other than actions brought to enforce any rights or obligations under the Plan) to the fullest extent provided under Bankruptcy Code section 524:

- (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against the Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets (including, all suits, actions, and proceedings that are pending on the Effective Date, which shall be deemed withdrawn and dismissed with prejudice);
- (ii) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree, or order against the Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets;
- (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien against the Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets;
- (iv) asserting any right of subrogation, setoff, or recoupment of any kind, directly or indirectly, against any obligation due the Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets; and
- (v) proceeding in any manner and in any place whatsoever that does not conform to or comply with the provisions of the Plan.

#### 10.3 Limited Releases and Exculpation Provisions Under the Plan

The Plan contains certain limited releases and exculpation provisions protecting certain parties from claims and liabilities arising from the actions taken or not taken in connection with the Sale Transaction, the Plan, and the Bankruptcy Cases before the Effective Date.

##### 10.3.1 Release

**Except as otherwise provided for in the Plan on the Effective Date, each of the Debtors (on behalf of themselves and their respective Estates), as applicable, shall be deemed to have released each of (i) their CRO; (ii) the Committee and members of the Committee in their**

capacity as members of the Committee, and (iii) Professionals from any and all claims, causes of actions, and other liabilities arising during the Bankruptcy Cases before the Effective Date from any act or omission in connection with, relating to, or arising out of the Bankruptcy Cases and related proceedings, including, but not limited to, filing of the Bankruptcy Cases, administration of the Bankruptcy Cases, the Sale Transaction, the CIBC Adversary Proceeding and CIBC Application to Allow Administrative Expense Claim, formulation, negotiation, preparation, dissemination, approval, execution, administration, confirmation, implementation, or consummation of, as well as the solicitation of votes for, the Plan, Disclosure Statement, Plan Supplement (including all Distributions thereunder); provided, however, that the Debtors (on behalf of themselves and their respective Estates), shall not be deemed to have released any such Entity from liability for willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order.

### 10.3.2 Exculpation

Except as otherwise provided for in the Plan, each of (i) the Debtors' CRO, officers and directors; (ii) the Committee and members of the Committee in their capacity as members of the Committee, and (iii) Professionals shall not have or incur any liability to any holder of Claim or Equity, or any other Entity, for any act or omission in connection with, relating to, or arising out of the Bankruptcy Cases and related proceedings, including, but not limited to, filing of the Bankruptcy Cases, administration of the Bankruptcy Cases, the Sale Transaction, the CIBC Adversary Proceeding and CIBC Application to Allow Administrative Expense Claim, formulation, negotiation, preparation, dissemination, approval, execution, administration, confirmation, implementation, or consummation of, as well as the solicitation of votes for, the Plan, Disclosure Statement, Plan Supplement (including all Distributions thereunder); except for liability arising from willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order; provided, however, that non-attorney Professionals shall not be exculpated for any claims, causes of action, or liabilities expressly excepted from their indemnification rights under their retention agreements with the Debtors approved by the Bankruptcy Court pursuant to a Final Order. In all such instances, such parties shall be and have been entitled to reasonably rely on the advice of counsel in all respects regarding their duties and responsibilities in connection with the Bankruptcy Cases and under the Plan. Nothing contained in Section 8.3 of the Plan shall prevent or limit any party's right to object to any Professional Compensation Claim asserted in the Bankruptcy Cases.

The Plan Proponent believes that the limited releases and exculpations provided to (i) the Debtors and their CRO; (ii) the Committee and members of the Committee in their capacity as members of the Committee, and (iii) the Professionals in consideration of services rendered and efforts extended by these parties during the Bankruptcy Cases, including their valuable and meaningful contribution to the administration of these Estates and proposed liquidation under the Plan, are appropriate. With respect to the releases, the releases are limited in scope and duration and provided for the benefit of only (i) their CRO; (ii) the Committee and members of the Committee in their capacity as members of the Committee, and (iii) the Professionals. As to the exculpation provisions, the Committee also believes that they are appropriate due to their limited nature and the manner.

Further, the exculpations only release and discharge claims generally related to the decisions made in connection with the filing and administration of the Bankruptcy Cases, the Sale Transaction, and the Plan, and therefore, the releases and exculpations are limited in scope.

For the avoidance of any doubt, no provision under the Plan provides for any exculpation or release from liability to any of the Debtors' directors or officers. Prior to the Petition Date, the Debtors extended the current directors' and officers' liability insurance policy in effect through February 25, 2012.

### 10.3.3 CIBC Release and Injunction

Section 8.4 of the Plan provides for a mutual release in favor of CIBC and the Estates and an injunction of claims of third parties against CIBC as follows: On the Effective Date, each of the Debtors (on behalf of themselves and their respective Estates), as applicable, and each holder of a Claim or Interest in each of the Debtors, shall be deemed to have released CIBC from any liability for any and all claims against CIBC relating to its pre- and post-petition lending relationship with the Debtors. On the Effective Date, CIBC shall be deemed to have released the Estates from any and all liability for any and all claims of CIBC against the Estates; provided, however, the Debtors are in compliance with their obligations under the Plan. Further, all claims of any third party against CIBC shall be permanently enjoined as of the Effective Date.

### 10.4 Term of Existing Injunctions or Stays

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case pursuant to Bankruptcy Code §§ 105, 362 or 524, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date, and thereafter shall be annulled.

### 10.5 Indemnification of Creditor Trustee

The Creditor Trustee and its agents, employees, officers, members, directors, professionals and principals (collectively, the "Indemnified Parties") shall be indemnified and held harmless by the Creditor Trust from the Creditor Trust Assets for any losses, claims, damages, costs, expenses and other liabilities, including, without limitation, reasonable attorneys' fees, disbursements and related expenses, which the Indemnified Parties may incur, or to which the Indemnified Parties may become subject to, in connection with carrying their duties and responsibilities under the Plan and any action, suit, proceeding or investigation brought by or threatened against one or more of the Indemnified Parties on account of their acts or omissions on or after the date of this Agreement; provided, however, that the Creditor Trust shall have no obligation to indemnify any of the Indemnified Parties for any losses or claims that are adjudicated by the Bankruptcy Court, or other court having jurisdiction, resulting from any act or omission by any of the Indemnified Parties that constitutes gross negligence, recklessness or intentional or willful misconduct; provided further, that nothing in Section 8.5 of the Plan shall be deemed to restrict the Creditor Trustee's right to receive an indemnity based on any act or omission taken in accordance with the provisions of this Plan. Notwithstanding any provision

herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Creditor Trust to cover their expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of the Creditor Trustee in its capacity as such; provided, however, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the Creditor Trust upon the entry of a Final Order finding that such Indemnified Parties were not entitled to indemnity under the provisions of Section 8.5 of the Plan.

## ARTICLE 11

### RESOLUTION OF OBJECTIONS TO PROOFS OF CLAIM; ESTIMATION OF CLAIMS

#### 11.1 Right to Object

On and after the Effective Date, the Creditor Trustee shall have the sole authority and discretion to examine, object to, contest the allowance of, compromise, settle, or otherwise resolve, or withdraw any objections to, any Claims, Equity Interests, Disputed Claims or Disputed Equity Interests (except those Claims specifically Allowed by the Plan) without approval of the Bankruptcy Court.

#### 11.2 Deadline for Objecting to Claims

After the Effective Date, objections to, and requests for estimation of, Claims against and Equity Interests in the Debtors may be interposed and prosecuted only by the Creditor Trustee. Such objections and requests for estimation including, without limitation, any reduction, recharacterization, subordination or other modification in whole or in part, which may be brought by motion, objection or adversary proceeding, shall be served on the respective Claimant or Interestholder and filed with the Bankruptcy Court by the Claim Objection Deadline; otherwise such Claims and Equity Interests shall be deemed allowed in accordance with Bankruptcy Code section 502.

#### 11.3 Deadline for Responding to Claim Objections

Within thirty (30) days after service of an objection, the Claimholder or Interestholder whose Claim or Equity Interest was objected to must file a written response to the objection with the Bankruptcy Court and serve a copy on the Creditor Trustee and the parties identified in Section 13.2 of the Plan. Failure to file a written response within the thirty (30) day time period shall constitute a waiver and release of the subject Claim or Equity Interest, and shall cause the Bankruptcy Court to enter a default judgment against the non-responding Claimholder or Interestholder granting the relief requested in the claim objection.

#### 11.4 Estimation of Claims

The Creditor Trustee may, at any time, request that the Bankruptcy Court estimate any contingent, disputed, or unliquidated Claim or Equity Interest pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether the Debtors or the Creditor Trustee have previously objected to such Claim or Equity Interest, or whether the Bankruptcy Court has ruled



on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim or Equity Interest at any time during the litigation concerning any objection to any Claim or Equity Interest, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, disputed, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Creditor Trustee may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claims objections, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court, except that after the Effective Date, the Creditor Trustee may compromise, settle or resolve any such Claims without Bankruptcy Court approval.

#### 11.5 Adjustment to Claims Without Objection

Any Claim that has been paid and/or satisfied pursuant to the terms of the Plan or a Final Order, or any Claim that has been amended or superseded, may be adjusted and/or expunged on the official claims register by the Creditor Trustee without a claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### 11.6 Disallowance Claims

Any and all Claims held by an Entity from which property is recoverable under Bankruptcy Code sections 542, 543, 550, or 553, or that is a transferee of a transfer avoidable under Bankruptcy Code sections 522(f), 522(h), 544, 545, 547, 548, 549, and 724(a), shall be deemed disallowed pursuant to Bankruptcy Code section 502(d), and holders of such Claims may not vote to accept or reject the Plan or receive any Distributions on account of such Claims, both consequences to be in effect until such time as Causes of Action against that Entity have been settled or a Final Order with respect thereto has been entered and all sums due to the Debtors, the Estates or Creditor Trust by that Entity have been turned over to the Debtors or Creditor Trustee. Any and all proofs of claim filed after the relevant Bar Date shall be disallowed and expunged for all purposes, and holders of such Claims may not vote to accept or reject the Plan or receive any Distributions on account of such Claims, unless such Creditors request on or before the Confirmation Hearing that the Bankruptcy Court deem such late Claim as being timely filed pursuant to Bankruptcy Rule 9006. All Claims filed after the relevant Bar Date and are (a) not deemed timely filed pursuant to Bankruptcy Rule 9006 on or before the Confirmation Hearing or (b) not the subject of a request that the Bankruptcy Court deem such late Claim as being timely filed pursuant to Bankruptcy Rule 9006 as of the Confirmation Hearing shall be deemed disallowed and expunged as of the Effective Date without any further notice to that Entity, or action, order, or approval of the Bankruptcy Court.



## ARTICLE 12

### PROVISIONS GOVERNING DISTRIBUTIONS

The Creditor Trustee shall make all Distributions required under the Plan.

#### 12.1 Distributions on Allowed Claims Only

Distributions under the Plan shall be made only to the holders of Allowed Claims. Except as otherwise provided in the Plan, Distributions to holders of Allowed Claims shall be made as soon as practicable after the Effective date and as appropriate thereafter; provided however, that the Creditor Trustee shall have sole and absolute discretion as to the timing of any Distribution until all Allowed Claims are satisfied under the Plan. Until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive any consideration. If a Disputed Claim becomes an Allowed Claim, in whole or in part, by a Final Order, the Creditor Trustee shall distribute the portion of the Distribution reserved for the particular Disputed Claim in accordance with the Plan on the next Distribution Date. If a Disputed Claim is disallowed in whole or in part, then the portion of the Distribution reserved for such Disputed Claim shall be distributed on the next Distribution Date to holders of Allowed Claims so that such holders receive their Pro Rata Share of such portion of the Distribution.

#### 12.2 No Interest

Post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final Distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim. Nothing in this Section, the Plan, or the Confirmation Order limits the rights of the United States of America or any Governmental Unit thereof to interest under 11 U.S.C. §§ 503, 506(b), 1129(a)(9)(A) & (C), and as otherwise provided for under applicable law.

#### 12.3 Place and Manner of Payments of Distributions

Distributions to holders of Allowed Claims shall be made by mailing such Distribution to the Claimholder at the address listed in any proof of claim filed by the Claimholder or at such other address as such Claimholder shall have specified for payment purposes in a written notice received by the Debtors at least twenty (20) days before a Distribution Date. If a Claimholder has not filed a proof of claim or interest or sent the Creditor Trustee a written notice of payment address, then the Distribution(s) for such Claimholder will be mailed to the address identified in the Schedules of Assets and Liabilities. The Creditor Trustee shall distribute any Cash by wire, check, or such other method as it deems appropriate under the circumstances. Before receiving any Distributions, all Claimholders, at the request of the Creditor Trustee, must provide appropriate taxpayer identification numbers, related withholding information, and any appropriate forms to the Creditor Trustee; otherwise, the Creditor Trustee may suspend Distributions to any Claimholders who have not provided such taxpayer identification numbers

and related withholding information until the Creditor Trustee receives any information and/or document requests.

#### 12.4 No Distributions Pending Allowance

Notwithstanding any other provision of the Plan, no payment or Distribution shall be made with respect to any Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

#### 12.5 Disputed Claims Reserve

In determining the amount of Distributions to be made under the Plan to holders of Allowed Claims, the Creditor Trustee shall hold Cash in reserve to protect the interests of holders of Disputed Claims in an amount determined by the Creditor Trustee, in his sole discretion, that represents the Pro Rata Share of the Cash that would otherwise be distributed to each holder of Disputed Claim if such Claim was Allowed, and after the Allowance Date, the appropriate Distribution shall be made under the Plan. The Disputed Claim Reserve shall also include an amount calculated by the Creditor Trustee to satisfy anticipated expenses of the Creditor Trust and to pay anticipated tax liabilities of the Creditor Trust.

#### 12.6 Distribution After Allowance

As soon as practicable after a Disputed Claim becomes an Allowed Claim, the holder of such Allowed Claim shall receive from its Disputed Claims Reserve a Distribution in an amount equal to the Distribution that such holder would have received had such Disputed Claim been an Allowed Claim on the Effective Date. Distributions to each holder of a Disputed Claim, to the extent that such Claim becomes an Allowed Claim, shall be made, without interest, in accordance with the Class of Claims to which such Claim belongs.

#### 12.7 Distribution After Disallowance

If and when a Disputed Claim or any portion thereof becomes a Disallowed Claim, the Pro Rata Share of the Distributions to which each holder of an Allowed Claim in the Class of Claims to which such Claim belongs is entitled, shall increase commensurately. Accordingly, the Creditor Trustee shall have the right to make subsequent Distributions in accordance with the provisions of the Plan.

#### 12.8 Undeliverable Distributions

If a Distribution to any Claimholder is returned as undeliverable, the Creditor Trustee shall use reasonable efforts to determine such Claimholder's then current address. After reasonable efforts, if the Creditor Trustee still cannot determine such Claimholder's then-current address, then unless and until the Creditor Trustee is notified of such Claimholder's then-current address, no further Distributions shall be made to such Claimholder, unless and until the Creditor Trustee is notified of such Claimholder's then-current address. Such Distributions shall be set aside and held in a segregated interest bearing account. If the Creditor Trustee is notified of such Claimholder's then-current address, then such Distribution, together with any interest earned thereon and proceeds thereof (less any withholding pursuant to Section 7.11) shall be paid or distributed to such Claimholder within ten (10) Business Days. If the Creditor Trustee cannot

determine, or is not notified of, a Claimholder's then-current address within six (6) months after the Effective Date, the Distribution reserved for such Claimholder shall be deemed an unclaimed Distribution, and Section 7.10 of the Plan shall be applicable thereto.

#### 12.9 Unclaimed Distributions

If the current address for a Creditor entitled to a Distribution under the Plan has not been determined within six (6) months after the Effective Date or such Creditor has otherwise not been located, then such Creditor (i) shall no longer be a Creditor and (ii) shall be deemed to have released such Claim. If such Creditor was entitled to a portion of the Distribution, then that Claimholder's Distribution shall be distributed Pro Rata in accordance with the Plan to the other holders of Allowed Claims receiving the Distribution on the next Distribution Date.

#### 12.10 Withholding

The Creditor Trustee may at any time withhold from a Distribution to any Person (except the Internal Revenue Service) amounts sufficient to pay any tax or other charge that has been or may be imposed on such Person with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for in the Plan, whenever such withholding is determined by the Creditor Trustee (in its sole discretion) to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. The Creditor Trustee, in the exercise of its sole discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts that may be withheld in accordance with the provisions of Section 7.11 of the Plan. Notwithstanding the foregoing but without prejudice to the Debtors' rights, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any Distribution under the Plan.

#### 12.11 No De Minimus Distribution

Notwithstanding anything to the contrary in this Plan, no cash payment of less than \$100 will be made to any Entity. No consideration will be provided in lieu of the *de minimis* distributions that are not made under Section 7.12, and the Creditor Trustee shall be authorized to remit such amounts to a charitable organization pursuant to Section 7.14.

#### 12.12 Compliance with Tax Requirements

To the extent applicable, the Creditor Trustee in making Distributions under this Plan shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to this Plan shall be subject to such withholding and reporting requirements. The Creditor Trustee may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides to the Creditor Trustee the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Creditor Trustee to the appropriate authority. If the holder of an Allowed Claim fails to provide the Creditor Trustee with any information necessary to comply with any withholding requirement of any governmental unit within sixty (60) days

after the date of first notification by the Creditor Trustee to the holder of the need for such information, then the holder's Distribution shall be treated as an unclaimed Distribution. The Creditor Trustee may be required to identify, by tax identification number, each holder of a Claim that receives a Distribution pursuant to the Plan. To ensure that the Creditor Trustee has a tax identification number for each holder of a Claim, Claimants will be sent a Form W-9 (or may download one at [www.irs.com](http://www.irs.com)). Claimants must return the completed and signed Form W-9 to the Creditor Trustee at the following address, postage pre-paid:

Kenneth A. Welt  
 1776 North Pine Island Road  
 Suite 102  
 Plantation, FL 33322  
 Tel. (954) 889-3403  
 Fax. (954) 929-8200  
 KAW@trusteeservices.biz

If a Claimant does not return the completed Form W-9 to the Creditor Trustee, the Creditor Trustee is allowed to retain Distributions to Allowed Claims until the appropriate tax identification information is provided. If the Creditor Trustee requests a tax identification number from a Claimant, and the Claimant does not respond by providing it within sixty (60) days of the first request by the Creditor Trustee, the Claimant shall lose the right to receive a Distribution pursuant to the Plan.

#### 12.13 Authority to Reserve Funds to Close these Bankruptcy Cases and to Donate any Balance to a Charitable Organization

If at any time the Creditor Trustee determines in his sole discretion that the expense of administering the Creditor Trust so as to make a final Distribution to the beneficiaries of the Creditor Trust is likely to exceed the value of the assets remaining in the Creditor Trust, the Creditor Trustee shall apply to the Court for authority to (i) reserve any amounts necessary to close the Bankruptcy Cases, (ii) donate any balance to a charitable organization exempt from federal income tax under 501(c)(3) of the Internal Revenue Code, and (iii) close the Bankruptcy Cases in accordance with the Bankruptcy Code and Bankruptcy Rules.

#### 12.14 Setoffs and Recoupments

The Creditor Trustee may, pursuant to Bankruptcy Code section 553 or applicable non-bankruptcy law, setoff and/or recoup against any Allowed Claim the Distributions to be made pursuant to this Plan (before any Distribution is made on account of such Claim) and the Causes of Action or Avoidance Actions that the Creditor Trustee may hold against the holder of such Allowed Claim. Neither the failure to effectuate such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Creditor Trustee of any such Causes of Action or Avoidance Actions that the Creditor Trustee may hold under Bankruptcy Code section 553 or applicable non-bankruptcy law.

## ARTICLE 13

### CERTAIN FACTORS TO BE CONSIDERED

A Claimholder should carefully consider the following factors, as well as the other information contained in this Disclosure Statement and the Plan (as well as the documents delivered herewith or incorporated by reference herein), before deciding whether to vote to accept or to reject the Plan. In addition, holders of Class – 3 Claims have the conditional consideration whether to make the Election to Opt Out of the Bondholder Settlement, as described in Section 4.3 of the Plan.

The principal purpose of the Debtors' Bankruptcy Cases is the formulation of the Plan, which provides for an orderly liquidation of the Debtors' business and operations and establishes how Claims against and Equity Interests in the Debtors will be satisfied. Under the Plan, certain Claims may receive partial distributions, and other Claims may not receive any distributions at all. For example, Equity Interests will receive no distributions.

#### 13.1 Failure to Confirm or Consummate the Plan

If the Plan is not confirmed and consummated, it is possible that an alternative plan can be negotiated and presented to the Bankruptcy Court for approval, however, there is no assurance that the alternative plan will be confirmed, that the Bankruptcy Cases will not be converted to a liquidation under chapter 7 of the Bankruptcy Code, or that any alternative plan of liquidation could or would be formulated on terms as favorable to the Claimholders as terms of the Plan. Importantly, Interestholders will receive no recovery under the Plan or in a liquidation under chapter 7 of the Bankruptcy Code.

#### 13.2 Claims Estimates May Be Incorrect

There can be no assurance that the estimated Claim amounts set forth herein are correct. The actual allowed amounts of Claims may differ materially from the estimates.

## ARTICLE 14

### ALTERNATIVES TO PLAN AND LIQUIDATION ANALYSIS

There are three possible consequences if the Plan is rejected or if the Bankruptcy Court refuses to confirm the Plan: (a) the Bankruptcy Court could dismiss the Debtors' chapter 11 Bankruptcy Cases, (b) the Debtors' chapter 11 Bankruptcy Cases could be converted to a liquidation case under chapter 7 of the Bankruptcy Code, or (c) the Bankruptcy Court could consider an alternative plan of reorganization proposed by the Debtors, the Committee, or by some other party.

#### 14.1 Dismissal

The most remote possibility is dismissal. If the Debtors' Bankruptcy Cases were to be dismissed, the Debtors would no longer have the protection of the Bankruptcy Court and the applicable provisions of the Bankruptcy Code. Dismissal would force a race among creditors to

take over and dispose of the Debtors' available assets. Even the most diligent unsecured creditors would likely fail to realize any significant recovery on their claims.

#### 14.2 Chapter 7 Liquidation

A straight liquidation bankruptcy, or chapter 7 case, requires liquidation of the bankruptcy debtor's assets by an impartial trustee. In a chapter 7 case, the amount unsecured creditors receive depends on the net estate available after all assets of the debtor have been reduced to cash. The cash realized from liquidation of the debtor's assets would be in accordance with the order of distribution prescribed in Bankruptcy Code section 507.

If the Plan is not confirmed, it is likely that the Debtors' Bankruptcy Cases will be converted to cases under chapter 7 of the Bankruptcy Code, in which case a trustee would be appointed to liquidate the Debtors' assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. Whether a bankruptcy case is one under chapter 7 or chapter 11, holders of administrative claims, secured claims, and priority unsecured claims are entitled to be paid in full before unsecured creditors receive any funds. However, the CIBC Payment represents the reallocation of CIBC's collateral for the purposes of Distribution to Allowed General Unsecured Creditors only and, therefore, the CIBC Payment shall not be available to pay any other Claims.

If the Debtors' Bankruptcy Cases were converted to chapter 7, the present Administrative Expense Claims may have a priority lower than priority claims generated by the chapter 7 cases, such as claims for fees and expenses incurred by the chapter 7 trustee, as well as attorneys, accountants and other professionals engaged by the chapter 7 trustee.

If the Bankruptcy Cases were converted, the Bankruptcy Court would appoint a trustee to liquidate the Debtors' property and assets and distribute the proceeds to creditors in accordance with the Bankruptcy Code's priority scheme. It is likely that the chapter 7 trustee would have little or no experience or knowledge of the Debtors' businesses or their records or assets. A substantial period of education would be required in order for any chapter 7 trustee to wind the case up effectively.

The chapter 7 trustee would be entitled to receive the compensation allowed under Bankruptcy Code section 326. The trustee's compensation is based on 25% of the first \$5,000 or less; 10% of any amount in excess of \$5,000 but not in excess of \$50,000; 5% of any amount in excess of \$50,000 but not in excess of \$1 million; and reasonable compensation not to exceed 3% of any amount in excess of \$1 million, on all funds disbursed or turned over in the bankruptcy case by the trustee to parties in interest (excluding the Debtors, but including the holders of Secured Claims). The trustee's compensation would be paid as a cost of administration of the chapter 7 estates, and may have priority over the costs and expenses incurred in the chapter 11 case and any payment to unsecured creditors.

It is also likely that the chapter 7 trustee would retain his own professionals (including attorneys and financial advisors) whose fees would also constitute priority claims in the chapter 7 case,



with a priority that may be higher than those claims arising as part of the administration of the chapter 11 case.

The Committee believes that liquidation under chapter 7 would result in smaller distributions being made to Claimholders than those provided for in the Plan. As previously noted, conversion to chapter 7 would give rise to (a) additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee and (b) additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation and from the rejection of leases and other executory contracts in connection with a cessation of the Debtors' operations. In a chapter 7 liquidation, it is a virtual certainty that general unsecured creditors would receive a substantially reduced recovery on their claims.

### 14.3 Alternative Plan

The Committee believes that any alternative plan would not be viable and would not provide the same recovery to Creditors as that proposed under the current Plan.

## ARTICLE 15

### CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

A summary description of certain material United States federal income tax consequences of the Plan is provided below. This description is for informational purposes only and, due to lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various tax consequences of the Plan as discussed herein. Only the principal United States federal income tax consequences of the Plan to the Debtors and to holders of Claims who are entitled to vote or to accept or reject the Plan are described below. No rulings or determination of the IRS or any other tax authorities have been sought or obtained with respect to any tax consequences of the Plan, and the discussion below is not binding upon the IRS or such other authorities. No representations are being made regarding the particular tax consequences of the confirmation and consummation of the Plan to the Debtors or any holder of the Claim. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein.

The discussion of the United States federal income tax consequences below is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury Regulations, judicial authorities, published positions of the IRS and other applicable authorities, all as in effect on the date of this document and all of which are subject to change or differing interpretations (possibly with retroactive effect).

The following discussion does not address foreign, state or local tax consequences of the Plan, nor does it purport to address the United States federal income tax consequences of the Plan to special classes of taxpayers (e.g., banks and certain other financial institutions, insurance companies, tax-exempt organizations, governmental entities, Person that are, or hold their Claims through, pass-through entities, Persons whose functional currency is not the United



States dollar, foreign Persons, dealers in securities or foreign currency, employees, Persons who received their Claims pursuant to the exercise of an employee stock option or otherwise as compensation and Persons holding Claims that are hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale or conversion transaction). Furthermore, the following discussion does not address United States federal taxes other than income taxes.

Each Claimholder is strongly urged to consult its own tax advisor regarding the United States federal, state, and local and foreign tax consequences of the transactions described herein and in the Plan. The following summary is not a substitute for careful tax planning and advice based on individual circumstances. All creditors are advised to consult their own tax advisors.

## 15.1 United States Federal Income Tax Consequences to the Debtors

### 15.1.1 Net Operating Losses—Section 382

Internal Revenue Code section 382 could substantially limit, or deny in full, the availability of the Debtors' NOL as a result of the transactions contemplated under the Plan. As a result of the sale of all of the Debtors' assets to PPE, the Committee believes the net operating losses are no longer available.

## 15.2 Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. 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 CLAIMHOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIMHOLDERS ARE STRONGLY 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, INCLUDING WITH RESPECT TO TAX REPORTING AND RECORD KEEPING REQUIREMENTS.

**ARTICLE 16**

**CONCLUSION**

This Disclosure Statement provides information regarding the Debtors' Bankruptcy Cases and the potential benefits that might accrue to holders of Claims against and Equity Interests in the Debtors under the Plan as proposed. The Plan is the result of extensive efforts by the Committee, as well as the Debtors and their advisors, to provide the holders of Allowed Claims with a meaningful dividend. The Committee believes that the Plan is feasible and will provide each holder of a Claim against the Debtors with an opportunity to receive greater benefits than those that would be received by any other alternative. The Committee, therefore, urges interested parties to vote to accept, and in favor of, the Plan.

DATED: December ~~20~~,22, 2010

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS

By: /s/ \_\_\_\_\_  
Its: Chair

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Miami, Florida 33131  
Telephone: (305) 349-2300

**EXHIBIT A**

**PLAN OF LIQUIDATION FOR THE DEBTORS PROPOSED  
BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**EXHIBIT B**  
**LIQUIDATION ANALYSIS**

**EXHIBIT C**

**CIBC CONDITIONAL PAYMENT STIPULATION  
AND ORDER APPROVING CIBC CONDITIONAL PAYMENT STIPULATION**

**EXHIBIT D**

**POTENTIAL ADDITIONAL PURCHASE PRICE FROM SALE OF TAX REFUNDS**

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Format changed	0
Total changes	125



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re: : Case No. 10-10711-BKC-JKO  
: PPOA HOLDING, INC., *et al.*,<sup>1</sup> : Chapter 11 Cases  
: Debtors. : (Jointly Administered)  
\_\_\_\_\_ :

**SECONDTHIRD AMENDED PLAN OF LIQUIDATION FOR THE DEBTORS  
PROPOSED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: December ~~20~~, 22, 2010

ATTORNEYS FOR THE OFFICIAL  
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<sup>1</sup> The name and last four digits of the taxpayer identification number for each of the Debtors follows in parenthesis: (i) PPOA Holding, Inc. f/k/a Protective Products of America, Inc. (9709); (ii) CPC Holding Corporation of America (8086); (iii) CP Corporation of America, Inc. f/k/a Ceramic Protection Corporation of America (7305); (iv) PPI International Corp. f/k/a Protective Products International Corp. (7373); and (v) PPNC, LLC f/k/a Protective Products of North Carolina, LLC (0927). The address for the Debtors is c/o Ahearn Jasco & Company, P.A., Attn. Frank E. Jaumot, CPA, 190 Southeast 19<sup>th</sup> Avenue, Pompano Beach, Florida 33060.

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## Introduction

The Official Committee of Unsecured Creditors (the “Committee”) proposes this ~~Second~~Third Amended Plan of Liquidation for the Debtors Proposed by the Official Committee of Unsecured Creditors (the “Plan”) pursuant to section 1121(a) of the Bankruptcy Code for the resolution of Claims and Equity Interests of PPOA Holding, Inc., f/k/a Protective Products of America, Inc. (“PPOA Holding”); CPC Holding Corporation of America (“CPC Holding”); CP Corporation of America, Inc. f/k/a Ceramic Protection Corporation of America (“CPC Corp.”); PPI International Corp. f/k/a Protective Products International Corp. (“PPI”); PPNC, LLC f/k/a Protective Products of North Carolina, LLC (“PPNC”) (collectively, the “Debtors”).

## ARTICLE 1

### DEFINITIONS, RULES OF INTERPRETATION, AND CONSTRUCTION OF TERMS

#### 1.1 Definitions

All capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the Glossary of Defined Terms attached as **Exhibit A** hereto, the Bankruptcy Code, or the Bankruptcy Rules.

#### 1.2 Rules of Interpretation and Construction

For purposes of the Plan, (i) any reference in the Plan to an existing document or exhibit filed or to be filed means that document or exhibit as it may have been or may be amended, supplemented, or otherwise modified; (ii) unless otherwise specified, all references in the Plan to sections, articles, and exhibits are references to sections, articles, or exhibits of the Plan; (iii) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan in its entirety and not to any particular portion of the Plan; (iv) captions and headings contained in the Plan are inserted for convenience and reference only, and are not intended to be part of or to affect the meaning or interpretation of the Plan; (v) wherever appropriate from the context, each term stated in either the singular or the plural includes the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; (vi) the rules of construction outlined in Bankruptcy Code section 102 and in the Bankruptcy Rules apply to the Plan; (vii) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply; and (viii) the use of the word “including” shall not in any manner exclude, and in all cases shall mean “including without limitation,” whether or not followed by such words. The duties, rights and obligations of any person or entity named or referred to in the Plan shall be binding upon, inure to the benefit of, and shall be the responsibility of, the successors and assigns of such person or entity.



## ARTICLE 2

### CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS; IMPAIRMENT

#### 2.1 Summary

Pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code, the following is a designation of the classes of Claims and Equity Interests under this Plan for purposes of voting, distribution, and implementation of the terms of this Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claims, and Priority Unsecured Tax Claims have not been classified and are excluded from the following Classes. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest, or portion thereof, qualifies within the description of that Class, and is classified in another Class(es) to the extent that any remainder of the Claim or Equity Interest qualifies within the description of such other Class(es). In addition, a Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest is an Allowed Claim or Allowed Equity Interest in that Class, subject to Section 10.1 of this Plan. Notwithstanding anything to the contrary in the Plan, no Distribution shall be made on account of any Claim that is not an Allowed Claim.

#### 2.2 Classification

Claims against and Equity Interests in the Debtors are classified as follows:

##### **Class – 1 – Priority Unsecured Non-Tax Claims in Sub-Classes:**

**PPA – 1**, consisting of all priority unsecured non-tax claims against PPOA Holding;

**PPI – 1**, consisting of all priority unsecured non-tax claims against PPI; and

**CPC Corp. – 1**, consisting of all priority unsecured non-tax claims against CPC Corp.

##### **Class – 2 – Secured Claim of CIBC:**

**PPA – 2**, consisting of all secured claims of CIBC against PPOA Holding.

##### **Class – 3 – Unsecured Claims of Subordinated Debentures:**

**PPA – 3**, consisting of all unsecured claims of subordinated debentures against PPOA Holding.

##### **Class – 4 – General Unsecured Claims in Sub-Classes:**

**PPA – 4**, consisting of all general unsecured claims against PPOA Holding;

**PPI – 4**, consisting of all general unsecured claims against PPI;

**PPNC – 4**, consisting of all general unsecured claims against PPNC;

**CPC Holding – 4**, consisting of all general unsecured claims against CPC Holding; and

**CPC Corp.** – 4, consisting of all general unsecured claims against CPC Corp.

**Class – 5 – Subordinated Claims in Sub-Classes:**

**PPA – 5**, consisting of all subordinated claims against PPOA Holding;

**PPI – 5**, consisting of all subordinated claims against PPI;

**PPNC – 5**, consisting of all subordinated claims against PPNC;

**CPC Holding – 5**, consisting of all subordinated claims against CPC Holding; and

**CPC Corp. – 5**, consisting of all subordinated claims against CPC Corp.

**Class – 6 – Equity Interests in Sub-Classes:**

**PPA – 6**, consisting of all equity interests in PPOA Holding;

**PPI – 6**, consisting of all equity interests in PPI;

**PPNC – 6**, consisting of all equity interests in PPNC;

**CPC Holding – 6**, consisting of all equity interests in CPC Holding; and

**CPC Corp. – 6**, consisting of all equity interests in CPC Corp.

2.3 Unimpaired Classes

Priority Unsecured Non-Tax Claims in Class – 1 are not Impaired under the Plan. Under Bankruptcy Code section 1126(f), holders of Claims in those Classes are conclusively presumed to have accepted the Plan, and are not entitled to vote to accept or reject the Plan.

2.4 Impaired Classes

Except for the Priority Unsecured Non-Tax Claims in Class – 1, all classified Claims and Equity Interests are Impaired under the Plan. Holders of Claims in the Impaired Classes are entitled to vote to accept or reject the Plan, except as provided in the following paragraph.

Holders of Subordinated Claims in Class – 5 shall not receive any Distributions, nor retain any interest in the Estate Property or the Creditor Trust Assets, on account of such Claims under the Plan, except and to the extent as provided in Section 4.5 of the Plan. In addition, holders of Equity Interests in Class – 6 will not retain their Equity Interests, and no Distributions on account of such Equity Interests will be made under the Plan, except and to the extent as provided in Section 4.6 of the Plan. Both holders of Subordinated Claims and holders of Equity Interests are Impaired under this Plan and, under Bankruptcy Code section 1126(g), conclusively deemed to have rejected the Plan because holders of Subordinated Claims and holders of Equity Interests will not receive or retain anything under the Plan. Thus, the Plan Proponent will not solicit the votes of Class – 5 and Class – 6.

### ARTICLE 3

#### TREATMENT OF UNCLASSIFIED CLAIMS AND CERTAIN POSTPETITION CLAIMS

##### 3.1 Administrative Expense Claims Bar Date

Except as otherwise provided in Article 3 herein, any application seeking the allowance and payment of an Administrative Expense Claim must have been timely and properly filed on or before the Administrative Expense Claim Bar Date, and served on counsel for the Debtors, the UST, and counsel for the Committee. Any Administrative Expense Claim for which an application or request for payment was not timely and properly filed by the Administrative Expense Claim Bar Date shall be discharged and forever barred.

##### 3.2 Professional Compensation Claims Bar Date

All applications or other requests for payment of Professional Compensation Claims arising on or before the Effective Date must be filed with the Bankruptcy Court and served on counsel for the Debtors, the UST, and counsel for the Committee no later than twenty-one (21) days prior to the Confirmation Hearing Date, or such other date established by order of the Court (the "Professional Compensation Bar Date"). Any Professional Compensation Claims for which an application or other request for payment is not filed by the Professional Compensation Bar Date, as may be supplemented by filing an amended application or request for payment at any time prior to the hearing on approval of such Professional Compensation Claims (which may include estimated fees and expenses up through the Effective Date), shall be discharged and forever barred from asserting such Professional Compensation Claim against the Debtors, the Estates, the Creditor Trust, or their respective property. The Court's approval is required prior to any payment of the Professional Compensation Claims.

##### 3.3 Administrative Tax Claims Bar Date

Any application or other request for payment of an Administrative Tax Claim must have been timely and properly filed with the Bankruptcy Court and served on counsel for the Debtors, the UST, and the Committee on or before the Administrative Expense Claim Bar Date. Any Administrative Tax Claim for which an application or other request for payment was not timely and properly filed by the Administrative Expense Claim Bar Date shall be discharged and forever barred.

##### 3.4 Payment of Administrative Expense Claims

The Creditor Trustee shall pay Allowed Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claim, within twenty-one (21) days after the later of (a) the Allowance Date or (b) the Effective Date of the Plan as follows: (i) first, from the balance of any retainers held by Professionals until fully exhausted; (ii) second, from the Debtors' Cash before the Effective Date; and (iii) after the Effective Date, from the Net Administrative and Priority Unsecured Tax Claim Fund; provided, however, that if the Net Administrative and Priority Unsecured Tax Claim Fund is not sufficient, the Creditor Trustee

shall fund the Net Administrative and Priority Unsecured Tax Claim Fund from the Creditor Trust Assets, in the full amount of the Allowed Administrative Expense Claims.

### 3.5 Payment of Priority Unsecured Tax Claims

Priority Unsecured Tax Claims shall be satisfied in full at the election of the Creditor Trustee, as follows:

#### (i) Cash Payment

Any Priority Unsecured Tax Claim may be satisfied by the payment of Cash to the holder of such Claim in the amount of its Priority Unsecured Tax Claim plus accrued interest after the Confirmation Date at the Tax Interest Rate on the later of the Allowance Date or the Effective Date of the Plan; or

#### (ii) Other Agreements

Any Priority Unsecured Tax Claim may be satisfied pursuant to an agreement reached with the holder of such Claim.

If the Net Administrative and Priority Unsecured Tax Claim Fund is not sufficient, the Creditor Trustee shall fund the Net Administrative and Priority Unsecured Tax Claim Fund from the Creditor Trust Assets, in the full amount of the Allowed Priority Unsecured Tax Claims.

### 3.6 UST Fees

The Creditor Trustee shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6), within ten (10) days after the Effective Date, for pre-confirmation periods. The Creditor Trustee shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), based upon all post-confirmation disbursements made by the Creditor Trustee until the earlier of the closing of this case by the issuance of a final decree by the Bankruptcy Court or upon the entry of an order by the Bankruptcy Court dismissing or converting this case to another chapter under the United States Bankruptcy Code. After the Confirmation Date, the Creditor Trustee shall file a quarterly post-confirmation operating report which shall include, among other things, all payments made under the Plan and payments made in the ordinary course of business. The post-confirmation operating report shall be filed quarterly until the court enters a final decree, dismisses the case, or converts the case to another chapter under the United States Bankruptcy Code.

## **ARTICLE 4**

### **TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

#### 4.1 Treatment of Priority Unsecured Non-Tax Claims (Class – 1) – Unimpaired

Priority Unsecured Non-Tax Claims in Class – 1 are entitled to priority in payment under sections 507(a)(2)-(7) and 507(a)(9)-(10) of the Bankruptcy Code. The Creditor Trustee shall

pay Allowed Priority Unsecured Non-Tax Claims within twenty-one (21) days after the later of (a) the Allowance Date or (b) the Effective Date of the Plan.

Class – 1 is not Impaired under this Plan and, therefore, is conclusively deemed to have accepted the Plan.

#### 4.2 Treatment of Secured Claim of CIBC (Class – 2) – Impaired

Under the Plan, (a) CIBC shall receive an Allowed Claim equal to \$8,471,192.01 (the amount already paid to CIBC pursuant to the CIBC Conditional Payment Stipulation that was approved by that certain Order of the Court dated as of June 4, 2010); (b) CIBC’s outstanding accrued reasonable attorneys’ fees and expenses on account of its Allowed Claim shall be paid in full prior to the Effective Date; (c) CIBC shall be granted a release from all claims against CIBC relating to its pre- and post-petition lending relationship with the Debtors; and (d) CIBC shall receive no other Distribution under the Plan, from the Creditor Trust, or otherwise; provided, however, (a) CIBC shall fully perform its obligations under the CIBC Conditional Payment Stipulation, including transferring the CIBC Payment to the attorneys to the Committee in accordance with Section 6.10 of the Plan.

Upon payment in full of the CIBC Claim, all Liens securing such claim and related documents shall be canceled and extinguished and of no further force or effect. In addition, upon receipt of CIBC Payment, all obligations of CIBC shall terminate, and no further extensions of credit whether direct or under any letter of credit issued in favor of any party shall occur. CIBC is authorized and directed to perform all acts reasonably required and/or reasonably requested by the Debtors or the Creditor Trustee to cancel and/or extinguish any Liens and/or security interests filed in any public records at no additional cost.

Class – 2 is Impaired and entitled to vote to accept or reject this Plan.

#### 4.3 Treatment of Unsecured Claims of Subordinated Debentures (Class – 3) – Impaired

As an attempt to avoid disputes and litigation and to fully and finally resolve Unsecured Claims of Subordinated Debentures, the Plan Proponent will grant each holder of an Unsecured Claims of Subordinated Debentures an Allowed Claim, as provided in the settlement and compromise (the “Bondholder Settlement”), subject to the terms of Section 4.3 of the Plan.

Unless a holder of Unsecured Claims of Subordinated Debentures affirmatively makes the election to “opt out” of the Bondholder Settlement (the “Election to Opt Out of the Bondholder Settlement”), each holder of Unsecured Claims of Subordinated Debentures shall be bound and conclusively deemed to accept the Bondholder Settlement as follows:

The Bondholder Settlement: Each holder of Unsecured Claims of Subordinated Debentures shall, subject to Sections 6.3 and 7.15 of the Plan, have a fixed Allowed Claim, not subject to recharacterization or subordination, that is equal to 25% of the face value of their (a) scheduled claim or (b) timely filed proof of claim, whichever is lesser (the “Allowed Compromised Subordinated Debentures Unsecured Claim”). Each holder of an Allowed Compromised Subordinated

Debentures Unsecured Claim shall be entitled to receive their Pro Rata Share of their beneficial interests in the Creditor Trust in full and complete satisfaction of such Class – 3 Claim.

For the avoidance of any doubt, each holder of an Allowed Compromised Subordinated Debentures Unsecured Claim shall not receive any Distribution in excess of the amount of Allowed Compromised Subordinated Debentures Unsecured Claim and any Claim to such excess amount shall be deemed waived, expunged and forever extinguished without further order of the Bankruptcy Court.

Notwithstanding the foregoing, and as provided in Sections 6.3 and 7.15 of the Plan, no Cause of Action shall be settled, released, waived, or discharged against any holder of Unsecured Claims of Subordinated Debentures in their capacity as an officer or director (current or former) of the Debtors. For the avoidance of any doubt, all Causes of Action against the officers and directors (current or former) of the Debtors are hereby preserved.

If a holder of Unsecured Claims of Subordinated Debentures makes the Election to Opt Out of the Bondholder Settlement in accordance with the terms of the Plan and the voting procedures, such holder of Unsecured Claims of Subordinated Debentures shall be treated as follows:

Opt Out Election of the Bondholder Settlement: Each holder of Unsecured Claims of Subordinated Debentures who makes the Election to Opt Out of the Bondholder Settlement shall be entitled to receive their Pro Rata Share of their beneficial interests in the Creditor Trust, subject to (a) any objections to the allowance of such Claims, as provided under the Plan, including Section 10.1 of the Plan; (b) all claims of the Debtors and the Estates, including Causes of Action, setoff, offset, or other defenses, or counterclaims; and (c) all claims by the Creditor Trustee for recharacterization and/or subordination of Unsecured Claims of Subordinated Debentures – which claims and objection (a) through (c) shall be preserved under the Plan, and filed, commenced and prosecuted by the Creditor Trustee as soon as practicable after the Effective Date. If Unsecured Claims of Subordinated Debentures are disallowed, subordinated and/or recharacterized, such Claims shall then (i) receive no Distribution and/or (ii) be reclassified and treated, whichever is applicable, as provided under the Plan.

In order to make the Election to Opt Out of the Bondholder Settlement in accordance with the terms of the Plan, each holder of Unsecured Claims of Subordinated Debentures must comply with the voting procedures and indicate their intent to opt out by marking their Ballot accordingly and checking the appropriate box. Merely voting to accept or reject the Plan (or not voting at all) is not sufficient to opt out of the Bondholder Settlement. Rather, each holder of Unsecured Claims of Subordinated Debentures must make the Election to Opt Out of the Bondholder Settlement and comply with the voting procedures, or each holder of Unsecured Claims of Subordinated Debentures will be bound and deemed to accept the Bondholder Settlement.



The Plan Proponent believes that if a holder of Unsecured Claims of Subordinated Debentures makes the Election to Opt Out of the Bondholder Settlement in accordance with the terms of the Plan and the voting procedures, it is anticipated that, through litigation, such holder's Unsecured Claims of Subordinated Debentures will be recharacterized, subordinated, and/or disallowed, and therefore, such holder will receive no Distribution under the Plan.

Class – 3 is Impaired and entitled to vote to accept or reject the Plan.

#### 4.4 Treatment of General Unsecured Claims (Class – 4) – Impaired

Each holder of an Allowed General Unsecured Claim shall receive their Pro Rata Share of the beneficial interests in the Creditor Trust and as beneficiary of the Creditor Trust shall receive, on a Distribution Date, their Pro Rata Share of net Cash derived from the Creditor Trust Assets available for Distribution on each such Distribution Date as provided under the Plan and the Creditor Trust Agreement, as full and complete satisfaction of their Claims against the Creditor Trust.

Class – 4 is Impaired and is entitled to vote to accept or reject this Plan.

#### 4.5 Treatment of Subordinated Claims (Class – 5) – Impaired

The holders of Allowed Subordinated Claims junior in priority to the holders of all other Allowed Claims shall not receive any Distributions, nor retain any interest in the Estate Property or the Creditor Trust Assets, on account of such Claims, except and to the extent that all other Allowed Claims are first paid in full as provided under the Plan (with interest from the Petition Date at the Federal Judgment Rate that is in effect on the Effective Date), and only after the Creditor Trust has been fully and completely administered and all fees, expenses and costs of any kind and nature have been paid in full, including any reserves established by the Creditor Trustee in his sole discretion, in which case Allowed Subordinated Claims shall be entitled to receive Pro Rata Distribution of any remaining cash available in the Creditor Trust as provided in the Creditor Trust.

Class – 5 is Impaired under this Plan and, under Bankruptcy Code section 1126(g), conclusively is deemed to have rejected the Plan. The Plan Proponent will not solicit their votes.

#### 4.6 Treatment of Equity Interests (Class – 6) – Impaired

On the Effective Date, holders of Equity Interests in Class – 6 shall be deemed automatically cancelled and extinguished without further act or action under any applicable agreement, law, regulation, order or rule, and no Distributions on account of such Equity Interests will be made under the Plan, except and to the extent that all Allowed Claims, including Allowed Subordinated Claims, are first paid in full, in which case Allowed Subordinated Claims shall be entitled to receive Pro Rata Distribution of any remaining cash available in the Creditor Trust, only after the Creditor Trust has been fully and completely administered and all fees, expenses and costs of any kind and nature have been paid in full, including any reserves established by the Creditor Trustee in his sole discretion.



Class – 6 is Impaired under this Plan and, under Bankruptcy Code section 1126(g), conclusively deemed to have rejected the Plan. The Plan Proponent will not solicit their votes.

## ARTICLE 5

### EXECUTORY CONTRACTS

#### 5.1 Assumption or Rejection of Executory Contracts

Except as set forth in Section 5.3, Executory Contracts or unexpired leases, if any, that were not previously assumed or rejected shall be rejected and terminated as of the Confirmation Date, and such rejected Executory Contracts and unexpired leases shall no longer represent the binding obligations of the Debtors (or the Creditor Trust, or Creditor Trustee) on or after the Effective Date. Entry of the Confirmation Order shall constitute approval of such rejections under sections 365 and 1123 of the Bankruptcy Code.

#### 5.2 Rejection Claims

Any Claim arising out of the rejection of an Executory Contract pursuant to the Confirmation Order must be filed with the Bankruptcy Court on or before the **Rejection Claim Bar Date**, and shall be served on counsel for the Debtors, the UST, and the Committee. Any such Claims not properly filed on or before the **Rejection Claim Bar Date** shall be discharged and forever barred. Each Allowed Claim arising from the rejection of an Executory Contract shall be treated as an Allowed General Unsecured Claim.

#### 5.3 Insurance Policies

To the extent that any and all insurance policies, including any D&O Policies, are considered Executory Contracts, then notwithstanding anything contained in the Plan to the contrary, such insurance policies, including the D&O Policies, shall be deemed assumed and assigned to the Creditor Trust. Unless otherwise determined by the Bankruptcy Court, pursuant to a Final Order, no payments are required to cure any defaults of the Debtors existing as of the Confirmation Date with respect to each such policy, including the D&O Policies. For the avoidance of any doubt, all rights under any insurance policy, including the D&O Policies, that is not an Executory Contract, and all rights under any other insurance policies under which the Debtors may be beneficiaries, shall be preserved and shall vest with the Creditor Trust and shall remain in full force and effect after the Effective Date for the term thereof; and nothing herein shall alter or adversely affect the rights of any non-Debtor beneficiaries of or covered Persons or Entities under such insurance policies, including the D&O Policies. Further, for the avoidance of any doubt, the Creditor Trustee may bring or assert Causes of Action under the D&O Policies as a “Bankruptcy Trustee” or “Liquidator or comparable authority of the Company,” as those terms are used in the D&O Policies.

#### 5.4 Reservation of Rights

Nothing contained in the Plan shall constitute an admission that any such contract or lease is in fact an Executory Contract or that any Debtor has any liability thereunder.

Nothing in the Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, Claims, Causes of Action, or other rights of the Debtors under any executory or non-executory contract or any unexpired or expired lease.

Nothing in the Plan shall increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtors under any executory or non-executory contract or any unexpired or expired lease.

## ARTICLE 6

### MEANS FOR IMPLEMENTATION OF THE PLAN

#### 6.1 Vesting of Remaining Assets in the Creditor Trust

On the Effective Date, except as otherwise expressly provided in the Plan, title to all Estate Property and Remaining Assets (including specifically rights to collect the Debtors' Income Tax Refunds, the Debtors' existing insurance policies, including the D&O Policies and any claims arising thereunder, and all Causes of Action and Avoidance Actions) shall vest in the Creditor Trust free and clear of all Liens, encumbrances, or interests of any kind. The Debtors are a party to the Asset Purchase Agreement. The Creditor Trust shall succeed to all rights and interests provided to the Debtors and the Estates under the Asset Purchase Agreement.

The Committee shall have the power and authority to enter into the Creditor Trust Agreement on the Effective Date.

#### 6.2 Purpose of the Creditor Trustee

The Creditor Trustee shall be the "representative of the estates" as contemplated by §1123(b)(3)(B) of the Bankruptcy Code for all purposes, including to bring or assert Causes of Action under the D&O Policies as a "Bankruptcy Trustee" or "Liquidator or comparable authority of the Company," as those terms are used in the D&O Policies. The Creditor Trustee will hold and monetize all the Creditor Trust Assets in accordance with the provisions of this Plan. Although the Creditor Trustee was not selected by the UST, will not be supervised by the UST, the UST has standing to appear and participate in all aspects of the cases and to seek removal of the Creditor Trustee. The Creditor Trustee, if required by the UST, shall be bonded in favor of the Creditor Trust for the funds held in the Creditor Trust. Such bond shall be cancelable on thirty (30) days notice to the UST and all costs and expenses related to the bond shall be paid by the Creditor Trust.

#### 6.3 Preservation of Litigation Rights and Investigations

Under the Plan, the Creditor Trustee retains all rights of, and on behalf of, the Debtors and the Creditor Trust to commence and pursue any and all Causes of Action, including but not limited to (i) Avoidance Actions and (ii) claims against PPE, Farlie, Turner & Co., LLC, Bayshore Partners, LLC, any and all current and/or former officers and directors of the Debtors, ~~including but not limited to R. Patrick Caldwell, Stephen Giordanella, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torykin, Sr., Charles E. Peters, Jr., and Deon Vaughan,~~ and any of their

affiliates, insiders, successors, and subsequent transferees, for, among other things, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence, misrepresentation, or breach of contract, subject to the Release and Exculpation contained in Sections 8.2 and 8.3 of the Plan, regardless of whether or not such Causes of Action are specifically enumerated herein, in the Disclosure Statement, or elsewhere, and all such rights shall not be deemed modified, waived, released in any manner, nor shall confirmation of the Plan or the Confirmation Order act as *res judicata* or limit the Creditor Trustee's rights to commence and pursue any and all Causes of Action to the extent the Creditor Trustee deems appropriate. Causes of Action and Avoidance Actions may, but need not, be pursued by the Debtors prior to the Effective Date and by the Creditor Trustee after the Effective Date, to the extent warranted.

For the avoidance of doubt, any and all Causes of Action, including but not limited to (i) Avoidance Actions and (ii) claims against PPE, Farlie, Turner & Co., LLC, Bayshore Partners, LLC, any and all current and/or former officers and directors of the Debtors, ~~including but not limited to R. Patrick Caldwell, Stephen Giordanela, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torykin, Sr., Charles E. Peters, Jr., and Deon Vaughan~~ and any of their affiliates, insiders, successors, and subsequent transferees, for, among other things, breach of fiduciary duty ~~or~~, aiding and abetting breach of fiduciary duty, negligence, misrepresentation, or breach of contract, subject to the Release and Exculpation contained in Sections 8.2 and 8.3 of the Plan, that the Debtors or the Estate had (or had power to assert) immediately prior to confirmation of the Plan will transfer to the Creditor Trust and the Creditor Trustee may commence or continue, in any appropriate court or tribunal, any suit or other proceeding for the enforcement of such Causes of Actions. In connection with the sale to PPE, PPE acquired certain Causes of Action against counterparties to Assumed Contracts, as set forth on Schedule 2.1(ii) of the Asset Purchase Agreement. **EXCEPT AS PROVIDED IN THE ASSET PURCHASE AGREEMENT AND THE SALE ORDER, THE PLAN DOES NOT, AND IS NOT INTENDED TO, RELEASE ANY SUCH CAUSES OF ACTION OR AVOIDANCE ACTIONS, OR OBJECTIONS TO PROOFS OF CLAIM. ALL SUCH RIGHTS ARE SPECIFICALLY RESERVED IN FAVOR OF THE DEBTORS, THE ESTATES, THE CREDITOR TRUST AND THE CREDITOR TRUSTEE.**

Creditors should understand that the Creditor Trustee may assert certain Causes of Action, including Avoidance Actions, against them. As such, Creditors are cautioned not to rely on (i) the absence of the listing of any legal right, claim, Causes of Action or Avoidance Actions against a particular creditor in the Disclosure Statement, Plan, Schedules of Assets and Liabilities, Statement of Financial Affairs, or Plan Supplement; or (ii) the absence of litigation or demand prior to the Effective Date of the Plan as any indication that the Debtors or the Creditor Trustee do not possess or do not intend to prosecute a particular Causes of Action if a particular Creditor votes to accept the Plan.

Unless a Cause of Action against a Creditor or other Entity is expressly waived, relinquished, released, compromised, or settled in this Plan, or any Final Order, the Debtors expressly reserve any and all Causes of Action, including Avoidance Actions, for later enforcement and prosecution by the Creditor Trustee (including, without limitation, those not specifically identified herein, in the Plan, Disclosure Statement, Plan Supplement, or otherwise, or which the Debtors may presently be unaware of, or which may arise or exist by reason of

additional facts or circumstances unknown to the Debtors at this time, or facts or circumstances which may change or be different from those which the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to any such Cause of Action or Avoidance Action upon or after the confirmation or consummation or implementation of this Plan. In addition, the Creditor Trustee expressly reserves the right to pursue and/or adopt any Causes of Action, including Avoidance Actions, alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, subject to the provisions of this Plan or any Final Order.

It is not intended and it should not be assumed (nor shall it be deemed) that because any existing or potential Cause of Action or Avoidance Action has not yet been identified or pursued by the Debtors, or any other Estates' fiduciary, or are not set forth in the Plan, Disclosure Statement, Plan Supplement, or otherwise, that any such Cause of Action or Avoidance Action has been waived or expunged.

#### 6.4 Books and Records

On the Effective Date, the books and records (in any form, including all electronic records) that the Debtors are in possession of shall be transferred to the Creditor Trust. The Creditor Trustee shall be free, in his or her discretion, to abandon, destroy, or otherwise dispose of those books and records beginning one (1) year after the Effective Date upon a motion to, and approval by, the Court (with requisite notice given to the UST, SEC, and the Federal Bureau of Investigation), notwithstanding any applicable laws, rules, or regulations that would have required the Debtors to retain such books and records. Further, the Creditor Trustee shall succeed in all of the Debtors' rights to access, and therefore shall have access to, the Debtors' books and records that were transferred to, and/or are currently in possession of, the Purchaser, pursuant to the Asset Purchase Agreement, or the Federal Bureau of Investigation. The Purchaser shall not dispose of any books and records without consulting with and giving notice to the Creditor Trustee.

#### 6.5 Debtors' Continued Cooperation

On or after the Effective Date, the Debtors' Chief Restructuring Officer ("CRO") shall provide reasonable and timely cooperation to effectuate the provisions of the Plan as the Creditor Trustee might otherwise reasonably request, including, but not limited to, executing such documents to carry out the terms of the Plan. To the extent the CRO fully and promptly cooperates, the Creditor Trustee shall pay the reasonable and documented out of pocket expenses incurred by the CRO as a result of providing such cooperation. Further, the Creditor Trustee is permitted to engage the CRO as a Post-Confirmation Professional and the CRO may simultaneously serve as CRO and as a Post-Confirmation Professional. The CRO may be terminated by the Creditor Trustee on five (5) days written notice.

## 6.6 Creditor Trustee's Powers and Authority

The Creditor Trustee shall have the power and authority to perform the acts described in the Creditor Trust Agreement (subject to approval by the Court where applicable), in addition to any powers granted by law or conferred to it by any other provision of the Plan, including without limitation any set forth herein, provided however, that enumeration of the following powers shall not be considered in any way to limit or control the power and authority of the Creditor Trustee to act as specifically authorized by any other provision of this Plan, the Creditor Trust Agreement, and/or any applicable law, and to act in such manner as the Creditor Trustee may deem necessary or appropriate to take any act deemed appropriate by the Creditor Trustee, including, without limitation, to discharge all obligations assumed by the Creditor Trustee or provided herein and to conserve and protect the Creditor Trust or to confer on the Creditors the benefits intended to be conferred upon them by this Plan. The Creditor Trustee shall have the power and authority without further approval by the Court to liquidate the Creditor Trust Assets, to hire and pay professional fees and expenses of counsel and other advisors, to prosecute and settle objections to Disputed Claims and Disputed Equity Interests, to prosecute and settle any Causes of Action and Avoidance Actions, and otherwise take any action as shall be necessary to administer the cases and effect the closing of the cases, including, without limitation, as follows:

- Open and maintain accounts in accordance with section 345 of the Bankruptcy Code.
- Perfect and secure the Creditor Trustee's right, title and interest to the assets comprising the Creditor Trust Assets.
- Manage, protect and monetize the Net Administrative and Priority Claims Fund and the Creditor Trust Assets and distribute the net proceeds as described herein.
- Take all actions necessary to terminate the Debtors' SEC reporting requirements.
- Grant options to purchase or contracts to sell, the Creditor Trust Assets or any part or parts thereof.
- Release, convey or assign any right, title or interest in the Creditor Trust Assets.
- Purchase insurance, including "tail" coverage, to protect the Creditor Trustee and the Creditor Trust Assets from liability or for any other purpose.
- Deposit estate funds, draw checks and make disbursements thereof.
- Employ and retain, and discharge and dismiss, appraisers, financial advisors, attorneys, accountants, auctioneers, agents and such other professionals as the Creditor Trustee may deem necessary or appropriate to assist in fulfilling the purposes of the Plan, including payment to its professionals, in connection with any ongoing litigation being pursued or conducted by the Creditor Trustee, and to pay reasonable charges, commissions and compensation to all of the foregoing.

- Exercise any and all powers granted to the Creditor Trustee by any agreements, by common law or any statute which serves to increase the extent of the powers granted to the Creditor Trustee hereunder.
- Take such other action as the Creditor Trustee may determine to be necessary or desirable to carry out the purposes of this Plan.
- Commence or prosecute, for its own account or in the name of the Debtors any Causes of Action and Avoidance Actions, as well as any lawsuit or other legal or equitable action, including filing objections to Claims, in any court of competent jurisdiction which are necessary to carry out the terms and conditions of the Plan.
- Settle, compromise or adjust pursuant to the standards of Bankruptcy Rule 9019 (which shall be deemed to apply to all Post-Confirmation settlements) any disputes or controversies in favor of, or against, the Creditor Trustee.
- Appoint, remove and act through agents, managers and employees and confer upon them such power and authority as may be necessary or advisable.
- Commence and prosecute all Causes of Action and Avoidance Action which can be brought by a trustee or the Debtors under the Bankruptcy Code or any other law, theory or other manner and prosecute or defend all appeals on behalf of the Debtors or the Creditor Trustee.
- Obtain a bond in favor of the Creditor Trust for the funds held in the Creditor Trust.
- Prepare and file tax returns, as mandated by applicable state and federal law, and collect income tax refunds.
- In general, without in any manner limiting any of the foregoing, deal with the Creditor Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith, whether similar to, or different from, the ways above specified at any time or times hereafter.

#### 6.7 Privileges

All of the Debtors' privileges, including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "Privileges") shall be transferred, assigned and delivered to the Creditor Trust, without waiver, limitation or release, and shall vest with the Creditor Trust. The Creditor Trustee shall hold and be the beneficiary of all Privileges and entitled to assert all Privileges. No Privilege shall be waived by disclosures to the Creditor Trustee of the Debtors' documents, information or communications subject to any privilege, protection or immunity or protections from disclosure jointly held by the Debtors and the Committee.



## 6.8 Federal Income Tax Treatment of the Creditor Trust

For federal income tax purposes, it is intended that the Creditor Trust be classified as a liquidating trust under Treasury Regulation section 301.7701-4 and that such trust be owned by its beneficiaries. Accordingly, for federal income tax purposes, it is intended that the beneficiaries be treated as if they had received a Distribution of an undivided interest in the Creditor Trust Assets and then contributed such interests to the Creditor Trust. Thus, the beneficiaries of the Creditor Trust shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Creditor Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes. The Creditor Trust Agreement shall (i) state that the primary purpose of the Creditor Trust is to liquidate the Creditor Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, its liquidating purpose and (ii) contain a fixed or determinable termination date that is not more than five (5) years from the date of creation of the Creditor Trust, which termination date may be extended for one or more finite terms subject to the approval of the Bankruptcy Court upon a finding that the extension is necessary to its liquidating purpose. Each such extension must be approved by the Bankruptcy Court within two (2) months before the beginning of the extended term.

The Creditor Trustee shall be responsible for filing all federal, state and local tax returns for the Creditor Trust. The Creditor Trustee shall file all federal tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4. The Creditor Trustee also will annually send to each beneficiary of the Creditor Trust a separate statement regarding the receipts and expenditures of the Creditor Trust as relevant for U.S. federal income tax purposes and will instruct all such beneficiaries to use such information in preparing their U.S. federal income tax returns or to forward the appropriate information to such holder's underlying beneficial holders with instructions to utilize such information in preparing their U.S. federal income tax returns. The Creditor Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Creditor Trust that is required by any governmental unit.

Nothing in this Plan shall compel the Creditor Trustee to treat any Income Tax Refund(s) obtained pursuant to Tax Code section 6411 as unrestricted cash until completion of the associated audit by the relevant authorities.

## 6.9 Tax Reporting for Creditor Trust

On or before the Effective Date, the Debtors shall provide the Creditor Trustee with a good-faith valuation of the Income Tax Refunds as of the Effective Date. As soon as practical after the Effective Date, the Creditor Trustee shall determine the fair market value, as of the Effective Date, of all other Creditor Trust Assets, and shall make all such values (including the Income Tax Refunds value) available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Creditor Trust (including, without limitation, the Debtors, the Creditor Trustee, and beneficiaries of the Creditor Trust) for all United States federal income tax purposes.



Allocations of Creditor Trust taxable income among the beneficiaries of the Creditor Trust shall be determined by reference to the manner in which an amount of cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Creditor Trust had distributed all its assets (valued at their tax book value) to beneficiaries of the Creditor Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent Distributions from the Creditor Trust. Similarly, taxable loss of the Creditor Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Creditor Trust Assets. The tax book value of the Creditor Trust Assets for purpose of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Creditor Trustee of a private letter ruling if the Creditor Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Creditor Trustee), the Creditor Trustee shall (A) timely elect to treat any Disputed Claims Reserve as a “disputed ownership fund” governed by Treasury Regulation section 1.468B-9, and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Creditor Trustee, the Debtors, and the beneficiaries of the Creditor Trust) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

The Creditor Trustee shall be responsible for payment, out of the Creditor Trust Assets, of any Taxes imposed on the trust or its assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such Taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such Taxes shall be (A) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (B) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

The Creditor Trustee shall have full and exclusive authority and responsibility with respect to all Income Tax Refunds to the same extent as if the Creditor Trustee were, as applicable, the Debtors, debtors, or debtors-in-possession, including the filing of tax returns (including amended tax returns), or requests for refunds for one or more of the Debtors. Without limiting the foregoing, each of the Debtors shall execute, on or prior to the Effective Date, a power of attorney authorizing the Creditor Trustee to correspond with any tax authority on behalf of such Debtor and to sign, collect, negotiate, settle, and administer the Income Tax Refunds, tax payments and tax returns. The Debtors (and the Creditor Trustee, as assignee) shall be entitled to the amount of the Income Tax Refunds.

#### 6.10 CIBC Payment

No later than three (3) business days after the Confirmation Date, CIBC shall indefeasibly pay to the attorneys for the Committee the CIBC Payment, which is the sum of one hundred thousand dollars (\$100,000.00). The CIBC Payment is a reallocation and gift from CIBC's collateral solely for the benefit of holders of Allowed General Unsecured Claims and which shall be free of Liens, encumbrances, or interests of any kind and not subject to offset, reduction, set off or limitation of any kind.

Further, CIBC shall have no right to assert a claim against the CIBC Payment and shall have no entitlement under any circumstances to receive any Distribution from the Estates based on the CIBC Payment. Upon ~~receipt of the CIBC Payment~~ Effective Date, the CIBC Adversary Proceeding and the CIBC Application to Allow Administrative Expense Claims shall be deemed dismissed with prejudice. In the event that this provision of the Plan is inconsistent with the Court's Order Approving CIBC Conditional Payment Stipulation, the Order Approving CIBC Conditional Payment Stipulation is hereby amended and superseded. If CIBC fails to make the CIBC Payment, the Creditor Trustee expressly has authority and standing under the Plan and pursuant to the Confirmation Order to commence and prosecute any action against CIBC, and any related party, to collect the CIBC Payment.

#### 6.11 Nominal Continued Corporate Existence

From and after the Effective Date, and notwithstanding any applicable non-bankruptcy law to the contrary, the Debtors shall remain in existence for the sole purpose of winding up the Debtors' business and transferring the Estate Property and Remaining Assets to the Creditor Trust, and for all other purposes, the Debtors shall be deemed dissolved and neither the Debtors or the Estates nor the Creditor Trust shall be liable for any state or local annual or other corporation excise or similar tax.

Upon the Effective Date each of Debtors' cases, except the lead case PPOA Holding, Inc., f/k/a/ Protective Products of America, Inc. (9790), Case No. 10-10711, shall be closed pursuant to the Confirmation Order. Upon the completion of such liquidation and the entry of the Final Order, the Creditor Trustee may file a certificate of dissolution as to each of the Debtors. The Creditor Trustee shall not be compelled to dissolve the Debtors if doing so would unduly burden the Creditor Trustee. No order shall be required to effectuate such dissolution and all state agencies shall accept a copy of this Plan and the Confirmation Order as sufficient to effectuate such dissolution without need for payment of any kind.

On the Effective Date, without affecting the rights of the Securities and Exchange Commission, the obligations of, and Claims against, the Debtors and their Estates arising under, evidenced by, or relating to any agreements, contracts, indentures, certificates of designation, bylaws, certificates or articles of incorporation, or any other corporate governance document or instrument, shall be terminated and extinguished, including but not limited to the obligations of the Debtors to indemnify any Entity or Person, including those who served as an officer or director of the Debtors, to the extent provided in any of the Debtors' corporate governance

documents or by written or other agreement or applicable law. Notwithstanding the foregoing, this provision will not limit or modify any indemnification obligations approved by the Court.

#### 6.12 Resignation of the Debtors' Officers and Directors

On the Effective Date, all of the Debtors' officers and directors shall be deemed to have resigned without the necessity of any further action or writing, and they shall be relieved from any of their responsibilities, duties and obligations that arise after the Effective Date to the Debtors or holders of Claims or Equity Interests under the Plan or applicable law. After the Effective Date, the Creditor Trustee shall serve as the sole officer and director of each of the Debtors for all purposes. For the avoidance of any doubt, this provision is not a release from any liability of any of the Debtors' officers and directors.

#### 6.13 Substantive Consolidation and Waiver of Intercompany Claims

The Bankruptcy Cases, the Debtors and their respective Estates shall be deemed to be substantively consolidated for purposes of voting, distribution, and implementation of the terms of this Plan. As a result of the substantive consolidation, the assets and liabilities of the Debtors shall be pooled and all Claims shall be satisfied from the assets of a single consolidated estate. Any Claim filed or asserted against one or more of the Debtors based upon a guaranty, indemnity, co-signature, surety or otherwise, against another Debtor shall be treated as combined into a single Claim against the consolidated estate of the Debtors and shall be entitled to Distributions only with respect to such single Claim. For purposes of determining the availability of any right of setoff under Bankruptcy Code section 553, the Debtors will be treated as one entity so that (subject to the other provisions of Bankruptcy Code section 553) debts due to any of the Debtors may be offset against the debts owed by any of the Debtors. Further, holders of Allowed Claims who assert identical Claims against multiple Debtors shall be entitled to a single satisfaction of such Claims. In addition, all Intercompany Claims (including such Claims arising from the rejection of any Executory Contract) shall be eliminated, waived, and forever expunged.

The substantive consolidation of the Debtors shall not constitute or effectuate a merger of the corporate or other legal identities of the Debtors, and their respective corporate and other legal identities shall remain intact, except as otherwise specified in the Plan.

#### 6.14 Cancellation of Existing Securities

On the Effective Date, except as otherwise specifically provided for in the Plan, (i) the Existing Securities shall be canceled and (ii) the obligations of, Claims against, and Equity Interests in the Debtors arising under, evidenced by, or relating to any agreements, contracts, indentures, certificates of designation, bylaws, certificates or articles of incorporation, or similar documents governing the Existing Securities shall be released and forever discharged.

#### 6.15 Dissolution of the Committee

On the first (1st) Business Date following the Effective Date, and provided that the Creditor Trust has become effective pursuant to the Plan, the Committee shall be dissolved and the Committee, its members, and professionals retained by the Committee in accordance with

section 1103 of the Bankruptcy Code will be released and discharged from their respective fiduciary obligations, duties, and responsibilities arising from or related to the Bankruptcy Cases, except with respect to (i) prosecuting applications for professionals' compensation; (ii) asserting, disputing and participating in the resolution of Professional Compensation Claims; and (iii) prosecuting or participating in any appeal of the Confirmation Order or any request for reconsideration thereof. Upon the conclusion of (i) through (iii), the Committee shall be immediately dissolved, released, and discharged. The professionals retained by the Committee and the members thereof shall not be entitled to compensation or reimbursement of expenses for any services rendered or expenses incurred after the first (1st) Business Day on behalf of the Committee following the Effective Date, except for services rendered and expenses incurred, as approved by the Court, in connection with (i) prosecuting applications for professionals' compensation; (ii) asserting, disputing and participating in the resolution of Professional Compensation Claims; and (iii) prosecuting or participating in any appeal of the Confirmation Order or any request for reconsideration thereof.

#### 6.16 Engagement of Post-Confirmation Professionals and Compensation

The Creditor Trustee shall be compensated based on his reasonable and customary hourly rate. The Creditor Trustee may engage Post-Confirmation Professionals, such as counsel, financial advisors and other professionals engaged by the Debtors and/or Committee during the Chapter 11 Cases, to represent him in connection with his duties hereunder. The Creditor Trustee and the Post-Confirmation Professionals shall be paid 90% of their fees and 100% of their expenses on a monthly basis prior to filing fee applications. Post-Confirmation Professionals shall file fee applications no less frequently than every 180 days seeking approval of fees and expenses to be awarded by the Bankruptcy Court, including approval of the amounts previously paid on a monthly basis. Upon the filing of each such application, the Post-Confirmation Professionals shall be entitled to request the payment of some or all of any pending holdbacks in fees.

### ARTICLE 7

#### PROVISIONS GOVERNING DISTRIBUTIONS

##### 7.1 In General

The Creditor Trustee shall make all Distributions required under the Plan.

##### 7.2 Distributions on Allowed Claims Only

Distributions under the Plan shall be made only to the holders of Allowed Claims. Except as otherwise provided in the Plan, Distributions to holders of Allowed Claims shall be made as soon as practicable after the Effective date and as appropriate thereafter; provided however, that the Creditor Trustee shall have sole and absolute discretion as to the timing of any Distribution until all Allowed Claims are satisfied under the Plan. Until a Disputed Claim becomes an Allowed Claim, the holder of that Disputed Claim shall not receive any consideration. If a Disputed Claim becomes an Allowed Claim, in whole or in part, by a Final Order, the Creditor Trustee shall distribute the portion of the Distribution reserved for the

particular Disputed Claim in accordance with the Plan on the next Distribution Date. If a Disputed Claim is disallowed in whole or in part, then the portion of the Distribution reserved for such Disputed Claim shall be distributed on the next Distribution Date to holders of Allowed Claims so that such holders receive their Pro Rata Share of such portion of the Distribution.

### 7.3 No Interest

Post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final Distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim. Nothing in this Section, the Plan, or the Confirmation Order limits the rights of the United States of America or any Governmental Unit thereof to interest under 11 U.S.C. §§ 503, 506(b), 1129(a)(9)(A) & (C), and as otherwise provided for under applicable law.

### 7.4 Place and Manner of Payments of Distributions

Distributions to holders of Allowed Claims shall be made by mailing such Distribution to the Claimholder at the address listed in any proof of claim filed by the Claimholder or at such other address as such Claimholder shall have specified for payment purposes in a written notice received by the Debtors at least twenty (20) days before a Distribution Date. If a Claimholder has not filed a proof of claim or interest or sent the Creditor Trustee a written notice of payment address, then the Distribution(s) for such Claimholder will be mailed to the address identified in the Schedules of Assets and Liabilities. The Creditor Trustee shall distribute any Cash by wire, check, or such other method as it deems appropriate under the circumstances. Before receiving any Distributions, all Claimholders, at the request of the Creditor Trustee, must provide appropriate taxpayer identification numbers, related withholding information, and any appropriate forms to the Creditor Trustee; otherwise, the Creditor Trustee may suspend Distributions to any Claimholders who have not provided such taxpayer identification numbers and related withholding information until the Creditor Trustee receives any information and/or document requests.

### 7.5 No Distribution Pending Allowance

Notwithstanding any other provision of the Plan, no payment or Distribution shall be made with respect to any Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim.

### 7.6 Disputed Claims Reserve

In determining the amount of Distributions to be made under the Plan to holders of Allowed Claims, the Creditor Trustee shall hold Cash in reserve to protect the interests of holders of Disputed Claims in an amount determined by the Creditor Trustee, in his sole discretion, that represents the Pro Rata Share of the Cash that would otherwise be distributed to each holder of Disputed Claim if such Claim was Allowed, and after the Allowance Date, the appropriate Distribution shall be made under the Plan. The Disputed Claim Reserve shall also

include an amount calculated by the Creditor Trustee to satisfy anticipated expenses of the Creditor Trust and to pay anticipated tax liabilities of the Creditor Trust.

#### 7.7 Distribution After Allowance

As soon as practicable after a Disputed Claim becomes an Allowed Claim, the holder of such Allowed Claim shall receive from its Disputed Claims Reserve a Distribution in an amount equal to the Distribution that such holder would have received had such Disputed Claim been an Allowed Claim on the Effective Date. Distributions to each holder of a Disputed Claim, to the extent that such Claim becomes an Allowed Claim, shall be made, without interest, in accordance with the Class of Claims to which such Claim belongs.

#### 7.8 Distribution After Disallowance

If and when a Disputed Claim or any portion thereof becomes a Disallowed Claim, the Pro Rata Share of the Distributions to which each holder of an Allowed Claim in the Class of Claims to which such Claim belongs is entitled, shall increase commensurately. Accordingly, the Creditor Trustee shall have the right to make subsequent Distributions in accordance with the provisions of the Plan.

#### 7.9 Undeliverable Distributions

If a Distribution to any Claimholder is returned as undeliverable, the Creditor Trustee shall use reasonable efforts to determine such Claimholder's then current address. After reasonable efforts, if the Creditor Trustee still cannot determine such Claimholder's then-current address, then unless and until the Creditor Trustee is notified of such Claimholder's then-current address, no further Distributions shall be made to such Claimholder, unless and until the Creditor Trustee is notified of such Claimholder's then-current address. Such Distributions shall be set aside and held in a segregated interest bearing account. If the Creditor Trustee is notified of such Claimholder's then-current address, then such Distribution, together with any interest earned thereon and proceeds thereof (less any withholding pursuant to Section 7.11) shall be paid or distributed to such Claimholder within ten (10) Business Days. If the Creditor Trustee cannot determine, or is not notified of, a Claimholder's then-current address within six (6) months after the Effective Date, the Distribution reserved for such Claimholder shall be deemed an unclaimed Distribution, and Section 7.10 of the Plan shall be applicable thereto.

#### 7.10 Unclaimed Distributions

If the current address for a Creditor entitled to a Distribution under the Plan has not been determined within six (6) months after the Effective Date or such Creditor has otherwise not been located, then such Creditor (i) shall no longer be a Creditor and (ii) shall be deemed to have released such Claim. If such Creditor was entitled to a portion of the Distribution, then that Claimholder's Distribution shall be distributed Pro Rata in accordance with the Plan to the other holders of Allowed Claims receiving the Distribution on the next Distribution Date.



### 7.11 Withholding

The Creditor Trustee may at any time withhold from a Distribution to any Person (except the Internal Revenue Service) amounts sufficient to pay any tax or other charge that has been or may be imposed on such Person with respect to the amount distributable or to be distributed under the income tax laws of the United States or of any state or political subdivision or entity by reason of any Distribution provided for in the Plan, whenever such withholding is determined by the Creditor Trustee (in its sole discretion) to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. The Creditor Trustee, in the exercise of its sole discretion and judgment, may enter into agreements with taxing or other authorities for the payment of such amounts that may be withheld in accordance with the provisions of Section 7.11 of the Plan. Notwithstanding the foregoing but without prejudice to the Debtors' rights, such Person shall have the right with respect to the United States, or any state, or any political subdivision of either, to contest the imposition of any tax or other charge by reason of any Distribution under the Plan.

### 7.12 No De Minimis Distributions

Notwithstanding anything to the contrary in this Plan, no cash payment of less than \$100 will be made to any Entity. No consideration will be provided in lieu of the *de minimis* distributions that are not made under Section 7.12, and the Creditor Trustee shall be authorized to remit such amounts to a charitable organization pursuant to Section 7.14.

### 7.13 Compliance with Tax Requirements

To the extent applicable, the Creditor Trustee in making Distributions under this Plan shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to this Plan shall be subject to such withholding and reporting requirements. The Creditor Trustee may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides to the Creditor Trustee the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Creditor Trustee to the appropriate authority. If the holder of an Allowed Claim fails to provide the Creditor Trustee with any information necessary to comply with any withholding requirement of any governmental unit within sixty (60) days after the date of first notification by the Creditor Trustee to the holder of the need for such information, then the holder's Distribution shall be treated as an unclaimed Distribution. The Creditor Trustee may be required to identify, by tax identification number, each holder of a Claim that receives a Distribution pursuant to the Plan. To ensure that the Creditor Trustee has a tax identification number for each holder of a Claim, Claimants will be sent a Form W-9 (or may download one at [www.irs.com](http://www.irs.com)). Claimants must return the completed and signed Form W-9 to the Creditor Trustee at the following address, postage pre-paid:

**Kenneth A. Welt  
1776 North Pine Island Road  
Suite 102  
Plantation, FL 33322**



**Tel. (954) 889-3403**  
**Fax. (954) 929-8200**  
**KAW@trusteeservices.biz**

If a Claimant does not return the completed Form W-9 to the Creditor Trustee, the Creditor Trustee is allowed to retain Distributions to Allowed Claims until the appropriate tax identification information is provided. If the Creditor Trustee requests a tax identification number from a Claimant, and the Claimant does not respond by providing it within sixty (60) days of the first request by the Creditor Trustee, the Claimant shall lose the right to receive a Distribution pursuant to the Plan.

7.14 Authority to Reserve Funds to Close These Bankruptcy Cases and to Donate Any Balance to a Charitable Organization

If at any time the Creditor Trustee determines in his sole discretion that the expense of administering the Creditor Trust so as to make a final Distribution to the beneficiaries of the Creditor Trust is likely to exceed the value of the assets remaining in the Creditor Trust, the Creditor Trustee shall apply to the Court for authority to (i) reserve any amounts necessary to close the Bankruptcy Cases, (ii) donate any balance to a charitable organization exempt from federal income tax under 501(c)(3) of the Internal Revenue Code, and (iii) close the Bankruptcy Cases in accordance with the Bankruptcy Code and Bankruptcy Rules.

7.15 Setoffs and Recoupments

The Creditor Trustee may, pursuant to Bankruptcy Code section 553 or applicable non-bankruptcy law, setoff and/or recoup against any Allowed Claim the Distributions to be made pursuant to this Plan (before any Distribution is made on account of such Claim) and the Causes of Action or Avoidance Actions that the Creditor Trustee may hold against the holder of such Allowed Claim. Neither the failure to effectuate such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Creditor Trustee of any such Causes of Action or Avoidance Actions that the Creditor Trustee may hold under Bankruptcy Code section 553 or applicable non-bankruptcy law.

## ARTICLE 8

### EXTINGUISHMENT OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES; RELEASE, EXCULPATION AND INDEMNIFICATION

8.1 Discharge

Except as otherwise provided in the Plan, the rights granted in the Plan and the treatment of all Claims and Equity Interests shall be in exchange for, and in satisfaction of, all Claims of any nature whatsoever against the Estates and the Estate Property, whether such Claims arose before or during the Bankruptcy Case or in connection with implementation of the Plan. **Pursuant to § 1141(d)(3) of the Bankruptcy Code, confirmation of this Plan will not discharge the Debtors.**

## 8.2 Releases

Except as otherwise provided for in the Plan on the Effective Date, each of the Debtors (on behalf of themselves and their respective Estates), as applicable, shall be deemed to have released each of (i) their CRO; (ii) the Committee and members of the Committee in their capacity as members of the Committee, and (iii) Professionals from any and all claims, causes of actions, and other liabilities arising during the Bankruptcy Cases before the Effective Date from any act or omission in connection with, relating to, or arising out of the Bankruptcy Cases and related proceedings, including, but not limited to, filing of the Bankruptcy Cases, administration of the Bankruptcy Cases, the Sale Transaction, the CIBC Adversary Proceeding and CIBC Application to Allow Administrative Expense Claim, formulation, negotiation, preparation, dissemination, approval, execution, administration, confirmation, implementation, or consummation of, as well as the solicitation of votes for, the Plan, Disclosure Statement, Plan Supplement (including all Distributions thereunder); **provided, however**, that the Debtors (on behalf of themselves and their respective Estates), shall not be deemed to have released any such Entity from liability for willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order.

## 8.3 Exculpation

Except as otherwise provided for in the Plan, each of (i) the Debtors' CRO, officers and directors; (ii) the Committee and members of the Committee in their capacity as members of the Committee, and (iii) Professionals shall not have or incur any liability to any holder of Claim or Equity, or any other Entity, for any act or omission in connection with, relating to, or arising out of the Bankruptcy Cases and related proceedings, including, but not limited to, filing of the Bankruptcy Cases, administration of the Bankruptcy Cases, the Sale Transaction, the CIBC Adversary Proceeding and CIBC Application to Allow Administrative Expense Claim, formulation, negotiation, preparation, dissemination, approval, execution, administration, confirmation, implementation, or consummation of, as well as the solicitation of votes for, the Plan, Disclosure Statement, Plan Supplement (including all Distributions thereunder); **except** for liability arising from willful misconduct, gross negligence or fraud as adjudicated pursuant to a Final Order; **provided, however**, that non-attorney Professionals shall not be exculpated for any claims, causes of action, or liabilities expressly excepted from their indemnification rights under their retention agreements with the Debtors approved by the Bankruptcy Court pursuant to a Final Order. In all such instances, such parties shall be and have been entitled to reasonably rely on the advice of counsel in all respects regarding their duties and responsibilities in connection with the Bankruptcy Cases and under the Plan. Nothing contained in Section 8.3 of the Plan shall prevent or limit any party's right to object to any Professional Compensation Claim asserted in the Bankruptcy Cases.

NOTWITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, NO PROVISION OF THE DISCLOSURE STATEMENT, PLAN OR THE CONFIRMATION ORDER SHALL (I) DISCHARGE OR RELEASE THE DEBTORS OR ANY OTHER PERSON OR ENTITY FROM ANY RIGHT, CLAIM, CAUSE OF ACTION, OR POWER OR INTEREST HELD OR ASSERTABLE BY THE UNITED STATES SECURITIES AND

EXCHANGE COMMISSION OR (II) ENJOIN, IMPAIR OR DELAY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION FROM COMMENCING OR CONTINUING ANY CLAIMS, CAUSES OF ACTION, PROCEEDINGS OR INVESTIGATIONS AGAINST THE DEBTORS OR ANY OTHER PERSON OR ENTITY IN ANY NON-BANKRUPTCY FORUM.

#### 8.4 CIBC Release and Injunction

**On the Effective Date, each of the Debtors (on behalf of themselves and their respective Estates), as applicable, and each holder of a Claim or Interest in each of the Debtors, shall be deemed to have released CIBC from any liability for any and all claims against CIBC relating to its pre- and post-petition lending relationship with the Debtors. On the Effective Date, CIBC shall be deemed to have released the Estates from any and all liability for any and all claims of CIBC against the Estates; provided, however, the Debtors are in compliance with their obligations under the Plan. Further, all claims of any third party against CIBC shall be permanently enjoined as of the Effective Date.**

#### 8.5 Term of Existing Injunctions or Stays

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case pursuant to Bankruptcy Code §§ 105, 362 or 524, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date, and thereafter shall be annulled.

#### 8.6 Indemnification of Creditor Trustee

The Creditor Trustee and its agents, employees, officers, members, directors, professionals and principals (collectively, the “Indemnified Parties”) shall be indemnified and held harmless by the Creditor Trust from the Creditor Trust Assets for any losses, claims, damages, costs, expenses and other liabilities, including, without limitation, reasonable attorneys’ fees, disbursements and related expenses, which the Indemnified Parties may incur, or to which the Indemnified Parties may become subject to, in connection with carrying their duties and responsibilities under the Plan and any action, suit, proceeding or investigation brought by or threatened against one or more of the Indemnified Parties on account of their acts or omissions on or after the date of this Agreement; provided, however, that the Creditor Trust shall have no obligation to indemnify any of the Indemnified Parties for any losses or claims that are adjudicated by the Bankruptcy Court, or other court having jurisdiction, resulting from any act or omission by any of the Indemnified Parties that constitutes gross negligence, recklessness or intentional or willful misconduct; provided further, that nothing in Section 8.5 of the Plan shall be deemed to restrict the Creditor Trustee’s right to receive an indemnity based on any act or omission taken in accordance with the provisions of this Plan. Notwithstanding any provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Creditor Trust to cover their expenses of defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of the Creditor Trustee in its capacity as such; provided, however, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the Creditor Trust upon the entry of a Final Order finding that such

Indemnified Parties were not entitled to indemnity under the provisions of Section 8.5 of the Plan.

## ARTICLE 9

### INJUNCTION AGAINST ENFORCEMENT OF PRECONFIRMATION CLAIMS AND EQUITY INTERESTS

#### 9.1 Injunction Enjoining Holders of Claims Against, and Equity Interests in, Debtors

Except as otherwise expressly provided in the Plan, after the Effective Date, all Persons who have been, are, or may be holders of Claims against, or Equity Interests in, the Debtors' Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets arising on or before the Effective Date shall be enjoined from taking any of the following actions against or affecting the Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets regarding such Claims or Equity Interests (other than actions brought to enforce any rights or obligations under the Plan) to the fullest extent provided under Bankruptcy Code section 524:

(i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind against the Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets (including, all suits, actions, and proceedings that are pending on the Effective Date, which shall be deemed withdrawn and dismissed with prejudice);

(ii) enforcing, levying, attaching, collecting, or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree, or order against the Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets;

(iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien against the Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets;

(iv) asserting any right of subrogation, setoff, or recoupment of any kind, directly or indirectly, against any obligation due the Estates, the Estate Property, the Creditor Trust, and the Creditor Trust Assets; and

(v) proceeding in any manner and in any place whatsoever that does not conform to or comply with the provisions of the Plan.

#### 9.2 Derivative Litigation Claims

Claims, Causes of Action, and Avoidance Actions that are derivative of or from the Debtors (the "Derivative Litigation Claim(s)") are Estate Property under Bankruptcy Code section 541. On and after the Effective Date, all such Derivative Litigation Claims, regardless of whether pending on the Petition Date, will be retained by, vest in, and/or become property of the Creditor Trust and shall be administered by the Creditor Trustee. Unless a Derivative Litigation Claim against a Creditor or other Person is expressly waived, relinquished, released,

compromised or settled in the Plan or any Final Order, such Claims, Causes of Actions, and Avoidance Actions are expressly reserved for later enforcement by the Creditor Trustee and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral, estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Claims, Causes of Action, and Avoidance Actions on or after the Confirmation of the Plan. In addition, the Creditor Trustee expressly reserves the right to pursue or adopt any claims not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Person or entity, including the plaintiffs or co-defendants in such lawsuits. All named plaintiffs in the actions pending on the Effective Date relating to any Derivative Litigation Claims and their respective servants, agents, attorneys, and representatives shall, on and after the Effective Date, be permanently enjoined, stayed, and restrained from pursuing or prosecuting any Derivative Litigation Claim and the Creditor Trustee shall be, without need of further order, substituted as plaintiff upon his request. Nothing herein shall impair claims or causes of action that any Person may have directly (as opposed to derivatively) against any other Person.

## ARTICLE 10

### RESOLUTION OF OBJECTIONS TO PROOFS OF CLAIM; ESTIMATION OF CLAIMS

#### 10.1 Right to Object to Claims

On and after the Effective Date, the Creditor Trustee shall have the sole authority and discretion to examine, object to, contest the allowance of, compromise, settle, or otherwise resolve, or withdraw any objections to, any Claims, Equity Interests, Disputed Claims or Disputed Equity Interests (except those Claims specifically Allowed by the Plan) without approval of the Bankruptcy Court.

#### 10.2 Deadline for Objecting to Claims

After the Effective Date, objections to, and requests for estimation of, Claims against and Equity Interests in the Debtors may be interposed and prosecuted only by the Creditor Trustee. Such objections and requests for estimation including, without limitation, any reduction, recharacterization, subordination or other modification in whole or in part, which may be brought by motion, objection or adversary proceeding, shall be served on the respective Claimant or Interestholder and filed with the Bankruptcy Court by the Claim Objection Deadline; otherwise such Claims and Equity Interests shall be deemed allowed in accordance with Bankruptcy Code section 502.

#### 10.3 Deadline for Responding to Claim Objections

Within thirty (30) days after service of an objection, the Claimholder or Interestholder whose Claim or Equity Interest was objected to must file a written response to the objection with the Bankruptcy Court and serve a copy on the Creditor Trustee and the parties identified in Section 13.2 of the Plan. Failure to file a written response within the thirty (30) day time period shall constitute a waiver and release of the subject Claim or Equity Interest, and shall cause the

Bankruptcy Court to enter a default judgment against the non-responding Claimholder or Interestholder granting the relief requested in the claim objection.

#### 10.4 Estimation of Claims

The Creditor Trustee may, at any time, request that the Bankruptcy Court estimate any contingent, disputed, or unliquidated Claim or Equity Interest pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether the Debtors or the Creditor Trustee have previously objected to such Claim or Equity Interest, or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim or Equity Interest at any time during the litigation concerning any objection to any Claim or Equity Interest, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, disputed, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Creditor Trustee may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claims objections, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court, except that after the Effective Date, the Creditor Trustee may compromise, settle or resolve any such Claims without Bankruptcy Court approval.

#### 10.5 Adjustment to Claims Without Objection

Any Claim that has been paid and/or satisfied pursuant to the terms of the Plan or a Final Order, or any Claim that has been amended or superseded, may be adjusted and/or expunged on the official claims register by the Creditor Trustee without a claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### 10.6 Disallowance of Claims

Any and all Claims held by an Entity from which property is recoverable under Bankruptcy Code sections 542, 543, 550, or 553, or that is a transferee of a transfer avoidable under Bankruptcy Code sections 522(f), 522(h), 544, 545, 547, 548, 549, and 724(a), shall be deemed disallowed pursuant to Bankruptcy Code section 502(d), and holders of such Claims may not vote to accept or reject the Plan or receive any Distributions on account of such Claims, both consequences to be in effect until such time as Causes of Action against that Entity have been settled or a Final Order with respect thereto has been entered and all sums due to the Debtors, the Estates or Creditor Trust by that Entity have been turned over to the Debtors or Creditor Trustee. Any and all proofs of claim filed after the relevant Bar Date shall be disallowed and expunged for all purposes, and holders of such Claims may not vote to accept or reject the Plan or receive any Distributions on account of such Claims, unless such Creditors request on or before the Confirmation Hearing that the Bankruptcy Court deem such late Claim as being timely filed pursuant to Bankruptcy Rule 9006. All Claims filed after the relevant Bar Date and are (a) not deemed timely filed pursuant to Bankruptcy Rule 9006 on or before the Confirmation Hearing or (b) not the subject of a request that the Bankruptcy Court deem such



late Claim as being timely filed pursuant to Bankruptcy Rule 9006 as of the Confirmation Hearing shall be deemed disallowed and expunged as of the Effective Date without any further notice to that Entity, or action, order, or approval of the Bankruptcy Court.

## ARTICLE 11

### RETENTION, ENFORCEMENT, COMPROMISE, OR ADJUSTMENT OF CAUSES OF ACTION BELONGING TO THE DEBTORS AND THE ESTATES

#### 11.1 Right to Enforce, Compromise, or Adjust Causes of Action

The Creditor Trustee shall have and retain the full power, authority, and standing to commence, prosecute, compromise, or otherwise resolve any Causes of Action. All proceeds derived from such Causes of Action shall revert in the Creditor Trust.

#### 11.2 Maintenance of Causes of Action

The Debtors transfer and assign to the Creditor Trust, all rights to commence and pursue, or decline to pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal including in an adversary proceeding or contested matter filed in one or more of the Bankruptcy Cases. The Debtors, through the Creditor Trustee, reserve and shall retain the foregoing Causes of Action notwithstanding the rejection of any Executory Contract during the Bankruptcy Cases. In accordance with Bankruptcy Code section 1123(b)(3), any Causes of Action that the respective Debtors may hold against any Entity shall vest in the Debtors or the Creditor Trust, as the case may be. The Creditor Trustee, as the Debtors' successor and the representative of the Creditor Trust, shall have the exclusive right, authority, standing and sole discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw, or litigate to judgment any and all such Causes of Action, and to decline to do any of the foregoing in the Creditor Trustee's business judgment without the consent or approval of any third party and without any further notice to or action, order, or approval of the Bankruptcy Court.

#### 11.3 Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action against a Creditor or other Entity is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order, the Debtors expressly reserve such Cause of Action for later enforcement by the Creditor Trustee and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral, estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Cause of Action on or after the Confirmation of the Plan. In addition, the Creditor Trustee expressly reserves the right to pursue or adopt Causes of Action or Avoidances Action not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits.



## ARTICLE 12

### RETENTION OF JURISDICTION

#### 12.1 Retention of Jurisdiction

The Bankruptcy Court, even after the Bankruptcy Case has been closed, shall have jurisdiction over all matters arising under, arising in, or relating to the Bankruptcy Case, including proceedings to:

- (a) ensure that the Plan is fully consummated and implemented;
- (b) enter such orders that may be necessary or appropriate to implement, consummate, or enforce the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;
- (c) consider any modification of the Plan under Bankruptcy Code section 1127;
- (d) hear and determine all Claims, controversies, suits, and disputes against the Debtors to the full extent permitted under 28 U.S.C. §§ 157 and 1334;
- (e) allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim, including the resolution of any and all objections to the allowance or priority of Claims;
- (f) hear, determine, and adjudicate any litigation involving the Causes of Action and Avoidance Actions or other claims constituting Estate Property;
- (g) decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any motions or applications involving the Debtors that are pending on or commenced after the Effective Date;
- (h) resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan, or any entity's obligations incurred in connection with the Plan, or any other agreements governing, instruments evidencing, or documents relating to any of the foregoing, including the interpretation or enforcement of any rights, remedies, or obligations under any of the foregoing;
- (i) hear and determine all controversies, suits, and disputes that may arise out of or in connection with the enforcement of any subordination and similar agreements among Creditors under Bankruptcy Code section 510;

- (j) hear and determine all requests for compensation and/or reimbursement of expenses that may be made for fees and expenses incurred before the Effective Date;
- (k) enforce any Final Order, the Confirmation Order, the final decree, and all injunctions contained in those orders;
- (l) enter an order concluding and terminating the Bankruptcy Case;
- (m) correct any defect, cure any omission, or reconcile any inconsistency in the Plan, or the Confirmation Order, or any other document or instruments created or entered into in connection with the Plan;
- (n) determine all questions and disputes regarding title to the Estate Property;
- (o) classify the Claims of any Claimholders and the treatment of those Claims under the Plan, re-examine Claims that may have been allowed for purposes of voting, and determine objections that may be filed to any Claims;
- (p) take any action described in the Plan involving the Debtors;
- (q) enter and implement such orders that are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
- (r) hear, determine and adjudicate any motions, contested or litigated motions brought pursuant to Bankruptcy Code section 1112;
- (s) hear, determine, and adjudicate all matters the Bankruptcy Court has authority to determine under Bankruptcy Code section 505, including determining the amount of any unpaid liability of the Debtors or the Estates for any tax incurred or accrued during the calendar year in which the Plan is confirmed;
- (t) enter a final decree as contemplated by Bankruptcy Rule 3022; and
- (u) hear, determine, and adjudicate any and all claims brought pursuant to the Plan.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

#### 13.1 Confirmation Order

The Confirmation Order shall contain all injunctions and other orders that may be necessary to implement the Plan. To the extent necessary, the Confirmation Order shall contain

any provisions necessary to provide for the substantial consummation of the Plan on the Effective Date.

### 13.2 Notices

Except as otherwise specifically provided for in the Plan, whenever a notice is required to be given under the Plan or otherwise, such notice shall be given to the following parties at their respective addresses, unless a prior notice of change of address has been served on the parties identified in this Section 13.2 indicating a new address:

The Debtors:

Mr. Frank Jaumot  
Chief Restructuring Officer  
Ahearn Jasco & Company, P.A.  
190 Southeast 19th Avenue  
Pompano Beach, FL 33060  
Facsimile: (954) 301-5708  
Email: [frank@ahearncpa.com](mailto:frank@ahearncpa.com)

-and-

Berger Singerman. P.A  
200 South Biscayne Blvd., Suite 1000  
Miami, FL 33131  
Facsimile: (305) 714-4340  
Email: [jguso@bergersingerman.com](mailto:jguso@bergersingerman.com)  
Attn: Jordi Guso, Esquire

The Official Committee of Unsecured Creditors:

Arent Fox LLP  
1675 Broadway  
New York, NY 10019-5820  
Facsimile: (212) 484-3990  
Email: [angelich.george@arentfox.com](mailto:angelich.george@arentfox.com)  
Attn: George P. Angelich, Esquire

-and-

Genovese Joblove & Battista, P.A.  
100 S.E. Second Street, 44th Floor  
Miami, Florida 33131  
Facsimile: (305) 349-2310  
Email: [gmoses@gjb-law.com](mailto:gmoses@gjb-law.com)  
Attn: Glenn D. Moses, Esq.

Creditor Trustee:

Kenneth A. Welt  
1776 North Pine Island Road  
Suite 102  
Plantation, FL 33322  
Facsimile: (954) 929-8200  
Email: [KAW@trusteeservices.biz](mailto:KAW@trusteeservices.biz)

The Office of the United States Trustee:

Office of the United States Trustee  
51 S.W. First Avenue  
Room 1204  
Miami, Florida 33130  
Facsimile: (305) 536-7360  
Email: [Zana.M.Scarlett@usdoj.gov](mailto:Zana.M.Scarlett@usdoj.gov)  
Attn: Zana M. Scarlett, Esquire

### 13.3 Dates

The provisions of Bankruptcy Rule 9006 shall govern the calculation of any dates or deadlines referenced in the Plan.

### 13.4 Further Action

Nothing contained in the Plan shall prevent the Debtors or the Creditor Trustee from taking any actions that may be necessary to consummate the Plan, even though such actions may not specifically be provided for in the Plan.

### 13.5 Exhibits

All exhibits attached to the Plan are incorporated in the Plan by reference and are an integral part of the Plan as though fully set forth herein.

### 13.6 Binding Effect

The Plan shall be binding on, and inure to the benefit of, the Debtors, the Committee, the Claimholders and Interestholders, all other parties in interest and their respective executors, successors, heirs, and assigns, regardless of whether those parties voted, or had a right to vote, to accept the Plan.

### 13.7 Deemed Consent

By submitting a Ballot or receiving a Distribution under, or any benefit pursuant to, the Plan, each holder of a Claim shall be deemed to have specifically consented to the terms of the Plan, including treatment and any release and exculpation provisions contained herein.

13.8 Governing Law

Except to the extent that the Bankruptcy Code, Bankruptcy Rules, or other non-bankruptcy federal law are applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida, without giving effect to any conflicts of law principles.

13.9 Severability

If the Bankruptcy Court determines that any provision of this Plan is unenforceable either on its face or as applied to any Claim transaction, the Plan Proponent may modify this Plan in accordance with Section 13.14. Such a determination of unenforceability shall not (i) limit or effect the enforceability and operative effect of any other provision of this Plan or (ii) require the re-solicitation of any acceptance or rejection of this Plan.

13.10 Waiver of Taxes

The making or delivery of an instrument of transfer under this Plan, including, but not limited to, the issuance, transfer or exchange of any security under this Plan, may not be taxed under any law imposing a stamp or similar tax.

13.11 Rounding of Amounts

Notwithstanding anything to the contrary in the Plan, the Creditor Trustee may round down all Distribution amounts payable in Cash under the Plan to the next lowest whole dollar amount.

13.12 Withdrawal or Revocation of the Plan

The Plan Proponent reserves the right to revoke or withdraw the Plan before the Confirmation Date. If the Plan Proponent revokes or withdraws the Plan, then the Plan shall be null and void, and nothing contained in the Plan shall constitute a waiver or release of any Claims, or prejudice in any manner to the rights of the Plan Proponent, the Debtors or any other Entity.

13.13 Reservation of Rights

Neither the filing of the Plan nor any statement or provision contained in the Plan, or in the Disclosure Statement or the Plan Supplement, nor the taking of any action with respect to the Plan, shall (i) be or be deemed to be an admission against interest and (ii) until the Effective Date, be or be deemed to be a waiver of any rights (a) against any other person or (b) in any of the property and assets of any other Person, and, until the Effective Date, all such rights are specifically reserved.

13.14 Defects, Omissions, and Amendments

The Plan Proponent may, with the approval of the Bankruptcy Court and without notice to holders of Claims, insofar as it does not materially and adversely affect holders of Claims,

correct any defect, omission, or inconsistency in the Plan in such a manner and to such extent necessary or desirable to expedite the execution of the Plan. The Plan Proponent may propose amendments or alterations to the Plan before or after confirmation as provided in Bankruptcy Code section 1127 if, in the opinion of the Bankruptcy Court, the modification does not materially and adversely affect the interests of holders of Claims, so long as the Plan, as modified, complies with Bankruptcy Code sections 1122 and 1123 and the Plan Proponent has complied with Bankruptcy Code section 1125. The Plan Proponent may propose amendments or alterations to the Plan before or after the Confirmation Date but prior to substantial consummation, in a manner that, in the opinion of the Bankruptcy Court, does not materially and adversely affect holders of Claims, so long as the Plan, as modified, complies with Bankruptcy Code sections 1122 and 1123, the Plan Proponent has complied with Bankruptcy Code section 1125, and after notice and a hearing, the Bankruptcy Court confirms such Plan, as modified, under Bankruptcy Code section 1129.

#### 13.15 Good Faith

The Plan Proponent will seek a finding in the Confirmation Order that (i) the Plan has been proposed in good faith and in compliance with the provisions of the Bankruptcy Code and (ii) the solicitation of acceptances or rejections of the Plan by all Persons and the offer, issuance, sale, or purchase of any security offered or sold under the Plan has been in good faith and in compliance with applicable provisions of the Bankruptcy Code.

### ARTICLE 14

#### CONDITIONS TO EFFECTIVENESS OF THE PLAN

##### 14.1 Conditions Precedent to Effective Date of Plan

The occurrence of the Effective Date and the Consummation of the Plan are subject to satisfaction of the following conditions precedent:

1. Confirmation Order. The Confirmation Order as entered by the Bankruptcy Court shall be a Final Order in full force and effect, in form and substance acceptable to the Committee.
2. Creditor Trust and Appointment of Creditor Trustee. The Creditor Trust shall be created pursuant to the terms of the Plan, and the appointment of the Creditor Trustee shall be approved by the Bankruptcy Court.
3. Execution of Documents; Other Actions. All actions, documents, and agreements necessary to implement the Plan shall have been effected or executed, including the Creditor Trust Agreement.
4. CIBC Payment. CIBC Payment shall be received in accordance with Section 6.10 of the Plan.

14.2 Waiver of Conditions Precedent

To the extent practicable and legally permissible, each of the conditions set forth in 14.1, other than 14.1.1, may be waived, in whole or in part, by the Committee.

**ARTICLE 15**

**REQUEST FOR CONFIRMATION OF THE PLAN**

15.1 Request for Confirmation of the Plan

The Committee requests confirmation of the Plan under sections 1129(a) and/or 1129(b) of the Bankruptcy Code, as appropriate.

DATED: December ~~20~~22, 2010

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS

By: /s/ \_\_\_\_\_  
Its: Chair

ATTORNEYS FOR THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS

**ARENT FOX LLP**

George P. Angelich, Esq.  
1675 Broadway  
New York, New York 10019  
Telephone: (212) 484-3900

and

**GENOVESE JOBLOVE & BATTISTA, P.A.**

Glenn D. Moses, Esq.  
100 S.E. Second Street, 44th Floor  
Miami, Florida 33131  
Telephone: (305) 349-2300



**EXHIBIT A**

**GLOSSARY OF DEFINED TERMS**

Defined terms appear below:

1) “Administrative Expense Claim” means any right to payment constituting a cost or expense of administration of Bankruptcy Cases under sections 330, 503(b), and 1114(e)(2) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(2) of the Bankruptcy Code, including, without limitation, (a) any actual and necessary costs and expenses of preserving the Debtors’ Estates, (b) any actual and necessary costs and expenses of operating the Debtors’ businesses, (c) any indebtedness or obligations incurred or assumed by the Debtors during the Bankruptcy Cases, and (d) Professional Compensation Claims; (e) all obligations designated as Allowed Administrative Expense Claims pursuant to an order of the Bankruptcy Court; and (f) any fee or charge assessed against the Debtors’ Estates under section 1930 of chapter 123 of Title 28 of the United States Code; provided, however, such Administrative Expense Claims must be filed by the Administrative Expense Claim Bar Date or the Professional Compensation Bar Date, as applicable.

2) “Administrative Expense Claim Bar Date” means April 30, 2010; provided, however, that the Administrative Expense Claim Bar Date does not apply to Professional Compensation Claims.

3) “Administrative Tax Claim” means an Administrative Expense Claim held by a Governmental Unit for taxes (and for any interest related to such taxes) for any tax year or period, all or any portion of that accrued or became due on or after the Petition Date through and including the Effective Date.

4) “Acquired Assets” has the meaning prescribed in Section 2.1 of the Asset Purchase Agreement.

5) “Affiliate” means any Entity that is an affiliate of the Debtors within the meaning of 11 U.S.C. § 101(2).

6) “Allowance Date” means (a) as to a Disputed Claim, the date on which such Disputed Claim becomes an Allowed Claim by Final Order; (b) as to a Claim Allowed by Final Order, the date on which the Claim becomes an Allowed Claim under the Final Order; and (c) as to any other Claim, the date on which such Claim became an Allowed Claim in accordance with the Plan.

7) “Allowed” means, subject to Section 10.1 of the Plan, with respect to any Claim against or Equity Interest in the Debtors, a Claim or Equity Interest allowable under 11 U.S.C. § 502(a), (a) any Claim against any Debtor that has been listed by the Debtors in the Schedules (as such Schedules may be amended by the Debtors from time-to-time in accordance with Bankruptcy Rule 1009) as liquidated in amount and not disputed or contingent and for which no contrary proof of Claim has been filed or no timely objection to allowance or request for estimation has been interposed, (b) any timely filed proof of Claim as to which no objection has been or is interposed in accordance with Section 10.2 of the Plan or such other applicable period

of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder of such Claim, (c) any Claim expressly allowed by a Final Order or under the Plan, (d) any Claim that is compromised, settled or otherwise resolved pursuant to a Final Order of the Bankruptcy Court, or under Section 10.1 of the Plan. Unless otherwise specified in the Plan or by order of the Bankruptcy Court, “Allowed Administrative Expense Claim” or “Allowed Claim” shall not, for any purpose under the Plan, include interest on such Claim from and after the Commencement Date. In addition, for purposes of determining the amount of an Allowed Claim (other than a Claim specifically Allowed under the Plan), there shall be deducted therefrom an amount equal to the amount of any claim that the Debtors may hold against the Creditor under 11 U.S.C. § 553.

8) “Asset Purchase Agreement” means that certain Second Amended and Restated Asset Purchase Agreement dated as of February 19, 2010 between the Debtors and PPE for the sale of substantially all of the Debtors’ assets, which sale closed on March 5, 2010.

9) “Assumed Executory Contracts” means, collectively, the Executory Contracts that (a) will or have been assumed by a Final Order, including the Confirmation Order; (b) are deemed assumed pursuant to the Plan; or (c) are the subject of a motion to assume pending on or before the Effective Date.

10) “Assumption Schedule” means the schedule to be filed with the Bankruptcy Court identifying those Executory Contracts to be assumed by the Debtors under the Plan.

11) “Avoidance Action(s)” means any and all Causes of Action and rights to recover or avoid transfers or to avoid any lien under Chapter 5 of the Bankruptcy Code or otherwise, including, but not limited to, sections 506, 510, 522, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code, and the proceeds thereof, or otherwise to exercise the avoidance powers provided under the Bankruptcy Code; provided, however, that Avoidance Actions shall not include any rights, claims, or causes of action of the Debtors that constitute “Acquired Assets” pursuant to the Asset Purchase Agreement, but shall not include any of the Debtors’ or the Estates’ claim, counterclaim, setoff or offset right, or Cause of Action solely (and for no other purpose than) as a defense or objection to a proof of claim filed in these Bankruptcy Cases. The Debtors’ Schedules of Assets and Liabilities and Statements of Financial Affairs indicate transfers of property were made in the one year prior to the Petition Date; those transfers appear to involve preferential payments that are potentially recoverable under the Bankruptcy Code and relevant state law. In addition, there were transfers of property in the relevant statutory periods under state and federal law for purposes of meeting the definition of fraudulent conveyance and fraudulent transfer. All such Avoidance Actions are expressly preserved for post-confirmation investigation and prosecution under the Plan.

12) “Ballot” means the ballot for voting to accept or reject the Plan.

13) “Bankruptcy Cases” means the bankruptcy cases filed by the Debtors under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, which are jointly administered under Bankruptcy Case No. 10-10711-BKC-JKO.

- 14) “Bankruptcy Code” means title 11 of the United States Code.
- 15) “Bankruptcy Court” or “Court” means the United States Bankruptcy Court for the Southern District of Florida, Ft. Lauderdale Division, or, in the event that court ceases to exercise jurisdiction over the Bankruptcy Cases, such court that may have jurisdiction over the reorganization of the Debtors under chapter 11 of the Bankruptcy Code.
- 16) “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure and the Local Rules.
- 17) “Bar Date” means May 18, 2010, the deadline established by the Bankruptcy Court for filing proofs of claim in the Bankruptcy Cases for all non-governmental creditors, and July 12, 2010 for governmental creditors.
- 18) “Board of Directors” means the Board of Directors of PPOA Holding, Inc.
- 19) “Business” means all of the business activities in which the Debtors are, or have been, engaged on or before the Effective Date.
- 20) “Business Day” means any day other than a Saturday, Sunday, or a “legal holiday” (as defined in Bankruptcy Rule 9006(a)).
- 21) “Cash” means legal tender of the United States of America and equivalents thereof, including readily marketable direct obligations of the United States of America, certificates of deposit issued by federally insured banks, and money market accounts of federally insured banks.
- 22) “Cash Collateral” has the meaning prescribed in 11 U.S.C. § 363(a).
- 23) “Cause(s) of Action” means (except as expressly provided otherwise in the Plan, the Confirmation Order, or any document, instrument, release, or agreement entered into in connection with the Plan) all claims, third-party claims, counterclaims, cross-claims, setoff, offset, or other defenses, all choate and inchoate actions, rights of action, causes of action, causes in action, choses in action, Avoidance Actions, suits, debts, dues, sums of money, accounts, rights to payment, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, whether fixed, contingent, matured or unmatured, disputed or undisputed, secured or unsecured, and whether asserted or unasserted, known or unknown, direct or indirect, derivative, or otherwise, and the proceeds thereof, of, or belonging to, the Debtors or the Estates, that are or may be pending on the Effective Date, or instituted by the Creditor Trustee (on behalf of the Creditor Trust) after the Effective Date, against any Entity, based in law or equity, including, but not limited to, under the Bankruptcy Code or any applicable state law, whether asserted, commenced, or filed in the Bankruptcy Court, or any other court or tribunal; provided, however, that Causes of Action shall not include any rights, claims, or causes of action of the Debtors that constitute “Acquired Assets” pursuant to Section 2.1 of the Asset Purchase Agreement. Causes of Action include, without limitation, those which are: (i) property of the Estates under and pursuant to section 541 of the Bankruptcy Code; (ii) for subrogation and contribution; (iii) for turnover; (iv) for avoidable transfers and preferences under and pursuant to sections 542 through 550 and 553 of

the Bankruptcy Code and applicable state law; (v) to determine the extent, validity and priority of liens and encumbrances; (vi) for surcharge under section 506(c) of the Bankruptcy Code; (vii) for recharacterization and/or subordination under section 510 of the Bankruptcy Code; (viii) related to federal or state securities laws; (ix) direct or derivative claims or causes of action of any type or kind; (x) against any and all current and/or former officers and directors of the Debtors, ~~including but not limited to R. Patrick Caldwell, Stephen Giordanella, Larry Moeller, Neil E. Schwartzman, Jason A. Williams, Brian L. Stafford, Henry H. Shelton, Frank E. Jaumot, Keith J. Engel, Richard P. Torykin, Sr., Charles E. Peters, Jr., and Deon Vaughan,~~ and any of their affiliates, insiders, successors, and subsequent transferees, for, among other things, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence, misrepresentation, or breach of contract, regardless of whether or not such Causes of Action are specifically enumerated herein, in the Disclosure Statement, or elsewhere (the “D&O Claims”), subject to the Release and Exculpation contained in Sections 8.2 and 8.3 of the Plan; (xi) under and pursuant to any policies for insurance (including for bad faith) maintained by the Debtors, including, without limitation, any liability insurance policy and/or D&O Policies; (xii) claims against PPE, Farlie, Turner & Co., LLC, Bayshore Partners, LLC, and any of their affiliates, insiders, successors, and subsequent transferees, under any theory of liability, including without limitation negligence, misrepresentation, or breach of contract, regardless of whether or not such Causes of Action are specifically enumerated herein, in the Disclosure Statement, or elsewhere; (xiii) for theft of corporate opportunity; (xiv) for collection on accounts, accounts receivables, loans, notes receivables or other rights to payment; (xv) for the right to seek a determination by the Bankruptcy Court of any tax, fine or penalty relating to a tax, or any addition to a tax, under section 505 of the Bankruptcy Code; (xvi) which arise under or as a result of any section of the Bankruptcy Code; (xvii) for common law torts or aiding and abetting common law torts.

24) “CIBC” means Canadian Imperial Bank of Commerce and all affiliates and related parties.

25) “CIBC Adversary Proceeding” means Adversary Proceeding No. 10-02832 pending in the Bankruptcy Court, commenced on April 9, 2010 by CIBC against the Debtors and the Committee.

26) “CIBC Application to Allow Administrative Expense Claims” means that certain CIBC’s Application to Allow Administrative Expense Claims filed on April 30, 2010 [ECF No. 207, Case No 10-10711].

27) “CIBC Claim” means all Claims of CIBC unless otherwise expressly indicated.

28) “CIBC Conditional Payment Stipulation” means that certain Stipulation Concerning (i) Conditional Payment of CIBC’s Claim; and (ii) Extension of the Committee’s (A) Challenge Deadline to Investigate, Assert, and Prosecute Certain of the Debtors’ and Estates’ Claims and Causes of Action, and (B) Time to File a Responsive Pleading to the Complaint; and (C) Time to Supplement the Committee’s Motion to Vacate the Interim DIP Financing Orders, dated as of June 3, 2010, by and between CIBC, the Committee and the Debtors, and approved by the Bankruptcy Court on June 4, 2010 [ECF No. 14, Adv. No. 10-02832] (the “Order Approving CIBC Conditional Payment Stipulation”), whereby CIBC received \$8,471,192.01, constituting its secured claim, less attorneys fees and expenses, and agreed to make CIBC

Payment. The CIBC Conditional Payment Stipulation and Order Approving CIBC Conditional Payment Stipulation are attached to the Disclosure Statement as **Exhibit C**.

29) “CIBC Payment” means the payment of one hundred thousand dollars (\$100,000.00) by CIBC to the attorneys for the Committee as provided in Section 6.10 of the Plan, which is a reallocation and gift from CIBC’s collateral solely for the benefit of holders of Allowed General Unsecured Claims.

30) “CIBC Pre-Petition Credit Facility” means the credit facility between CIBC and the Debtors including the 2004 credit agreement and subsequent amending credit agreements, including the Amended and Restated Credit Agreement, dated as of January 30, 2009, which gave rise to the CIBC Claim.

31) “Claim” has the meaning specified in 11 U.S.C. § 101(5) and includes, without limitation, (a) any right to payment from a Debtor whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; (b) any right to an equitable remedy for breach of performance if such performance gives right to a right of payment from a Debtor, whether or not such right is reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; (c) CIBC Claim; and (d) Unsecured Claims of Subordinated Debentures.

32) “Claimant” or “Claimholder(s)” means the holder(s) of a Claim.

33) “Claim Objection Deadline” means the latest of: (i) one hundred and eighty (180) days after the Effective Date or (ii) such later date as may be fixed upon application to the Bankruptcy Court.

34) “Class” means a category of Claims or Equity Interests as described in the Plan.

35) “Committee” means the official committee of unsecured creditors appointed in the Bankruptcy Cases.

36) “Confirmation Date” means the date the Confirmation Order is entered on the docket of the Bankruptcy Cases.

37) “Confirmation Hearing” means the hearing held by the Bankruptcy Court to consider confirmation of the Plan.

38) “Confirmation Hearing Date” means the date established by the Bankruptcy Court for the Confirmation Hearing.

39) “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan in accordance with the provisions of chapter 11 of the Bankruptcy Code.

40) “Consummation” means the occurrence of the Effective Date.

- 41) “Creditor” has the meaning specified in 11 U.S.C. § 101(10).
- 42) “Creditor Trust” means the trust to be created on the Effective Date pursuant to the Creditor Trust Agreement and this Plan.
- 43) “Creditor Trust Agreement” means the trust agreement that documents the powers, duties and responsibilities of the Creditor Trustee, and which agreement will be filed with the Bankruptcy Court by the Plan Supplement Filing Date and incorporated in the Confirmation Order.
- 44) “Creditor Trust Assets” means all assets transferred to or acquired by the Creditor Trust including without limitation (i) Estate Property, (ii) Remaining Assets, (iii) any Cash or cash equivalents held or maintained in any accounts of the Debtors; (iv) CIBC Payment; and (v) the Net Administrative and Priority Claims Fund.
- 45) “Creditor Trustee” means the trustee for the Creditor Trust pursuant to the terms of, and for the purposes set forth in, the Plan, the Creditor Trust Agreement, and Confirmation Order; in this case Kenneth A. Welt in capacity as the Creditor Trustee of the Creditor Trust, as will be identified in the Plan Supplement.
- 46) “Cure” means the amount of Cash required to cure defaults necessary to assume or assume and assign an Executory Contract under 11 U.S.C. § 365(b) as determined by the Bankruptcy Court or pursuant to any agreement among the Debtors and the other Party(ies) to the Executory Contract.
- 47) “Debtors” or “Debtors in Possession” means, collectively, PPOA Holding, Inc., f/k/a Protective Products of America, Inc. (9709); CPC Holding Corporation of America (8086); CP Corporation of America, Inc. f/k/a Ceramic Protection Corporation of America (7305); PPI International Corp. f/k/a Protective Products International Corp. (7373); PPNC, LLC f/k/a Protective Products of North Carolina, LLC (0927).
- 48) “Deficiency Claim” means any portion of a Claim (a) to the extent the value of the holder’s interest in the Estate Property securing such Claim is less than the amount of such Claim or (b) to the extent the amount of a Claim subject to setoff is less than the amount of the Claim, each as determined by the Bankruptcy Court under 11 U.S.C. § 506(a).
- 49) “Derivative Litigation Claim” means any claim, cause of action, demand, or any other right to payment derivative of or from the Debtors that are property of their Estates under 11 U.S.C. § 541.
- 50) “Disclosure Statement” means the disclosure statement (including all exhibits and schedules thereto or referenced therein) regarding the Plan, as may be amended, modified, or supplemented and as approved by the Bankruptcy Court.
- 51) “Disclosure Statement Approval Date” means the date the Disclosure Statement Approval Order is entered on the docket of the Bankruptcy Cases.



52) “Disclosure Statement Approval Order” means the order of the Bankruptcy Court approving the Disclosure Statement and authorizing the solicitation of acceptances of the Plan.

53) “Disputed Claim” means, subject to Section 10.1 of the Plan, (i) a Claim in a particular Class as to which a proof of claim has been filed or scheduled is deemed to have been filed under applicable law or (ii) an Administrative Expense Claim, as to which an objection has been or is filed in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, which objection has not been withdrawn or determined by a Final Order. For the purposes of the Plan, a Claim is a Disputed Claim prior to any objection to the extent that (a) the amount of a Claim specified in a proof of claim exceeds the amount of any corresponding Claim scheduled by the applicable Debtor in the Schedules of Assets and Liabilities; (b) any corresponding Claim scheduled by the applicable Debtor in the Schedules of Assets and Liabilities has been scheduled as disputed, contingent or unliquidated, irrespective of the amount scheduled; or (c) no corresponding Claim has been scheduled by the applicable Debtor in the Schedules of Assets and Liabilities.

54) “Disputed Claim Reserve” means Cash that the Creditor Trustee shall hold in reserve to protect the interests of holders of Disputed Claims in an amount determined by the Creditor Trustee, in his sole discretion, that represents the Pro Rata Share of the Cash that would otherwise be distributed to each holder of Disputed Claim if such Claim was Allowed, and after the Allowance Date, the appropriate Distribution shall be made under the Plan. The Disputed Claim Reserve shall also include an amount calculated by the Creditor Trustee to satisfy anticipated expenses of the Creditor Trust and to pay anticipated tax liabilities of the Creditor Trust.

55) “Disputed Equity Interest” means, subject to Section 10.1 of the Plan, (i) an Equity Interest in a particular Class as to which a proof of interest has been filed or scheduled is deemed to have been filed under applicable law, as to which an objection has been or is filed in accordance with the Plan, the Bankruptcy Code, the Bankruptcy Rules, which objection has not been withdrawn or determined by a Final Order. For the purposes of the Plan, an Equity Interest is a Disputed Equity Interest prior to any objection to the extent that (a) the amount of an Equity Interest specified in a proof of interest exceeds the amount of any corresponding Equity Interest scheduled by the applicable Debtor in the Schedules of Equity Interests; (b) any corresponding Equity Interest scheduled by the applicable Debtor in the Schedules of Equity Interests has been scheduled as disputed, contingent or unliquidated, irrespective of the amount scheduled; or (c) no corresponding Equity Interest has been scheduled by the applicable Debtor in the Schedules of Equity Interests.

56) “Distribution(s)” means the disbursement of Cash or non-Cash consideration, or other assets of the Estates, or corpus of the Creditor Trust to holders of Allowed Claims pursuant to the Plan.

57) “Distribution Date” means any date that a Distribution is made under the Plan.



58) “Distribution Record Date” means the record date for determining entitlement to receive Distributions under the Plan on account of Allowed Claims, which date shall be the date that is thirty (30) calendar days prior to each Distribution Date.

59) “D&O Policies” means that certain Management Liability and Company Reimbursement Binder, dated February 28, 2009, provided by XL Specialty Insurance Company to Protective Products of America, Inc., Policy No. ELU109986-09, as well as any other amendments, endorsements, or similar policies, including that certain D&O Policy extension the Management Liability and Company Reimbursement Run-Off Binder dated February 24, 2010, with a run-off date of February 25, 2012.

60) “Effective Date” means the first Business Day following the Confirmation Date on which (a) the Confirmation Order is not stayed and (b) all conditions to the effectiveness of the Plan have been satisfied or waived as provided in the Plan.

61) “Entity” means an “entity” as the term is defined in section 101(41) of the Bankruptcy Code.

62) “Equity Interest” means, subject to Section 10.1 of the Plan, (a) all issued, unissued, authorized or outstanding capital stock, partnership interests, membership interests, and any other equity security (as defined in 11 U.S.C. § 101(16)) in any of the Debtors and (b) all warrants, options, and rights (whether fixed or contingent, matured or unmatured, disputed or undisputed), whether contractual, legal, equitable, or otherwise to acquire such equity interests.

63) “Estates” means the bankruptcy estate of each of the Debtors and all Estate Property comprising the individual bankruptcy estates of each of the Debtors within the meaning of 11 U.S.C. § 541.

64) “Estate Property” means all right, title, and interest in and to any and all property of every kind or nature, owned by the Debtors or their Estates on the Effective Date as defined by 11 U.S.C. § 541 and includes, without limitation, Avoidance Actions, Causes of Action, Sale Proceeds Escrow, Remaining Assets, Income Tax Refunds, Excluded Assets as the term is defined in Section 2.2 of the Asset Purchase Agreement, and all rights and Causes of Action under any of the Debtors’ insurance policies, including the D&O Policies.

65) “Excluded Assets” has the meaning prescribed in Section 2.2 of the Asset Purchase Agreement.

66) “Exclusive Period” means the first 120 days after the Petition Date during which only the Debtors may file a chapter 11 plan as provided for in 11 U.S.C. § 1121, including any extension of that period as ordered by the Bankruptcy Court.

67) “Executory Contracts” means executory contracts and unexpired leases as such terms are used in 11 U.S.C. § 365, including all operating leases, capital leases, and contracts to which any Debtor is a party or beneficiary on the Confirmation Date.

68) “Existing Securities” means the Equity Interests and any other note, bond, indenture, or other instrument or document evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors.

69) “Final Order” means an order or judgment (a) as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired; or (b) in the event an appeal, writ of certiorari, or motion for reargument or rehearing has been filed, such judgment or order has not been reversed, modified, stayed, or amended.

70) “Final Decree” means an order closing the Bankruptcy Cases and indicated that the Estates are fully administered.

71) “GAAP” means the generally accepted accounting principles described in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or in such other statements by such other entity as approved by a significant segment of the accounting profession that are in effect in the United States).

72) “General Unsecured Claim” means an Unsecured Claim against any of the Debtors that is not (a) an Administrative Expense Claim, (b) an Administrative Tax Claim, (c) a Professional Compensation Claim, (d) a CIBC Claim or a Secured Claim, (e) a Priority Unsecured Tax Claim, (f) a Priority Unsecured Non-Tax Claim, (g) an Unsecured Claim of Subordinated Debentures, (h) an Intercompany Claim, (i) a Subordinated Claim, or (j) an Equity Interest.

73) “Governmental Unit” has the meaning prescribed in 11 U.S.C. § 101(27).

74) “Governmental Unit Bar Date” means July 12, 2010, the deadline for Governmental Units to file proofs of claim in the Bankruptcy Cases.

75) “Impaired” or “Impairment” has the meaning prescribed in 11 U.S.C. § 1124.

76) “Income Tax Refunds” means all refunds of tax that may be paid to any of the Debtors, their subsidiaries, and consolidated, combined or unitary tax group, whether Federal, state or local, including, without limitation, (a) as a result of a carryback (including a carryback pursuant to an election under Tax Code Section 172(b)(1)(H)) by the Debtors and/or their subsidiaries of NOLs and alternative minimum tax NOLs incurred in recent years, including 2008, 2009 and/or 2010, the amount and timing of any such refund(s) being uncertain as of the date hereof, and (b) the right to collect the Debtors’ portion of certain Cash Tax Refunds, as the term is defined in Section 10.10(g) of the Asset Purchase Agreement. The Potential Additional Purchase Price From Sale of Tax Refunds is attached to the Disclosure Statement as **Exhibit D**.

77) “Insider” has meaning prescribed in 11 U.S.C. § 101(31).

78) “Intercompany Claim(s)” means any Claim or Cause of Action held by any Debtor against any Debtor accruing before or after the Petition Date, including, but not limited

to, any claim for reimbursement, payment as guarantor or surety, any claim for contribution and expenses that were allocable between or among the Debtors.

79) “Interestholder” means the holder of an Equity Interest.

80) “IRS” means the United States Internal Revenue Service.

81) “Lien” means a lien, security interest, or other interest or encumbrance as defined in 11 U.S.C. § 101(37) asserted against any Estate Property.

82) “Local Rules” means the local bankruptcy rules prescribed by the Bankruptcy Court.

83) “Net Administrative and Priority Claims Fund” means the reserve maintained by the Creditor Trustee consisting of (a) the Debtors’ Cash and (b) the unused retainers and deposits in the amount which the Committee shall determine to be reasonable and necessary on the Effective Date to satisfy Administrative Expense Claims, including Professional Compensation Claims and Administrative Tax Claim, and Priority Unsecured Tax Claims; provided, however, that the Cash remaining in the Net Administrative and Priority Claims Fund after all Administrative Expense Claims, all Administrative Tax Claims, all Professional Compensation Claims, and All Priority Unsecured Tax Claims have either been (i) paid in full to the extent Allowed, or (ii) disallowed by Final Order, shall be transferred to the Creditor Trust.

84) “Order” means an order or judgment of the Bankruptcy Court.

85) “Person” means a “person” as the term is defined in section 101(41) of the Bankruptcy Code and includes natural persons, corporations, limited partnerships, general partnerships, joint ventures, trusts, land trusts, business trusts, unincorporated organizations, or other legal entities, regardless of whether they are governments, agencies, or political subdivisions thereof.

86) “Petition Date” means January 13, 2010, the date of filing of the Bankruptcy Cases.

87) “Plan” means the Plan of Liquidation for the Debtors Proposed by the Official Committee of Unsecured Creditors dated November 3, 2010, as such document may be periodically amended or modified in accordance with its terms.

88) “Plan Documents” means, collectively, those material documents to be executed in order to consummate the transactions contemplated under the Plan, which will be filed with the Bankruptcy Court on or before the date that is ten (10) days before the Confirmation Hearing.

89) “Plan Proponent” means the Committee.

90) “Plan Supplement” means the supplement to the Plan that contains the forms of the Creditor Trust Agreement, which will be filed on or before the Plan Supplement Filing Date.

91) “Plan Supplement Filing Date” means the date by which the Plan Supplement, any Exhibits or Plan Schedules not filed with the Plan shall be filed with the Bankruptcy Court. This date shall be not less than 10 days before the Confirmation Hearing Date.

92) “Post-Confirmation Professionals” means any professionals engaged after the Confirmation Date by the Creditor Trustee.

93) “PPE” means Protective Products Enterprises, Inc., a Delaware corporation, an affiliate of Sun Capital Partners Group V, Inc.

94) “Priority Unsecured Non-Tax Claim” means an Unsecured Claim, or that portion thereof, that is entitled to priority in payment under 11 U.S.C. § 507(a)(2)-(7) and 507(a)(9)-(10).

95) “Priority Unsecured Tax Claim” means an Unsecured Claim, or that portion thereof, that is entitled to priority in payment under 11 U.S.C. § 507(a)(8).

96) “Proceeds” means the funds realized by the Estates or the Creditor Trust from a sale, lease, settlement, adjudication, or other disposition of the Estate Property, Remaining Assets, or Creditor Trust Assets.

97) “Professional” means any professional employed in the Bankruptcy Cases under 11 U.S.C. §§ 327, 328, or 1103, or seeks compensation or reimbursement of expenses in connection with the Bankruptcy Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

98) “Professional Compensation Claim(s)” means (a) a Claim under 11 U.S.C. §§ 326, 327, 328, 330, 331, 503(b), or 1103; and (b) any reasonable, actual and necessary claims or requests for payment of legal fees and expenses of CIBC’s counsel, Shutts & Bowen LLP.

99) “Pro Rata Share” means, as to a particular holder of a particular Claim, the ratio that the amount of such Claim held by such Claimholder bears to the aggregate amount of all Claims in the particular Class or category. Such ratio shall be calculated as if all Claims in the particular Class or category asserted against all Debtors are Allowed Claims as of the Effective Date, unless specifically provided otherwise in the Plan.

100) “Purchaser” means Protective Products Enterprises, Inc.

101) “Rejection Claim Bar Date” means the first Business Day that is thirty (30) days after the Confirmation Date or such earlier date that may be set by the Bankruptcy Court concerning a particular Executory Contract.

102) “Remaining Assets” means any and all Cash, assets, Estate Property, or other property of the Debtors of every kind and character including, without limitation, (i) all funds remaining in the Sale Proceeds Escrow; (ii) Income Tax Refunds; (iii) the Disputed Claims Reserves, (iv) Causes of Action and Avoidance Actions and Proceeds thereof.

103) “Sale Proceeds Escrow” means \$9,000,000, plus interest, maintained in a segregated trust account of the Debtors’ counsel pending further order of the Court.

104) “Sale Transaction” means the sale of substantially all of the Debtors’ assets to PPE on March 5, 2010, pursuant to the Asset Purchase Agreement.

105) “Schedules of Assets and Liabilities” means the schedules of assets and liabilities filed by the Debtors in the Bankruptcy Cases, as may be amended, modified, or supplemented.

106) “Schedule of Equity Interests” means the schedule of holders of Equity Interests in the Debtors filed by the Debtors in the Bankruptcy Cases, as amended, modified or supplemented.

107) “SEC” means the Securities and Exchange Commission of the United States of America.

108) “Secured Claim” means a Claim for which a Claimant asserts a valid, perfected, and enforceable Lien, not subject to avoidance or subordination under the Bankruptcy Code or applicable non-bankruptcy law, or a Claim for which a Claimant asserts a setoff under Bankruptcy Code section 553, but only to the extent of the value, determined in accordance with Bankruptcy Code section 506(a), of the Claimant’s interest in the Debtors’ interest in Estate Property or to the extent of the amount subject to such setoff, as the case may be, unless a timely election has been made under 11 U.S.C. § 1111(b)(2).

109) “Secured Tax Claim” means a Secured Claim for taxes held by a governmental unit, including cities, counties, school districts, and hospital districts, (a) entitled by statute to assess taxes based on the value or use of real and personal property and to obtain an encumbrance against such property to secure payment of such taxes or (b) entitled to obtain an encumbrance on property to secure payment of any tax Claim specified in 11 U.S.C. § 507(a)(8). Secured Tax Claims shall not include any such Claims secured by liens/security interests that are avoidable, unperfected, subject to subordination, or otherwise unenforceable.

110) “Solicitation Materials” means the Disclosure Statement Approval Order, the Disclosure Statement and Plan, Solicitation Letters, Ballot, and any other materials, as may be amended, modified, or supplemented, authorized by the Bankruptcy Court to be used in the solicitation of votes on the Plan.

111) “Statement of Financial Affairs” means the statement of financial affairs filed by the Debtors in the Bankruptcy Cases, as may be amended, modified, or supplemented.

112) “Subordinated Claim(s)” means any Claim that is subordinated pursuant to section 510(a), (b), or (c) of the Bankruptcy Code, or other applicable law, or the Plan, or a Final Order declaring that such Claim is subordinated in right of payment, or a contract or agreement of the holder of such Claim, to the General Unsecured Claims. Subordinated Claims specifically include any Claim for punitive damages provided for under applicable law.

113) “Subordinated Debentures Holder(s)” means a holder of subordinated debentures issued by the Debtors, including, but not limited to, (i) subordinated, nonconvertible debentures

(“Sub NC Debentures”) issued by the Debtors in August and September 2007 and/or (ii) subordinated, convertible debentures (“Sub C Debentures”) issued by the Debtors in February 2008 (collectively, “Subordinated Debentures”).

114) “Treasury Regulations” means the regulations promulgated under the Internal Revenue Code by the Department of the Treasury of the United States.

115) “Tax Interest Rate” means applicable tax interest rate as provided under the Internal Revenue Code of 1986, as amended from time to time (the “Tax Code”).

116) “Unsecured Claim(s)” means any Claim against any of the Debtors that is not (a) an Administrative Expense Claim, (b) an Administrative Tax Claim, (c) a Professional Compensation Claim, (d) a CIBC Claim or a Secured Claim, (e) a Priority Unsecured Tax Claim, or (f) a Priority Unsecured Non-Tax Claim. The term specifically includes any tort Claims or contractual Claims or Claims arising from damage or harm to the environment and, pursuant to 11 U.S.C. § 506(a), any Claim of a Creditor against the Debtors to the extent that such Creditor’s Claim is greater than the value of the Lien securing such Claim, any Claim for damages resulting from rejection of any Executory Contract under 11 U.S.C. § 365, and any Claim not otherwise classified under the Plan.

117) “Unsecured Claims of Subordinated Debentures” means Unsecured Claims held by each of the Subordinated Debentures Holders and scheduled by, or asserted against, the Debtors on or before the Bar Date.

118) “UST” means the Office of the United States Trustee.

119) “Voting Deadline” means the deadline for filing Ballots accepting or rejecting the Plan as established by the Bankruptcy Court.

120) “Voting Record Date” means the Disclosure Statement Approval Date.

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