

**THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCE OR REJECTION MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT MAY BE REVISED PRIOR TO THE COURT'S APPROVAL OF THE DISCLOSURE STATEMENT.**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

Philadelphia Newspapers, LLC, *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)  
) Case No. 09-11204 (SR)  
)  
) Jointly Administered  
)

**DISCLOSURE STATEMENT WITH RESPECT TO THE  
JOINT CHAPTER 11 PLAN DATED AS OF AUGUST 20, 2009**

**PROSKAUER ROSE LLP**

Mark K. Thomas (admitted *pro hac vice*)  
Paul V. Possinger (admitted *pro hac vice*)  
Peter J. Young (admitted *pro hac vice*)  
Three First National Plaza  
70 West Madison, Suite 3800  
Chicago, Illinois 60602-4342  
Telephone: (312) 962-3550  
Facsimile: (312) 962-3551

**DILWORTH PAXSON LLP**

Lawrence G. McMichael  
Anne M. Aaronson  
1500 Market St., Suite 3500E  
Philadelphia, PA 19102  
Telephone: (215) 575-7000  
Facsimile: (215) 575-7200

Dated: August 20, 2009

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Philadelphia Media Holdings, LLC (4680), PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Newspapers, LLC (3870), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574) and Philadelphia Media, LLC (0657).

## DISCLAIMER

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE JOINT CHAPTER 11 PLAN DATED AUGUST 20, 2009, FILED BY PHILADELPHIA MEDIA HOLDINGS, LLC, PMH ACQUISITION, LLC, BROAD STREET VIDEO, LLC, PHILADELPHIA NEWSPAPERS, LLC, PHILADELPHIA DIRECT, LLC, PHILLY ONLINE, LLC, PMH HOLDINGS, LLC, BROAD STREET PUBLISHING, LLC AND PHILADELPHIA MEDIA, LLC, DEBTORS AND DEBTORS IN POSSESSION (AS MAY BE AMENDED IN ACCORDANCE WITH THE TERMS THEREOF AND APPLICABLE LAW, THE "PLAN"). THE INFORMATION CONTAINED HEREIN MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS ANNEXED TO THE PLAN AND THE PLAN SUPPLEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN SHALL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

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

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE

ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST OR EQUITY INTERESTS IN ANY OF THE DEBTORS AND DEBTORS IN POSSESSION IN THESE CASES.

*[Remainder of Page Intentionally Left Blank.]*

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	OVERVIEW OF THE PLAN.....	3
	A. General Structure of the Plan.....	3
	B. Summary of Treatment of Claims and Interests under the Plan .....	4
III.	PLAN VOTING INSTRUCTIONS AND PROCEDURES .....	11
	A. Notice to Holders of Claims and Interests .....	11
	B. Voting Rights .....	12
	C. Solicitation Materials .....	12
	D. Voting Procedures, Ballots and Voting Deadline .....	13
	E. Confirmation Hearing and Deadline for Objections to Confirmation .....	15
IV.	GENERAL INFORMATION CONCERNING THE DEBTORS.....	15
	A. Overview of Business Operations.....	15
	B. Description of the Debtors' Business Operations.....	15
	C. Organizational Structure .....	16
	D. Pre-Confirmation Management and Employees.....	17
	1. Existing Management .....	17
	2. Existing Executive Officers .....	17
	3. Employees/Labor Relations .....	17
	4. Existing Compensation and Benefits .....	17
	E. Pre-Confirmation Capital Structure of the Company .....	20
	1. Corporate Structure .....	20
	2. Prepetition Secured Debt .....	20
	F. Summary of Assets .....	21
	G. Historical Financial Information.....	21
	H. Events Leading to Commencement of the Chapter 11 Cases .....	21
	I. The Debtors' Significant Leverage.....	21
	J. Prepetition Negotiations with the Senior Lenders .....	22
V.	THE CHAPTER 11 CASES .....	23
	A. Continuation of Business; Stay of Litigation.....	23
	B. First Day Motions .....	24
	C. Retention of Professionals .....	24
	D. Authorization to Use Cash Collateral of Existing Lenders.....	24
VI.	SUMMARY OF THE PLAN.....	27
	A. Overall Structure of the Plan.....	27
	B. Substantive Consolidation .....	28
	C. Classification and Treatment of Claims and Interests .....	28
	1. Treatment of Unclassified Claims under the Plan .....	29
	2. Treatment of Classified Claims and Interests under the Plan .....	30
	D. Reservation of Rights Regarding Claims.....	32

E.	Allowed Claims, Distribution Rights and Objections to Claims .....	32
1.	Allowance Requirement.....	32
2.	Date of Distribution .....	32
3.	Making of Distributions.....	32
4.	Objection Procedures .....	33
F.	Disposition of Executory Contracts and Unexpired Leases .....	33
1.	Contracts and Leases Deemed Rejected .....	33
2.	Cure with Respect to Assumed Contracts and Leases .....	34
3.	Rejection Damages .....	34
4.	Compensation and Benefit Programs.....	34
G.	Revesting of Assets; Release of Liens .....	35
H.	Post-Consummation Corporate Structure, Management and Operation.....	35
1.	Cancellation of Interests .....	35
2.	Officers and Directors/Managing Member(s) of Purchaser.....	35
3.	Corporate Action.....	35
I.	Confirmation and/or Consummation .....	35
1.	Requirements for Confirmation of the Plan.....	35
2.	Conditions to Confirmation Date and Effective Date.....	37
J.	Releases, Discharge, Injunctions, Exculpation and Indemnification.....	38
1.	Releases by Debtors in Favor of Third Parties .....	38
2.	Releases by Creditors of Claims Against Third Parties.....	38
3.	Discharge and Discharge Injunction .....	39
4.	Exculpation Relating to Chapter 11 Cases.....	40
5.	Post-Effective Date Indemnifications .....	40
K.	Preservation of Rights of Action.....	40
L.	Retention of Jurisdiction .....	41
M.	Amendment, Alteration and Revocation of Plan .....	43
N.	Plan Implementation Documents .....	44
VII.	CERTAIN RISK FACTORS TO BE CONSIDERED .....	44
A.	General Considerations .....	44
B.	Certain Bankruptcy Considerations .....	44
C.	Claims Estimations .....	45
D.	Conditions Precedent to Consummation.....	45
E.	Inherent Uncertainty of Financial Projections .....	45
F.	Certain Tax Considerations.....	45
VIII.	APPLICABILITY OF FEDERAL AND OTHER SECURITIES LAWS.....	46
A.	Offer and Sale of New Securities Pursuant to the Plan: Bankruptcy Code Exemption from Registration Requirements .....	46
B.	Subsequent Transfers of New Securities .....	46
IX.	CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN .....	48
A.	U.S. Federal Income Tax Consequences to the Debtors.....	49
1.	Introduction.....	49
2.	Partnership. ....	49

3.	Passive Activity Losses.....	50
4.	Sale Transaction.....	51
5.	Cancellation of Indebtedness Income.....	52
B.	U.S. Federal Income Tax Consequences to Claim Holders.....	53
1.	Overview.....	53
2.	Holders of Prepetition Senior Secured Claims (Class 3) and Prepetition Senior Deficiency Claims (Class 4, in part).....	54
3.	Holders of Prepetition Mezzanine Lender Claims (Class 4, in part).....	55
C.	Other Tax Matters.....	55
1.	Information Reporting and Backup Withholding.....	55
2.	Importance of Obtaining Professional Tax Assistance.....	55
X.	FEASIBILITY OF THE PLAN AND BEST INTERESTS OF CREDITORS .....	56
A.	Feasibility of the Plan .....	56
B.	Acceptance of the Plan.....	58
C.	Best Interests Test.....	58
D.	Liquidation Analysis.....	59
E.	Application of the “Best Interests” of Creditors Test to the Liquidation Analysis and the Valuation .....	59
F.	Confirmation Without Acceptance of All Impaired Classes: The “Cramdown” Alternative .....	60
XI.	ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN .....	60
A.	Alternative Plan(s) of Reorganization .....	60
B.	Liquidation Under Chapter 7 .....	61
XII.	THE SOLICITATION; VOTING PROCEDURES.....	61
A.	Parties in Interest Entitled to Vote.....	61
B.	Classes Entitled to Vote to Accept or Reject the Plan.....	62
C.	Solicitation Order.....	62
D.	Waivers of Defects, Irregularities, Etc.....	62
E.	Withdrawal of Ballots; Revocation.....	62
F.	Voting Rights of Disputed Claimants.....	63
G.	Further Information; Additional Copies .....	63

## I. INTRODUCTION

The debtors and debtors in possession in the above-referenced chapter 11 cases (these “Chapter 11 Cases”) are the following related companies (collectively, the “Debtors” or the “Company”):

Philadelphia Media Holdings, LLC  
PMH Acquisition, LLC;  
Broad Street Video, LLC;  
Philadelphia Newspapers, LLC;  
Philadelphia Direct, LLC;  
Philly Online, LLC;  
PMH Holdings, LLC;  
Broad Street Publishing, LLC; and  
Philadelphia Media, LLC.

The Debtors submit this disclosure statement (as may be amended, the “Disclosure Statement”) pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”) for use in the solicitation of votes on the Joint Chapter 11 Plan Dated as of August 20, 2009 (as may be amended, the “Plan”). A copy of the Plan is attached hereto as Appendix A. Each capitalized term used in this Disclosure Statement but not otherwise defined herein has the meaning ascribed to such term in the Plan. In addition, all references in this Disclosure Statement to monetary figures refer to United States currency, unless otherwise expressly provided.

This Disclosure Statement sets forth certain information regarding the Debtors’ prepetition operating and financial history, their reasons for seeking protection and liquidation under chapter 11 and significant events that have occurred during the Chapter 11 Cases. This Disclosure Statement also describes certain terms and provisions of the Plan, certain effects of confirmation of the Plan, certain risk factors associated with the Plan and the securities to be issued under the Plan and the manner in which distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that Holders of Claims entitled to vote on the Plan must follow for their votes to be counted.

By order entered on or about [\_\_\_\_\_, 2009], the Bankruptcy Court has approved this Disclosure Statement as containing “adequate information,” in accordance with section 1125 of the Bankruptcy Code, to enable a hypothetical, reasonable investor typical of Holders of Claims against the Debtors to make an informed judgment as to whether to accept or reject the Plan, and has authorized its use in connection with the solicitation of votes with respect to the Plan. **APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.** No solicitation of votes may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. In voting on the Plan, Holders of Claims entitled to vote should not rely on any information relating



to the Debtors and their businesses, other than that contained in this Disclosure Statement, the Plan, the Plan Supplement and all exhibits and appendices hereto and thereto.

Pursuant to the provisions of the Bankruptcy Code, only classes of Claims or Interests that are (a) "impaired" by a plan and (b) entitled to receive a distribution under such plan are entitled to vote on the plan. In the Debtors' cases, only Claims in Classes 3, 4, 5 and 6 are Impaired by and entitled to receive a distribution under the Plan; accordingly, only the Holders of Claims in those Classes are entitled to vote to accept or reject the Plan. Claims and Interests in Classes 1 and 2 are Unimpaired by the Plan; accordingly, the Holders thereof are conclusively presumed to have accepted the Plan. Interests in Class 7 and Claims in Class 8, which receive nothing under the Plan, are deemed to have rejected the Plan and the Holders of Interests in Class 7 and Claims in Class 8 are not entitled to vote.

FOR A DESCRIPTION OF THE PLAN AND VARIOUS RISKS AND OTHER FACTORS PERTAINING TO THE PLAN, PLEASE SEE ARTICLE VI OF THIS DISCLOSURE STATEMENT, ENTITLED "SUMMARY OF THE PLAN" AND ARTICLE VII OF THIS DISCLOSURE STATEMENT, ENTITLED "CERTAIN RISK FACTORS TO BE CONSIDERED."

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN DOCUMENTS RELATING TO THE PLAN, CERTAIN EVENTS THAT HAVE OCCURRED IN THE CHAPTER 11 CASES AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTORS BELIEVE THAT THE SUMMARIES OF THE PLAN AND RELATED DOCUMENT SUMMARIES ARE FAIR AND ACCURATE AS OF THE DATE HEREOF, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS AND TO THE EXTENT THEY MAY CHANGE AS PERMITTED BY THE PLAN AND APPLICABLE LAW. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

NOTHING CONTAINED HEREIN SHALL BE DEEMED TO CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY OR BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS OR INTERESTS. YOU SHOULD CONSULT YOUR PERSONAL COUNSEL OR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS RESPECTING TAX, SECURITIES OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. EXCEPT WITH RESPECT TO THE *PRO FORMA* FINANCIAL PROJECTIONS SET FORTH IN APPENDIX B ANNEXED HERETO (THE



“PROJECTIONS”) AND EXCEPT AS OTHERWISE SPECIFICALLY AND EXPRESSLY STATED HEREIN, THIS DISCLOSURE STATEMENT DOES NOT REFLECT ANY EVENTS THAT MAY OCCUR SUBSEQUENT TO THE DATE HEREOF AND THAT MAY HAVE A MATERIAL IMPACT ON THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS DO NOT UNDERTAKE ANY OBLIGATION TO, AND DO NOT INTEND TO, UPDATE THE PROJECTIONS; THUS, THE PROJECTIONS WILL NOT REFLECT THE IMPACT OF ANY SUBSEQUENT EVENTS NOT ALREADY ACCOUNTED FOR IN THE ASSUMPTIONS UNDERLYING THE PROJECTIONS. FURTHER, THE DEBTORS DO NOT ANTICIPATE THAT ANY AMENDMENTS OR SUPPLEMENTS TO THIS DISCLOSURE STATEMENT WILL BE DISTRIBUTED TO REFLECT SUCH OCCURRENCES. ACCORDINGLY, THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCE IMPLY THAT THE INFORMATION HEREIN IS CORRECT OR COMPLETE AS OF ANY TIME SUBSEQUENT TO THE DATE HEREOF. MOREOVER, THE PROJECTIONS ARE BASED ON ASSUMPTIONS THAT, ALTHOUGH BELIEVED TO BE REASONABLE BY THE DEBTORS, MAY DIFFER FROM ACTUAL RESULTS.

THE DEBTORS BELIEVE THAT THE PLAN WILL ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTORS, THEIR CREDITORS AND THEIR ESTATES. THE DEBTORS URGE ALL HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT THE PLAN.

## **II. OVERVIEW OF THE PLAN**

The following is a brief overview of the material provisions of the Plan and is qualified in its entirety by reference to the full text of the Plan. For a more detailed description of the terms and provisions of the Plan, see Article VI of this Disclosure Statement, entitled “Summary of the Plan.”

The Plan provides for the classification and treatment of Claims against and Interests in the Debtors. The Plan designates seven Classes of Claims and one Class of Interests. These Classes take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Interests.

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

The Plan is structured as a joint plan and provides for the sale of substantially all of the Debtors’ assets through a Court-approved auction process. The Debtors will pursue all reasonably available actions to maximize distributions under the Plan to Holders of Claims and Interests.

On August 20, 2009, the Debtors executed that certain Asset Purchase Agreement (the “Stalking Horse Agreement”) with Philly Papers, LLC, as purchaser (the “Stalking Horse Bidder”), for the sale (the “Plan Sale”) of substantially all of the Debtors’ assets pursuant to the Plan. Under the Stalking Horse Agreement, the Stalking Horse will pay to the Debtors’ estates a cash purchase price of \$30,000,000, plus an additional cash payment in an amount equal to the Debtors’ existing deposits with their insurance carriers and credit card processors, less the amount of accrued and unpaid administrative and priority claims against the Debtors’ estates as of the closing of the Plan Sale and less the sum of \$750,000, which will be used to fund a

liquidating trust for the benefit of the Debtors' general unsecured trade creditors. The Debtors anticipate that the Stalking Horse Agreement will yield gross proceeds to the estates in the amount of over \$41,000,000, after payment of approximately \$6,000,000 in administrative and priority claims (including accrued professional fees). The Debtors further anticipate that they will have approximately \$8,000,000 of cash on hand as of the closing. The purchase proceeds plus cash on hand will be used to pay off any outstanding debtor-in-possession financing facility advances (estimated to be \$15,000,000 as of closing) and to make a distribution to the Debtors' senior secured lenders of approximately \$36,000,000. Additionally, the Stalking Horse Agreement does not include the sale of the Debtors' real property located at 400 North Broad Street, Philadelphia, Pennsylvania and certain adjacent parcels, which will be transferred to the Agent for the senior secured lenders under the Plan. Finally, the Plan will provide for distribution of 3% of the equity interests in the Stalking Horse (or other successful bidder) to holders of unsecured prepetition creditors other than general trade creditors. The Debtors believe that the value they will realize from the Stalking Horse Agreement constitutes fair market value for their assets and will support a confirmable Plan that will maximize value to their various creditor constituencies and bring a successful conclusion to these Chapter 11 Cases. On that basis the Debtors are prepared to proceed with the sale of their business and assets under the terms of the Stalking Horse Agreement and the Plan, subject to higher and better bids in accordance with bid procedures to be established by this Court.

The Debtors have estimated the ultimate distributions that will be made in respect of Allowed Claims and Interests. As explained more fully in Section VII entitled "Certain Risk Factors to Be Considered," however, because of inherent uncertainties, many of which are beyond the Debtors' control, there can be no guaranty that actual performance will meet the Debtors' estimates. The Debtors nonetheless believe that if the Plan is not consummated, it is likely that Holders of Claims against and Interests in the Debtors' estates will receive less than they would if the Plan is confirmed because liquidation of the Debtors' assets under chapter 7 of the Bankruptcy Code will not result in a higher distribution to any Class of Claims or Interests.

## **B. Summary of Treatment of Claims and Interests under the Plan**

The table below summarizes the classification and treatment of the prepetition Claims against and Interests in the Debtors under the Plan. For certain Classes of Claims, estimated percentage recoveries also are set forth below. Estimated percentage recoveries have been calculated based upon a number of assumptions, including (where not Allowed by the Plan) the amount of Allowed Claims in each Class.

For certain Classes of Claims, the actual amounts of Allowed Claims could materially exceed or could be materially less than the estimated amounts shown in the table that follows. Except for Claims Allowed by the Plan, estimated Claim amounts for each Class set forth below are based upon the Debtors' review of their books and records, and include estimates of a number of Claims that are contingent, disputed and/or unliquidated. Accordingly, for these reasons, no representation can be or is being made with respect to whether the estimated percentage recoveries shown in the table below for Classes 3, 4, 5 and 6 will actually be realized by the Holders of Allowed Claims in such Classes.

Type of Claim or Interest	Description and Treatment under Plan
---------------------------	--------------------------------------

Type of Claim or Interest	Description and Treatment under Plan
<p><b>Unclassified — Administrative Claims</b></p> <p>Estimated Aggregate Allowed Amount: Approximately \$21,000,000</p>	<p>An Administrative Claim is a Claim for (a) any cost or expense of administration (including, without limitation, the fees and expenses of Professionals) of any of the Chapter 11 Cases asserted or arising under sections 503, 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code including, but not limited to (i) any actual and necessary post Petition Date cost or expense of preserving the Debtors' respective Estates or operating the businesses of the Debtors, (ii) any payment to be made under the Plan to cure a default under an assumed executory contract or unexpired lease, (iii) any post Petition Date cost, indebtedness or contractual obligation duly and validly incurred or assumed by the Debtors in the ordinary course of their respective businesses, (iv) compensation or reimbursement of expenses of Professionals to the extent Allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code, and (v) all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under section 546 of the Bankruptcy Code; (b) any fees or charges assessed against the Debtors' respective Estates under section 1930 of title 28 of the United States Code; (c) any Allowed administrative claim or superpriority claim granted to the Collateral Trustee pursuant to the Cash Collateral Order; and (d) all claims of the DIP Lender under the DIP Financing Facility.</p> <p>Under the Plan, Administrative Claims are Unimpaired. Unless otherwise provided for therein, each Holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Administrative Claim becomes Allowed, or (iii) a date agreed to in writing by the Debtors or the Purchaser, as the case may be, and the Holder of such Administrative Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Purchaser, as the case may be, or as the Bankruptcy Court may order.</p> <p>Administrative Claims are not classified and are treated as required by the Bankruptcy Code. The Holders of such Claims are not entitled to vote on the Plan.</p>

Type of Claim or Interest	Description and Treatment under Plan
	Estimated Percentage Recovery: 100%
<p><b>Unclassified — Priority Tax Claims</b></p> <p>Estimated Aggregate Allowed Amount: Approximately \$110,000</p>	<p>The Plan defines Priority Tax Claims as any and all Claims accorded priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code. Such Priority Tax Claims include Claims of governmental units for taxes owed by the Debtors that are entitled to a certain priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code. The taxes entitled to priority are (a) taxes on income or gross receipts that meet the requirements set forth in section 507(a)(8)(A) of the Bankruptcy Code, (b) property taxes meeting the requirements of section 507(a)(8)(B) of the Bankruptcy Code, (c) taxes that were required to be collected or withheld by the Debtors and for which the Debtors are liable in any capacity as described in section 507(a)(8)(C) of the Bankruptcy Code, (d) employment taxes on wages, salaries or commissions that are entitled to priority pursuant to section 507(a)(4) of the Bankruptcy Code, to the extent that such taxes also meet the requirements of section 507(a)(8)(D), (e) excise taxes of the kind specified in section 507(a)(8)(E) of the Bankruptcy Code, (f) customs duties arising out of the importation of merchandise that meet the requirements of section 507(a)(8)(F) of the Bankruptcy Code and (g) prepetition penalties relating to any of the foregoing taxes to the extent such penalties are in compensation for actual pecuniary loss as provided in section 507(a)(8)(G) of the Bankruptcy Code.</p> <p>Under the Plan, Priority Tax Claims are Unimpaired. Each Holder of an Allowed Priority Tax Claim shall receive, at the option of the Debtors or the Purchaser, as the case may be, in full satisfaction, settlement, release, extinguishment and discharge of such Priority Tax Claim: (a) the amount of such unpaid Allowed Priority Tax Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Priority Tax Claim becomes Allowed and (iii) a date agreed to by the Debtors or the Purchaser, as the case may be, and the Holder of such Priority Tax Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Priority Tax Claim and the Debtors or the Purchaser, as the case may be, or as the Bankruptcy Court may order.</p> <p>Priority Tax Claims are not classified and are treated</p>

Type of Claim or Interest	Description and Treatment under Plan
	<p>as required by the Bankruptcy Code. The Holders of such Claims are not entitled to vote on the Plan.</p> <p>Estimated Percentage Recovery: 100%</p>
<p><b>Class 1 — Miscellaneous Secured Claims</b></p> <p>Estimated Aggregate Allowed Amount: \$0</p>	<p>Class 1 consists of Miscellaneous Secured Claims, which are any Secured Claims other than the Secured Claims of the Prepetition Senior Agent or the Prepetition Senior Secured Lenders.</p> <p>Under the Plan, Class 1 Miscellaneous Secured Claims are Unimpaired. Each Holder of an Allowed Class 1 Miscellaneous Secured Claim shall receive, in the sole discretion of the Debtors or the Liquidation Trustee, as the case may be, in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) Cash equal to the amount of such Allowed Miscellaneous Secured Claim on or as soon as practicable after the later of (i) the Effective Date, (ii) the date that such Miscellaneous Secured Claim becomes Allowed, and (iii) a date agreed to by the Debtors or the Liquidation Trustee, as the case may be, and the Holder of such Class 1 Miscellaneous Secured Claim; (b) reinstatement of such Allowed Miscellaneous Secured Claim; (c) the Property securing such Miscellaneous Secured Claim; or (d) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Liquidation Trustee, as the case may be.</p> <p>Estimated Percentage Recovery: 100%</p>
<p><b>Class 2 — Miscellaneous Priority Claims</b></p> <p>Estimated Aggregate Allowed Amount: \$0</p>	<p>Class 2 consists of Miscellaneous Priority Claims, which are Claims against the Debtors entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than Priority Tax Claims or Administrative Claims.</p> <p>Under the Plan, Class 2 Miscellaneous Priority Claims are Unimpaired. Each Holder of an Allowed Class 2 Miscellaneous Priority Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Class 2 Claim becomes Allowed, and (iii) a date agreed to by the Debtors or the Purchaser, as the case may be, and the Holder of such Class 2 Miscellaneous Priority Claim; or (b) such</p>



Type of Claim or Interest	Description and Treatment under Plan
	<p>other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Purchaser, as the case may be.</p> <p>Estimated Percentage Recovery: 100%</p>
<p><b>Class 3 — Prepetition Senior Secured Claims</b></p> <p>Estimated Aggregate Allowed Amount: Approximately \$66,000,000</p>	<p>Class 3 consists of Prepetition Senior Secured Claims, which are the claims of the Prepetition Senior Secured Lenders arising under the Prepetition Senior Secured Credit Agreement, including, without limitation, any contingent claims for outstanding Prepetition Senior Secured Letters of Credit issued under the Prepetition Senior Secured Credit Agreement, but only to the extent that such Claim is a secured claim as determined by section 506(a)(1) of the Bankruptcy Code.</p> <p>Under the Plan, Class 3 Prepetition Senior Secured Claims are Impaired. On the Effective Date, each Holder of an Allowed Prepetition Senior Secured Claim shall receive, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, its Pro Rata Share of (i) approximately \$36,000,000 in cash (which constitutes estimated cash on hand as of the Effective Date plus estimated net proceeds of the Sale of the Debtors' assets under the current Asset Purchase Agreement with the Stalking Horse Bidder, subject to higher and better bids at the Auction), and (ii) all of the Debtors' right, title and interest in the real property commonly known as 400 N. Broad Street, Philadelphia, Pennsylvania.</p> <p>Estimated Percentage Recovery: 100%</p>
<p><b>Class 4 — Prepetition Unsecured Debt Claims</b></p> <p>Estimated Aggregate Allowed Amount: \$350,000,000</p>	<p>Class 4 consists of Prepetition Senior Deficiency Claims, Prepetition Mezzanine Lender Claims, Litigation Claims, and Rejection Claims.</p> <p>Prepetition Senior Deficiency Claims are the claims of the Prepetition Senior Secured Lenders arising under the Prepetition Senior Secured Credit Agreement, including, without limitation, any contingent claims for outstanding Prepetition Senior Secured Letters of Credit issued under the Prepetition Senior Secured Credit Agreement, but only to the extent that such Claim is an unsecured claim as determined by section 506(a)(1) of the Bankruptcy Code.</p> <p>Prepetition Mezzanine Lender Claims are the Claims of the Prepetition Mezzanine Lenders arising under the</p>

Type of Claim or Interest	Description and Treatment under Plan
	<p>Prepetition Mezzanine Note Purchase Agreement.</p> <p>Litigation Claims are Claims relating to pending litigation or other filed or unfiled Causes of Action against the Debtors as of the Petition Date.</p> <p>Rejection Claims are (a) claims of any non-Debtor counterparty to any unexpired leased of nonresidential real property or executory contract arising on account of the rejection of such lease or contract during the administration of these Chapter 11 Cases under section 365 of the Bankruptcy Code; and (b) any claims relating to pension plans.</p> <p>Under the Plan, Class 4 Prepetition Unsecured Debt Claims are Impaired. On or as soon as reasonably practicable after the later of (a) the Effective Date, or (b) the date on which such Prepetition Unsecured Debt Claim becomes Allowed, each Holder of an Allowed Class 4 Prepetition Unsecured Debt Claim shall receive its Pro Rata Share of 3.0% of the equity interests in the Purchaser; <u>provided, however</u>, that in the event that either (x) Class 4 does not accept the Plan, or (y) the Prepetition Senior Lenders do not waive their rights against the Prepetition Mezzanine Lenders with respect to distributions under the Plan, Class 4 will receive no distribution under the Plan.</p> <p>Estimated Percentage Recovery: less than 1%</p>
<p><b>Class 5 — General Unsecured Trade Claims</b></p> <p>Estimated Aggregate Allowed Amount: Approximately \$4,000,000</p>	<p>Class 5 consists of General Unsecured Trade Claims, which are all Allowed Claims (i) that are Allowed in the amount of \$200,000 or less, or that are voluntarily reduced to \$200,000 by the Holders of such Claims prior to the Confirmation Date, and (ii) that are not Administrative Claims, Priority Tax Claims, Professional Fee Claims, Miscellaneous Secured Claims, Miscellaneous Priority Claims, Prepetition Senior Secured Claims, Prepetition Mezzanine Lender Claims, Insider Claims, Rejection Claims or Litigation Claims.</p> <p>Under the Plan, Class 5 General Unsecured Trade Claims are Impaired. Each Holder of an Allowed General Unsecured Trade Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim, its Pro Rata share of the Net Trust Assets.</p> <p>Estimated Percentage Recovery: 6%</p>



Type of Claim or Interest	Description and Treatment under Plan
<p><b>Class 6 — City of Philadelphia Claim</b></p> <p>Estimated Aggregate Allowed Amount: Approximately \$86,000</p>	<p>Class 6 consists of the City of Philadelphia Claim, which is the Secured Claim of the City of Philadelphia for real estate taxes relating to the Real Property.</p> <p>Under the Plan, the Class 6 City of Philadelphia Claim is Impaired. The Holder of the Allowed City of Philadelphia Claim shall receive, at the option of the Debtors or the Purchaser, as the case may be, in full satisfaction, settlement, release, extinguishment and discharge of such Claim five (5) equal cash payments totaling the Allowed amount of the City of Philadelphia Claim, due and payable on each anniversary of the Petition Date for the Subsidiary Debtors, with the final payment to be due and payable on the fifth (5<sup>th</sup>) anniversary of the Petition Date for the Subsidiary Debtors.</p> <p>Estimated Percentage Recovery: 100%</p>
<p><b>Class 7 — Interests</b></p>	<p>Class 7 consists of Interests. Such Interests include, but are not limited to, any and all equity interests, ownership interests or shares in the Debtors issued by the Debtors prior to the Petition Date (including, without limitation, all capital stock, stock certificates, common stock, preferred stock, partnership interests, membership and other interests in a limited liability company, rights, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtors, partnership interests in the Debtors' stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights and liquidation preferences, puts, calls or commitments of any character whatsoever relating to any such equity, ownership interests or shares of capital stock of the Debtors or obligating the Debtors to issue, transfer or sell any shares of capital stock) whether or not certificated, transferable, voting or denominated "stock" or a similar security, and any Claim or Cause of Action related to or arising from any of the foregoing.</p> <p>Under the Plan, Class 7 Interests are Impaired. Holders of Class 7 Interests shall not receive or retain any property under the Plan on account of such Interests. On the Effective Date, all Interests shall be cancelled.</p> <p>Estimated Percentage Recovery: 0%</p>

Type of Claim or Interest	Description and Treatment under Plan
<b>Class 8 — Insider Claims</b> Estimated Aggregate Allowed Amount: Approximately \$0	<p>Class 8 consists of Insider Claims, which are any Claim of an Insider against any of the Debtors, other than any Claim of an Insider that is either a Prepetition Mezzanine Lender Claim or a Claim for indemnification under the Debtors' organizational documents, employment agreements, internal policies or otherwise.</p> <p>Under the Plan, Class 8 Insider Claims are Impaired. Holders of Class 8 Insider Claims shall not receive or retain any property under the Plan on account of such Insider Claims. On the Effective Date, all Insider Claims shall be extinguished.</p> <p>Estimated Percentage Recovery: 0%</p>

THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF CLAIMS AGAINST THE DEBTORS AND THUS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

### **III. PLAN VOTING INSTRUCTIONS AND PROCEDURES**

#### **A. Notice to Holders of Claims and Interests**

Approval by the Bankruptcy Court of this Disclosure Statement means that the Bankruptcy Court has found that this Disclosure Statement contains information of a kind and in sufficient and adequate detail to enable Holders of Claims to make an informed judgment whether to accept or reject the Plan.

THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR THEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

IF THE PLAN IS APPROVED BY THE REQUISITE VOTE OF HOLDERS OF CLAIMS ENTITLED TO VOTE AND IS SUBSEQUENTLY CONFIRMED BY THE BANKRUPTCY COURT, THE PLAN WILL BIND ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS, WHETHER OR NOT THEY WERE ENTITLED TO VOTE OR DID VOTE ON THE PLAN AND WHETHER OR NOT THEY RECEIVE OR RETAIN ANY DISTRIBUTIONS OR PROPERTY UNDER THE PLAN. THUS, ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ENTITLED TO VOTE ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS APPENDICES CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR REJECT THE PLAN.

THIS DISCLOSURE STATEMENT AND THE PLAN ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN

## CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN.

No solicitation of votes may be made except after distribution of this Disclosure Statement and no person has been authorized to distribute any information concerning the Debtors other than the information contained herein. No such information will be relied upon in making a determination to vote to accept or reject the Plan.

### **B. Voting Rights**

Pursuant to the provisions of the Bankruptcy Code, only holders of claims in classes that are (a) treated as “impaired” by the plan and (b) entitled to receive a distribution under such plan are entitled to vote on the plan. In these Chapter 11 Cases, under the Plan, only Holders of Claims in Classes 3, 4, 5 and 6 are entitled to vote on the Plan. Claims and Interests in other Classes are either (i) Unimpaired and their Holders are deemed to have accepted the Plan, or (ii) receiving no distributions under the Plan and their Holders are deemed to have rejected the Plan.

Only Holders of Allowed Claims in the voting Classes are entitled to vote on the Plan. A Claim that is unliquidated, contingent or disputed is not an Allowed Claim, and is thus not entitled to vote, unless and until the amount is estimated or determined, or the dispute is determined, resolved or adjudicated in the Bankruptcy Court or another court of competent jurisdiction, or pursuant to agreement with the Debtors. However, the Bankruptcy Court may deem a contingent, unliquidated or disputed Claim to be Allowed on a provisional basis, for purposes only of voting on the Plan.

Holders of Allowed Claims in the voting Classes may vote on the Plan only if they are Holders as of the Distribution Record Date, which Distribution Record Date is [\_\_\_\_\_, 2009].

### **C. Solicitation Materials**

In soliciting votes for the Plan pursuant to this Disclosure Statement, the Debtors, through their voting agent The Garden City Group (the “Voting Agent” or “Garden City”), will send to Holders of Claims who are entitled to vote copies of (a) the Disclosure Statement and Plan, (b) the notice of, among other things, (i) the date, time and place of the hearing to consider confirmation of the Plan and related matters and (ii) the deadline for filing objections to confirmation of the Plan (the “Confirmation Hearing Notice”), (c) one or more ballots (and return envelopes) to be used in voting to accept or to reject the Plan and (d) other materials as authorized by the Bankruptcy Court.

If you are the Holder of a Claim that is entitled to vote, but you did not receive a ballot, or if your ballot is damaged or illegible, or if you have any questions concerning voting procedures, you may contact the following:

#### **If by regular mail:**

THE GARDEN CITY GROUP, INC.  
ATTN: PHILADELPHIA NEWSPAPERS, LLC  
P.O. BOX 9000 #6528  
MERRICK, NY 11566-9000

**If by overnight courier or hand delivery:**

THE GARDEN CITY GROUP, INC.  
ATTN: PHILADELPHIA NEWSPAPERS, LLC  
105 MAXESS ROAD  
MELVILLE, NY 11747

**If by telephone, for U.S. callers only:**

THE GARDEN CITY GROUP, INC.  
(866) 697-5547

**If by telephone, for international callers:**

THE GARDEN CITY GROUP, INC.  
(941)-906-4829

**D. Voting Procedures, Ballots and Voting Deadline**

After reviewing the Plan and this Disclosure Statement, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying ballot. You should complete and sign your original ballot (copies will not be accepted) and return it in the envelope provided.

Each ballot has been coded to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded ballot or ballots sent to you with this Disclosure Statement.

IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN [\_\_\_\_\_, 2009], AT 5:00 P.M. EASTERN TIME (THE “VOTING DEADLINE”) BY THE FOLLOWING:

**If by regular mail:**

THE GARDEN CITY GROUP, INC.  
ATTN: PHILADELPHIA NEWSPAPERS, LLC  
P.O. BOX 9000 #6528  
MERRICK, NY 11566-9000

**If by overnight courier or hand delivery:**

THE GARDEN CITY GROUP, INC.  
ATTN: PHILADELPHIA NEWSPAPERS, LLC  
105 MAXESS ROAD  
MELVILLE, NY 11747

UNLESS OTHERWISE PROVIDED IN THE INSTRUCTIONS ACCOMPANYING THE BALLOTS, FAXED BALLOTS WILL NOT BE ACCEPTED. BALLOTS THAT ARE RECEIVED BUT NOT SIGNED WILL NOT BE COUNTED. BALLOTS THAT ARE SIGNED BUT DO NOT SPECIFY WHETHER THE HOLDER ACCEPTS OR REJECTS THE PLAN WILL BE NULL AND VOID. DO NOT RETURN ANY STOCK CERTIFICATES, DEBT INSTRUMENTS OR OTHER EVIDENCE OF YOUR CLAIM WITH YOUR BALLOT.

Copies of this Disclosure Statement, the Plan and any appendices and exhibits to such documents are available to be downloaded free of charge on the Philadelphia Newspapers, LLC, *et al.* case website: [www.pnreorg.com](http://www.pnreorg.com). If you have any questions about (a) the procedure for voting your Claim, (b) the packet of materials that you have received, or (c) the amount of your Claim, or if you wish to obtain, at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d), an additional copy of the Plan, this Disclosure Statement or any appendices or exhibits to such documents, please contact:

**If by regular mail:**

THE GARDEN CITY GROUP, INC.  
ATTN: PHILADELPHIA NEWSPAPERS, LLC  
P.O. BOX 9000 #6528  
MERRICK, NY 11566-9000

**If by overnight courier or hand delivery:**

THE GARDEN CITY GROUP, INC.  
ATTN: PHILADELPHIA NEWSPAPERS, LLC  
105 MAXESS ROAD  
MELVILLE, NY 11747

**If by telephone, for U.S. callers only:**

THE GARDEN CITY GROUP, INC.  
(866) 697-5547

**If by telephone, for international callers:**

THE GARDEN CITY GROUP, INC.  
(941)-906-4829

For further information and general instruction on voting to accept or reject the Plan, see Article XII of this Disclosure Statement and the instructions accompanying your ballot.

THE DEBTORS URGE ALL HOLDERS OF CLAIMS ENTITLED TO VOTE TO EXERCISE THEIR RIGHT BY VOTING IN FAVOR OF THE PLAN AND OTHERWISE

COMPLETING THEIR BALLOTS AND RETURNING THEM BY THE VOTING DEADLINE.

**E. Confirmation Hearing and Deadline for Objections to Confirmation**

Pursuant to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3017(c), the Bankruptcy Court has scheduled a Confirmation Hearing for [\_\_\_\_\_, 2009], at [\_\_\_\_\_] (prevailing Eastern time). The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing. Objections to confirmation of the Plan or proposed modifications to the Plan, if any, must (i) be in writing, (ii) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, (iii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party, (iv) state with particularity the basis and nature of any objection to the Plan and (v) be filed electronically, together with proof of service, with the United States Bankruptcy Court for the Eastern District of Pennsylvania, 900 Market Street, Suite 400, Philadelphia, Pennsylvania 19107, www.paeb.uscourts.gov, and served on the parties listed in the Confirmation Hearing notice, in each case so as to be actually received on or before 5:00 p.m. (**prevailing Eastern time**) on [\_\_\_\_\_, 2009]. Objections to Confirmation of the Plan are governed by Bankruptcy Rule 9014.

**IV. GENERAL INFORMATION CONCERNING THE DEBTORS**

**A. Overview of Business Operations**

The Debtors own and operate numerous print and online publications in the Philadelphia market, including the Philadelphia Inquirer (the "Inquirer"), the Philadelphia Daily News (the "Daily News"), several community newspapers, the region's number one local website, philly.com ("Philly.com") and a number of related online products. The Debtors' flagship publications are the Inquirer, the third oldest newspaper in the country and the winner of numerous Pulitzer Prizes and other journalistic recognitions, and the Daily News. Both the Inquirer and Daily News are owned and operated by Debtor Philadelphia Newspapers, LLC ("Philly News"). The Debtors also distribute award-winning news, sports and commentary from the Inquirer and Daily News through Philly.com, which is operated by Debtor Philly Online, LLC. Debtor Broad Street Publishing, LLC also publishes a series of community newspapers and advertising publications in the Philadelphia area, including the Northeast Times, Star, and My Community Trend.

**B. Description of the Debtors' Business Operations**

The Inquirer and the Daily News are the number one and number two most widely read daily newspapers, respectively, in the Philadelphia media area, which in turn is the fourth largest media market in the United States (behind New York, Los Angeles and Chicago). Independent estimates show that the Inquirer's daily readership is over 830,000 readers and the Daily News' daily readership exceeds 460,000. The Inquirer's Sunday publication is read by over 1,500,000 readers, far more than the combined readership of all other Sunday newspapers in the Philadelphia market. Including unduplicated visitors to Philly.com, the Debtors estimate that their publications are read by more than 2,000,000 adults, almost half of the adult population of the eight-county Philadelphia area. The Inquirer and Daily News also have a higher combined



readership than the audiences of local television and radio news broadcasts. In the aggregate, the Debtors provide the largest source of news media in one of the largest media markets in the country.

The Debtors' businesses were formerly owned by Knight-Ridder, Inc. ("Knight-Ridder"). After Knight-Ridder's acquisition by The McClatchy Company ("McClatchy") in June 2006, McClatchy sold certain entities, business and assets (including the Inquirer and the Daily News, and collectively, the "Businesses") to Philadelphia Media Holdings, LLC ("Parent"). Parent was formed by a diverse group of Philadelphia investors for the purpose of establishing local ownership of Philadelphia's flagship newspapers. The local Philadelphians invested over \$150 million as equity into PMH.

The Debtors employ approximately 4,600 individuals and engage approximately 9,000 independent contractors (primarily newspaper carriers, circulation sales contractors and freelancers), virtually all of them in the Philadelphia area. A large percentage of the Debtors' employees are union workers. The Debtors enjoy excellent relations with their eleven unions. The past actions of the unions evidence their commitment to the success of the Debtors and their willingness to cooperate with existing local ownership and management.

Since the 2006 acquisition, local ownership and management have dramatically improved the operations of the Debtors' business. For instance:

- The efficiency of the organization has improved and now ranks among the best in the nation. Notable improvements include eliminating unnecessary overtime costs, significant reductions in non-labor expenses, combining some newsroom operations, and dramatically reducing the number of union grievances and arbitrations.
- Nationally-recognized talent has been recruited by the organization, including two-time Pulitzer Prize-winning William K. Marimow to serve as editor of the Inquirer, Mark J. Frisby to serve as Executive Vice President of Operations, and others.
- Circulation revenue has increased.
- The organization developed nationally-recognized advertiser services such as Media Lab™ and Research Lab™.
- Achieved reduction of over \$90 million in run rate expenses.
- Newsroom articles and series that contributed to positive change, helping thousands of individuals and organizations throughout the region.
- All this while improving the overall quality of journalism.

### **C. Organizational Structure**

Debtor PMH Acquisition, LLC, a Delaware limited liability company ("Holdings"), was formed for the purpose of acquiring the seven subsidiary Debtors. Holdings is the sole owner of one hundred percent of the equity interests in each of the seven subsidiary Debtors, which in turn own and operate the Businesses. Parent is the sole owner of one hundred percent of the equity interests in Holdings.



#### **D. Pre-Confirmation Management and Employees**

##### *1. Existing Management*

(a) Brian Tierney became the Debtors' sole manager and chief executive officer on or about June 29, 2006. Mr. Tierney oversees the Debtors' management, reviews their long-term strategic plans and exercises direct decision making authority in key areas.

##### *2. Existing Executive Officers*

The following are each of the Debtors' current executive officers:

- Brian Tierney, Chief Executive Officer
- Richard R. Thayer, Executive Vice President, Finance
- Mark J. Frisby, Executive Vice President of Operations

##### *3. Employees/Labor Relations*

As of the Petition Date, the Debtors employed approximately 4,619 employees, of whom approximately 1,836 are full-time employees (the "Full-Time Employees") and approximately 897 are part-time employees (the "Part-Time Employees"). In addition, during various times of the year, the Debtors employ approximately 1,886 seasonal employees (the "Seasonal Employees," and together with the Full-Time Employees and the Part-Time Employees, the "Regular Employees"). Including the Seasonal Employees, approximately 3,430 Regular Employees (74%) are paid on an hourly basis and approximately 1,189 Regular Employees (26%) are paid salary.<sup>2</sup> Approximately 3,430 Regular Employees are unionized. The Debtors' unionized Regular Employees are covered by sixteen collective bargaining agreements ("CBAs"). In addition to their Regular Employees, the Debtors supplement their workforce by employing one temporary employee (the "Temporary Employee"). They procure the services of the Temporary Employee through a third party staffing agency ("Temporary Agency").

Brian Tierney and Richard R. Thayer are subject to executive employment agreements (which include severance and separation terms).

##### *4. Existing Compensation and Benefits*

The Company has historically provided a competitive compensation and benefit package to its employees, consistent with its belief that the success of its businesses is dependent to a significant extent upon the efforts and abilities of its employees.

##### *(a) Severance Practices*

Certain of the Company's management and key employees described above are subject to employment agreements containing fixed severance terms. With respect to employees who do not have an employment agreement, the Company historically has awarded an employee

---

<sup>2</sup> The Seasonal Employees are paid on an hourly basis.

severance pay if employment is terminated for reasons such as a reduction in the work force or job elimination.

(b) *Bonus Plans*

(1) Advertising Sales Incentive Programs.<sup>3</sup> In the ordinary course of business, to incentivize certain Regular Employees and to maximize advertising sales which constitute a significant portion of the Debtors' revenue, the Debtors offer bonus-based monthly, quarterly and annual advertising sales incentive programs (as modified on a periodic basis, the "Advertising Incentive Programs"). As set forth in the First Day Declaration, the Advertising Incentive Programs are typical of the incentive programs used by other companies in the Debtors' industry. Under the Advertising Incentive Programs, a Regular Employee can earn bonuses, in addition to base salary, if such Regular Employee attains his or her sales goal for that particular month or quarter. The bonuses are either (i) a predetermined fixed amount; or (ii) a percentage of the revenue that the Debtors recognize generated by that Regular Employee's sales of advertising for the Debtors' print publications (the "Print Ad Sales") or websites (the "Online Ad Sales"). Certain of the Advertising Incentive Programs provide for additional bonuses in the event that a Regular Employee exceeds his or her sales goal by at least 5%.

Monthly bonuses accrue during the month the sales goal is attained and are paid in the second week of the following month. Quarterly bonuses accrue each month and are paid in the second week of the following quarter. Annual bonuses are earned during the fiscal year in which the goal is attained and are paid the following fiscal year. On average, the Debtors pay approximately \$2.7 million per year with respect to their Advertising Incentive Programs. Regular Employee bonuses constitute a substantial portion of the Debtors' advertising Regular Employees' income. As a result, these Employees rely on their bonuses to pay their daily living expenses.

(2) Circulation Incentive Programs.<sup>4</sup> In the ordinary course of business, to incentivize non-insider Regular Employees in the Debtors' circulation division and to maximize newspaper and print publication sales, the Debtors offer bonus-based newspaper sales and distribution incentive programs (as modified on a periodic basis, the "Circulation Incentive Programs").<sup>5</sup> As set forth in the First Day Declaration, the Circulation Incentive Programs are typical of the incentive programs used by other newspapers. Under the Circulation Incentive Programs, depending on a Regular Employee's particular position, such Regular Employee may be entitled to receive a bonus if he or she excels in one or more of the following areas including, without limitation, circulation performance, service performance, achievement of a particular project initiative, distribution of alternative (non-core) products and draw

---

<sup>3</sup> The Advertising Incentive Programs apply to all advertising sales personnel including sales representatives and advertising management, but do not apply to insiders.

<sup>4</sup> The Circulation Incentive Programs do not apply to insiders.

<sup>5</sup> The Circulation Incentive Programs apply to district managers, distribution center managers, regional managers, delivery partnership managers, road-staff, marketing managers, newspaper in education coordinators, the home delivery sales director, the circulation sales manager, among others.

management, among others.<sup>6</sup> Depending on a Regular Employee's position, a Regular Employee is evaluated on a quarterly, semi-annual or annual basis. If a Regular Employee achieves his or her specific goals during an evaluation period as determined by the Debtors' management, he or she receives a fixed bonus the following quarter.

Quarterly bonuses accrue each month and are paid in the second week of the following quarter. Semi-annual bonuses accrue each month and are paid in the second week following the six month period. Annual bonuses accrue each month and are paid in the second week following the end of the fiscal year in which the bonus was earned.

(3) Management Incentive Program. Certain members of the Debtors' senior management participated in the management incentive program (the "Management Incentive Program"), implemented by the Debtors in December 2008. The Management Incentive Program is typical of the incentive programs used by other companies in the Debtors' industry to incentivize management. Under the Management Incentive Program, discretionary bonuses were made to executives and selected managers. These payments in large part were designed to satisfy commitments made as part of the senior managers' employment packages. All of the Debtors' senior managers were formerly employed by organizations that provided bonuses, deferred compensation and equity programs, whether options, stock incentive rights or other forms of executive compensation. In their business judgment, the Debtors determined that, in the absence of the Management Incentive Program, their senior management compensation program would not be sufficiently competitive to attract, motivate or retain top talent from the media industry. The determination of bonus amounts under the Management Incentive Program were made according to criteria including: organizational level (executive, director or manager); performance (*e.g.*, collaboration, revenue generation, cost/expense reduction, new product development, project completion and managerial capacity); and base salary competitiveness. In establishing the bonus amounts for vice-president-level executives, a range of ten percent to twenty percent was set (with an average of fifteen percent) and the base amount was adjusted up or down, as necessary, to reflect individual performance against the criteria set forth above. The executives were permitted to nominate directors or managers based on exemplary performance in one or more of the bonus criteria.

---

<sup>6</sup> One of the Debtors' businesses is the printing and distribution of publications not owned by the Debtors or "alternative products." Draw management refers to the management of the number of newspapers printed in relation to the number of newspapers ultimately sold.

(c) *Retirement Plans*

The Debtors maintain a retirement savings plan meeting the requirements of Section 401(k) of the Internal Revenue Code for the benefit of all Regular Employees (the “401(k) Plan”). Regular Employees are automatically eligible to participate in the 401(k) Plan (the “Participants”). The 401(k) Plan allows for automatic pre-tax salary deductions of eligible compensation up to the limits set by the Internal Revenue Code. Nonunion Regular Employees receive a 50% match on up to 6% of such Regular Employee’s contributions. As of the Petition Date, approximately 951 Regular Employees participated in the 401(k) Plan.

On a monthly basis, in the ordinary course of business, the Debtors make contributions to union health and welfare plans and pension, severance, and 401(k) plans in accordance with the terms of the CBAs. These contributions are separate from any employee payroll deductions.

**E. Pre-Confirmation Capital Structure of the Company**

1. *Corporate Structure*

Each of the Debtors is a limited liability company. Parent is the holder of one hundred percent of the membership interests in Holdings, and Holdings is the holder of one hundred percent of the membership interests in the other seven Debtors.

2. *Prepetition Secured Debt*

The Debtors are parties to a Credit and Guaranty Agreement dated June 29, 2006 (as amended, the “Prepetition Credit Agreement”) with Citizens Bank of Pennsylvania, as administrative and collateral agent (the “Prepetition Agent”), and certain other lender parties (collectively, the “Prepetition Lenders”), pursuant to which the Prepetition Lenders extended a term loan in the original principal amount of \$295,000,000 (the “Prepetition Term Loan”) and a senior secured revolving credit facility (the “Prepetition Revolver”) in the original committed amount of \$50,000,000 (where applicable, the Prepetition Term Loan and Prepetition Revolver are hereinafter collectively referred to as the “Prepetition Credit Facility”). Debtor Philly News is the borrower under the Prepetition Credit Agreement and all of the other Debtors (other than Parent) are guarantors thereunder. The Prepetition Agent and Prepetition Lenders assert that the Prepetition Credit Facility is secured by first priority liens on and security interests in substantially all of the real and personal property of the Debtors (other than Parent), including, without limitation, a first priority mortgage on the Debtors’ corporate headquarters at 400 North Broad Street in Philadelphia.

The Debtors also are parties to a Note Purchase Agreement dated June 29, 2006 (the “Subordinated Note Purchase Agreement”), pursuant to which \$85,000,000 in 16% Senior Subordinated Notes (the “Subordinated Notes”) were issued to various holders. The Debtors’ obligations under the Subordinated Notes are unsecured. Debtor Philly News is the borrower under the Subordinated Note Purchase Agreement and all of the other Debtors (other than Parent) are guarantors thereunder.

The relative rights and priorities with respect to the Prepetition Credit Facility and the Subordinated Notes are governed by a Subordination and Intercreditor Agreement dated as of June 29, 2006, by and among the Debtors, the Prepetition Agent, and The Royal Bank of Scotland PLC on behalf of the holders of the Subordinated Notes.

As of February 22, 2009, the Debtors (other than Parent) were obligated under the Prepetition Credit Facility in the approximate aggregate amount of \$318,764,000 of which approximately \$292,317,000 is outstanding principal and interest on account of the Prepetition Term Loan, \$6,331,000 is outstanding principal and interest on account of the Prepetition Revolver, \$6,973,000 is outstanding on account of swap obligations and \$13,143,000 is outstanding on account of letter of credit obligations.

As of February 22, 2009, the Debtors were obligated under the Subordinated Notes in the approximate aggregate amount of \$102,762,000.

#### **F. Summary of Assets**

The Debtors filed Schedules with the Bankruptcy Court that detail the assets owned by each of the Debtors. Such assets include cash on hand, bank accounts and investments, security deposits, insurance policies, stock interests, accounts receivable, intellectual property, vehicles, office equipment, furnishings and supplies, machinery, fixtures, equipment and supplies used in business, inventory, and other items of personal property. The Schedules will provide asset values on a net book basis, which are not reflective of actual values. The Schedules may be reviewed on the Bankruptcy Court electronic case filing system, on the Debtors' case website at [www.pnreorg.com](http://www.pnreorg.com) or during business hours in the offices of the Clerk of the Bankruptcy Court. Information regarding the Debtors' assets is also available in the Liquidation Analysis attached hereto as Appendix C.

#### **G. Historical Financial Information**

Attached as Appendix D is selected financial data for the Debtors for the annual periods ended December 30, 2007 and December 28, 2008. The financial data as of 2008 has not been audited.

#### **H. Events Leading to Commencement of the Chapter 11 Cases**

Like many newspapers and other traditional news media, the Debtors have experienced a series of challenges stemming from a loss of advertising revenue as a result of the recession and volatile credit market, and particularly with respect to drastically lower automotive, real estate and retail sales. In addition, certain advertising revenue, particularly classified employment advertising, has been declining for some time as a result of increased competition from other competing forms of media, including the Internet. These negative trends have affected many media companies around the country. Indeed, many newspapers over the past year have been put up for sale or sought bankruptcy protection.

Despite these challenges, the Inquirer has performed well when compared with similar metropolitan newspapers in other large media markets. The Debtors generate positive earnings before interest, taxes, depreciation and amortization ("EBITDA"). In 2008, the Debtors generated approximately \$36 million in EBITDA, adjusted for certain one time items ("Adjusted EBITDA"). The Debtors project that 2009 Adjusted EBITDA will exceed \$12 million.

Prior to and as of the Petition Date, the Debtors were in payment and covenant default under both the Prepetition Credit Facility and the Subordinated Notes.

#### **I. The Debtors' Significant Leverage**

As the Debtors experienced decreasing revenues, they continued to maintain significant leverage and, as such, attendant high debt costs. As of the Petition Date, the Debtors'



books reflected approximately \$421,526,000 of funded debt obligations and assets (exclusive of goodwill) of substantially less.

#### **J. Prepetition Negotiations with the Senior Lenders**

For months leading up to the Petition Date, the Debtors attempted to reach agreement on a consensual out-of-court restructuring with the Senior Lenders, but despite their exhaustive, good faith efforts, were not able to do so. Prior to the Petition Date, the Debtors had several meetings with the Prepetition Agent and a steering group of the Prepetition Lenders (the “Steering Group”). During these meetings, the Debtors have made proposals whereby investors would have invested tens of millions of dollars of new equity in exchange for an equity interest in the restructured enterprise. These new money investment proposals were rejected.

After a mid-November 2008 meeting, during which a \$20 million new equity proposal was rejected, it was determined that the Prepetition Agent and Steering Group would make their own restructuring proposal that would include a \$20 million new money loan. On January 29, 2009, the Prepetition Agent and Steering Group finally delivered their proposal containing a proposed commitment for debtor-in-possession financing (the “DIP Commitment”), a term sheet for the to-be-arranged debtor-in-possession financing, a term sheet for a restructured term note, and a management incentive plan (“MIP”) term sheet. The proposal contemplated a “pre-arranged” chapter 11 filing. The DIP Commitment made reference to a fee letter (“Fee Letter”), which Fee Letter was not attached (and was first delivered to the Debtors on February 5, 2009). Notwithstanding the foregoing, the DIP Commitment required acceptance by the Debtors less than 48 hours after its delivery. Most significantly, the materials delivered did not contain a commitment for exit financing and, in fact, the Prepetition Agent and Steering Group informed the Debtors that the Lenders were not willing nor able to provide exit financing nor had they found a third party willing to do so. Therefore, the Prepetition Agent and the Steering Group’s proposal was not capable of closing, and could not support a feasible, pre-arranged plan of reorganization.

After these deliveries, there were further discussions between the parties. Then, on February 6, 2009, the Prepetition Agent delivered to the Debtors a DIP Commitment with a seven hour deadline to sign that letter. On February 9, 2009, the Debtors informed the Prepetition Agent that they had located DIP financing that would convert into an exit facility. On February 10, 2009, the Debtors delivered to the Prepetition Agent a commitment letter and term sheet for the alternative, convertible DIP financing offered by Callowhill Partners, LLC (the “Proposed DIP Agent”).

On February 11, 2009, the Prepetition Agent delivered a revised DIP financing commitment and term sheet, again imposed a short (48 hour) cut-off time, and again did not deliver an exit financing commitment.

On February 13, 2009, the Debtors, wary of the Prepetition Agent’s ability to exercise rights and remedies with respect to the Debtors’ cash and other operating assets, executed a DIP financing commitment letter with the Prepetition Agent that incorporated the terms of the February 11 term sheet. Although the Debtors signed this letter, the Debtors informed the Prepetition Agent prior to signing that (a) they objected to certain provisions of the letter (including a provision calling for the retention of a new, unidentified officer that would have corporate governance responsibilities equivalent to a Board of Directors) and (b) such provisions that could not be implemented. The Debtors requested that such provisions be

modified. The letter accommodated the Debtors' right to seek alternative financing arrangements as required by the Bankruptcy Code and the Debtors' fiduciary duties.

The Debtors reasonably determined that the DIP Facility offered by the Proposed DIP Agent provided greater liquidity at a significantly lower cost, plus the prospect of exit liquidity that was not available from the Prepetition Agent and Lenders, under provisions otherwise similar to those offered by the Prepetition Agent and Lenders. As with the commitment offered by the Prepetition Agent, the Proposed DIP Agent required liens on all assets superior to those of the Prepetition Agent and Prepetition Lenders. Given that the value of the Debtors' business and assets are almost certainly far less than the amount of the outstanding debt under the Prepetition Credit Agreement, the Debtors were unable to find alternate post-petition financing not secured by such priming liens. Based on the foregoing, in the sound exercise of their business judgment and fiduciary duties, the Debtors determined to commence chapter 11 proceedings and to proceed under the DIP Facility offered by the Proposed DIP Agent.

On February 22, 2009, each of the Debtors, other than Parent, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code and immediately filed a motion seeking the approving of the DIP Facility. Such motion has been continued with the consent of the Prepetition Agent and Lenders, and prior to interim or final approval of this DIP Facility, the Debtors have been using the Prepetition Lenders' cash collateral in accordance with the Cash Collateral Order described in Section V.D. below. The Court has presently scheduled the Debtors' motion to approve the DIP Facility for hearing on August 21, 2009.

## **V. THE CHAPTER 11 CASES**

### **A. Continuation of Business; Stay of Litigation**

As described above, on February 22, 2009, the Debtors, other than Parent,<sup>7</sup> filed petitions for relief under chapter 11 of the Bankruptcy Code. Since their respective Petition Dates, the Debtors have continued to operate as debtors in possession subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties in the ordinary course, with transactions outside of the ordinary course of business requiring Bankruptcy Court approval.

An immediate effect of the filing of the Debtors' bankruptcy petitions was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts by creditors, the enforcement of liens against property of the Debtors and the continuation of litigation against the Debtors. The relief provides the Debtors with the "breathing room" necessary to assess their businesses and prevents creditors from obtaining an unfair recovery advantage while the Chapter 11 Cases are pending.

---

<sup>7</sup> Parent filed its chapter 11 petition on June 10, 2009, and its chapter 11 case has been procedurally consolidated with the Chapter 11 Cases of the other Debtors.



## **B. First Day Motions**

On the first day of the Chapter 11 Cases, the Debtors filed several applications and motions seeking certain relief by virtue of so-called “first day orders.” First day motions and orders are intended to facilitate the transition between a debtor’s prepetition and postpetition business operations by approving certain regular business practices that may not be specifically authorized under the Bankruptcy Code or as to which the Bankruptcy Code requires prior approval by the Bankruptcy Court. The first day motions filed in the Chapter 11 Cases are typical of motions filed in large Chapter 11 cases across the country. Such motions sought, among other things, the following relief:

- **joint administration of the Debtors’ bankruptcy cases;**
- **interim use of cash collateral (as further discussed below);**
- **the maintenance of the Debtors’ bank accounts and operation of their cash management systems substantially as such systems existed prior to the Petition Date;**
- **payment of employees’ prepetition compensation, benefits and expense reimbursement amounts;**
- **payment of prepetition taxes and fee amounts;**
- **authority to administer customer programs and honor certain prepetition obligations to customers;**
- **approval of entry into trade agreements with critical vendors and payment of certain prepetition claims to such critical vendors in the ordinary course of business; and**
- **an extension of the statutory period during which utilities are prohibited from altering, refusing or discontinuing services and/or requiring adequate assurance of payment as a condition of receiving services.**

## **C. Retention of Professionals**

The Debtors are represented in the Chapter 11 Cases by Proskauer Rose LLP (“Proskauer”) and Dilworth Paxson LLP (“Dilworth”). The Debtors obtained the financial advisory services of Alvarez & Marsal (“Alvarez & Marsal”) and the investment banking services of Sonenshine Partners LLC (“Sonenshine”). Garden City was authorized to provide claims, noticing and balloting services to the Debtors.

## **D. Authorization to Use Cash Collateral of Existing Lenders**

As of the Petition Date, the Debtors held proceeds of assets on which the Prepetition Senior Lenders assert first priority liens and security interests (the “Cash”).

Collateral”).<sup>8</sup> Cash collateral is defined in section 363 of the Bankruptcy Code and includes, but is not limited to, “cash, negotiable instruments, documents of title, securities, deposit accounts, . . . other cash equivalents. . . and . . . proceeds, products, offspring, rents or profits of property subject to a security interest. . .” 11 U.S.C. § 363(a). Under the Bankruptcy Code, the Debtors are prohibited from using, selling or leasing cash collateral unless either the appropriate creditors consent or the Bankruptcy Court, after notice and a hearing, authorizes such action.

On the Petition Date, the Debtors filed the *Motion of the Debtors for Interim and Final Orders (a) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection for Use and (b) Prescribing Form and Manner of Notice and Setting the Time for the Final Hearing* [Docket No. 21] (the “Cash Collateral Motion”).

By the Cash Collateral Motion, the Debtors sought (i) authority on an interim basis to use cash collateral in accordance with a proposed budget, (ii) authority on an interim basis to provide adequate protection to the Prepetition Senior Lenders (iii) a final hearing on the Cash Collateral Motion, (iv) authority on a final basis to use cash collateral in accordance with a proposed budget, and (v) authority on a final basis to provide adequate protection to the Prepetition Senior Lenders.

On February 24, 2009, the Court entered the *Interim Order (a) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection for Use and (b) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing* [Docket No. 46] (the “Interim Cash Collateral Order”). By the Interim Cash Collateral Order, the Court authorized the Debtors, among other things, to use cash collateral in accordance with a proposed budget pending a final hearing.

On March 9, 2009, the Court entered the *Second Interim Order (a) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection for Use and (b) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing* [Docket No. 134] (the “Second Interim Cash Collateral Order”). By the Second Interim Cash Collateral Order, the Court authorized the Debtors, among other things, to use cash collateral in accordance with a proposed budget pending a final hearing.

On March 16, 2009, the Court entered the *Third Interim Order (a) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection for Use and (b) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing* [Docket No. 216] (the “Third Interim Cash Collateral Order”). By the Third Interim Cash Collateral Order, the Court authorized the Debtors, among other things, to use cash collateral in accordance with a proposed budget pending a final hearing.

On March 27, 2009, the Court entered the *Fourth Interim Order (a) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection for Use and (b) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing* [Docket No. 257] (the “Fourth Interim Cash Collateral Order”). By the Fourth

---

<sup>8</sup> The Debtors do not hereby make any admission or consent with respect to the validity, priority, extent or enforceability of the liens asserted by the Prepetition Senior Lenders and hereby reserve all rights with respect thereto.

Interim Cash Collateral Order, the Court authorized the Debtors, among other things, to use cash collateral in accordance with a proposed budget pending a final hearing.

On April 14, 2009, the Court entered the *Fifth Interim Order (a) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection for Use and (b) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing* [Docket No. 353] (the “Fifth Interim Cash Collateral Order” and collectively, with the Interim Cash Collateral Order, the Second Interim Cash Collateral Order, the Third Interim Cash Collateral Order and the Fourth Interim Cash Collateral Order, the “Cash Collateral Order”). By the Fifth Interim Cash Collateral Order, the Court authorized the Debtors, among other things, to use cash collateral through and including week ending May 22, 2009 in accordance with a proposed budget.

On May 8, 2009, the Court entered the *Sixth Interim Order (a) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection for Use and (b) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing* [Docket No. 443] (the “Sixth Interim Cash Collateral Order”). By the Sixth Interim Cash Collateral Order, the Court authorized the Debtors, among other things, to use cash collateral through and including week ending May 22, 2009 in accordance with a proposed budget.

On May 18, 2009, the Court entered the *Seventh Interim Order (a) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection for Use and (b) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing* [Docket No. 488] (the “Seventh Interim Cash Collateral Order”). By the Seventh Interim Cash Collateral Order, the Court authorized the Debtors, among other things, to use cash collateral through and including week ending June 26, 2009 in accordance with a proposed budget.

On June 26, 2009, the Court entered the *Eighth Interim Order (a) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection for Use and (b) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing* [Docket No. 488] (the “Eighth Interim Cash Collateral Order”). By the Eighth Interim Cash Collateral Order, the Court authorized the Debtors, among other things, to use cash collateral through and including week ending July 31, 2009 in accordance with a proposed budget.

On July 30, 2009, the Court entered the *Ninth Interim Order (a) Authorizing the Debtors to Use Cash Collateral of Existing Secured Lenders and Granting Adequate Protection for Use and (b) Prescribing the Form and Manner of Notice and Setting the Time for the Final Hearing* [Docket No. 670] (the “Ninth Interim Cash Collateral Order” and collectively, with the Interim Cash Collateral Order, the Second Interim Cash Collateral Order, the Third Interim Cash Collateral Order, the Fourth Interim Cash Collateral Order, the Fifth Interim Cash Collateral Order, the Sixth Interim Cash Collateral Order, the Seventh Interim Cash Collateral Order and the Eighth Interim Cash Collateral Order, the “Cash Collateral Order”). By the Ninth Interim Cash Collateral Order, the Court authorized the Debtors, among other things, to use cash collateral through and including week ending September 11, 2009 in accordance with a proposed budget.

The Debtors' financial performance in the five months during which these Chapter 11 Cases have been pending has exceeded expectations in that, during that five-month period, the Debtors have been able to fund their operations using only Cash Collateral, without the need for a debtor-in-possession loan.

## **VI. SUMMARY OF THE PLAN**

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE AND IMPLEMENTATION OF THE PLAN AND THE CLASSIFICATION AND TREATMENT OF CLAIMS UNDER THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT.

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

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN WILL CONTROL THE TREATMENT OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS AND OTHER PARTIES IN INTEREST. IN THE EVENT OF ANY CONFLICT BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN OR ANY OTHER OPERATIVE DOCUMENT, THE TERMS OF THE PLAN AND/OR SUCH OTHER OPERATIVE DOCUMENT WILL CONTROL.

### **A. Overall Structure of the Plan**

The Plan constitutes a plan of liquidation and sets forth the means for satisfying Claims against and Interests in the Debtors. Under the Plan, Claims against and Interests in the Debtors are divided into Classes according to their relative seniority and other criteria.

If the Plan is confirmed by the Bankruptcy Court and consummated: (a) the Claims in certain Classes will be Reinstated or modified and receive distributions equal to the full amount of such Claims, (b) the Claims of certain other Classes will be modified and receive distributions constituting a partial recovery on such Claims and (c) the Claims and Interests in certain other Classes will receive no recovery on such Claims or Interests. On the Effective Date and at certain times thereafter, the Debtors or the Liquidation Trustee will distribute Cash and other property in respect of certain Classes of Claims as provided in the Plan. The Classes of Claims against and Interests in the Debtors created under the Plan, the treatment of those Classes under the Plan and the securities and other property to be distributed under the Plan are described below.

On or before the Effective Date, except as otherwise provided in the Plan and the Asset Purchase Agreement, all assets of the Debtors' estates shall vest in the Liquidating Trust in accordance with section 1141 of the Bankruptcy Code free and clear of all Claims,

encumbrances and interests, but subject to the rights of Holders of Allowed Claims to obtain the distributions provided for in the Plan. A copy of the Liquidating Trust Agreement shall be included with the Plan Supplement to be filed on or before the fifth day prior to the Confirmation Hearing.

**B. Substantive Consolidation**

The Plan does not provide for the substantive consolidation of the Debtors' assets and liabilities. The Debtors, however, reserve the right to seek substantive consolidation by motion if they conclude that substantive consolidation is necessary or appropriate for effectuation of the Plan.

**C. Classification and Treatment of Claims and Interests**

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

The Debtors believe that the Plan has classified all Claims and Interests in compliance with the provisions of section 1122 of the Bankruptcy Code and applicable case law, but it is possible that a Holder of a Claim or Interest may challenge the Debtors' classification of Claims and Interests and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. In that event, the Debtors intend, to the extent permitted by the Bankruptcy Code, the Plan and the Bankruptcy Court, to make such reasonable modifications of the classifications under the Plan to permit confirmation and to use the Plan acceptances received for purposes of obtaining the approval of the reconstituted Class or Classes of which each accepting Holder ultimately is deemed to be a member. Any such reclassification could adversely affect the Class in which such Holder initially was a member, or any other Class under the Plan, by changing the composition of such Class and the vote required of that Class for approval of the Plan.

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

The classification of Claims and Interests and the nature of distributions to members of each Class are summarized below. The Debtors believe that the consideration, if any, provided under the Plan to Holders of Claims and Interests reflects an appropriate resolution of their Claims and Interests, taking into account the differing nature and priority (including applicable contractual and statutory subordination) of such Claims and Interests and the fair



value of the Debtors' assets. In the event any Class rejects the Plan, the Debtors will seek confirmation of the Plan pursuant to the "cramdown" provisions of the Bankruptcy Code as to any dissenting Class. Section 1129(b) of the Bankruptcy Code permits confirmation of a chapter 11 plan in certain circumstances even if the plan has not been accepted by all Impaired classes of Claims and Interests. Although the Debtors believe that the Plan can be confirmed under section 1129(b) of the Bankruptcy Code, there can be no assurance that the Bankruptcy Court will find that the requirements to do so have been satisfied.

1. *Treatment of Unclassified Claims under the Plan*

(a) *Administrative Claims*

An Administrative Claim is defined in the Plan as a Claim for: (a) any cost or expense of administration (including, without limitation, the fees and expenses of Professionals) of any of the Chapter 11 Cases asserted or arising under sections 503, 507(a)(1), 507(b) or 1114(e)(2) of the Bankruptcy Code including, but not limited to (i) any actual and necessary post Petition Date cost or expense of preserving the Debtors' respective Estates or operating the businesses of the Debtors, (ii) any post Petition Date cost, indebtedness or contractual obligation duly and validly incurred or assumed by the Debtors in the ordinary course of their respective businesses, (iii) compensation or reimbursement of expenses of Professionals to the extent Allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code, and (iv) all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under section 546 of the Bankruptcy Code; (b) any fees or charges assessed against the Debtors' respective Estates under section 1930 of title 28 of the United States Code; and (c) any Allowed administrative claim or superpriority claim granted to the Prepetition Senior Agent pursuant to the Cash Collateral Order.

Under the Plan, Administrative Claims are Unimpaired. Unless otherwise provided for therein, each Holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Administrative Claim becomes Allowed, or (iii) a date agreed to in writing by the Debtors or the Purchaser, as the case may be, and the Holder of such Administrative Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Purchaser, as the case may be, or as the Bankruptcy Court may order.

All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, will be paid on or before the Effective Date. All such fees that arise after the Effective Date but before the closing of the Chapter 11 Cases will be paid by the Liquidation Trustee.

Under the Plan, applications for compensation for services rendered and reimbursement of expenses incurred by Professionals (a) from the Petition Date through the Effective Date or (b) at any time during the Chapter 11 Cases when such compensation is sought pursuant to sections 503(b)(2) through (b)(5) of the Bankruptcy Code, must be Filed no later than ninety (90) days after the Effective Date or such later date as the Bankruptcy Court approves, and must be served on (a) the Debtors, Philadelphia Newspapers, LLC, 400 N. Broad Street, Philadelphia, PA 19130 (Attn: Scott Baker, General Counsel), (b) counsel to the Debtors, Proskauer Rose LLP, 70 West Madison Street, Suite 3800, Chicago, Illinois 60602 (Attn: Mark

K. Thomas and Peter J. Young), (c) the Office of the United States Trustee, 833 Chestnut Street, Suite 500, Philadelphia, Pennsylvania 19107 and (d) any other party designated by the Bankruptcy Rules or any order of the Court to receive notice. Applications that are not timely Filed will be barred and will not be considered by the Court. The Debtors will pay any valid claims for Professional fees and expenses incurred after the Effective Date without any application to the Bankruptcy Court.

(b) *Priority Tax Claims*

The Plan defines Priority Tax Claims as any and all Claims accorded priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code. Such Priority Tax Claims include Claims of governmental units for taxes owed by the Debtors that are entitled to a certain priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code. The taxes entitled to priority are (a) taxes on income or gross receipts that meet the requirements set forth in section 507(a)(8)(A) of the Bankruptcy Code, (b) property taxes meeting the requirements of section 507(a)(8)(B) of the Bankruptcy Code, (c) taxes that were required to be collected or withheld by the Debtors and for which the Debtors are liable in any capacity as described in section 507(a)(8)(C) of the Bankruptcy Code, (d) employment taxes on wages, salaries or commissions that are entitled to priority pursuant to section 507(a)(4) of the Bankruptcy Code, to the extent that such taxes also meet the requirements of section 507(a)(8)(D), (e) excise taxes of the kind specified in section 507(a)(8)(E) of the Bankruptcy Code, (f) customs duties arising out of the importation of merchandise that meet the requirements of section 507(a)(8)(F) of the Bankruptcy Code and (g) prepetition penalties relating to any of the foregoing taxes to the extent such penalties are in compensation for actual pecuniary loss as provided in section 507(a)(8)(G) of the Bankruptcy Code. The Debtors have estimated that the aggregate amount of Priority Tax Claims payable under the Plan will be approximately \$110,000.

Priority Tax Claims are Unimpaired. Under the Plan, each Holder of an Allowed Priority Tax Claim shall receive, at the option of the Debtors or the Purchaser, as the case may be, in full satisfaction, settlement, release, extinguishment and discharge of such Priority Tax Claim: (a) the amount of such unpaid Allowed Priority Tax Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Priority Tax Claim becomes Allowed and (iii) a date agreed to by the Debtors or the Purchaser, as the case may be, and the Holder of such Priority Tax Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Priority Tax Claim and the Debtors or the Purchaser, as the case may be, or as the Bankruptcy Court may order.

2. *Treatment of Classified Claims and Interests under the Plan*

(a) *Class 1: Miscellaneous Secured Claims*

Class 1 Miscellaneous Secured Claims are Unimpaired under the Plan. Holder of an Allowed Class 1 Miscellaneous Secured Claim shall receive, in the sole discretion of the Debtors or the Liquidation Trustee, as the case may be, in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) Cash equal to the amount of such Allowed Miscellaneous Secured Claim on or as soon as practicable after the later of (i) the Effective Date, (ii) the date that such Miscellaneous Secured Claim becomes Allowed, and (iii) a date agreed to by the Debtors or the Liquidation Trustee, as the case may be, and the Holder of such Class 1 Miscellaneous Secured Claim; (b) reinstatement of such Allowed Miscellaneous Secured Claim;



(c) the Property securing such Miscellaneous Secured Claim; or (d) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Liquidation Trustee, as the case may be.

(b) *Class 2: Miscellaneous Priority Claims*

Class 2 Miscellaneous Priority Claims are Unimpaired under the Plan. Each Holder of an Allowed Class 2 Miscellaneous Priority Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Class 2 Claim becomes Allowed, and (iii) a date agreed to by the Debtors or the Purchaser, as the case may be, and the Holder of such Class 2 Miscellaneous Priority Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Purchaser, as the case may be.

(c) *Class 3: Prepetition Senior Secured Claims*

Class 3 Prepetition Senior Secured Claims are Impaired under the Plan and, on the Effective Date thereof, each Holder of an Allowed Prepetition Senior Secured Claim shall receive, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, such Holder's Pro Rata Share of (i) the Plan Cash, and (ii) all of the Debtors' right, title and interest in and to the Real Property.

(d) *Class 4: Prepetition Unsecured Debt Claims*

Class 4 Prepetition Senior Deficiency Claims are Impaired under the Plan. On or as soon as reasonably practicable after the later of (a) the Effective Date, or (b) the date on which such Prepetition Unsecured Debt Claim becomes Allowed, each Holder of an Allowed Class 4 Prepetition Unsecured Debt Claim shall receive its Pro Rata Share of 3% of the equity interests in the Purchaser; provided, however, that in the event that either (x) Class 4 does not accept the Plan, or (y) the Prepetition Senior Lenders do not waive their rights against the Prepetition Mezzanine Lenders with respect to distributions under the Plan, Class 4 will receive no distribution under the Plan.

(e) *Class 5: General Unsecured Trade Claims*

Class 5 General Unsecured Trade Claims are Impaired under the Plan. On the Effective Date, each Holder of an Allowed General Unsecured Trade Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim, its Pro Rata Share of the Net Trust Assets.

(f) *Class 6: City of Philadelphia Claim*

Class 6 City of Philadelphia Claim is Impaired under the Plan. On the Effective Date, the Holder of the Allowed City of Philadelphia Claim shall receive, at the option of the Debtors or the Purchaser, as the case may be, in full satisfaction, settlement, release, extinguishment and discharge of such Claim five (5) equal cash payments totaling the Allowed amount of the City of Philadelphia Claim, due and payable on each anniversary of the Petition Date for the Subsidiary Debtors, with the final payment to be due and payable on the fifth (5<sup>th</sup>) anniversary of the Petition Date for the Subsidiary Debtors.

(g) *Class 7: Interests*

Class 7 Interests are Impaired under the Plan. Holders of Class 7 Interests shall not receive or retain any property under the Plan on account of such Interests. On the Effective Date, all Interests shall be cancelled.

(h) *Class 8: Insider Claims*

Class 8 Insider Claims are Impaired under the Plan. Holders of Class 8 Insider Claims shall not receive or retain any property under the Plan on account of such Insider Claims. On the Effective Date, all Insider Claims shall be extinguished.

**D. Reservation of Rights Regarding Claims**

Except as otherwise explicitly provided in the Plan, nothing will affect the Debtors' or the Liquidation Trustee's rights and defenses, both legal and equitable, with respect to any Claims, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment. The Debtors specifically reserve all rights, remedies, claims, defenses and Causes of Action.

**E. Allowed Claims, Distribution Rights and Objections to Claims**

1. *Allowance Requirement*

Only Holders of Allowed Claims are entitled to receive distributions under the Plan. An Allowed Administrative Claim is a Claim or any portion thereof that has been Allowed, or adjudicated in favor of the Holder by estimation or liquidation, by a Final Order, that was incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases and as to which there is no dispute as to the Debtors' liability, or that has become Allowed by failure to object pursuant to Section 8.05 of the Plan. An Allowed Claim is such Claim or any portion thereof (other than an Administrative Claim) of (a) any Claim against any of the Debtors that has been listed by the Debtors in the Schedules, as such Schedules may have been amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent, and with respect to which no contrary proof of claim has been filed, (b) any Claim specifically allowed under the Plan, (c) any Claim the amount or existence of which has been determined or allowed by a Final Order, or (d) any Claim as to which a proof of claim has been timely filed before the Bar Date, provided that at the time of the Effective Date the Debtors have not identified such Claim as being objectionable in part or in whole and no objection to the allowance thereof has been filed by the Claims Objection Deadline; provided, however, that the term Allowed, with reference to any Claim, shall not include (x) any unliquidated claim or (y) interest or attorneys' fees on or related to any Claim that accrues from and after the Petition Date unless otherwise expressly provided for in the Plan.

2. *Date of Distribution*

All Distributions to Holders of Allowed Claims as of the Effective Date will be made as and when provided in the Plan.

3. *Making of Distributions*

Distributions to Holders of Allowed Claims will be made by the Liquidation Trustee or the Purchaser as provided in the Plan (a) to the last known addresses of such Holders, or (b) to the addresses set forth in any written notices of address changes delivered to the

Liquidation Trustee or the Purchaser, as applicable. If any Holder's distribution is returned as undeliverable, no further distributions to such Holder shall be made unless and until the Liquidation Trustee or the Purchaser, as applicable, is notified of such Holder's then current address, at which time all missed distributions shall be made to such Holder without interest. Unless otherwise agreed by the Liquidation Trustee or the Purchaser, as applicable, amounts in respect of undeliverable distributions made by the Liquidation Trustee or the Purchaser, as applicable, will be returned to the Liquidating Trust or the Purchaser, as applicable, until such distributions are claimed.

All Property distributed on account of Claims must be claimed within the later of (a) one (1) year after the Effective Date or (b) one (1) year after such distribution is made to such Holder or, in the case of a distribution made in the form of a check, must be negotiated and a request for reissuance be made as provided for in Section 5.05 of the Plan. All Unclaimed Property will be retained by and will revert in the Liquidating Trust and will no longer be subject to distribution. All full or partial payments made by the Liquidation Trustee or the Purchaser, as applicable, and received by the Holder of a Claim prior to the Effective Date will be deemed to be payments under the Plan for purposes of satisfying the obligations of Debtors pursuant to the Plan. Nothing contained in the Plan shall require the Liquidation Trustee or the Purchaser, as applicable, to attempt to locate any Holder of an Allowed Claim other than by reviewing the records of the Debtors and any Claims filed in these cases. Pursuant to section 1143 of the Bankruptcy Code, all claims in respect of Unclaimed Property shall be deemed Disallowed under Section 5.06 of the Plan and the Holder of any Claim Disallowed under Section 5.06 of the Plan will be forever barred, expunged, estopped and enjoined from assertion in any manner against the Debtors, the Purchaser, or the Liquidating Trust.

#### 4. *Objection Procedures*

Unless otherwise ordered by the Court after notice and a hearing, under the Plan, the Liquidation Trustee shall have the exclusive right, on and after the Effective Date, to File objections to Claims (other than Claims specifically Allowed in the Plan) and shall serve a copy of each such objection upon the Holder of the Claim to which the objection is made as soon as practicable, but in no event later than the latest of (a) 75 days after the Effective Date, (b) 75 days after the date on which any Claim is Filed, or (c) such later date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clauses (a) and (b) above. The foregoing deadlines may be extended by order of the Court. An objection to any Claim shall be deemed properly served on the Holder thereof if the Liquidation Trustee effects service in any of the following manners: (i) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Federal Rule of Bankruptcy Procedure 7004, (ii) by first class mail, postage prepaid, on the signatory on the proof of claim or interest or other representative identified in the proof of claim or interest or any attachment thereto, or (iii) by first class mail, postage prepaid, on any counsel that has appeared on the Holder's behalf in the Chapter 11 Cases.

### **F. Disposition of Executory Contracts and Unexpired Leases**

#### 1. *Contracts and Leases Deemed Rejected*

The Plan provides that all contracts and unexpired leases of the Debtors shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired lease that: (a) has previously been assumed, assumed and assigned, or rejected

pursuant to an order of the Bankruptcy Court on or prior to the Confirmation Date, (b) is the subject of a pending motion to assume, assume and assign, or reject as of the Confirmation Date, or (c) is listed on the Schedule of Assumed Contracts, provided, however, that the Debtors and the Purchaser shall have the right, at any time prior to the Confirmation Date, to amend the Schedule of Assumed Contracts in any manner set forth in the Asset Purchase Agreement, the Sale and Bid Procedures Motion, or by any other means approved by the Court or to delete any executory contract or unexpired lease listed therein, thus providing for its rejection pursuant to the Plan or to add any executory contract or unexpired lease thereto, thus providing for its assumption and assignment pursuant to the Plan and the terms of the Asset Purchase Agreement. The assumption, assumption and assignment, and rejection of executory leases and unexpired contracts under this Plan shall be governed by the terms of the Asset Purchase Agreement, the Sale Documents, the Sale and Bid Procedures, and other orders of the Court.

Under the Plan, each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property will include (a) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements, vaults, tunnel or bridge agreements or franchises, and any other interests in real estate or rights *in rem* related to such premises, unless any of the foregoing agreements has been rejected pursuant to an order of the Bankruptcy Court.

2. *Cure with Respect to Assumed Contracts and Leases*

The cure of all defaults under executory contracts and unexpired leases to be assumed and assigned under the Asset Purchase Agreement, including the resolution of all objections to the adequacy of assurance of future performance under such contracts and leases and as to the adequacy of amounts proposed to cure defaults under such contracts and leases, shall be governed by the terms and conditions of the Sale and Bid Procedures, the Asset Purchase Agreement, the Sale Documents, any order approving the Asset Purchase Agreement or authorizing the Sale, and other orders of the Court. All such cure amounts shall be satisfied by the Purchaser.

3. *Rejection Damages*

Claims arising out of the rejection of any executory contract or unexpired lease pursuant to Article VI of the Plan must be filed with the Bankruptcy Court no later than the later of (a) twenty (20) days after the Effective Date, or (b) thirty (30) days after the entry of an order rejecting such executory contract or unexpired lease. Any Claim not filed within such time period shall be forever barred. The Debtors and the Liquidation Trustee shall have the right to object to any Claim arising out of the rejection of an executory contract or unexpired lease pursuant to the terms of Section 9.08 of the Plan.

4. *Compensation and Benefit Programs*

Except and to the extent previously rejected by an order of the Bankruptcy Court on or before the Effective Date, all officer, director or employee compensation and benefit programs of the Debtors entered into before or after the Petition Date and not since terminated,

shall be deemed to be, and shall be treated as though they are, executory contracts that are rejected under the Plan, except for any such program that is specifically assumed under the Plan.

**G. Revesting of Assets; Release of Liens**

Except as otherwise expressly provided in the Plan, pursuant to sections 1123(a)(5), 1123(b)(3) and 1141(b) of the Bankruptcy Code, all Property comprising the Estates of each Debtor not conveyed to the Purchaser under the Asset Purchase Agreement shall automatically vest in the Liquidating Trust, free and clear of all Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests of Creditors and equity security holders on the Effective Date, with all such Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests being extinguished except as otherwise provided in the Plan.

**H. Post-Consummation Corporate Structure, Management and Operation**

1. *Cancellation of Interests*

On the Effective Date, except as otherwise provided for in the Plan, (a) all of the Interests, and any other note, bond, or indenture evidencing or creating any indebtedness or obligation of any Debtor will be cancelled, and (b) the obligations of the Debtors under any agreements, indentures, or certificates of designations governing the Interests and any other note, bond, or indenture evidencing or creating any indebtedness or obligation of any Debtor will be discharged.

2. *Officers and Directors/Managing Member(s) of Purchaser*

The names of the new officers and directors or managing member(s) of the Purchaser will be set forth in the Plan Supplement.

3. *Corporate Action*

The entry of the Confirmation Order shall constitute authorization for the Debtors to take or cause to be taken all corporate actions necessary or appropriate to consummate and implement the provisions of the Plan prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court, including, without limitation, the cancellation of the Interests. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the stockholders or directors of the Debtors. On the Effective Date, the appropriate officers and directors of the Debtors are authorized and directed to execute and deliver the agreements, documents and instruments contemplated by the Plan in the name and on behalf of the Debtors.

**I. Confirmation and/or Consummation**

Described below are certain important considerations under the Bankruptcy Code in connection with confirmation of the Plan.

1. *Requirements for Confirmation of the Plan*

Before the Plan can be confirmed, the Bankruptcy Court must determine at the Confirmation Hearing that the following requirements for confirmation, set forth in section 1129 of the Bankruptcy Code, have been satisfied:



- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised by 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 Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment made before 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.
- The Debtors have disclosed (a) the identity and affiliations of (i) any individual proposed to serve, after confirmation of the Plan, as a director, officer or voting trustee of the successor to the Debtors under the Plan, (ii) any affiliate of the Debtors participating in a joint plan with the Debtors or (iii) any successor to the Debtors under the Plan (and the appointment to, or continuance in, such office of such individual(s) is consistent with the interests of Claim and Interest Holders and with public policy), and (b) the identity of any insider that will be employed or retained by the Debtors and the nature of any compensation for such insider.
- With respect to each Class of Claims or Interests, each Impaired Claim and Impaired Interest Holder either has accepted the Plan or will receive or retain under the Plan, on account of the Claims or Interests held by such Holder, property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on such date under chapter 7 of the Bankruptcy Code. See Section X.D.
- The Plan provides that Administrative Claims and Priority Claims other than Priority Tax Claims will be paid in full on the Effective Date and that Priority Tax Claims will receive on account of such Claims deferred cash payments, over a period not exceeding five years after the date of assessment of such Claims, of a value, as of the Effective Date, equal to the Allowed Amount of such Claims, except to the extent that the Holder of any such Claim has agreed to a different treatment.
- If a Class of Claims is Impaired under the Plan, at least one Class of Impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by insiders holding Claims in such Class.
- Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any



successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan. See Section X.A.

- The Plan provides for the continuation after the Effective Date of all retiree benefits, if any, at the level established pursuant to section 1114(e)(1)(B) or 1114(g) of the Bankruptcy Code at any time prior to confirmation of the Plan, for the duration of the period the Debtors have obligated themselves to provide such benefits.

The Debtors believe that, upon receipt of the votes required to confirm the Plan, the Plan will satisfy all the statutory requirements of chapter 11 of the Bankruptcy Code, that the Debtors have complied or will have complied with all of the requirements of chapter 11 and that the Plan has been proposed and submitted to the Bankruptcy Court in good faith.

Further, even if all of the foregoing are satisfied, if any Class of Claims is Impaired and votes to reject the Plan, the Debtors must satisfy the applicable “cramdown” standard with respect to that Class. Section 1129(b) of the Bankruptcy Code requires that the plan “not discriminate unfairly” and be “fair and equitable” with respect to such class. The Debtors do not anticipate that any Class of Claims will vote to reject the Plan. However, in the event any Class votes to reject the Plan, the Debtors believe they will satisfy the cramdown standards in section 1129(b) with respect to any such rejecting class.

## *2. Conditions to Confirmation Date and Effective Date*

The Plan specifies conditions precedent to the Confirmation Date and the Effective Date. Each of the specified conditions must be satisfied or waived in whole or in part by the Debtors, without any notice to parties-in-interest or the Bankruptcy Court and without a hearing.

The conditions precedent to the occurrence of the Confirmation Date, which is the date of entry by the clerk of the Bankruptcy Court of the Confirmation Order, are that: (a) the form and substance of the Confirmation Order, as well as any amendments to the Plan, shall have been approved by the Debtors; (b) the Confirmation Order shall authorize the transactions contemplated by the Plan; and (c) the Confirmation Order shall provide that the provisions of the Confirmation Order are non-severable and mutually dependent.

The conditions that must be satisfied on or prior to the Effective Date, which is the Business Day upon which all conditions to the consummation of the Plan have been satisfied or waived, and is the date on which the Plan becomes effective, are that: (a) the Confirmation Order shall have been entered and shall not be stayed by order of a court of competent jurisdiction; (b) all documents and agreements required to be executed or delivered under the Plan on or prior to the Effective Date shall have been executed and delivered by the parties thereto; (c) the Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) authorizing and directing the Debtors and the Liquidation Trustee to take all actions necessary or appropriate to enter into, implement, and consummate the contracts, instruments, releases, indentures and other agreements or documents created, amended, supplemented, modified or adopted in connection with the Plan; (d) all authorizations, consents and regulatory approvals required, if any, in connection with the Plan’s effectiveness shall have been obtained; and (e) no order of a court of competent jurisdiction shall have been entered and shall remain in effect restraining the Debtors from consummating the Plan.

**J. Releases, Discharge, Injunctions, Exculpation and Indemnification**

*1. Releases by Debtors in Favor of Third Parties*

The Plan provides for certain releases to be granted by the Debtors on and as of the Effective Date. Specifically, effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors and the Liquidation Trustee, in their individual capacities and as debtors in possession, will be deemed to have forever released, waived and discharged the Releasees from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtors, the Purchaser or Liquidation Trustee to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan; provided, however, that no Releasee shall be released or discharged from any Claims, obligations, suits, judgments, debts or Causes of Action arising out of or in connection with indebtedness for money borrowed by any such person from any of the Debtors.

The Debtors do not believe that there are any valid claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities that they hold against any of the persons to be released pursuant to this provision; provided, however, that the Debtors believe they hold valid claims and causes of action against certain of the Prepetition Senior Lenders. The Prepetition Senior Agent and the Prepetition Senior Lenders are included as Releasees under the Plan only in the event that Classes 3 and 4 vote to accept the Plan. The Debtors reasonably believe that the acceptance of the Plan by these Classes is sufficient consideration for the release of such claims and causes of action.

As to the Debtors' directors, officers and employees, the consideration for such release is the service rendered by such individuals during the pendency of the Chapter 11 Cases and the need for their continued dedication after the Effective Date to fully consummate a successful Sale. The Debtors will be hampered in their consummation efforts if their directors, officers and employees are subject to claims and potential litigation that will distract their attention from operational and other business matters.

*2. Releases by Creditors of Claims Against Third Parties*

In furtherance of the release provisions of the Plan, effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, to the fullest extent permitted under applicable law, in consideration for the obligations of the Persons set forth below under the Plan and, if applicable, the Cash, securities, contracts, releases and other agreements or documents to be delivered in connection with the Plan, each Holder of a Claim or Interest and any Affiliate of any such Holder (as well as any trustee or agent on behalf of each such Holder shall be deemed to have forever waived, released and discharged (i) the Debtors, (ii) the Liquidation Trustee, and (iii) the Releasees from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the

rights of the Debtors or Liquidation Trustee to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder)), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan.

3. *Discharge and Discharge Injunction*

Confirmation of the Plan effects a discharge of all Claims against the Debtors. To the fullest extent permitted by applicable law (including, without limitation, section 105 of the Bankruptcy Code), and except as otherwise provided in the Plan or in the Confirmation Order all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge and release of, all Claims of any nature whatsoever against the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims. Upon the Effective Date, and except as expressly contemplated in the Plan, the Debtors, and each of them, shall (a) be deemed discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, debts (as such term is defined in section 101(12) of the Bankruptcy Code), Liens, security interests, and encumbrances of and against all Property of the respective Estates, the Debtors, or the Liquidation Trustee that arose prior to the Effective Date, including without limitation, all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) such Claim has been Allowed pursuant to section 502 of the Bankruptcy Code, or (ii) the Holder of such Claim has voted to accept the Plan and (b) terminate all Interests. Further, as of the Effective Date, all entities, including, without limitation, all Holders of Claims or Interests, shall be barred and enjoined from asserting against the Debtors or the Liquidation Trustee, their successors or their property any other or further Claims, debts, rights, Causes of Action, liabilities or Interests relating to the Debtors based upon any act, omission, transaction or other activity of any nature that occurred prior to the Effective Date, except for those obligations expressly created by, or reserved in, the Plan. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities against the Debtors and termination of all Interests, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge and termination shall void any judgment obtained against the Debtors or the Liquidation Trustee at any time, to the extent that such judgment relates to a discharged Claim or terminated Interest.

In furtherance of the discharge of Claims and the termination of Interests, the Plan provides that, except as provided in the Plan or the Confirmation Order and to the fullest extent authorized or provided by the Bankruptcy Code, including sections 524 and 1141 thereof, the entry of the Confirmation Order shall, provided that the Effective Date occurs, permanently enjoin all Persons that have held, currently hold or may hold a Claim or other debt or liability that is discharged or an Interest or other right of an equity security Holder that is Impaired or terminated pursuant to the terms of the Plan from taking any of the following actions against the Debtors, the Liquidation Trustee or their property on account of any such discharged Claims,

debts or liabilities or such terminated Interests or rights: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order; (c) creating, perfecting or enforcing in any manner directly or indirectly, any Lien or encumbrance of any kind; (d) asserting any setoff, offset, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors or the Liquidation Trustee; and (e) proceeding in any manner in any place whatsoever, including employing any process, that does not conform to or comply with or is inconsistent with the provisions of the Plan.

4. *Exculpation Relating to Chapter 11 Cases*

The Plan contains standard exculpation provisions applicable to the key parties in interest with respect to their conduct in the Chapter 11 Cases. Specifically, the Plan provides that, none of the Debtors, Liquidation Trustee or Exculpated Persons shall have or incur any liability to any Person, including, without limitation, any Holder of a Claim or Interest or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates or any of their successors or assigns, for any act taken or omission made in good faith in connection with, relating to, or arising out of, the Chapter 11 Cases, Filing, negotiating, prosecuting, administering, formulating, implementing, confirming or consummating the Plan, or the Property to be distributed under the Plan, including all prepetition activities leading to the promulgation and confirmation of the Plan, the Disclosure Statement (including any information provided or statement made in the Disclosure Statement or omitted therefrom), or any contract, instrument, release or other agreement or document created in connection with or related to the Plan or the administration of the Debtors or these Chapter 11 Cases, provided, however, that the exculpation will not apply to any act of gross negligence or willful misconduct.

5. *Post-Effective Date Indemnifications*

To the extent not inconsistent with the Plan, any obligations of the Debtors, pursuant to their respective articles of incorporation or by-laws, applicable state law or their specific agreement, to indemnify a Person with respect to all present and future actions, suits and proceedings against the Debtors or such indemnified Person, based upon any act or omission related to service with, or for or on behalf of, the Debtors, shall terminate as of the Effective Date; provided, however, that to the extent such liabilities and/or obligations are expressly assumed by the Purchaser under the Asset Purchase Agreement, such obligations and liabilities shall be deemed to be and treated as executory contracts that are assumed and assigned to the Purchaser, except to the extent any such obligation has been released, discharged or modified pursuant to the Plan. Such indemnification obligations described in the foregoing proviso shall survive unaffected by the Plan and shall be performed and honored by the Purchaser.

**K. Preservation of Rights of Action**

Except to the extent that any Claim is Allowed during the Chapter 11 Cases or expressly by the Plan, nothing, including, but not limited to, the failure of the Debtors or the Liquidation Trustee to object to a Claim or Interest for any reason during the pendency of the Chapter 11 Cases, shall affect, prejudice, diminish or impair the rights and legal and equitable defenses of the Debtors or the Liquidation Trustee with respect to any Claim or Interest, including, but not limited to, all rights of the Debtors or Liquidation Trustee to contest or defend

themselves against such Claims or Interests in any lawful manner or forum when and if such Claim or Interest is sought to be enforced by the Holder thereof.

All Causes of Action, including Avoidance Actions, other than those expressly released or compromised as part of or pursuant to the Plan, shall be assigned to the Purchaser under the Asset Purchase Agreement.

**L. Retention of Jurisdiction**

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

- **classify, re-classify or establish the priority or secured or unsecured status of any Claim (whether Filed before or after the Effective Date and whether or not contingent, Disputed or unliquidated) or resolve any dispute as to the treatment of any Claim or Interest pursuant to the Plan;**
- **grant or deny any applications for allowance of compensation or reimbursement of expenses pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code or otherwise provided for in the Plan, for periods ending on or before the Effective Date;**
- **determine and resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which any Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;**
- **ensure that all payments due under the Plan and performance of the provisions of the Plan are accomplished as provided herein and resolve any issues relating to distributions to Holders of Allowed Claims pursuant to the provisions of the Plan;**
- **construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with section 1142 of the Bankruptcy Code, as may be necessary for the enforcement, implementation, execution and consummation of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, including, without limitation, the Disclosure Statement and the Confirmation Order, for the maintenance of the integrity of the Plan and protection of the Liquidation Trustee in accordance with sections 524 and 1141 of the Bankruptcy Code following consummation;**
- **determine and resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, implementation or enforcement of the Plan (and all Exhibits to the Plan and the Plan Supplement) or the Confirmation Order, including**



**the indemnification and injunction provisions set forth in and contemplated by the Plan or the Confirmation Order, or any Entity's rights arising under or obligations incurred in connection therewith;**

- **hear any application of the Debtors or Liquidation Trustee to modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code and the Plan or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code and the Plan;**
- **issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;**
- **enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;**
- **determine any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, except as otherwise provided in the Plan;**
- **determine such other matters and for such other purposes as may be provided in the Confirmation Order;**
- **hear and determine any other matters related hereto and not inconsistent with chapter 11 of the Bankruptcy Code;**
- **hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan;**
- **enter a final decree closing the Chapter 11 Cases;**
- **determine and resolve any and all controversies relating to the rights and obligations of the Liquidation Trustee in connection with the Chapter 11 Cases;**



- **allow, disallow, determine, liquidate, reduce, re-classify or estimate any Claim, including the compromise, settlement and resolution of any request for payment of any Claim, the resolution of any Objections to the allowance of Claims and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any Objection to such Claim (to the extent permitted under applicable law);**
- **permit the Debtors to recover all assets of the Debtors and Property of their respective Estates, wherever located;**
- **hear and determine any motions or contested matters involving taxes, tax refunds, tax attributes and tax benefits and similar or related matters with respect to the Debtors or the Debtors' respective Estates arising prior to the Effective Date or relating to the period of administration of the Chapter 11 Cases, including, without limitation, matters concerning federal, state and local taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;**
- **hear and determine any motions, applications, adversary proceedings, contested matters and other litigated matters pending on, Filed or commenced after the Effective Date that may be commenced by the Debtors thereafter, including Avoidance Actions, proceedings with respect to the rights of the Debtors to recover Property under sections 542, 543 or 553 of the Bankruptcy Code, or proceedings to otherwise collect to recover on account of any claim or Cause of Action that the Debtors may have; and**
- **hear any other matter not inconsistent with the Bankruptcy Code.**

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Debtors, including with respect to the matters set forth above, nothing in the Plan shall prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

#### **M. Amendment, Alteration and Revocation of Plan**

The Debtors may alter, amend or modify the Plan in accordance with section 1127 of the Bankruptcy Code or as otherwise permitted at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of the Plan, and in accordance with the provisions of section 1127(b) of the Bankruptcy Code and the Bankruptcy Rules, the Debtors may, so long as the treatment of Holders of Claims or Interests under the Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, prior notice of such proceedings shall be served in accordance with Bankruptcy Rules 2002 and 9014.

The Debtors reserve the right, at any time prior to Confirmation of the Plan, to withdraw the Plan. If the Plan is withdrawn or if the Confirmation Date does not occur, the Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall

be deemed to constitute a waiver or release of any claims by or against the Debtors or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors.

**N. Plan Implementation Documents**

The documents necessary to implement the Plan include the following:

- Asset Purchase Agreement
- Liquidating Trust Agreement

Such documents are either enclosed herewith or will be submitted in substantially the form to be implemented on the Effective Date as part of the Plan Supplement. All documents in the Plan Supplement shall be in form, scope, and substance satisfactory to the Debtors. Upon such filing, all documents included in the Plan Supplement may be viewed and downloaded free of charge from the Debtors' case website at [www.pnreorg.com](http://www.pnreorg.com), viewed and downloaded from the Bankruptcy Court electronic case filing system or inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims or Interests may obtain a copy of any document included in the Plan Supplement upon written request to the Debtors' Voting Agent at the address set forth in Section III.C or to the Debtors' counsel, Proskauer Rose LLP, 70 West Madison Street, Suite 3800, Chicago, Illinois 60602 (Attn: Peter J. Young).

**VII. CERTAIN RISK FACTORS TO BE CONSIDERED**

The Holders of Claims in Classes 3, 4, 5 and 6 should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), before deciding whether to vote to accept or reject the Plan. These risk factors should not, however, be regarded as constituting the only risks associated with the Plan and its implementation.

**A. General Considerations**

The Plan sets forth the means for satisfying the Claims against each of the Debtors. See Section VI.D. of this Disclosure Statement entitled "Classification and Treatment of Claims and Interests" for a description of the treatments of each class of Claims and Interests. Certain Claims and Interests receive no distributions pursuant to the Plan.

**B. Certain Bankruptcy Considerations**

Even if all voting Impaired Classes vote in favor of the Plan, and if with respect to any Impaired Class deemed to have rejected the Plan the requirements for "cramdown" are met, the Bankruptcy Court may choose not to confirm the Plan. Section 1129 of the Bankruptcy Code requires, among other things, a showing that confirmation of the Plan will not be followed by liquidation or the need for further financial reorganization of the Debtors, (see Section X.A), and that the value of distributions to dissenting Holders of Claims and Interests will not be less than the value such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. See Section X.D. Although the Debtors believe that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. See Appendix C for a liquidation analysis of the Debtors.

**C. Claims Estimations**

There can be no assurance that any estimated Claim amounts set forth in this Disclosure Statement are correct. The actual Allowed amount of Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should any underlying assumptions prove incorrect, the actual Allowed amount of Claims may vary from those estimated herein.

**D. Conditions Precedent to Consummation**

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

**E. Inherent Uncertainty of Financial Projections**

The Projections set forth in Appendix B hereto have been prepared by management of the Debtors in consultation with their financial advisors and cover the projected operations of the successor to the Debtors through fiscal year 2011. These Projections are based on numerous assumptions that are an integral part of the Projections, including confirmation and consummation of the Plan in accordance with its terms, realization of the operating strategy of the Debtors, industry performance, no material adverse changes in applicable legislation or regulations, or the administration thereof, or regulations, exchange rates or generally accepted accounting principles, general business and economic conditions, competition, retention of key management and other key employees, absence of material contingent or unliquidated litigation, indemnity or other claims, and other matters. Certain additional material assumptions are disclosed on Appendix B, and the projections should be read in conjunction with these assumptions.

Although the Projections are presented with numerical specificity and are based on assumptions considered reasonable by the Debtors, the assumptions and estimates underlying the Projections are subject to business, economic and competitive uncertainties and contingencies. Accordingly, the Projections are only the Debtors' educated, good faith estimates and are necessarily contingent in nature. It can be expected that some or all of the assumptions in the Projections will not be realized and that actual results will vary from the Projections, which variations may be material and may increase over time. The projected financial information contained herein should not be regarded as a guaranty by the Debtors, the Debtors' advisors or any other Person that the Projections can or will be achieved. However, the Debtors believe that the Projections are credible and that there is a reasonable likelihood that the results set forth in the Projections can be achieved.

**F. Certain Tax Considerations**

There are a number of income tax considerations, risks and uncertainties associated with consummation of the Plan. Interested parties should read carefully the discussions set forth in Article IX regarding certain U.S. federal income tax consequences of the

transactions proposed by the Plan to the Debtors and the Liquidating Trust and to Holders of Claims who are entitled to vote to accept or reject the Plan.

### **VIII. APPLICABILITY OF FEDERAL AND OTHER SECURITIES LAWS**

It is not currently expected that any registration statement will be filed under the Securities Act or any state securities laws with respect to the issuance or distribution of equity interests in the Purchaser under the Plan, or any subsequent transfer or resale of any interests therein. The Debtors believe that, subject to certain exceptions described below, various provisions of the Securities Act, the Bankruptcy Code and state securities laws exempt from federal and state securities registration requirements with respect to (a) the offer and the sale of such securities pursuant to the Plan and (b) subsequent transfers of such securities.

#### **A. Offer and Sale of New Securities Pursuant to the Plan: Bankruptcy Code Exemption from Registration Requirements**

Holders of certain Allowed Claims will receive a pro rata share of a percentage of equity interests in the Purchaser. Section 1145(a)(1) of the Bankruptcy Code exempts the offer or sale of securities under a plan of reorganization from registration under Section 5 of the Securities Act and state laws if three principal requirements are satisfied: (a) the securities must be issued “under a plan” of reorganization by the debtor or its successor under a plan or by an affiliate participating in a joint plan of reorganization with the debtor; (b) the recipients of the securities must hold a pre-petition or administrative expense claim against the debtor or an interest in the debtor; and (c) the securities must be issued entirely in exchange for the recipient’s claim against or interest in the debtor, or “principally” in such exchange and “partly” for cash or property. In reliance upon this exemption, the Debtors believe that the offer and sale of the equity interests in the Purchaser under the Plan will be exempt from registration under the Securities Act and state securities laws.

In addition, the Debtors will seek to obtain, as part of the Confirmation Order, a provision confirming such exemption. Accordingly, such securities may be resold without registration under the Securities Act or other federal securities laws pursuant to an exemption provided by Section 4(1) of the Securities Act, unless the Holder is an “underwriter” (see discussion below) with respect to such securities, as that term is defined under the Bankruptcy Code. In addition, such securities generally may be resold without registration under state securities or “blue sky” laws pursuant to various exemptions provided by the respective laws of the several states. However, recipients of securities issued under the Plan are advised to consult with their own legal advisors as to the availability of any such exemption from registration under state law in any given instance and as to any applicable requirements or conditions to such availability.

#### **B. Subsequent Transfers of New Securities**

Section 1145(b) of the Bankruptcy Code defines the term “underwriter” for purposes of the Securities Act as one who, except with respect to “ordinary trading transactions” of an entity that is not an “issuer,” (a) purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, if such purchase is with a view to distributing any security received in exchange for such a claim or interest; (b) offers to sell securities offered or sold under a plan for the Holders of such securities; (c) offers to buy securities offered or sold under the plan from the Holders of such securities, if the offer to buy is:

(i) with a view to distribution of such securities; and (ii) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (d) is an issuer” with respect to the securities, as the term “issuer” is defined in Section 2(11) of the Securities Act.

The term “issuer” is defined in Section 2(4) of the Securities Act; however, the reference contained in section 1145(b)(1)(D) of the Bankruptcy Code to Section 2(11) of the Securities Act purports to include as statutory underwriters all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. “Control” (as such term is defined in Rule 405 of Regulation C under the Securities Act) means the possession, direct or indirect, of the power to direct or cause the direction of the policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Accordingly, an officer or director of a reorganized debtor (or its successor) under a plan of reorganization may be deemed to be a “control person,” particularly if such management position is coupled with the ownership of a significant percentage of the debtor’s (or successor’s) voting securities. Moreover, the legislative history of section 1145 of the Bankruptcy Code suggests that a creditor who owns at least 10% of the securities of a reorganized debtor may be presumed to be a “control person.”

To the extent that persons deemed to be “underwriters” receive any equity interests in the Purchaser pursuant to the Plan, resales by such persons would not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Such persons would not be permitted to resell such new equity interests in the Purchaser unless such securities were registered under the Securities Act or an exemption from such registration requirements were available. Entities deemed to be statutory underwriters for purposes of section 1145 of the Bankruptcy Code may, however, be able, at a future time and under certain conditions, to sell securities without registration pursuant to the resale provisions of Rule 144 and Rule 144A under the Securities Act.

Pursuant to the Plan, certificates evidencing new equity interests in the Purchaser received by a Holder of ten percent (10%) of any class of such securities will bear a legend substantially in the form below:

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE SOLD, OFFERED FOR SALE, OR OTHERWISE TRANSFERRED UNLESS REGISTERED OR QUALIFIED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO IT THAT SUCH REGISTRATION OR QUALIFICATION IS NOT REQUIRED.

Whether or not any particular person would be deemed to be an “underwriter,” or an “affiliate” of the Debtors or the Purchaser, would depend upon various facts and circumstances applicable to that person. Accordingly, the Debtors express no view as to whether any such person would be such an “underwriter” or “affiliate.” Persons who receive securities under the Plan are urged to consult their own legal advisor with respect to the restrictions applicable under Rule 144 and the circumstances under which such securities may be sold in reliance upon such Rule.



In each of the provinces of Canada either a resale exemption is available or application may be made for an exemption from the relevant first trade restrictions in order for the securities issued under the Plan to be freely tradable by Canadian Holders through an exchange or a market outside of Canada or to a person or company outside of Canada.

THE FOREGOING SUMMARY DISCUSSION IS GENERAL IN NATURE AND HAS BEEN INCLUDED IN THIS DISCLOSURE STATEMENT SOLELY FOR INFORMATIONAL PURPOSES. THE DEBTORS MAKE NO REPRESENTATIONS CONCERNING, AND DO NOT HEREBY PROVIDE, ANY OPINIONS OR ADVICE WITH RESPECT TO THE EQUITY INTERESTS IN THE PURCHASER, OR THE BANKRUPTCY MATTERS DESCRIBED HEREIN. IN LIGHT OF THE UNCERTAINTY CONCERNING THE AVAILABILITY OF EXEMPTIONS FROM THE RELEVANT PROVISIONS OF FEDERAL AND STATE SECURITIES LAWS, THE DEBTORS ENCOURAGE EACH CREDITOR AND PARTY IN INTEREST TO CONSIDER CAREFULLY AND CONSULT WITH ITS OWN LEGAL ADVISORS WITH RESPECT TO ALL SUCH MATTERS. BECAUSE OF THE COMPLEX, SUBJECTIVE NATURE OF THE QUESTION OF WHETHER A PARTICULAR HOLDER MAY BE AN UNDERWRITER, THE DEBTORS MAKE NO REPRESENTATION CONCERNING THE ABILITY OF A PERSON TO DISPOSE OF THE EQUITY INTERESTS IN THE PURCHASER.

#### **IX. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

THE FOLLOWING DISCUSSION SUMMARIZES CERTAIN ANTICIPATED U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE TRANSACTIONS PROPOSED BY THE PLAN TO THE DEBTORS AND HOLDERS OF CLAIMS THAT ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN. THIS SUMMARY IS PROVIDED FOR INFORMATION PURPOSES ONLY AND IS BASED ON THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), TREASURY REGULATIONS PROMULGATED THEREUNDER, JUDICIAL AUTHORITIES, AND CURRENT ADMINISTRATIVE RULINGS AND PRACTICE, ALL AS IN EFFECT AS OF THE DATE HEREOF AND ALL OF WHICH ARE SUBJECT TO CHANGE OR DIFFERING INTERPRETATION, POSSIBLY WITH RETROACTIVE EFFECTS THAT COULD ADVERSELY AFFECT THE U.S. FEDERAL INCOME TAX CONSEQUENCES DESCRIBED BELOW.

THIS SUMMARY DOES NOT ADDRESS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A CLAIM IN LIGHT OF ITS PARTICULAR FACTS AND CIRCUMSTANCES OR TO CERTAIN TYPES OF HOLDERS OF CLAIMS SUBJECT TO SPECIAL TREATMENT UNDER THE CODE (FOR EXAMPLE, NON-U.S. TAXPAYERS, FINANCIAL INSTITUTIONS, BROKER-DEALERS, INSURANCE COMPANIES, TAX-EXEMPT ORGANIZATIONS, AND THOSE HOLDING CLAIMS THROUGH A PARTNERSHIP OR OTHER PASS-THROUGH ENTITY). IN ADDITION, THIS SUMMARY DOES NOT DISCUSS ANY ASPECTS OF STATE, LOCAL, OR NON-U.S. TAXATION AND DOES NOT ADDRESS THE U.S. FEDERAL INCOME TAX CONSEQUENCES TO HOLDERS OF CLAIMS THAT ARE UNIMPAIRED UNDER THE PLAN, HOLDERS OF CLAIMS THAT ARE NOT ENTITLED TO VOTE UNDER THE PLAN, AND HOLDERS OF CLAIMS THAT ARE NOT ENTITLED TO RECEIVE OR RETAIN ANY PROPERTY UNDER THE PLAN.



THE TAX RULES DESCRIBED HEREIN ARE COMPLEX AND THEIR APPLICATION IS UNCERTAIN IN CERTAIN RESPECTS. EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE TAX CONSEQUENCES (INCLUDING STATE, LOCAL AND NON-U.S.) OF THE PLAN TO SUCH HOLDER.

A SUBSTANTIAL AMOUNT OF TIME MAY ELAPSE BETWEEN THE DATE OF THIS DISCLOSURE STATEMENT AND THE RECEIPT OF A FINAL DISTRIBUTION UNDER THE PLAN. EVENTS SUBSEQUENT TO THE DATE OF THIS DISCLOSURE STATEMENT, SUCH AS ADDITIONAL TAX LEGISLATION, COURT DECISIONS, OR ADMINISTRATIVE CHANGES, COULD AFFECT THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREUNDER. NO RULING HAS BEEN OR IS EXPECTED TO BE SOUGHT FROM THE INTERNAL REVENUE SERVICE (THE “IRS”) WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN AND NO OPINION OF COUNSEL HAS BEEN OR IS EXPECTED TO BE OBTAINED BY THE DEBTORS WITH RESPECT THERETO.

**To ensure compliance with United States Internal Revenue Service Circular 230, (a) any discussion of U.S. federal tax issues in this Disclosure Statement is not intended or written to be relied upon, and cannot be relied upon by Holders, for purposes of avoiding penalties that may be imposed on such Holders under the Code; (b) such discussion is written to support the promotion of the Plan; and (c) each Holder of a claim should seek advice based on such Holder's particular circumstances from an independent tax advisor.**

**A. U.S. Federal Income Tax Consequences to the Debtors**

**1. Introduction.**

Each Debtor is a limited liability company that has not elected to be treated as an association taxable as a corporation for U.S. federal income tax purposes. Parent directly or indirectly owns one hundred percent of all the other Debtors. For U.S. federal income tax purposes, Parent is treated as a partnership and all other Debtors are treated as disregarded entities and branches of Parent. Therefore, and for purposes of the discussion of U.S. federal income tax consequences herein, Parent is treated as the sole Debtor which holds all the assets of and is subject to all the liabilities and obligations of each of the other Debtors, as well as its own assets, liabilities and obligations.

**2. Partnership.**

A partnership is not itself a taxpaying entity for U.S. federal income tax purposes, and a partnership's income or loss (and items thereof) for each taxable period during which it is in existence is allocated among its partners, who are required to report the income or loss (and items thereof) allocated to them on their own tax returns.

Generally, a partner is not allowed to deduct his or her share of partnership losses for the year in excess of the adjusted tax basis of his or her interest in the partnership, determined as of the end of the partnership's taxable year in which the loss occurs. Any excess is allowed in any subsequent year in which the adjusted tax basis increases. A partner's tax basis is initially equal to the amount of cash and the adjusted tax basis of property contributed to the partnership.

Thereafter, tax basis increases for such items as additional contributions and the partner's share of taxable and tax-exempt income and gain, and tax basis decreases for such items as distributions and the partner's share of losses.

An increase in a partner's share of partnership liabilities or a partner's assumption of partnership liabilities is treated as a cash contribution to the partnership that increases tax basis, and a decrease in a partner's share of partnership liabilities or the assumption by the partnership of a partner's liabilities decreases tax basis, but not below zero. (Cash distributions, including a decrease in a partner's share of partnership liabilities, in excess of tax basis is taxable and generally treated as gain from the sale of a partnership interest.) A partner shares partnership recourse liabilities to the extent the partner bears the economic risk of loss with respect to the liabilities, i.e., based on a hypothetical partnership liquidation at a time when the partnership has no assets, after taking into account any rights of contribution or reimbursement from other partners or third parties that are related to other partners. A partner also shares partnership nonrecourse liabilities.

A partner is not allowed to deduct his or her share of partnership losses for the year in excess of the amount the partner is deemed to be "at risk" with regard to the partnership. Generally, a partner is deemed to be "at risk" to the same extent that the partner has a tax basis in his or her partnership interest, except that a partner's share of recourse liabilities (including in tax basis) are excluded from the computation if the partner is in any way protected against loss (e.g., by the existence of a guarantee) and the partner's share of nonrecourse liabilities (included in tax basis) are excluded unless the nonrecourse liabilities represent "qualified nonrecourse financing", which is generally secured real estate financing obtained from an unrelated lender engaged in the business of lending money.

### 3. Passive Activity Losses.

Generally, individuals, trusts, estates and personal services corporations may not apply losses from "passive activities" to offset non-passive income. Closely held corporations (i.e., corporations in which 50 percent or more of its stock is owned by five or fewer individuals) that are not personal services corporations may not use passive losses to offset portfolio income but may use passive losses to offset active business income. A passive activity includes an activity involving the conduct of a trade or business in which the taxpayer does not materially participate. Material participation exists if the taxpayer is involved in the operations of the activity on a regular, continuous and substantial basis. A limited partnership interest in a limited partnership is treated as intrinsically passive; however, a recent Tax Court decision held that a membership interest in a limited liability company is not necessarily treated like a limited partner interest. Rather, the treatment of a membership interest in a limited liability company is based on the facts and circumstances, with a particular emphasis on the level of the member's involvement in the activity. Therefore, if a member is not involved in the activity of the limited liability company, such member's allocable share of partnership income and losses generally is treated as passive. A member is deemed to not materially participate in the activity of the limited liability company unless the member participates in the activity for more than 500 hours during the taxable year or satisfies certain other tests designed to determine whether the taxpayer is involved in the business on a regular, continuous and substantial basis. If a member materially participates in the conduct of the trade or business, such member's allocable share of partnership income and losses generally is treated as active.

Suspended passive losses (i.e., passive losses that cannot be used currently) are carried forward indefinitely (but not carried back) and applied against subsequently generated passive income. If a loss is subject to both the passive loss rules and other restrictions that limit deductions or losses (e.g., the “at risk” rules and the rule limiting a partner’s ability to deduct his or her share of partnership losses in excess of the adjusted tax basis in his or her partnership interest, as discussed above), the passive loss rules are applied last. When a taxpayer disposes of his or her entire interest in the activity to an unrelated party in a fully taxable transaction, any current and suspended passive losses from the activity and any allowable loss realized on the disposition of the activity may be used to offset non-passive income (after first being applied against any other passive income).

In order for there to be a complete disposition of an interest in an activity, where that activity is held through a partnership, either the taxpayer’s entire interest in the partnership must be disposed of or all the assets used by the partnership in such activity must be disposed of by the partnership. Furthermore, the disposition must be in a fully taxable transaction. A fully taxable disposition generally is a sale or exchange of the property to a third party at arm’s length in a bona fide transaction. The abandonment of a partnership interest is generally considered to be a disposition for purposes of the passive loss rules.

4. Sale Transaction.

Pursuant to the Plan, Parent intends to sell substantially all of its assets to a Purchaser for cash, and equity interests in the Purchaser, and the assumption by the Purchaser of certain liabilities of Parent. In general, a taxpayer will realize gain or loss on a sale of its assets in an amount equal to the difference between the consideration it receives and its adjusted tax basis in the assets sold. If the loss recognized by a taxpayer from the sale or exchange of property used in a trade or business, the “section 1231 loss”, exceeds the gain recognized from the sale or exchange of property used in the trade or business, the “section 1231 gain”, in the taxable year, such gains and losses are treated as ordinary income and losses. However, if the section 1231 gains exceed the section 1231 losses in any taxable year, such gains and losses are treated as long-term capital gains, subject to recharacterization as ordinary income under “depreciation recapture” rules, and long-term capital losses. “Property used in the trade or business” is depreciable property used in the trade or business that is held for more than one year, and real property used in the trade or business that is held for more than one year (excluding inventory, property held for sale to customers in the ordinary course of business and certain intangibles such as copyrights, artistic, literary or musical compositions). If there is a net section 1231 gain from any other transaction during any of the five taxable years following the taxable year in which there was a net section 1231 loss, such net section 1231 loss will be “recaptured” by recharacterizing the net section 1231 gain as ordinary income to the extent of any net section 1231 loss taken by the taxpayer during those five preceding years and not previously recaptured.

Parent intends to take the position, based on the holding of 2925 Briarpark, Ltd v. Commissioner, 163 F.3d 313 (5<sup>th</sup> Cir. 1999), that the cancelled portion of the Prepetition Senior Secured Claims, the Prepetition Senior Deficiency Claims and the Prepetition Mezzanine Lender Claims should be treated as additional consideration for the sale of its assets, as described above. The result of this case turned upon the treatment of the debt cancelled in connection with the sale of property by the debtor to a third party as nonrecourse debt and the extension of the rule that the transfer of property to a lender in satisfaction of nonrecourse debt (as distinguished from

recourse debt) was treated as a sale or exchange of such property, even when the adjusted issue price of the debt exceeded the property's fair market value. The IRS may disagree with Parent's position. It may assert, based on state law, that these Claims should be treated as recourse debt under the rules governing the calculation of debt discharge income and the calculation of gain or loss from a sale or exchange of property, notwithstanding that these Claims are treated as nonrecourse debt under other provisions of the Code, and therefore the debt discharge rules (discussed below) should apply. Alternatively, if the IRS agrees that the Claims are nonrecourse debt for these purposes, it may assert that the cancellation of the Prepetition Mezzanine Lender Claims should not be additional sales consideration under this case because such Claims are not secured by the assets of the Parent and its subsidiaries, but rather should result in cancellation of indebtedness ("COD") income, as discussed in more detail below. While Parent believes that its position will prevail if challenged by the IRS, there can be no assurance of this result.

The sale of the assets of Parent and its subsidiaries to the Purchaser should constitute, and will be reported by Parent as, a fully taxable disposition of the passive activity potentially allowing the members to use any suspended passive losses they have against their non-passive income. However, it is unclear whether the receipt of a small portion of equity in the Purchaser as part of the consideration would alter this result by treating the Parent as continuing to hold some of the assets used in the passive activity. If that were the case, the likely result would be to delay the release of any suspended passive losses until such equity in the Purchaser was distributed to the holders of the Prepetition Senior Deficiency Claims and the Prepetition Mezzanine Lender Claims in satisfaction of such Claims. In addition, members of Parent that will hold equity interests in the Purchaser should consult with their tax advisors to determine whether the holding of such interests will prevent them from deducting suspended passive losses against non-passive income.

#### 5. Cancellation of Indebtedness Income.

Under the Code, COD income is recognized by a partnership to the extent, and at the time, that certain debts are discharged for less than full payment. The COD income recognized at the partnership level is then allocated among the partners pursuant to the allocation provisions of the partnership agreement, if such provisions comply with the requirements of the Code regarding allocations, or, if not, in accordance with the partners' interests in the partnership. The Code's bankruptcy and insolvency exceptions to the general rule requiring recognition of COD income apply at the partner level and not at the partnership level. Therefore, for the bankruptcy or insolvency exception to apply to COD income allocated to a partner, the partner either must be in a bankruptcy case or be insolvent.

In general, COD income is the amount equal to the difference between the adjusted issue price of the indebtedness discharged and the sum of (i) the amount of any cash and (ii) the fair market value of any other property transferred in satisfaction of the discharged indebtedness. COD income also includes any interest that the taxpayer deducted under the accrual method of accounting but remains unpaid at the time the indebtedness is discharged. COD income generally does not include the discharge of indebtedness to the extent payment of the liability would have given rise to a deduction.

For a taxpayer that does not materially participate in an activity, COD income is treated as passive income, which can be offset by passive losses, to the extent that, as in the case of Parent, the discharged debt was incurred to finance passive activities. Should the IRS

successfully challenge Parent's reliance on Briarpark and disallow the treatment of the cancelled portion of the Prepetition Senior Secured Claims, the Prepetition Senior Deficiency Claims and the Prepetition Mezzanine Lender Claims as additional consideration for the sale by Parent of its assets, Parent expects that it will incur a significant loss from the sale that will offset substantially all of its COD income, provided that such loss is deductible under Section 707 of the Code.

Section 707 disallows the deduction of losses from sales or exchanges of property between two related partnerships. For this purpose, two partnerships are related if the same partners (applying certain constructive ownership rules) own, directly or indirectly, more than 50 percent of the capital interests or profits interests in both partnerships. While certain members of Parent are expected to be members of the Purchaser, one of such members has abandoned its membership interest in Parent, and, as a result, this ownership threshold will not be satisfied. If the IRS challenges both this abandonment on the ground that it is illusory in connection with this bankruptcy, or on some other basis, and Parent's reliance on Briarpark and prevails on both challenges, Parent will not be able to deduct its loss from the sale against its COD income. However, the Stalking Horse has agreed that it will structure and regulate its ownership on the closing date of the Sale and thereafter so that Section 707 will not apply to the losses incurred by Parent from the sale of assets to the Stalking Horse. In addition, Parent has the right to review the list of the owners of the Stalking Horse and their respective ownership interests before the closing. Therefore, Parent does not anticipate that its members will be prevented from applying the loss from the sale against their COD income in the event the reliance on Briarpark is disallowed and the abandonment of the membership interest described above is not respected. The Stalking Horse Agreement provides that the liability of the Stalking Horse for the breach of this covenant is limited to \$3 million.

## **B. U.S. Federal Income Tax Consequences to Claim Holders**

### **1. Overview**

The U.S. federal income tax consequences to a Holder receiving, or entitled to receive, a payment in partial or total satisfaction of a Claim may depend on a number of factors, including the nature of the Claim, the Holder's method of accounting, and its own particular tax situation. Because the Holders' Claims and tax situations differ, Holders should consult their own tax advisors to determine how the Plan affects them for federal, state and local tax purposes, based on their particular tax situations.

Among other things, the U.S. federal income tax consequences of a payment to a Holder may depend initially on the nature of the original transaction pursuant to which the Claim arose. For example, a payment in repayment of the principal amount of a loan is generally not included in the gross income of an original lender.

The U.S. federal income tax consequences of a transfer to a Holder may also depend on whether the item to which the payment relates has previously been included in the Holder's gross income or has previously been subject to a loss or bad debt deduction. For example, if a payment is made in satisfaction of a receivable acquired in the ordinary course of a Holder's trade or business, the Holder had previously included the amount of such receivable payment in its gross income under its method of accounting, and had not previously claimed a loss or bad debt deduction for that amount, the receipt of the payment should not result in additional income to the Holder but may result in a loss. Conversely, if the Holder had



previously claimed a loss or bad debt deduction with respect to the item previously included in income, the Holder generally would be required to include the amount of the payment in income.

A Holder receiving a payment under the Plan in satisfaction of its Claim generally may recognize taxable income or loss measured by the difference between (i) the amount of cash and the fair market value (if any) of any property received and (ii) its adjusted tax basis in the Claim. For this purpose, the adjusted tax basis may include amounts previously included in income (less any bad debt or loss deduction) with respect to that item. The character of any income or loss that is recognized will depend upon a number of factors, including the status of the creditor, the nature of the Claim in its hands, whether the Claim was purchased at a discount, whether and to what extent the creditor has previously claimed a bad debt deduction with respect to the Claim, and the creditor's holding period of the Claim. This income or loss may be ordinary income or loss if the distribution is in satisfaction of accounts or notes receivable acquired in the ordinary course of the Holder's trade or business for the performance of services or for the sale of goods or merchandise. Generally, the income or loss will be capital gain or loss if the Claim is a capital asset in the Holder's hands.

Market discount is the amount by which a Holder's tax basis in a debt obligation immediately after its acquisition is exceeded by the adjusted issue price of the debt obligation at such time, subject to a *de minimis* exception. A Holder generally is required to include gain on the disposition of a market discount debt instrument as ordinary income to the extent of the accrued market discount on the debt instrument.

2. Holders of Prepetition Senior Secured Claims (Class 3) and Prepetition Senior Deficiency Claims (Class 4, in part)

General. The Prepetition Senior Secured Lenders hold the Claims arising under the Prepetition Senior Secured Credit Agreement which includes, collectively, the Prepetition Senior Secured Claims and the Prepetition Senior Deficiency Claims. Under the Plan a Holder of these Claims will recognize taxable gain or loss in an amount equal to the difference between (i) the cash, the fair market value of the Real Estate, and the fair market value of the equity interests in the Purchaser received by such Holder and (ii) such Holder's adjusted tax basis in its Prepetition Senior Secured Claims and the Prepetition Senior Deficiency Claims. As a result, a Holder's tax basis in the Real Estate and the equity interests in the Purchaser will be equal to their fair market value. The holding period for such Real Estate and the equity interests in the Purchaser will begin on the day following their receipt. To the extent a Holder has market discount on its Prepetition Senior Secured Claims and the Prepetition Senior Deficiency Claims, if such Holder recognizes gain, it generally would be required to include such gain as ordinary income to the extent of the accrued market discount on the Claims.

Accrued Interest. The Plan provides that the consideration distributed to Holders of Prepetition Senior Secured Claims and Prepetition Senior Deficiency Claims is entirely attributed to unpaid principal and no consideration is attributed to accrued but unpaid interest. However, the manner in which consideration is allocated between accrued but unpaid interest and principal for U.S. federal income tax purposes in connection with a debt restructuring under which the full amount of the principal of the debt is not repaid is unclear under present law. If any consideration were attributed to accrued but unpaid interest, a Holder of Prepetition Senior Secured Claims and Prepetition Senior Deficiency Claims would be required to recognize such



consideration as ordinary income if such interest income has not already been included in income by the Holder.

3. Holders of Prepetition Mezzanine Lender Claims (Class 4, in part)

General. Under the Plan a Holder of Prepetition Mezzanine Lender Claims will recognize taxable gain or loss in an amount equal to the difference between (i) the fair market value of the equity interests in the Purchaser received by such Holder and (ii) such Holder's adjusted tax basis in its Prepetition Mezzanine Lender Claims. As a result, a Holder's tax basis in the equity interests in the Purchaser will be equal to their fair market value, and the holding period will begin on the day following their receipt. To the extent a Holder has market discount on its Prepetition Mezzanine Lender Claims, if such Holder recognizes gain, it generally would be required to include such gain as ordinary income to the extent of the accrued market discount on the Claims.

Accrued Interest. The Plan provides that the consideration distributed to Holders of Prepetition Mezzanine Lender Claims is entirely attributed to unpaid principal and no consideration is attributed to accrued but unpaid interest. However, the manner in which consideration is allocated between accrued but unpaid interest and principal for U.S. federal income tax purposes in connection with a debt restructuring under which the full amount of the principal of the debt is not repaid is unclear under present law. If any consideration were attributed to accrued but unpaid interest, a Holder of Prepetition Mezzanine Lender Claims would be required to recognize such consideration as ordinary income if such interest income has not already been included in income by the Holder.

**C. Other Tax Matters**

1. Information Reporting and Backup Withholding

Certain payments or distributions pursuant to the Plan may be subject to information reporting to the IRS. Moreover, such reportable payments may be subject to backup withholding (at the then applicable rate (currently 28%)) unless the taxpayer: (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income.

Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax and the appropriate information is supplied to the IRS.

In addition, from an information reporting perspective, Treasury Regulations generally require disclosure by a taxpayer on its federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds.

2. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. 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 INFORMATION PURPOSES ONLY AND IS NOT TAX

ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS SHOULD CONSULT THEIR TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE, LOCAL AND NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

## **X. FEASIBILITY OF THE PLAN AND BEST INTERESTS OF CREDITORS**

### **A. Feasibility of the Plan**

In connection with confirmation of the Plan, the Bankruptcy Court will be required to determine that the Plan is feasible pursuant to section 1129(a)(11) of the Bankruptcy Code, which means that the confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors.

To support their belief in the feasibility of the Plan, the Debtors have prepared and relied upon the Projections with respect to the Debtors' business post-confirmation and after acquisition by the Purchaser, which are annexed to this Disclosure Statement as Appendix B.

The Plan itself proposes a Sale of the substantially all of the Debtors' assets, and thus meets the feasibility test embodied in section 1129(a)(11) of the Bankruptcy Code. In addition, the Debtors believe that the fact that the Plan contemplates the funding of a Liquidating Trust to, in part, realize the value of the Debtors' assets for the benefit of creditors and the Estates ensures that no further financial restructuring will be necessary. The Debtors should have sufficient cash to fund their activities through the closing of the Sale contemplated by the Plan. Accordingly, the Debtors believe that the Plan complies with the financial feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

The Projections were developed by Senior Management in consultation with the Debtors' financial advisors. Collectively, Senior Management possesses decades of experience in the Debtors' industry, and the Projections rely, in part, on the judgment developed through that experience. In addition, they are based on Senior Management's knowledge of the Debtors' businesses and customers, and by reference to publicly available projections for industry revenue growth.

The Projections, however, are based upon numerous assumptions that are an integral part of the Projections, including, without limitation, confirmation and consummation of the Plan in accordance with its terms, realization of the Purchaser's operating strategy, industry performance, no material adverse changes in applicable legislation or regulations, or the administration thereof, exchange rates or generally accepted accounting principles, general business and economic conditions, competition, absence of material contingent or unliquidated litigation, indemnity or other claims, and other matters. To the extent that the assumptions inherent in the Projections are based upon future business decisions and objectives, they are subject to change. In addition, although they are presented with numerical specificity and the assumptions on which they are based are considered reasonable by the Debtors, the assumptions and estimates underlying the Projections are subject to business, economic and competitive uncertainties and contingencies. Accordingly, the Projections are only an educated, good faith estimate and are necessarily contingent in nature. It can be expected that some or all of the assumptions in the Projections will not be realized and that actual results will vary from the Projections, which variations may be material and may be adverse. The Projections should

therefore not be regarded as a guaranty by the Debtors or any other Person that the results set forth in the Projections will be achieved. The Projections were prepared by the Debtors, and not by any of their creditors, and the Debtors' creditors make no representations concerning the reasonableness of the Projections. In light of the foregoing, readers are cautioned not to place undue reliance on the Projections. The projected financial information contained herein and in the Projections should not be regarded as a representation or warranty by the Debtors, the Debtors' advisors or any other Person that the Projections can or will be achieved. The Projections should be read together with the assumptions set forth in the Projections and information in Article VII of this Disclosure Statement entitled "Certain Risk Factors to be Considered," which sets forth important factors that could cause actual results to differ from those in the Projections. The Debtors, however, believe that the Projections are credible and that there is a reasonable likelihood that the results set forth in the Projections can be achieved.

The Debtors do not intend to update or otherwise revise the Projections, including any revisions to reflect events or circumstances existing or arising after the date of the Projections or to reflect the occurrence of unanticipated events, even if any or all of the underlying assumptions do not come to fruition. Furthermore, the Debtors do not intend to update or revise the Projections to reflect changes in general economic or industry conditions.

**SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995:** This Disclosure Statement and the financial projections contained herein and in the Projections include "forward-looking statements" within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. All statements other than statements of historical fact included in this Disclosure Statement are forward-looking statements, including, without limitation, financial projections, the statements, and the underlying assumptions, regarding the timing of, completion of and scope of the current restructuring, the Plan, debt and equity market conditions, the cyclicity of the Debtors' industry, current and future industry conditions, the potential effects of such matters on the Debtors' business strategy, results of operations or financial position, the adequacy of the Debtors' liquidity and the market sensitivity of the Debtors' financial instruments. The forward-looking statements are based upon current information and expectations. Estimates, forecasts and other statements contained in or implied by the forward-looking statements speak only as of the date on which they are made, are not guarantees of future performance and involve certain risks, uncertainties and assumptions that are difficult to evaluate and predict. Although the Debtors believe that the expectations reflected in the forward-looking statements are reasonable, parties are cautioned that any such forward-looking statements are not guarantees of future performance, and involve risks and uncertainties, and that actual results may differ materially from those contemplated by such forward-looking statements. Certain important factors that could cause actual results to differ materially from the Debtors' expectations or what is expressed, implied or forecasted by or in the forward-looking statements include developments in the Chapter 11 Cases, adverse developments in the timing or results of the Debtors' business plan (including the time line to emerge from chapter 11), the timing and extent of changes in economic conditions, industry capacity and operating rates, the supply-demand balance for the Debtors' services, competitive products and pricing pressures, federal and state regulatory developments, the Debtors' financial leverage, motions filed or actions taken in connection with the bankruptcy proceedings, the availability of skilled personnel, the Debtors' ability to attract or retain high quality employees and operating hazards attendant to the industry. Additional factors that could cause actual results to differ materially from the Projections or what is expressed,

implied or forecasted by or in the forward-looking statements are stated herein in cautionary statements made in conjunction with the forward-looking statements or are included elsewhere in this Disclosure Statement.

## **B. Acceptance of the Plan**

As a condition to Confirmation, the Bankruptcy Code requires that each Class of Impaired Claims vote to accept the Plan, except under certain circumstances.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds ( $\frac{2}{3}$ ) in dollar amount and more than one-half ( $\frac{1}{2}$ ) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the Plan. Thus, Holders of Claims in each of Classes 3, 4, 5 and 6 will have voted to accept the Plan only if two-thirds ( $\frac{2}{3}$ ) in amount and a majority in number of the Claims actually voting in each Class cast their ballots in favor of acceptance. Holders of Claims who fail to vote are not counted as either accepting or rejecting the Plan.

## **C. Best Interests Test**

As noted above even if a plan is accepted by each class of claims and interests, the Bankruptcy Code requires a bankruptcy court to determine that the plan is in the best interests of all holders of claims or interests that are impaired by the plan and that have not accepted the plan. The “best interests” test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires a bankruptcy court to find either that all members of an impaired class of claims or interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to holders of each impaired class of claims and interests if the debtor were liquidated under chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from the debtor’s assets if its chapter 11 case were converted to a chapter 7 case under the Bankruptcy Code. This “liquidation value” would consist primarily of the proceeds from a forced sale of the debtor’s assets by a chapter 7 trustee.

The amount of liquidation value available to unsecured creditors would be reduced by, first, the claims of secured creditors to the extent of the value of their collateral and, second, by the costs and expenses of liquidation, as well as by other administrative expenses and costs of both the chapter 7 cases and the chapter 11 cases. Costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid administrative expenses incurred by the debtors in their chapter 11 cases that are allowed in the chapter 7 cases, litigation costs and claims arising from the operations of the debtor during the pendency of the chapter 11 case. The liquidation itself would trigger certain priority payments that otherwise would be due in the ordinary course of business. Those priority claims would be paid in full from the liquidation proceeds before the balance would be made available to pay general unsecured claims or to make any distribution in respect of equity security interests. The liquidation would also prompt the rejection of a large number of executory contracts and

unexpired leases and thereby significantly enlarge the total pool of unsecured claims by reason of resulting rejection damages claims.

Once the bankruptcy court ascertains the recoveries in liquidation of secured creditors and priority claimants, it must determine the probable distribution to general unsecured creditors and equity security holders from the remaining available proceeds in liquidation. If such probable distribution has a value greater than the distributions to be received by such creditors and equity security holders under the plan, then the plan is not in the best interests of creditors and equity security holders.

#### **D. Liquidation Analysis**

For purposes of the best interests test, in order to determine the amount of liquidation value available to Creditors, the Debtors, with the assistance of their financial advisors, prepared a liquidation analysis, annexed hereto as Appendix C (the “Liquidation Analysis”), which concludes that in the event of a forced liquidation of the Debtors’ assets under chapter 7, the aggregate value to be realized by the Debtors’ estates would be approximately [\$\_\_\_\_\_] (net of repayment the DIP Financing Facility). In the event of an orderly liquidation of the Debtors’ assets in chapter 7, the aggregate value to be realized by the Debtors’ estates would be approximately [\$\_\_\_\_\_] (net of repayment the DIP Financing Facility). In either event, all such value would be distributed to either the DIP Lender in repayment of the DIP Financing Facility or to Holders of Allowed Class 3 Prepetition Senior Secured Claims, and no other Holder of a Claim, including unpaid Administrative Priority Claims incurred during the administration of the Debtors’ Chapter 11 Cases (other than the DIP Financing Facility), would receive a distribution. These conclusions are premised upon the assumptions set forth in Appendix C, which the Debtors and Alvarez & Marsal believe are reasonable.

The Debtors believe that any liquidation analysis with respect to the Debtors is inherently speculative. The Liquidation Analysis for the Debtors necessarily contains estimates of the net proceeds that would be received from a forced or orderly sale of assets and/or business units, as well as the amount of Claims that would ultimately become Allowed Claims. Claims estimates are based solely upon the Debtors’ books and records. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims at the projected amounts of Allowed Claims set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtors have projected an amount of Allowed Claims that represents their best estimate of the chapter 7 liquidation dividend to Holders of Allowed Claims. The estimate of the amount of Allowed Claims set forth in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any distribution to be made on account of Allowed Claims under the Plan.

#### **E. Application of the “Best Interests” of Creditors Test to the Liquidation Analysis and the Valuation**

It is impossible to determine with certainty the value each Holder of a Claim will receive under the Plan as a percentage of any Allowed Claim. Notwithstanding the difficulty in quantifying recoveries with precision, the Debtors believe that the financial disclosures and projections contained herein imply a greater recovery to Holders of Claims in Impaired Classes than the recovery available in a chapter 7 liquidation. Accordingly, the Debtors believe that the “best interests” test of section 1129 of the Bankruptcy Code is satisfied.



**F. Confirmation Without Acceptance of All Impaired Classes: The “Cramdown” Alternative**

In the event any Class of Impaired Claims rejects the Plan, the Debtors may seek confirmation of the Plan pursuant to the “cramdown” provisions of the Bankruptcy Code.

Section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed even if the plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted it. The Bankruptcy Court may confirm a plan at the request of a debtor if the plan “does not discriminate unfairly” and is “fair and equitable” as to each impaired class that has not accepted the plan. A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated equally with respect to other classes of equal rank. The Debtors believe the Plan does not discriminate unfairly with respect to the Claims and Interests in Classes 3 through 8.

A plan is “fair and equitable” as to holders of unsecured claims that reject the plan if the plan provides either that: (a) each holder of a claim of such class receives or retains on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides (a) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled or the value of such interest or (b) that the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property at all.

The Debtors believe that they could, if necessary, meet the “fair and equitable” requirements of section 1129(b) of the Bankruptcy Code with respect to Holders of Claims and Interests in Classes 3 through 8.

**XI. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Debtors believe that the Plan affords Holders of Claims in Classes 3, 4, 5 and 6 the potential for the greatest realization on the Debtors’ assets and, therefore, is in the best interests of such Holders. If, however, the requisite acceptances are not received, or the Plan is not confirmed and consummated, the theoretical alternatives include (a) formulation of an alternative plan or plans of reorganization or (b) liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

**A. Alternative Plan(s) of Reorganization**

If the requisite acceptances are not received or if the Plan is not confirmed, the Debtors (or, if the Debtors’ exclusive periods in which to file and solicit acceptances of a plan of reorganization have expired, any other party in interest) could attempt to formulate and propose a different plan or plans of reorganization. Such a plan or plans might involve either a reorganization and continuation of the Debtors’ businesses or an orderly liquidation of assets.



The Debtors believe that the Plan enables Creditors to realize the greatest possible value under the circumstances and has the greatest chance to be confirmed and consummated.

**B. Liquidation Under Chapter 7**

If no plan is confirmed, the Debtors' cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate the Debtors' assets for distribution in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict with certainty how the proceeds of the liquidation would be distributed to the respective Holders of Claims against or Interests in the Debtors. It is, however, possible to predict that the Prepetition Senior Secured Lenders would assert that they held security interests in substantially all assets to be liquidated, likely resulting in nothing to distribute to any other Class of Claims or Interests.

The Debtors believe that a liquidation under chapter 7 would cause a substantial diminution in the Debtors' Estates given the substantial premium in the enterprise value of their businesses over the liquidation value of their assets, and the additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants and other professionals to assist such trustees. The assets available for distribution to Creditors would be reduced by such additional expenses and by Claims, some of which would be entitled to priority, arising by reason of the liquidation and from the rejection of leases and other executory contracts in connection with the cessation of operations and the failure to realize the greater going concern value of the Debtors' assets. More importantly, conversion to a chapter 7 liquidation would likely result in the immediate cessation of the Debtors' businesses, as most chapter 7 trustees are disinclined to continue operations.

**XII. THE SOLICITATION; VOTING PROCEDURES**

**A. Parties in Interest Entitled to Vote**

In general, a holder of a claim or interest may vote to accept or to reject a plan if (a) the claim or interest is "allowed," which means generally that no party in interest has objected to such claim or interest, and (b) the claim or interest is "impaired" by the plan but entitled to receive or retain property under the plan.

Under section 1124 of the Bankruptcy Code, a class of claims or interests is deemed to be "impaired" under a plan unless (a) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or interest entitles the holder thereof or (b) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before the default.

If, however, the holder of an impaired claim or interest will not receive or retain any distribution under the plan on account of such claim or interest, the Bankruptcy Code deems such holder to have rejected the plan and, accordingly, holders of such claims and interests do not actually vote on the plan. If a claim or interest is not impaired by the plan, the Bankruptcy Code deems the holder of such claim or interest to have accepted the plan and, accordingly, holders of such claims and interests are not entitled to vote on the plan.

**B. Classes Entitled to Vote to Accept or Reject the Plan**

Holders of Claims in Classes 3, 4, 5 and 6 are entitled to vote to accept or reject the Plan. By operation of law, each Unimpaired Class of Claims is deemed to have accepted the Plan and each Impaired Class of Claims or Interests that will receive nothing under the Plan is deemed to have rejected the Plan and, therefore, the Holders of Claims or Interests in such Classes are not entitled to vote to accept or reject the Plan. Consequently, Classes 1 and 2 are deemed to have accepted the Plan and Classes 7 and 8 are deemed to have rejected the Plan and, therefore, none of the Holders of Claims or Interests in such Classes are entitled to vote to accept or reject the Plan.

**C. Solicitation Order**

Upon approval of this Disclosure Statement, the Bankruptcy Court entered an order that, among other things, determines the dates, procedures and forms applicable to the process of soliciting votes on the Plan and establishes certain procedures with respect to the tabulation of such votes (the “Solicitation Order”). Parties in interest may obtain a copy of the Solicitation Order through the Bankruptcy Court’s electronic case filing system, by downloading the Solicitation Order from the Debtors’ case website at [www.pnreorg.com](http://www.pnreorg.com) or by making written request upon the Debtors’ counsel or Voting Agent.

**D. Waivers of Defects, Irregularities, Etc.**

All questions with respect to the validity, form, eligibility (including time of receipt), acceptance and revocation or withdrawal of ballots will be determined by the Bankruptcy Court. As indicated below under “Withdrawal of Ballots; Revocation,” effective withdrawals of ballots must be delivered to the Voting Agent prior to the Voting Deadline. The Debtors reserve the absolute right to contest the validity of any such withdrawal. The Debtors also reserve the right to seek rejection of any and all ballots not in proper form. The Debtors further reserve the right to seek waiver of any defects or irregularities or conditions of delivery as to any particular ballot. Neither the Debtors 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 liabilities for failure to provide such notification. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) may be invalidated by the Bankruptcy Court.

**E. Withdrawal of Ballots; Revocation**

Any party 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 to the Voting Agent at any time prior to the Voting Deadline. A notice of withdrawal, to be valid, must (a) contain the description of the Claim(s) to which it relates and the aggregate principal amount represented by such Claim(s), (b) be signed by the withdrawing party in the same manner as the ballot being withdrawn, (c) contain a certification that the withdrawing party owns the Claim(s) and possesses the right to withdraw the vote sought to be withdrawn and (d) be received by the Voting Agent in a timely manner *via* regular mail, at The Garden City Group, Attn: Philadelphia Newspapers, LLC, P.O. Box 9000 #6528, Merrick, NY 11566-9000, or *via* overnight courier or hand delivery at The Garden City Group, Attn: Philadelphia Newspapers, LLC, 105 Maxess Road, Melville, NY 11747. The Debtors intend to consult with the Voting Agent to determine whether any withdrawals of ballots were received and whether the requisite

acceptances of the Plan have been received. As stated above, the Debtors expressly reserve 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 which is not received in a timely manner by the Voting Agent will not be effective to withdraw a previously cast ballot.

Any party who has previously submitted to the Voting Agent prior to the Voting Deadline a properly completed ballot may revoke such ballot and change its vote by submitting to the Voting Agent prior to the Voting Deadline a subsequent properly completed ballot for acceptance or rejection of the Plan. In the case where more than one timely, properly completed ballot is received, only the ballot which bears the latest date will be counted for purposes of determining whether the requisite acceptances have been received.

#### **F. Voting Rights of Disputed Claimants**

Holders of Disputed Claims in Classes 3, 4, 5 and 6 whose Claims are (a) asserted as wholly unliquidated or wholly contingent in Proofs of Claim filed prior to the Distribution Record Date or (b) whose Claims are asserted in Proofs of Claim as to which an objection to the entirety of the Claim is pending as of the Distribution Record Date (collectively, the “Disputed Claimants”) are not permitted to vote on the Plan except as provided in the Solicitation Order. Pursuant to the procedures outlined in the Solicitation Order, Disputed Claimants may obtain a ballot for voting on the Plan only by filing a motion under Bankruptcy Rule 3018(a) seeking to have their Claims temporarily Allowed for voting purposes (a “Rule 3018 Motion”). Any such Rule 3018 Motion must be filed and served upon the Debtors’ counsel and the Voting Agent no later than 5:00 p.m. (Eastern time) on the fourteenth (14th) day after the later of (i) the Solicitation Date and (ii) the date of service of an objection, if any, to such claim. The ballot of any creditor filing such a motion, will not be counted unless temporarily allowed by the Bankruptcy Court for voting purposes, after notice and a hearing. Any party timely filing and serving a Rule 3018 Motion will be provided a ballot and be permitted to cast a provisional vote to accept or reject the Plan. If and to the extent that the Debtors and such party are unable to resolve the issues raised by the Rule 3018 Motion prior to the Voting Deadline established by the Bankruptcy Court, then at the Confirmation Hearing the Bankruptcy Court will determine whether the provisional ballot should be counted as a vote on the Plan. Nothing herein affects the Debtors’ right to object to any Proof of Claim after the Distribution Record Date. With respect to any such objection, the Debtors may request that any vote cast by the Holder of the Claim subject to the objection be disallowed and not counted in determining whether the requirements of section 1126(c) of the Bankruptcy Code have been met.

#### **G. Further Information; Additional Copies**

If you have any questions or require further information about the voting procedures for voting your Claim or about the package of materials you received, or if you wish to obtain an additional copy of the Plan or this Disclosure Statement, or any exhibits or appendices to such documents (at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d) or the Solicitation Order), please contact the Voting Agent at:

**If by regular mail:**

THE GARDEN CITY GROUP, INC.

ATTN: PHILADELPHIA NEWSPAPERS, LLC  
P.O. BOX 9000 #6528  
MERRICK, NY 11566-9000

**If by overnight courier or hand delivery:**

THE GARDEN CITY GROUP, INC.  
ATTN: PHILADELPHIA NEWSPAPERS, LLC  
105 MAXESS ROAD  
MELVILLE, NY 11747

**If by telephone, for U.S. callers only:**

THE GARDEN CITY GROUP, INC.  
(866) 697-5547

**If by telephone, for international callers:**

THE GARDEN CITY GROUP, INC.  
(941)-906-4829

**RECOMMENDATION AND CONCLUSION**

For all of the reasons set forth in this Disclosure Statement, the Debtors believe that confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors urge all Holders of Claims in Classes 3, 4, 5 and 6 to vote to ACCEPT the Plan, and to complete and return their ballots so that they will be RECEIVED on or before [\_\_\_\_\_, 2009], at 5:00 p.m. prevailing Eastern time.

Dated: August 20, 2009

PMH ACQUISITION, LLC, BROAD  
STREET VIDEO, LLC, PHILADELPHIA  
NEWSPAPERS, LLC, PHILADELPHIA  
DIRECT, LLC, PHILLY ONLINE, LLC,  
PMH HOLDINGS, LLC, BROAD STREET  
PUBLISHING, LLC AND PHILADELPHIA  
MEDIA, LLC

By: /s/ Richard R. Thayer  
Name: Richard R. Thayer  
Title: Executive Vice President, Finance

**Appendix A**

[Joint Chapter 11 Plan]

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:	)	
	)	Chapter 11
Philadelphia Newspapers, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 09-11204 (JKF)
Debtors.	)	
	)	Jointly Administered

**DEBTORS' JOINT CHAPTER 11 PLAN AS OF AUGUST 20, 2009**

The above-captioned debtors and debtors in possession hereby submit their Joint Chapter 11 Plan dated as of August 20, 2009.

Dated: Philadelphia, Pennsylvania  
August 20, 2009

/s/ Lawrence G. McMichael  
**DILWORTH PAXSON LLP**  
Lawrence G. McMichael  
Anne M. Aaronson  
1500 Market St., Suite 3500E  
Philadelphia, PA 19102  
Telephone: (215) 575-7000  
Facsimile: (215) 575-7200

*Co- Counsel for Debtors and Debtors in Possession*

-and-

**PROSKAUER ROSE LLP**  
Mark K. Thomas  
Paul V. Possinger  
Peter J. Young  
Three First National Plaza  
70 West Madison, Suite 3800  
Chicago, Illinois 60602  
Telephone: (312) 962-3550  
Facsimile: (312) 962-3551

*Counsel for Debtors and Debtors in Possession*

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Philadelphia Media Holdings, LLC (4680), PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Newspapers, LLC (3870), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574) and Philadelphia Media, LLC (0657).



Table of Contents

	<u>Page No.</u>
ARTICLE I	
DEFINITIONS, INTERPRETATION AND EXHIBITS. ....	1
Section 1.01. Definitions.....	1
Section 1.02. Rules of Interpretation .....	13
Section 1.03. Exhibits .....	13
ARTICLE II	
CLASSIFICATION OF CLAIMS AND INTERESTS.....	13
Section 2.01. Generally.....	13
Section 2.02. Unclassified Claims .....	14
Section 2.03. Unimpaired Classes .....	14
Section 2.04. Impaired Classes Entitled to Vote.....	14
Section 2.05. Impaired Classes Deemed to Reject .....	14
ARTICLE III	
PROVISIONS FOR TREATMENT OF CLASSES OF CLAIMS AND INTERESTS .....	14
Section 3.01. Satisfaction of Claims and Interests.....	14
Section 3.02. Unclassified Claims, Classified Unimpaired and Impaired Claims and Classified Interests .....	15
Section 3.03. Administrative Claims .....	15
Section 3.04. Priority Tax Claims.....	15
Section 3.05. Class 1: Miscellaneous Secured Claims .....	15
Section 3.06. Class 2: Miscellaneous Priority Claims .....	16
Section 3.07. Class 3: Prepetition Senior Secured Claims .....	16
Section 3.08. Class 4: Prepetition Unsecured Debt Claims.....	16
Section 3.09. Class 5: General Unsecured Trade Claims .....	16
Section 3.10. Class 6: City of Philadelphia Claim.....	16
Section 3.11. Class 7: Interests .....	17
Section 3.12. Class 8: Insider Claims .....	17
ARTICLE IV	
ACCEPTANCE OR REJECTION OF THE PLAN; CRAMDOWN .....	17
Section 4.01. Acceptance by Impaired Classes of Claims and Interests .....	17
Section 4.02. Voting Classes .....	17
Section 4.03. Ballot Instructions .....	17
Section 4.04. Cramdown.....	17

ARTICLE V

PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE PLAN .....	18
Section 5.01. Timing of Distributions.....	18
Section 5.02. Distributions to Holders of Allowed Claims .....	18
Section 5.03. Liquidating Trust .....	18
Section 5.04. Delivery of Distributions .....	19
Section 5.05. Method of Cash Distributions .....	19
Section 5.06. Failure to Negotiate Checks.....	19
Section 5.07. Unclaimed Distributions .....	19
Section 5.08. Limitation on Distribution Rights .....	20
Section 5.09. Fractional Dollars.....	20
Section 5.10. Compliance With Tax Requirements.....	20
Section 5.11. De Minimis Distributions .....	20

ARTICLE VI

EXECUTORY CONTRACTS AND UNEXPIRED LEASES; INDEMNIFICATION OBLIGATIONS; BENEFIT PROGRAMS.....	21
Section 6.01. Treatment of Executory Contracts and Unexpired Leases .....	21
Section 6.02. Cure of Defaults for Assumed Contracts and Leases .....	21
Section 6.03. Bar Date for Claims for Rejection Damages .....	21
Section 6.04. Treatment of Rejection Claims .....	21
Section 6.05. Executory Contracts and Unexpired Leases Entered Into and Other Obligations Incurred After the Petition Date .....	22
Section 6.06. Benefit Programs .....	22

ARTICLE VII

means for implementation of the of the plan.....	22
Section 7.01. The Sale .....	22
Section 7.02. Dissolution of the Debtors .....	22
Section 7.03. Liquidating Trust .....	22
Section 7.04. Powers and Duties of the Liquidation Trustee.....	22
Section 7.05. Powers of the Purchaser.....	23
Section 7.06. Application of Sale Proceeds .....	23
Section 7.07. Distribution of Interests in Purchaser .....	23
Section 7.08. Transfer of the Real Property.....	23
Section 7.09. Approval of Agreements.....	24
Section 7.10. Corporate Action.....	24
Section 7.11. Revesting of Assets.....	24

ARTICLE VIII

PRESERVATION OF CAUSES OF ACTION AND RIGHT TO DEFEND AND CONTEST .....	24
Section 8.01. Preservation of Rights.....	24
Section 8.02. Rights of Action.....	24
Section 8.03. Setoffs .....	25
Section 8.04. No Payment or Distribution Pending Allowance.....	25
Section 8.05. Resolution of Disputed Claims .....	25

ARTICLE IX

CONDITIONS TO CONSUMMATION OF THE PLAN.....	25
Section 9.01. Confirmation Order.....	25
Section 9.02. Conditions to Effective Date.....	26
Section 9.03. Waiver of Conditions to Consummation .....	26
Section 9.04. Effect of Failure or Absence of Waiver of Conditions Precedent to the Effective Date of the Plan .....	26

ARTICLE X

EFFECTS OF CONFIRMATION.....	27
Section 10.01. Discharge .....	27
Section 10.02. Injunction.....	27
Section 10.03. Exculpation .....	28
Section 10.04. Releases.....	29
Section 10.05. Other Documents and Actions.....	29
Section 10.06. Term of Injunctions or Stays.....	29
Section 10.07. Preservation of Insurance.....	30
Section 10.08. Guaranties .....	30
Section 10.09. Subordination Rights .....	30
Section 10.10. No Successor Liability.....	30

ARTICLE XI

RETENTION OF JURISDICTION .....	30
Section 11.01. Exclusive Jurisdiction of Bankruptcy Court.....	30
Section 11.02. Failure of Bankruptcy Court to Exercise Jurisdiction.....	33

ARTICLE XII

MISCELLANEOUS PROVISIONS .....	33
Section 12.01. Binding Effect of Plan .....	33
Section 12.02. Withdrawal of the Plan .....	33
Section 12.03. Final Order .....	33
Section 12.04. Modification of the Plan .....	33

Section 12.05. Business Days .....	33
Section 12.06. Severability .....	34
Section 12.07. Governing Law .....	34
Section 12.08. Dissolution of Committee .....	34
Section 12.09. Payment of Statutory Fees .....	34
Section 12.10. Post-Confirmation Operating Reports .....	34
Section 12.11. Notices .....	34
Section 12.12. Filing of Additional Documents .....	35
Section 12.13. Section 1125 of the Bankruptcy Code. ....	35
Section 12.14. Section 1146 Exemption .....	35
Section 12.15. Section 1145 Exemption .....	35
Section 12.16. Time .....	36
Section 12.17. No Attorneys' Fees .....	36
Section 12.18. No Injunctive Relief.....	36
Section 12.19. Continued Confidentiality Obligations .....	36
Section 12.20. No Admissions or Waivers .....	36
Section 12.21. Entire Agreement .....	36
Section 12.22. Waiver.....	36
Section 12.23. Bar Date for Professionals .....	36

## INTRODUCTION

This joint chapter 11 plan (as amended or modified hereafter in accordance with its terms, the “Plan”), dated as of August 20, 2009, is proposed by Philadelphia Media Holdings, LLC, PMH Acquisition, LLC, Broad Street Video, LLC, Philadelphia Newspapers, LLC, Philadelphia Direct, LLC, Philly Online, LLC, PMH Holdings, LLC, Broad Street Publishing, LLC and Philadelphia Media, LLC (each a “Debtor” and collectively, the “Debtors”). Reference is made to the Disclosure Statement accompanying the Plan for a discussion of the Debtors’ history, business, results of operations, historical financial information, properties, projections for future operations and risk factors, a summary and analysis of the Plan, and certain related matters. The Debtors are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL CREDITORS OF THE DEBTORS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3019 AND THE PLAN, THE DEBTORS RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN PRIOR TO ITS SUBSTANTIAL CONSUMMATION.

Capitalized terms used herein shall have the meanings set forth in Article I hereof. The Debtors have obtained Bankruptcy Court authority to have the Chapter 11 Cases jointly administered for administrative and procedural purposes only. Accordingly, the Plan is being proposed as a joint plan of the Debtors for administrative and procedural purposes only. The Plan is not premised upon the substantive consolidation of the Debtors or the Chapter 11 Cases and nothing herein shall be otherwise construed. The Debtors, however, reserve the right to seek substantive consolidation by motion or amendment to the Plan if they conclude that substantive consolidation is necessary or appropriate for effectuation of the Plan. Claims against, and Interests in, the Debtors (other than Administrative Claims and Priority Tax Claims) are classified in Article II hereof and treated in Article III hereof.

## ARTICLE I DEFINITIONS, INTERPRETATION AND EXHIBITS.

Section 1.01. Definitions. Unless the context requires otherwise, the following terms shall have the following meanings whether presented in the Plan or the Disclosure Statement with initial capital letters or otherwise. As used herein:

“Adequate Protection Claims” means all liens and claims of the Prepetition Senior Agent, on behalf of the Prepetition Senior Secured Lenders, granted pursuant to the Cash Collateral Order or subsequent order of the Bankruptcy Court.

“Administrative Claim” means a Claim for: (a) any cost or expense of administration (including, without limitation, the fees and expenses of Professionals) of any of the Chapter 11 Cases asserted or arising under sections 503, 507(a)(1), 507(b) or 1114(e)(2) of the Bankruptcy Code including, but not limited to (i) any actual and necessary post Petition Date cost or expense of preserving the Debtors’ respective Estates or operating the businesses of the



Debtors, (ii) any post Petition Date cost, indebtedness or contractual obligation duly and validly incurred or assumed by the Debtors in the ordinary course of their respective businesses, (iii) compensation or reimbursement of expenses of Professionals to the extent Allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code, and (iv) all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under section 546 of the Bankruptcy Code; (b) any fees or charges assessed against the Debtors' respective Estates under section 1930 of title 28 of the United States Code; (c) any Allowed administrative claim or superpriority claim granted to the Prepetition Senior Agent pursuant to the Cash Collateral Order; and (d) Claims of the DIP Lender in connection with the DIP Financing Facility.

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

"Allowed" means, with reference to any Claim, (a) any Claim against any of the Debtors that has been listed by the Debtors in the Schedules, as such Schedules may have been amended by the Debtors from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent, and with respect to which no contrary proof of claim has been filed, (b) any Claim specifically allowed under the Plan, (c) any Claim the amount or existence of which has been determined or allowed by a Final Order, or (d) any Claim as to which a proof of claim has been timely filed before the Bar Date, provided that at the time of the Effective Date the Debtors have not identified such Claim as being objectionable in part or in whole and no objection to the allowance thereof has been filed by the Claims Objection Deadline; provided, however, that the term Allowed, with reference to any Claim, shall not include (x) any unliquidated claim or (y) interest or attorneys' fees on or related to any Claim that accrues from and after the Petition Date unless otherwise expressly provided for in the Plan.

"Allowed Claim" means a Claim that is Allowed.

"Allowed Interest" means an Interest that is Allowed.

"Asset Purchase Agreement" means that certain Asset Purchase Agreement dated as of August 20, 2009 by and among the Debtors, as sellers, and the Stalking Horse Bidder, as buyer, which provides for the sale of certain or substantially all of the Debtors' assets, or such other asset purchase agreement submitted at or prior to the Auction and subsequently determined by the Debtors pursuant to the Sale and Bid Procedures to be the highest or otherwise best offer for such assets.

"Auction" means the auction for the sale of the Debtors' assets to be held in accordance with the Sale and Bid Procedures.

"Avoidance Actions" means any and all Causes of Action which a trustee, debtor in possession, the Estates or other appropriate party in interest may assert under sections 502, 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code (other than those which are released or dismissed as part of and pursuant to the Plan) or under other similar or related state or federal statutes or common law, including fraudulent conveyance laws.

“Ballot” means the forms of ballots accompanying the Disclosure Statement upon which Holders of Impaired Claims and Interests entitled to vote on the Plan shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the instructions regarding voting.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as in effect on the Petition Date, together with all amendments and modifications thereto that subsequently may be made applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Pennsylvania or, if such court ceases to exercise jurisdiction over these proceedings, the court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases.

“Bankruptcy Rules” means: (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of title 28 of the United States Code; (b) the Federal Rules of Civil Procedure, as amended and promulgated under section 2072 of title 28 of the United States Code; (c) any local rules applicable to the Bankruptcy Court; and (d) any standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto that were subsequently made applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

“Bar Date” means the applicable bar date by which a proof of Claim must be, or must have been, Filed, as established by an order of the Bankruptcy Court.

“Business Day” means any day which is not a Saturday, a Sunday, a “legal holiday” as defined in Bankruptcy Rule 9006(a), or a day on which banking institutions in the State of Pennsylvania are authorized or obligated by law, executive order or governmental decree to be closed.

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

“Cash Collateral Order” means the interim or Final Order, as in effect from time-to-time, entered by the Bankruptcy Court authorizing and approving the Debtors’ use of cash collateral pursuant to section 363 of the Bankruptcy Code, and any extensions or amendments thereof.

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

“Chapter 11 Cases” means the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court on the Petition Date.

“City of Philadelphia Claim” means the Secured Claim of the City of Philadelphia for real estate taxes relating to the Real Property.

“Claim” shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

“Claims Objection Deadline” means the latest of: (a) 75 days after the Effective Date; (b) 75 days after the date on which any Claim is Filed; or (c) such other date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clauses (a) and (b) above.

“Class” means each class, subclass or category of Claims or Interests as classified in Article II of the Plan.

“Committee” means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code by the United States Trustee, as the membership of such committee is from time to time constituted and reconstituted.

“Committee Members” means the members of the Committee.

“Confirmation” or “Confirmed” means the entry by the Bankruptcy Court of the Confirmation Order.

“Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court with respect to the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

“Confirmation Hearing” means the hearing held before the Bankruptcy Court to consider Confirmation of the Plan pursuant to sections 1128 and 1129 of the Bankruptcy Code.

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

“Creditor” means any Person that is the Holder of any Claim against any of the Debtors.

“DIP Financing Facility” means the post-petition financing facility provided to the Debtors by the DIP Lender pursuant to the DIP Financing Order and related documents.

“DIP Financing Order” means the interim or Final Order, as in effect from time-to-time, entered by the Bankruptcy Court authorizing the Debtors to enter into the DIP Financing Facility pursuant to section 364 of the Bankruptcy Code, and any extensions or amendments thereof.

“DIP Lender” means \_\_\_\_\_, in its capacity as post-petition lender to the Debtors under the DIP Financing Facility.

“Day(s)” means, unless expressly otherwise provided, calendar day(s).

“Debtors” shall have the meaning set forth in the Introduction.

“Disallowed” means, with respect to any Claim or Interest or portion thereof, any Claim against or Interest in the Debtors which: (a) has been withdrawn, in whole or in part, by agreement of the Debtors or the Liquidation Trustee, as applicable, and the Holder thereof; (b) has been withdrawn, in whole or in part, by the Holder thereof; or (c) has been disallowed, in whole or part, by Final Order of a court of competent jurisdiction. In each case a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance or withdrawal.

“Disallowed Claim” means a Claim, or any portion thereof, that is Disallowed.

“Disallowed Interest” means an Interest, or any portion thereof, that is Disallowed.

“Disbursing Agent” means the Liquidation Trustee or such other Entity that is designated by the Liquidation Trustee to disburse Property pursuant to the Plan.

“Disclosure Statement” means the Debtors’ Disclosure Statement With Respect to the Joint Chapter 11 Plan Dated as of August 20, 2009, including all exhibits, appendices, schedules and annexes, if any, attached thereto, as submitted by the Debtors, as the same may be altered, amended, supplemented or modified from time to time, and which was prepared and distributed in accordance with sections 1125 and 1126(b) of the Bankruptcy Code and Bankruptcy Rule 3018.

“Disputed” means any Claim or Interest that has been neither Allowed nor Disallowed.

“Disputed Claim” means a Claim, or any portion thereof, that is Disputed. For purposes of the Plan, a Claim that has been neither Allowed nor Disallowed shall be considered a Disputed Claim.

“Disputed Interest” means an Interest, or any portion thereof, that is Disputed. For purposes of the Plan, an Interest that has been neither Allowed nor Disallowed shall be considered a Disputed Interest.

“Effective Date” means the first Business Day following the date on which all conditions to consummation set forth in Article IX of the Plan have been satisfied or waived (if capable of being duly and expressly waived), provided that no stay of the Confirmation Order is then in effect.

“Entity” means any individual, corporation, limited or general partnership, joint venture, association, joint stock company, limited liability company, estate, trustee, United States

Trustee, unincorporated organization, government, governmental unit (as defined in the Bankruptcy Code), agency or political subdivision thereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rules issued thereunder.

“Estates” means the estates created in the Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code upon commencement of the Chapter 11 Cases.

“Exculpated Persons” means: (a) directors, officers and employees of the Debtors, as of the Petition Date but prior to the Effective Date, and the Debtors’ agents and professionals; (b) the Prepetition Senior Agent and the Prepetition Senior Secured Lenders (if Classes 3 and 4 vote to accept the Plan); (c) the Committee and the Committee Members (if Classes 4 and 5 vote to accept the Plan); (d) the Purchaser; (e) the Liquidation Trustee; and (f) to the extent that such parties are deemed to be Exculpated Persons, the respective current and former officers, directors, employees, agents, stockholders, managers, members, affiliates, partners, attorneys advisors and professionals of the parties identified in subclauses (a) through (f).

“File, Filed or Filing” means file, filed or filing with the Bankruptcy Court in the Chapter 11 Cases.

“Final Decree” means the final decree entered by the Bankruptcy Court after the Effective Date and pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022.

“Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket of such court, the operation or effect of which has not been stayed, reversed, vacated, modified or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) of the time to appeal, petition for certiorari, or seek review or rehearing has expired and as to which no appeal, petition for certiorari, or petition for review or rehearing was filed or, if filed, remains pending; provided, however, that the possibility that a motion may be filed pursuant to Rules 9023 or 9024 of the Bankruptcy Rules or Rules 59 or 60(b) of the Federal Rules of Civil Procedure shall not mean that an order or judgment is not a Final Order.

“General Unsecured Trade Claims” means all Claims (i) that are Allowed in the amount of \$200,000 or less, or that are voluntarily reduced to \$200,000 by the Holders of such Claims prior to the Confirmation Date, and (ii) that are not Administrative Claims, Priority Tax Claims, Professional Fee Claims, Miscellaneous Secured Claims, Miscellaneous Priority Claims, Prepetition Senior Secured Claims, Prepetition Mezzanine Lender Claims, Insider Claims, Rejection Claims or Litigation Claims.

“Holder” means an Entity holding a beneficial interest in a Claim or Interest and, when used in conjunction with a Class or type of Claim or Interest, means a holder of a beneficial interest in a Claim or Interest in such Class or of such type.

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



“Impaired Claim” means a Claim which is Impaired.

“Impaired Interest” means an Interest which is Impaired.

“Insider” shall have the meaning set forth in section 101(31) of the Bankruptcy Code.

“Insider Claims” means any Claim of an Insider against any of the Debtors, other than any Claim of an Insider that is either a Prepetition Mezzanine Lender Claim or a Claim for indemnification under the Debtors’ organizational documents, employment agreements, internal policies or otherwise.

“Interests” means any and all equity interests, ownership interests or shares in the Debtors issued by the Debtors prior to the Petition Date (including, without limitation, all capital stock, stock certificates, common stock, preferred stock, partnership interests, membership and other interests in a limited liability company, rights, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtors, partnership interests in the Debtors’ stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights and liquidation preferences, puts, calls or commitments of any character whatsoever relating to any such equity, ownership interests or shares of capital stock of the Debtors or obligating the Debtors to issue, transfer or sell any shares of capital stock) whether or not certificated, transferable, voting or denominated “stock” or a similar security, and any Claim or Cause of Action related to or arising from any of the foregoing.

“Liens” means, with respect to any asset or Property (or the rents, revenues, income, profits or proceeds therefrom), and in each case, whether the same is consensual or nonconsensual or arises by contract, operation of law, legal process or otherwise: (a) any and all mortgages, liens, pledges, attachments, charges, leases evidencing a capitalizable lease obligation, conditional sale or other title retention agreement, or other security interest or encumbrance or other legally cognizable security devices of any kind in respect of any asset or Property, or upon the rents, revenues, income, profits or proceeds therefrom; or (b) any arrangement, express or implied, under which any Property is transferred, sequestered or otherwise identified for the purpose of subjecting or making available the same for the payment of debt or performance of any other obligation in priority to the payment of general unsecured Creditors.

“Liquidating Trust” means the trust to be established in accordance with Section 7.03 of the Plan.

“Liquidating Trust Agreement” means the agreement to be executed between the Liquidation Trustee and the Debtors establishing the Liquidating Trust, which will be filed with the Plan Supplement.

“Liquidating Trust Documents” means the Liquidating Trust Agreement and any ancillary documents relating thereto.

“Liquidation Trustee” means the trustee of the Liquidating Trust.

“Litigation Claims” means Claims relating to pending litigation or other filed or unfiled Causes of Action against any of the Debtors as of their respective Petition Dates.

“Miscellaneous Priority Claims” means any Claim against the Debtors entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

“Miscellaneous Secured Claims” means any Secured Claim other than the Secured Claims of the Prepetition Senior Agent or the Prepetition Senior Secured Lenders.

“Net Trust Assets” means the assets of the Liquidating Trust minus reasonable costs and expenses incurred by the Liquidating Trustee in carrying out his or her duties.

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

“Parent” means Philadelphia Media Holdings, LLC, a Delaware limited liability company.

“Person” means and includes a natural person, individual, partnership, corporation (as defined in section 101(a) of the Bankruptcy Code), or organization including, without limitation, corporations, limited partnerships, limited liability companies, general partnerships, joint ventures, joint stock companies, trusts, land trusts, business trusts, unincorporated organizations or associations, or other organizations, irrespective of whether they are legal entities, governmental bodies (or any agency, instrumentality or political subdivision thereof), or any other form of legal entities; provided, however, “Person” does not include governmental units, except that a governmental unit that (a) acquires an asset from a Person (i) as a result of the operation of a loan guarantee agreement or (ii) as receiver or liquidating agent of a Person; (b) is a guarantor of a pension benefit payable by or on behalf of a Debtor or an Affiliate of a Debtor of; or (c) is the legal or beneficial owner of an asset of (i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986 or (ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986, shall be considered for purposes of section 1102 of the Bankruptcy Code to be a Person with respect to such asset or such benefit.

“Petition Date” means the date on which the Debtors Filed their respective petitions for relief commencing the Chapter 11 Cases. For the Subsidiary Debtors, the Petition Date is February 22, 2009, and for the Parent, the Petition Date is June 10, 2009.

“Plan” means this Joint Chapter 11 Plan dated as of August 20, 2009, including all exhibits, appendices, schedules and annexes, if any, attached hereto, as submitted by the Debtors, including the Plan Supplement, as such Plan may be altered, amended, supplemented or modified from time to time in accordance with the provisions of the Bankruptcy Code, the

Bankruptcy Rules, the Confirmation Order and the terms and conditions of Section 14.04 of the Plan.

“Plan Cash” means the sum of (i) all of the Debtors’ cash on hand as of the Effective Date, plus (ii) \$30,000,000 to be paid by the Purchaser to or for the benefit of the Debtors’ estates pursuant to the Asset Purchase Agreement, plus (iii) any additional sums to be paid by the Purchaser pursuant to the Asset Purchase Agreement, by adjustment or otherwise, excluding (x) the Unsecured Creditor Fund, (y) cash necessary to pay Administrative Claims, Professional Fee Claims, Priority Tax Claims and Miscellaneous Priority Claims, and (z) cash necessary to pay off the outstanding balance of the DIP Financing Facility as of the Effective Date.

“Plan Supplement” means the supplement to this Plan to be Filed with the Bankruptcy Court on or before the date that is five (5) days prior to the Confirmation Hearing.

“Prepetition Mezzanine Lenders” means the lenders party to the Prepetition Mezzanine Note Purchase Agreement.

“Prepetition Mezzanine Note Purchase Agreement” means that certain Purchase Agreement dated June 29, 2006 by and among Debtor Philadelphia Newspapers, LLC, as borrower, the other Subsidiary Debtors, as guarantors, and the Prepetition Mezzanine Lenders, as lenders.

“Prepetition Mezzanine Lender Claims” means the Claims of the Prepetition Mezzanine Lenders arising under the Prepetition Mezzanine Note Purchase Agreement.

“Prepetition Senior Agent” means Citizens Bank of Pennsylvania, as administrative and collateral agent under the Prepetition Senior Secured Credit Agreement.

“Prepetition Senior Secured Credit Agreement” means the Credit and Guaranty Agreement dated as of June 29, 2006, as amended, pursuant to which the Prepetition Senior Secured Lenders agreed to provide loans and other financial accommodations to Philadelphia Newspapers, LLC, guaranteed by the other Subsidiary Debtors.

“Prepetition Senior Secured Lenders” means the lender parties to the Prepetition Senior Secured Credit Agreement as of the Petition Date.

“Prepetition Senior Secured Letters of Credit” means any letter of credit issued under the Prepetition Senior Secured Credit Agreement that was outstanding as of the Petition Date.

“Prepetition Senior Secured Claims” means the claims of the Prepetition Senior Secured Lenders arising under the Prepetition Senior Secured Credit Agreement, including, without limitation, any contingent claims for outstanding Prepetition Senior Secured Letters of Credit issued under the Prepetition Senior Secured Credit Agreement, but only to the extent that such Claim is a secured claim as determined by section 506(a)(1) of the Bankruptcy Code.

“Prepetition Senior Deficiency Claims” means the claims of the Prepetition Senior Secured Lenders arising under the Prepetition Senior Secured Credit Agreement, including, without limitation, any contingent claims for outstanding Prepetition Senior Secured Letters of Credit issued under the Prepetition Senior Secured Credit Agreement, excluding the Prepetition Senior Secured Claims.

“Prepetition Unsecured Debt Claims” means, collectively, the Prepetition Senior Deficiency Claims, the Prepetition Mezzanine Lender Claims, the Rejection Claims, and the Litigation Claims.

“Priority Tax Claim” means any and all Claims accorded priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code. For clarity, the City of Philadelphia Claim is not a Priority Tax Claim.

“Pro Rata Share” means, with respect to any Claim, a proportionate share, so that the ratio of the consideration distributed on account of an Allowed Claim in a Class to the consideration distributed on account of all Allowed Claims in that Class is the same as the ratio such Claim bears to the total amount of all Allowed Claims in that Class (plus Disputed Claims in that Class until disallowed).

“Professional Fee Claim” means a claim for compensation and/or reimbursement of expenses pursuant to sections 327, 328, 330, 331 or 503(b) of the Bankruptcy Code relating to services incurred on and after the Petition Date and prior to and including the Effective Date in connection with an application made to the Bankruptcy Court by Professionals in the Chapter 11 Cases.

“Professionals” means any professional employed in these Chapter 11 Cases pursuant to sections 327 or 1103 of the Bankruptcy Code or any Professional entitled to compensation pursuant to sections 327, 328, 330, 331, 503(b)(2) or (4), or 1103 of the Bankruptcy Code.

“Property” means all assets or property of the Debtors’ respective Estates of any nature whatsoever, real or personal, tangible or intangible, including contract rights, accounts and Causes of Action, previously or now owned by the Debtors, or acquired by the Debtors’ respective Estates, as defined in section 541 of the Bankruptcy Code.

“Purchaser” means the purchaser under the Asset Purchase Agreement.

“Real Property” means, collectively, the parcels of real property commonly known as: (i) 400 North Broad Street, Philadelphia, Pennsylvania; (ii) 1501-1525 Callowhill Street, Philadelphia, Pennsylvania; (iii) 1527-1547 Callowhill Street, Philadelphia, Pennsylvania; and (iv) 1540 Hamilton Street, Philadelphia, Pennsylvania.

“Reinstated or Reinstatement” means: (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the Holder of such Claim so as to leave such Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code; or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim to demand or receive accelerated payment of such Claim after the occurrence of a default

(i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code; (ii) reinstating the maturity of such Claim as such maturity existed before such default; (iii) compensating the Holder of such Claim for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; and (iv) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitled the Holder of such Claim; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, and affirmative covenants regarding corporate existence or which prohibit certain transactions or actions contemplated by the Plan, or conditioning such transactions or action on certain factors, shall not be required to be reinstated in order to accomplish Reinstatement.

“Rejection Claims” means: (a) claims of any non-Debtor counterparty to any unexpired leased of nonresidential real property or any executory contract arising on account of the rejection of such lease or contract during the administration of these Chapter 11 Cases under section 365 of the Bankruptcy Code or pursuant to the Plan or the Asset Purchase Agreement; and (b) any claims arising from the termination of or withdrawal from any pension plan of the Debtors qualified under ERISA.

“Releasees” means: (a) the directors, members, managers, officers and employees of the Debtors, in each case as of the Petition Date or that have become directors, members, managers, officers, or employees thereafter but prior to the Effective Date, and the Debtors’ agents and professionals, (b) the Prepetition Senior Agent and the Prepetition Senior Secured Lenders (if Classes 3 and 4 vote to accept the Plan), (c) the Committee and members of the Committee (if Classes 4 and 5 accept the Plan), (d) the Purchaser, (e) the Liquidation Trustee, and (f) to the extent such parties are deemed Releasees, the respective current and former officers, directors, employees, agents, stockholders, managers, members, affiliates, partners, advisors and professionals of the parties identified in subclauses (a) through (e); provided, however, that the foregoing released parties identified in subclauses (a) through (f) above shall be released only from liabilities arising out of actions taken in such capacity.

“Sale” means the sale of certain or substantially all of the Debtors’ assets under or in connection with the Plan and the Asset Purchase Agreement.

“Sale and Bid Procedures” means the sale, bid and auction procedures set forth in the Sale and Bid Procedures Motion.

“Sale and Bid Procedures Motion” means a motion to be filed in the Bankruptcy Court seeking approval of, among other things, sale and auction procedures in connection with the Sale.

“Sale Documents” means the Asset Purchase Agreement, the Schedule of Assumed Contracts, and any schedules, exhibits or other documents attached thereto or contemplated thereby, in each case as amended from time to time in accordance with their terms. The Disclosure Statement will include a form of the Sale Documents of the Stalking Horse Bidder in substantially the form to be implemented on the Effective Date.

“Schedule of Assumed Contracts” means the schedule listing certain executory contracts and unexpired leases to be assumed by the Debtors and assigned to the Purchaser under or in connection with the Asset Purchase Agreement, which schedule shall be set forth in or as an attachment or exhibit to the Asset Purchase Agreement.

“Schedules” means the schedules of assets and liabilities and statements of financial affairs Filed by any of the Debtors in the Chapter 11 Cases, as required by section 521 of the Bankruptcy Code, as the same may have been or may be amended, modified or supplemented.

“Secured Claim” means any Claim arising before the Petition Date that is: (a) secured in whole or part, as of the Petition Date, by a Lien which is valid, perfected and enforceable under applicable law on Property in which the Debtors’ respective Estates has an interest and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law; or (b) subject to setoff under section 553 of the Bankruptcy Code, but, with respect to both case (a) and (b), only to the extent of the value of the assets or Property securing any such Claim or the amount subject to setoff, as the case may be.

“Securities Act” means the Securities Act of 1933, as amended.

“Stalking Horse Bidder” means Philly Papers, LLC, a Delaware limited liability company.

“Subsidiary Debtors” means all of the Debtors other than the Parent.

“Subsidiary Interests” means any and all authorized, issued and outstanding Interests in any of the Subsidiary Debtors as of the Petition Date.

“Tax” means any tax, charge, fee, levy, impost or other assessment by any federal, state, local or foreign governmental authority, including, without limitation, income, excise, property, sales, transfer, employment, payroll, franchise, profits, license, use, *ad valorem*, estimated, severance, stamp, occupation and withholding tax, together with any interest, penalties, fines or additions attributable to, imposed on, or collected by any such federal, state, local or foreign governmental authority.

“Unclaimed Property” means any distribution of Cash or any other Property made to the Holder of an Allowed Claim pursuant to the Plan that is returned to the Debtors or the Liquidation Trustee as undeliverable and no appropriate forwarding address is received prior to the date on which the Final Decree is entered in the Chapter 11 Cases, in the case of a distribution made in the form of a check, is not negotiated and no request for reissuance is made as provided for in Section 5.06 of the Plan.

“Unimpaired” means any Claim that is not Impaired within the meaning of section 1124 of the Bankruptcy Code.

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



“Unsecured Creditor Fund” means cash in the amount of \$750,000 to be funded by the Purchaser upon the Effective Date and used to establish and fund the Liquidating Trust in accordance with section 7.03 of the Plan.

“U.S. Trustee’s Fee Claims” means any fees assessed against the Debtors’ Estates pursuant to section 1930(a)(6) of title 28 of the United States Code.

“Voting Agent” means The Garden City Group, Inc.

Section 1.02. Rules of Interpretation. All references to “the Plan” herein shall be construed, where applicable, to include references to this document and all its exhibits, appendices, schedules and annexes, if any (and any amendments thereto made in accordance with the Bankruptcy Code). Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular paragraph, subparagraph, or clause contained in the Plan. The words “includes” and “including” are not limiting and mean that the things specifically identified are set forth for purposes of illustration, clarity or specificity and do not in any respect qualify, characterize or limit the generality of the class within which such things are included. The captions and headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Any term used in the Plan that is not defined in the Plan, either in Article I hereof or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in (and shall be construed in accordance with the rules of construction under) the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the case of a conflict or ambiguity). Without limiting the preceding sentence, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to the Plan, unless superseded herein. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) and Section 13.18 hereof shall apply, but Bankruptcy Rule 9006(a) shall govern.

Section 1.03. Exhibits. All Exhibits to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein, regardless of when Filed.

## **ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS**

Section 2.01. Generally. Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of the Class and is classified in a different Class to the extent the Claim or Interest qualifies within the description of that different Class. A Claim or Interest is placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or an Allowed Interest in that Class and such Claim or Interest has not been paid, released, settled or otherwise satisfied prior to the Effective Date.

Section 2.02. Unclassified Claims. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Claims of the DIP Lender in connection with the DIP Financing Facility) and Priority Tax Claims are not classified and are excluded from the Classes designated in this Article II of the Plan. The treatment accorded Administrative Claims and Priority Tax Claims is set forth in Article III of the Plan.

Section 2.03. Unimpaired Classes. The Plan classifies the following Unimpaired Claims and Unimpaired Interests that are not entitled to vote on the Plan. Pursuant to section 1126(f) of the Bankruptcy Code, each Holder of a Claim or Interest in the following Classes is conclusively presumed to have accepted the Plan in respect of such Claims or Interests and is not entitled to vote to accept or reject the Plan:

Class 1 shall consist of all Miscellaneous Secured Claims.

Class 2 shall consist of all Miscellaneous Priority Claims.

Section 2.04. Impaired Classes Entitled to Vote. The Plan classifies the following Classes as the only Impaired Classes that may receive a distribution under the Plan and that are entitled to vote to accept or reject the Plan:

Class 3 shall consist of the Prepetition Senior Secured Claims.

Class 4 shall consist of Prepetition Unsecured Debt Claims.

Class 5 shall consist of the General Unsecured Trade Claims.

Class 6 shall consist of the City of Philadelphia Claim.

Section 2.05. Impaired Classes Deemed to Reject. The Plan classifies the following Impaired Classes of Interests and Claims as Impaired Classes that are not entitled to vote to accept or reject the Plan. Pursuant to section 1126(g) of the Bankruptcy Code, each Holder of an Interest or Claim in these Classes is conclusively presumed to have rejected the Plan in respect of such Interests or Claims because the Plan does not entitle the Holders of such Interests and Claims to receive or retain any property under the Plan on account of such Interests or Claims. Accordingly, Holders of such Interests and Claims are not entitled to vote to accept or reject the Plan:

Class 7 shall consist of all Interests in the Debtors.

Class 8 shall consist of all Insider Claims.

### **ARTICLE III PROVISIONS FOR TREATMENT OF CLASSES OF CLAIMS AND INTERESTS**

Section 3.01. Satisfaction of Claims and Interests. The treatment of and consideration to be received by Holders of Allowed Claims or Allowed Interests pursuant to this Article III and the Plan shall be in full satisfaction, settlement, release, extinguishment and

discharge of their respective Claims against or Interests in the Debtors and the Debtors' respective Estates, except as otherwise provided in the Plan or the Confirmation Order.

Section 3.02. Unclassified Claims, Classified Unimpaired and Impaired Claims and Classified Interests. Administrative Claims and Priority Tax Claims are treated in accordance with section 1129(a)(9)(A) and section 1129(a)(9)(C) of the Bankruptcy Code, respectively. Such Claims are Unimpaired under the Plan and, in accordance with section 1123(a)(1) of the Bankruptcy Code, are not designated as Classes of Claims for purposes of this Plan and for purposes of sections 1123, 1124, 1126 and 1129 of the Bankruptcy Code. In addition, Class 1 Claims and Class 2 Claims are classified as Classes of Claims and Interests that are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Claims or Interests in such Classes are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan. Class 3 Claims, Class 4 Claims, and Class 5 Claims are Impaired and the Holders thereof are entitled to vote to accept or reject the Plan on account of such Allowed Claims. Class 6 Interests and Class 7 Interests are Impaired under the Plan and the Holders thereof will neither receive nor retain any property on account of such Interests and Claims and, pursuant to section 1126(g) of the Bankruptcy Code, Holders of such Claims and Interests are conclusively presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan on account of such Claims and Interests.

Section 3.03. Administrative Claims. Administrative Claims are Unimpaired. Unless otherwise provided for herein, each Holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Administrative Claim becomes Allowed, or (iii) a date agreed to in writing by the Debtors or the Purchaser, as the case may be, and the Holder of such Administrative Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Purchaser, as the case may be, or as the Bankruptcy Court may order.

Section 3.04. Priority Tax Claims. Priority Tax Claims are Unimpaired. Each Holder of an Allowed Priority Tax Claim shall receive, at the option of the Debtors or the Purchaser, as the case may be, in full satisfaction, settlement, release, extinguishment and discharge of such Priority Tax Claim: (a) the amount of such unpaid Allowed Priority Tax Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Priority Tax Claim becomes Allowed and (iii) a date agreed to by the Debtors or the Purchaser, as the case may be, and the Holder of such Priority Tax Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Priority Tax Claim and the Debtors or the Purchaser, as the case may be, or as the Bankruptcy Court may order. Prior to the Effective Date, the Debtors shall have the right, in their sole discretion, to prepay at any time, in whole or in part, any Allowed Priority Tax Claim without premium or penalty of any sort or nature.

Section 3.05. Class 1: Miscellaneous Secured Claims. Class 1 Miscellaneous Secured Claims are Unimpaired. Each Holder of an Allowed Class 1 Miscellaneous Secured Claim shall receive, in the sole discretion of the Debtors or the Liquidation Trustee, as the case may be, in full satisfaction, settlement, release, extinguishment and discharge of such Claim:

(a) Cash equal to the amount of such Allowed Miscellaneous Secured Claim on or as soon as practicable after the later of (i) the Effective Date, (ii) the date that such Miscellaneous Secured Claim becomes Allowed, and (iii) a date agreed to by the Debtors or the Liquidation Trustee, as the case may be, and the Holder of such Class 1 Miscellaneous Secured Claim; (b) reinstatement of such Allowed Miscellaneous Secured Claim; (c) the Property securing such Miscellaneous Secured Claim; or (d) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Liquidation Trustee, as the case may be.

Section 3.06. Class 2: Miscellaneous Priority Claims. Class 2 Miscellaneous Priority Claims are Unimpaired. Each Holder of an Allowed Class 2 Miscellaneous Priority Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Class 2 Claim becomes Allowed, and (iii) a date agreed to by the Debtors or the Purchaser, as the case may be, and the Holder of such Class 2 Miscellaneous Priority Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Purchaser, as the case may be.

Section 3.07. Class 3: Prepetition Senior Secured Claims. Class 3 Prepetition Senior Secured Claims are Impaired. On the Effective Date, each Holder of an Allowed Prepetition Senior Secured Claim shall receive, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, its Pro Rata Share of (i) the Plan Cash, and (ii) all of the Debtors' right, title and interest in the Real Property.

Section 3.08. Class 4: Prepetition Unsecured Debt Claims. Class 4 Prepetition Unsecured Debt Claims are Impaired. On or as soon as reasonably practicable after the later of (a) the Effective Date, or (b) the date on which such Prepetition Unsecured Debt Claim becomes Allowed, each Holder of an Allowed Class 4 Prepetition Unsecured Debt Claim shall receive its Pro Rata Share of 3% of the equity interests in the Purchaser; provided, however, that in the event that either (x) Class 4 does not accept the Plan, or (y) the Prepetition Senior Lenders do not waive their rights against the Prepetition Mezzanine Lenders with respect to distributions under the Plan, Class 4 will receive no distribution under the Plan.

Section 3.09. Class 5: General Unsecured Trade Claims. Class 5 General Unsecured Trade Claims are Impaired. Each Holder of an Allowed General Unsecured Trade Claim shall receive in full satisfaction, settlement, release, extinguishment and discharge of such Claim, its Pro Rata share of the Net Trust Assets.

Section 3.10. Class 6: City of Philadelphia Claim. The Class 6 City of Philadelphia Claim is Impaired. The Holder of the Allowed City of Philadelphia Claim shall receive, at the option of the Debtors or the Purchaser, as the case may be, in full satisfaction, settlement, release, extinguishment and discharge of such Claim five (5) equal cash payments totaling the Allowed amount of the City of Philadelphia Claim, due and payable on each anniversary of the Petition Date for the Subsidiary Debtors, with the final payment to be due and payable on the fifth (5<sup>th</sup>) anniversary of the Petition Date for the Subsidiary Debtors.

Section 3.11. Class 7: Interests. Class 7 Interests are Impaired. Holders of Class 7 Interests shall not receive or retain any property under the Plan on account of such Interests. On the Effective Date, all Interests shall be cancelled.

Section 3.12. Class 8: Insider Claims. Class 8 Insider Claims are Impaired. Holders of Class 8 Insider Claims shall not receive or retain any property under the Plan on account of such Insider Claims. On the Effective Date, all Insider Claims shall be extinguished.

#### **ARTICLE IV**

#### **ACCEPTANCE OR REJECTION OF THE PLAN; CRAMDOWN**

Section 4.01. Acceptance by Impaired Classes of Claims and Interests. Pursuant to section 1126(c) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if: (a) the Holders of at least two-thirds (2/3) in dollar amount of the Allowed Claims actually voting in such Class (other than Claims held by any Holder designated pursuant to section 1126(e) of the Bankruptcy Code) have timely and properly voted to accept the Plan, and (b) more than one-half (1/2) in number of the Holders of such Allowed Claims actually voting in such Class (other than Claims held by any Holder designated pursuant to section 1126(e) of the Bankruptcy Code) have timely and properly voted to accept the Plan. No Class of Interests is entitled to vote on the Plan pursuant to section 1126 of the Bankruptcy Code.

Section 4.02. Voting Classes. Except as otherwise required by the Bankruptcy Code or the Bankruptcy Rules or as otherwise provided in this Section 4.02, the Holders of Claims in Classes 3, 4, 5 and 6 shall be entitled to vote to accept or reject the Plan in accordance with Section 4.01 of the Plan. Classes of Claims Unimpaired under the Plan (Miscellaneous Secured Claims (Class 1) and Miscellaneous Priority Claims (Class 2)) shall not be entitled to vote to accept or reject the Plan, and shall be conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Class of Interests and Class of Claims that are Impaired under the Plan and whose Holders neither receive nor retain any property on account of such Claims and Interests under the Plan (Interests (Class 7) and Insider Claims (Class 8)) shall not be entitled to vote to accept or reject the Plan and shall be conclusively presumed to have rejected the Plan. Administrative Claims and Priority Tax Claims are Unimpaired and not classified under the Plan and hence are not entitled to vote to accept or reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

Section 4.03. Ballot Instructions. Each Holder of a Claim or Interest entitled to vote on the Plan will be asked to complete and return a Ballot to the Voting Agent, which will compile the votes so received. Any questions as to the validity, form, and eligibility (including time of receipt) of Ballots will be resolved by the Bankruptcy Court upon application or at the Confirmation Hearing.

Section 4.04. Cramdown. If all applicable requirements for Confirmation of the Plan are met as set forth in section 1129(a)(1) through (13) of the Bankruptcy Code except subsection (8) thereof, the Debtors may request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the requirements of section 1129(a)(8) thereof, on the bases that the Plan is fair and equitable, and does not



discriminate unfairly, with respect to each Class of Claims or Interests that is Impaired under, and has not accepted, the Plan.

**ARTICLE V**  
**PROVISIONS GOVERNING DISTRIBUTIONS**  
**UNDER THE PLAN**

Section 5.01. Timing of Distributions. Except as specifically set forth in the Plan, distributions of Property will be made to Holders of Allowed Claims in accordance with Article III of the Plan. If a Claim is not an Allowed Claim as of the applicable distribution date, distributions will be made only if and when the Claim is Allowed, and then in accordance with Article III of the Plan and, with respect to the cure of defaults for assumed executory contracts and unexpired leases, Section 6.02 of the Plan, and in each case, subject to Article VIII of the Plan. Distributions to be made as of the Effective Date on account of Claims that are Allowed as of the Effective Date and are entitled to receive distributions under the Plan shall be made on the Effective Date or as soon as reasonably practicable thereafter.

Section 5.02. Distributions to Holders of Allowed Claims. Except as otherwise provided herein, the Liquidation Trustee or the Purchaser shall make all distributions required under the Plan in a manner consistent with the Plan. Distributions to Holders of Allowed Claims will be made in accordance with Article III of the Plan. On the Effective Date, the Debtors shall cause the Purchaser to deliver the Unsecured Creditor Fund to the Liquidation Trustee. Payments and other distributions to be made pursuant to the Plan will be made by the Purchaser (or, with respect to Allowed Claims in Class 3, by the Debtors) and will be available from the proceeds of the Sale and assets and funds transferred to or otherwise held by the Liquidation Trustee, the Debtors or the Purchaser as of and after the Effective Date. If any dispute arises as to the identity of a Holder of an Allowed Claim who is to receive any distribution, the Liquidation Trustee, the Debtors or the Purchaser shall, as appropriate and in lieu of making such distribution to such Holder, delay such distribution until the disposition thereof shall be determined by Final Order of the Bankruptcy Court or by written agreement among the interested parties to such dispute. Notwithstanding anything herein to the contrary, (a) the Purchaser shall be responsible for: (i) conveying equity interests in Purchaser or its nominee to Holders of Allowed Claims in Class 4; (ii) conveying the Unsecured Creditor Fund to the Liquidating Trustee; and (iii) satisfying Allowed Administrative Expense Claims (other than Claims of the DIP Lender), Allowed Priority Tax Claims and Allowed Miscellaneous Priority Claims; and (b) the Debtors shall be responsible for: (i) paying the Plan Cash to Holders of Allowed Class 3 Claims; (ii) transferring the Real Property to Holders of Allowed Class 3 Claims; and (c) paying in full the Claims of the DIP Lender under the DIP Financing Facility.

Section 5.03. Liquidating Trust. The Liquidating Trust shall be established to receive the Unsecured Creditor Fund and certain property of the Debtors not conveyed to the Purchaser in accordance with the Asset Purchase Agreement and to distribute such property and the proceeds of such property to Holders of Allowed Claims and Interests in accordance with the Plan. The Liquidating Trust shall qualify as a liquidating trust as described in Treasury Regulation section 301.7701-4(d) and shall be treated as a grantor trust for United States federal income tax purposes. The Debtors shall appoint the Liquidation Trustee, who shall have the authority to manage the day-to-day operations of the Liquidating Trust, including, without



limitation, by disposing of the assets of the Liquidating Trust, appearing as a party in interest, calculating distributions, paying taxes and such other matters as more particularly described in Section 7.04 of the Plan and the Liquidating Trust Agreement. Expenses of the Liquidating Trust, including the expenses of the Liquidation Trustee and his representatives and professionals, will be satisfied from the assets of the Liquidating Trust and its proceeds, as set forth in the Liquidating Trust Agreement.

Section 5.04. Delivery of Distributions. Except for distributions to Holders of Allowed Prepetition Senior Secured Claims, which shall be made by the Debtors to the Prepetition Senior Agent for the benefit of such Holders, distributions to Holders of Allowed Claims shall be made by the Liquidation Trustee or the Purchaser, as appropriate: (a) at the last known addresses of such Holders or (b) at the addresses set forth in any written notices of address changes delivered to the Debtors or the Liquidation Trustee, as appropriate. If any Holder's distribution is returned as undeliverable, no further distributions to such Holder shall be made unless and until the Liquidation Trustee or the Purchaser, as appropriate, is notified of such Holder's then current address, at which time all missed distributions shall be made to such Holder without interest. Distributions of equity interests in the Purchaser shall be made by the Purchaser at the Purchaser's expense.

Section 5.05. Method of Cash Distributions. Any Cash payment to be made pursuant to the Plan may be made by Cash, draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law at the option of the Liquidation Trustee, the Debtors or the Purchaser.

Section 5.06. Failure to Negotiate Checks. Checks issued in respect of distributions under the Plan shall be null and void if not negotiated within sixty (60) days after the date of issuance. Any amounts returned to the Debtors, the Liquidation Trustee or the Purchaser in respect of such non-negotiated checks shall be forwarded to (if necessary) and held by the Liquidation Trustee. Requests for reissuance for any such check shall be made directly to the issuer of the check by the Holder of the Allowed Claim with respect to which such check originally was issued. All amounts represented by any voided check will be held until the earlier of: (a) one (1) month after date on which the check is voided, or (b) the date on which the Bankruptcy Court enters the Final Decree, and all requests for reissuance by the Holder of the Allowed Claim in respect of a voided check are required to be made prior to such date. Thereafter, all such amounts shall be deemed to be Unclaimed Property, in accordance with Section 5.07 of the Plan, and all Holders of Claims in respect of void checks shall be forever barred, estopped and enjoined from asserting a claim to such funds in any manner against the Debtors or their respective assets, the Liquidation Trustee, the Liquidating Trust, or the Purchaser.

Section 5.07. Unclaimed Distributions. All Property distributed on account of Claims must be claimed prior to the date on which the Bankruptcy Court enters the Final Decree, or, in the case of a distribution made in the form of a check, must be negotiated and a request for reissuance be made as provided for in Section 5.06 of the Plan. All Unclaimed Property will be retained by and will vest in the Liquidating Trust. All full or partial payments made by the Debtors and received by the Holder of a Claim prior to the Effective Date will be deemed to be payments under the Plan for purposes of satisfying the obligations of the Debtors or the

Liquidation Trustee pursuant to the Plan. Nothing contained in the Plan shall require the Debtors, the Liquidation Trustee or the Purchaser to attempt to locate any Holder of an Allowed Claim other than by reviewing the records of the Debtors and any Claims filed in the Chapter 11 Cases. Pursuant to section 1143 of the Bankruptcy Code, all claims in respect of Unclaimed Property shall be deemed Disallowed and the Holder of any Claim Disallowed in accordance with this Section 5.07 will be forever barred, expunged, estopped and enjoined from asserting such Claim in any manner against the Debtors or their respective assets, the Liquidation Trustee, the Liquidating Trust, or the Purchaser.

Section 5.08. Limitation on Distribution Rights. If a claimant holds more than one Claim in any one Class, all Claims of the claimant in that Class will be aggregated into one Claim and one distribution will be made with respect to the aggregated Claim.

Section 5.09. Fractional Dollars. Notwithstanding any other provision of the Plan, Cash distributions of fractions of dollars will not be made; rather, whenever any payment of a fraction of a dollar would be called for, the actual payment made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash remains undistributed as a result of the rounding of such fraction to the nearest whole cent, such Cash shall be treated as Unclaimed Property pursuant to Section 5.07 of this Plan.

Section 5.10. Compliance With Tax Requirements. In connection with each distribution with respect to which the filing of an information return (such as an Internal Revenue Service Form 1099 or 1042) or withholding is required, the Debtors, the Liquidation Trustee or the Purchaser, as appropriate, shall file such information return with the Internal Revenue Service and provide any required statements in connection therewith to the recipients of such distribution or effect any such withholding and deposit all moneys so withheld as required by law. With respect to any Person from whom a tax identification number, certified tax identification number or other tax information required by law to avoid withholding has not been received by the Debtors, the Liquidation Trustee or the Purchaser within thirty (30) days from the date of such request, the Debtors, the Liquidation Trustee or the Purchaser may, at their or its option, withhold the amount required and distribute the balance to such Person or decline to make such distribution until the information is received.

Section 5.11. Character of Distributions. The Debtors shall treat all distributions to Holders of Prepetition Senior Secured Claims, Prepetition Senior Deficiency Claims and Prepetition Mezzanine Lender Claims pursuant to this Plan as repayments of principal amounts due with respect to such Claims, with no amounts allocable to the payment of any accrued but unpaid interest thereon. Consistent with that treatment, Holders of Prepetition Senior Secured Claims, Prepetition Senior Deficiency Claims and Prepetition Mezzanine Lender Claims covenant and agree to treat the entire amount of such distributions as repayments of principal amounts due on their claims and shall not allocate any portion of such distributions to accrued but unpaid interest.

Section 5.12. De Minimis Distributions. No Cash payment of less than twenty-five (\$25.00) dollars shall be made to any Holder of an Allowed Claim on account of such Allowed Claim.

**ARTICLE VI**  
**EXECUTORY CONTRACTS AND UNEXPIRED LEASES; INDEMNIFICATION**  
**OBLIGATIONS; BENEFIT PROGRAMS**

Section 6.01. Treatment of Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases of the Debtors shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired lease that: (a) has previously been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court on or prior to the Confirmation Date, (b) is the subject of a pending motion to assume, assume and assign, or reject as of the Confirmation Date, or (c) is listed on the Schedule of Assumed Contracts, provided, however, that the Debtors and the Purchaser shall have the right, at any time prior to the Confirmation Date, to amend the Schedule of Assumed Contracts in any manner set forth in the Asset Purchase Agreement, the Sale and Bid Procedures Motion, or by any other means approved by the Court or to delete any executory contract or unexpired lease listed therein, thus providing for its rejection pursuant to this Section 6.01 or to add any executory contract or unexpired lease thereto, thus providing for its assumption and assignment pursuant to this Section 6.01 and the terms of the Asset Purchase Agreement. The assumption, assumption and assignment, and rejection of executory leases and unexpired contracts under this Plan shall be governed by the terms of the Asset Purchase Agreement, the Sale Documents, the Sale and Bid Procedures, and other orders of the Court.

Section 6.02. Cure of Defaults for Assumed Contracts and Leases. The cure of all defaults under executory contracts and unexpired leases to be assumed and assigned under the Asset Purchase Agreement, including the resolution of all objections to the adequacy of assurance of future performance under such contracts and leases and as to the adequacy of amounts proposed to cure defaults under such contracts and leases, shall be governed by the terms and conditions of the Sale and Bid Procedures, the Asset Purchase Agreement, the Sale Documents, any order approving the Asset Purchase Agreement or authorizing the Sale, and other orders of the Court. All such cure amounts shall be satisfied by the Purchaser.

Section 6.03. Bar Date for Claims for Rejection Damages. Claims arising out of the rejection of any executory contract or unexpired lease pursuant to Article VI of the Plan must be filed with the Bankruptcy Court no later than the later of (a) twenty (20) days after the Effective Date, or (b) thirty (30) days after the entry of an order rejecting such executory contract or unexpired lease. Any Claim not filed within such time period shall be forever barred. The Debtors and the Liquidation Trustee shall have the right to object to any Claim arising out of the rejection of an executory contract or unexpired lease pursuant to the terms of Section 8.05 of this Plan.

Section 6.04. Treatment of Rejection Claims. The Bankruptcy Court shall determine any objections Filed in accordance with Section 8.05 hereof at a hearing to be held on a date to be determined by the Bankruptcy Court. Subject to any statutory limitation, including, but not limited to the limitations contained in sections 502(b)(6) and 502(b)(7) of the Bankruptcy Code, any Claims arising out of the rejection of executory contracts and unexpired leases shall, pursuant to section 502(g) of the Bankruptcy Code, be Impaired and treated as Class 4 Claims in accordance with Section 3.08 of the Plan.

Section 6.05. Executory Contracts and Unexpired Leases Entered Into and Other Obligations Incurred After the Petition Date. On the Effective Date, all contracts, leases, and other agreements entered into by any or all of the Debtors on or after the Petition Date, which agreements have not been terminated in accordance with their terms on or before the Effective Date or conveyed to the Purchaser, shall be deemed assumed and assigned to the Purchaser.

Section 6.06. Benefit Programs. Except and to the extent previously rejected by an order of the Bankruptcy Court on or before the Effective Date, all officer, director or employee compensation and benefit programs of the Debtors entered into before or after the Petition Date and not since terminated, shall be deemed to be, and shall be treated as though they are, executory contracts that are rejected under Section 6.01 of the Plan, except for any such program that is specifically assumed under Section 6.01 of the Plan.

## **ARTICLE VII MEANS FOR IMPLEMENTATION OF THE OF THE PLAN**

Section 7.01. The Sale. The Confirmation Order shall grant the relief requested in the Sale and Bid Procedures Motion and authorize a sale of certain or substantially all of the Debtors' assets under sections 365, 1123(b)(4), 1129(b)(2)(A), 1145 and 1146(a) of the Bankruptcy Code under the terms and conditions of the Asset Purchase Agreement. Any Sale conducted via Auction shall be conducted in accordance with applicable orders of the Court, including, without limitation, interim or other orders approving the Sale and Bid Procedures Motion (prior to entry of the Confirmation Order). Upon Confirmation, the Debtors shall be authorized to take any and all actions necessary to consummate the Sale.

Section 7.02. Dissolution of the Debtors. The Confirmation Order shall authorize: (a) the dissolution of the Debtors, effective as of the Effective Date; and (b) the filing of a certificate of dissolution (or its equivalent) with the secretary of state or similar official of each jurisdiction of incorporation of each of the Debtors. On the Effective Date, each of the manager and officers of the Debtors shall be deemed to have resigned from all of their respective positions with the Debtors.

Section 7.03. Liquidating Trust. The Liquidating Trust shall be established to receive on the Effective Date: (a) unless otherwise specifically provided for in this Plan, the Unsecured Creditor Fund; and (b) the equity interests in the Purchaser to be distributed under Section 3.08 of the Plan, all of which assets shall vest in the Liquidating Trust on the Effective Date free and clear of all Claims, encumbrances and interests in accordance with section 1141 of the Bankruptcy Code, but subject to the rights of Holders of Allowed Claims to obtain the distributions provided for in this Plan.

Section 7.04. Powers and Duties of the Liquidation Trustee. The Liquidation Trustee shall administer the Liquidating Trust and its assets in accordance with this Plan, the Liquidating Trust Agreement, and the other Liquidating Trust Documents and shall be responsible for, among other things, making distributions required under this Plan. From and after the Effective Date and continuing through the date of entry of a Final Decree, the Liquidation Trustee shall: (a) possess the rights of a party in interests pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under, or related to the Chapter 11

Cases and, in connection therewith, shall (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts, (ii) be entitled to notice and opportunity for hearing on all such issues, (iii) participate in all matters brought before the Bankruptcy Court, and (iv) receive notice of all applications, motions, and other papers and pleadings filed in the Bankruptcy Court; (b) have the authority to act on behalf of the Debtors in all adversary proceedings and contested matters pending in the Bankruptcy Court and in all actions and proceedings pending elsewhere; and (c) have the authority to retain such personnel or professionals (including, without limitation, legal counsel, financial advisors or other agents) as it deems appropriate and compensate such personnel and professionals as it deems appropriate, all without prior notice to or approval of the Bankruptcy Court. Professionals and personnel retained or employed by the Liquidating Trust or the Liquidation Trustee need not be disinterested as that term is defined in the Bankruptcy Code.

Section 7.05. Powers of the Purchaser. In accordance with the terms of the Plan the Purchaser shall, among other things: (a) satisfy Allowed Administrative Claims (other than Claims of the DIP Lender), Allowed Professional Fee Claims, Allowed Priority Tax Claims and Allowed Miscellaneous Priority Claims; (b) satisfy all costs to cure and provide adequate assurance of performance with respect to all executory contracts and unexpired leases assumed and assigned to Purchaser; and (c) be responsible for funding the Unsecured Creditor Fund to the Liquidating Trust. From and after the Effective Date and continuing through the date of entry of a Final Decree, the Purchaser shall possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under, or related to the Chapter 11 Cases and, in connection therewith, shall (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts, (ii) be entitled to notice and opportunity for hearing on all such issues, (iii) participate in all matters brought before the Bankruptcy Court, and (iv) receive notice of all applications, motions, and other papers and pleadings filed in the Bankruptcy Court.

Section 7.06. Application of Sale Proceeds. Proceeds of the Sale shall be applied to establish the Plan Cash to be distributed pro rata to each Holder of an Allowed Class 3 Claim in accordance with Section 3.07 of the Plan. Additionally, the Purchaser shall pay the (a) Unsecured Creditor Fund to the Liquidating Trust to fund the Liquidating Trust for the benefit of the Holders of Allowed Class 5 Claims and (b) Allowed Administrative Claims (other than Claims of the DIP Lender), Allowed Professional Fee Claims, Allowed Priority Tax Claims and Allowed Miscellaneous Priority Tax Claims. Such payments shall made directly by the Purchaser and not from proceeds of the Sale or other assets of the Estates to which the Debtors would otherwise be entitled.

Section 7.07. Distribution of Interests in Purchaser. The Purchaser or its nominee shall distribute 3.0% of the equity interests in the Purchaser to the Liquidating Trustee for distribution to Holders of Allowed Class 4 Claims on a pro rata basis in accordance with Section 3.08 of the Plan.

Section 7.08. Transfer of the Real Property. On the Effective Date, Debtor Philadelphia Newspapers, LLC shall transfer all of its right, title and interest in and to the Real Property by quitclaim deed to the Prepetition Senior Agent for the benefit of Holders of Allowed Class 3 Prepetition Senior Secured Claims in accordance with Section 3.07 of the Plan.



Section 7.09. Approval of Agreements. The solicitation of votes on the Plan shall be deemed a solicitation of the Holders of Claims for the approval of the Asset Purchase Agreement and the Sale in accordance with the Sale and Bid Procedures Motion. Entry of the Confirmation Order shall constitute approval of such agreements and transactions and the Confirmation Order shall so provide.

Section 7.10. Corporate Action. The entry of the Confirmation Order shall constitute authorization for the Debtors to take or to cause to be taken all limited liability company actions necessary or appropriate to consummate and implement the provisions of the Plan prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court, including, without limitation, the execution and delivery of the Asset Purchase Agreement. Subject to the terms and conditions of the Asset Purchase Agreement, all such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the stockholders or directors of the Debtors. On the Effective Date, the appropriate officers and managers of the Debtors are authorized and directed to execute and deliver the agreements, documents and instruments contemplated by the Plan, the Plan Supplement and the Sale Documents in the name and on behalf of the Debtors.

Section 7.11. Revesting of Assets. Except as otherwise expressly provided in the Plan, pursuant to sections 1123(a)(5), 1123(b)(3) and 1141(b) of the Bankruptcy Code, all Property comprising the Estates of each Debtor not conveyed to the Purchaser under the Asset Purchase Agreement shall automatically vest in the Liquidating Trust, free and clear of all Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests of Creditors and equity security holders on the Effective Date, with all such Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests being extinguished except as otherwise provided in the Plan.

## **ARTICLE VIII PRESERVATION OF CAUSES OF ACTION AND RIGHT TO DEFEND AND CONTEST**

Section 8.01. Preservation of Rights. Except to the extent that any Claim is Allowed during the Chapter 11 Cases or expressly by this Plan, the Asset Purchase Agreement, or the Confirmation Order, nothing, including, but not limited to, the failure of the Debtors or the Liquidation Trustee to object to a Claim or Interest for any reason during the pendency of the Chapter 11 Cases, shall affect, prejudice, diminish or impair the rights and legal and equitable defenses of the Debtors, the Liquidation Trustee or the Purchaser with respect to any Claim or Interest, including, but not limited to, all rights of the Debtors, Liquidation Trustee or the Purchaser to contest or defend themselves against such Claims or Interests in any lawful manner or forum when and if such Claim or Interest is sought to be enforced by the Holder thereof.

Section 8.02. Rights of Action. Except as otherwise provided in the Plan, the Asset Purchase Agreement or the Confirmation Order, all Causes of Action, including Avoidance Actions, shall automatically be transferred to and become the property of the Liquidating Trust. Pursuant to section 1123(b)(3) of the Bankruptcy Code, the Liquidation Trustee (as a representative of the Debtors' Estates) will have the right to enforce and prosecute



such Causes of Action against any Entity, that arose before the Effective Date, other than those expressly conveyed, released or compromised as part of or pursuant to the Plan or the Asset Purchase Agreement.

Section 8.03. Setoffs. Except to the extent that any Claim is Allowed, the Debtors, the Liquidation Trustee or the Purchaser, as applicable, may, but shall not be required to, set off against any Claims and the payments or distributions to be made pursuant to the Plan in respect of such Claims, any and all debts, liabilities, Causes of Action and claims of every type and nature whatsoever which the Estates, the Debtors, the Liquidation Trustee or the Purchaser may have against such Creditors, but neither the failure to do so nor the allowance of any such Claims, whether pursuant to the Plan or otherwise, shall constitute a waiver or release by the Debtors, the Liquidation Trustee or the Purchaser of any such claims or Causes of Action the Debtors, the Liquidation Trustee or the Purchaser may have against such Creditors, and all such claims and Causes of Action which are not expressly released, conveyed or compromised pursuant to the Plan, the Asset Purchase Agreement or the Sale Order shall be conveyed to the Liquidating Trust.

Section 8.04. No Payment or Distribution Pending Allowance. All references to Claims and amounts of Claims refer to the amount of the Claim Allowed by agreement of the Debtors, the Liquidation Trustee or the Purchaser and the Holder of such Claim, by operation of law, by Final Order, or by this Plan. Notwithstanding any other provision in the Plan, no payment or distribution shall be made on account of or with respect to any Claim to the extent it is a Disputed Claim unless and until the Disputed Claim becomes an Allowed Claim.

Section 8.05. Resolution of Disputed Claims. Unless otherwise ordered by the Court after notice and a hearing, the Liquidation Trustee and the Purchaser shall have the right, on and after the Effective Date, to File objections to Claims (except those specifically Allowed by this Plan) and shall serve a copy of each such objection upon the holder of the Claim to which the objection is made as soon as practicable, but in no event later than the applicable Claims Objection Deadline. The foregoing deadlines may be extended by order of the Court. An objection to any Claim shall be deemed properly served on the Holder thereof if the Liquidation Trustee or the Purchaser effects service in any of the following manners: (a) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Federal Rule of Bankruptcy Procedure 7004; (b) by first class mail, postage prepaid, on the signatory on the proof of claim or other representative identified in the proof of claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the Holder's behalf in the Chapter 11 Cases.

## **ARTICLE IX CONDITIONS TO CONSUMMATION OF THE PLAN**

Section 9.01. Confirmation Order. The Confirmation Order shall not be entered unless and until all conditions to entry of the Confirmation Order set forth in the Asset Purchase Agreement have been met.

Section 9.02. Conditions to Effective Date. The Plan shall not be consummated, and the Effective Date shall not occur, unless and until the following conditions have occurred or been duly waived (if waivable) pursuant to Section 9.03 below:

- a) the Bankruptcy Court shall have approved the information contained in the Disclosure Statement as adequate;
- b) the Confirmation Order shall have been entered and shall not be stayed by order of a court of competent jurisdiction;
- c) all conditions precedent to the obligations of the Debtors and Purchaser under the Asset Purchase Agreement have occurred;
- d) the transactions contemplated in the Asset Purchase Agreement have been consummated;
- e) the Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) authorizing and directing the Debtors to take all actions necessary or appropriate to enter into, implement, and consummate the documents created, amended, supplemented, modified or adopted in connection with the Plan;
- f) all authorizations, consents and regulatory approvals required, if any, in connection with the Plan's effectiveness shall have been obtained;
- g) the Debtors shall have appointed the Liquidation Trustee, the Liquidating Trust Agreement and the other Liquidating Trust Documents shall have been executed, and the Liquidation Trust shall have received the Unsecured Creditor Fund and the Rejection Distribution; and
- h) no order of a court shall have been entered and shall remain in effect restraining the Debtors from consummating the Plan.

Section 9.03. Waiver of Conditions to Consummation. The conditions to consummation in Section 9.02 (other than Sections 9.02(a), (b) and (d)) may be waived at any time by a writing signed by an authorized representative of each of the Debtors without notice or order of the Bankruptcy Court or any further action other than proceeding to consummation of the Plan. The conditions to consummation in Section 9.02 and the Asset Purchase Agreement may only be waived in accordance with the terms of the Asset Purchase Agreement.

Section 9.04. Effect of Failure or Absence of Waiver of Conditions Precedent to the Effective Date of the Plan. In the event that one or more of the conditions specified in Section 9.02 of the Plan have not occurred (or been waived), upon notification submitted by the Debtors to the Bankruptcy Court: (a) the Confirmation Order, automatically and without further order of the Bankruptcy Court, shall be, and shall be deemed, vacated, null and void, with no force or legal effect whatsoever; (b) no distributions under the Plan shall be made; (c) all Property of the Estates shall revert in the Debtors' Estates; (d) the Debtors and all Holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding

the Confirmation Date as though the Confirmation Date never occurred; (e) the Asset Purchase Agreement shall become null and void; and (f) the Debtors' obligations with respect to the Claims and Interests shall remain unchanged and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Interests by or against the Debtors or any other Person or Entity or to prejudice in any manner the rights of the Debtors or any Person or Entity in any further proceedings involving the Debtors.

## **ARTICLE X EFFECTS OF CONFIRMATION**

Section 10.01. Discharge. To the fullest extent permitted by applicable law (including, without limitation, section 105 of the Bankruptcy Code), and except as otherwise provided in the Plan or in the Confirmation Order, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge and release of, all Claims of any nature whatsoever against the Debtors or any of their assets or properties, regardless of whether any Property shall have been distributed or retained pursuant to the Plan on account of such Claims. Upon the Effective Date, and except as expressly contemplated in this Plan, the Debtors, and each of them, shall be deemed discharged and released under section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims, including, but not limited to, demands and liabilities that arose before the Effective Date, debts (as such term is defined in section 101(12) of the Bankruptcy Code), Liens, security interests, and encumbrances of and against all Property of the respective Estates or the Debtors that arose prior to the Effective Date, including without limitation, all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) such Claim has been Allowed pursuant to section 502 of the Bankruptcy Code, or (ii) the Holder of such Claim has voted to accept the Plan. Further, as of the Effective Date, all entities, including, without limitation, all Holders of Claims or Interests, shall be barred and enjoined from asserting against the Debtors, the Liquidating Trust, the Liquidation Trustee, the Purchaser, their property or their successors or assigns any other or further Claims, debts, rights, Causes of Action, liabilities or Interests relating to the Debtors based upon any act, omission, transaction or other activity of any nature that occurred prior to the Effective Date, except for those obligations expressly created by, or reserved in, this Plan. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination of discharge of all such Claims and other debts and liabilities against the Debtors and termination of all Interests, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge and termination shall void any judgment obtained against the Debtors, the Liquidating Trust, the Liquidation Trustee or the Purchaser at any time, to the extent that such judgment relates to a discharged Claim or terminated Interest.

### Section 10.02. Injunction.

(a) Discharged Claims and Terminated Interests. Except as otherwise expressly provided for in the Plan or the Confirmation Order and to the fullest extent authorized or provided by the Bankruptcy Code, including sections 524 and 1141 thereof, the entry of the Confirmation Order shall, provided that the Effective Date occurs, permanently enjoin all Persons that have held, currently hold or may hold a Claim or other debt or liability that is discharged or an Interest or other right of an equity security holder that is Impaired or terminated

pursuant to the terms of the Plan from taking any of the following actions against the Debtors, the Liquidating Trust, the Liquidation Trustee, the Purchaser, or the Property of any of the foregoing on account of any such discharged Claims, debts or liabilities or such terminated Interests or rights: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any Lien or encumbrance of any kind; (d) asserting any setoff, offset, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors; and (e) proceeding in any manner in any place whatsoever, including employing any process, that does not conform to or comply with or is inconsistent with the provisions of the Plan.

(b) Released Claims. As of the Effective Date, the Confirmation Order shall constitute an injunction permanently enjoining any Person that has held, currently holds or may hold a Claim, demand, debt, right, Cause of Action or liability that is released pursuant to Section 10.04 of the Plan from enforcing or attempting to enforce any such Claim, demand, debt, right, Cause of Action or liability against (i) any Debtor, (ii) the Liquidating Trust, (iii) any Releasee, or (iv) any Exculpated Person, or any of their respective Property, based on, arising from or relating to, in whole or in part, any act, omission, or other occurrence taking place on or prior to the Effective Date with respect to or in any way relating to the Chapter 11 Cases, all of which claims, demands, debts, rights, Causes of Action or liabilities shall be deemed released on and as of the Effective Date; provided, however, that with respect to the former directors, officers and employees of the Debtors, this injunction shall apply only to the enforcement of Claims, demands, debts, rights, Causes of Action or liabilities with respect to which such former directors, officers and employees would be entitled to indemnification from the Debtors under contract or law; and, provided further, however, that this injunction shall not apply to (a) any claims Creditors may assert under the Plan to enforce their rights thereunder to the extent permitted by the Bankruptcy Code or (b) any claims Creditors or other third parties may have against each other, which claims are not related to the Debtors, it being understood, however, that any defenses, offsets or counterclaims of any kind or nature whatsoever which the Debtors may have or assert in respect of any of the claims of the type described in (a) or (b) of this proviso are fully preserved.

Section 10.03. Exculpation. None of the Debtors, the Liquidating Trustee, the Purchaser or any Exculpated Person shall have or incur any liability to any Person, including, without limitation, any Holder of a Claim or Interest or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates or any of their successors or assigns, for any act taken or omission made in connection with, relating to, or arising out of, the Chapter 11 Cases, Filing, negotiating, prosecuting, administering, formulating, implementing, confirming or consummating this Plan, or the Property to be distributed under this Plan, including all activities leading to the promulgation and confirmation of the Plan, the Disclosure Statement (including any information provided or statement made in the Disclosure Statement or omitted therefrom), or any contract, instrument, release or other agreement or document created in connection with or related to the Plan or the administration of the Debtors or these Chapter 11 Cases, provided, however, that the foregoing exculpation shall not apply to any act of gross negligence or willful misconduct.

Section 10.04. Releases.

(a) Releases by Debtors. Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, in their individual capacities and as debtors in possession, will be deemed to have forever released, waived and discharged the Releasees from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtors or the Liquidating Trustee to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan; provided, however, that no Releasee shall be released or discharged from any Claims, obligations, suits, judgments, debts or Causes of Action arising out of or in connection with indebtedness for money borrowed by any such person from any of the Debtors.

(b) Releases by Holders of Claims and Interests. Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, to the fullest extent permitted under applicable law, in consideration for the obligations of the Persons set forth below under the Plan and, if applicable, the Cash, securities, contracts, releases and other agreements or documents to be delivered in connection with the Plan, each Holder of a Claim or Interest who votes in favor of the Plan, and any Affiliate of any such Holder (as well as any trustee or agent on behalf of each such Holder) shall be deemed to have forever waived, released and discharged (i) the Debtors, (ii) the Liquidation Trustee, (iii) the Liquidation Trust, and (iv) the Releasees from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtors or Liquidation Trustee to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan.

Section 10.05. Other Documents and Actions. The Debtors are authorized to execute such documents and take such other action as is necessary to effectuate the transactions provided for in the Plan.

Section 10.06. Term of Injunctions or Stays. Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under sections 105(a) or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.



Section 10.07. Preservation of Insurance. Except as necessary to be consistent with the Plan, the Plan and the discharge provided herein shall not diminish or impair (a) the enforceability of insurance policies that may cover Claims against the Debtors or any other Person or Entity or (b) the continuation of workers' compensation programs in effect, including self-insurance programs.

Section 10.08. Guaranties. Notwithstanding the existence of guaranties by the Debtors of obligations of any Entity or Entities, and the Debtors' joint obligations with another Entity or Entities with respect to the same obligations, all Claims against the Debtors based upon any such guaranties shall be satisfied, discharged and released in the manner provided in this Plan and the Holders of Claims shall be entitled to only one distribution with respect to any given obligation of the Debtors.

Section 10.09. Subordination Rights. Any distributions under the Plan shall be received and retained free of and from any obligations to hold or transfer the same to any other Creditor, and shall not be subject to levy, garnishment, attachment or other legal process by any Holder by reason of claimed contractual subordination rights, which rights shall be waived and the Confirmation Order shall constitute an injunction enjoining any Person from enforcing or attempting to enforce any contractual, legal or equitable subordination rights to Property distributed under the Plan, in each case other than as provided in the Plan.

Section 10.10. No Successor Liability. Except as otherwise expressly provided in the Plan or the Asset Purchase Agreement, the Debtors, the Liquidation Trustee and the Purchaser do not, pursuant to the Plan or otherwise, assume, agree to perform, pay, or indemnify or otherwise have any responsibilities for any liabilities or obligations of the Debtors or any other party relating to or arising out of the operations of or assets of the Debtors, whether arising prior to, on, or after the Effective Date. The Liquidating Trust, the Liquidation Trustee and the Purchaser are not, and shall not be, successors to the Debtors by reason of any theory of law or equity, and none shall have any successor or transferee liability of any kind or character, except that the Liquidating Trustee and the Liquidation Trust shall assume the obligations specified in the Plan, the Liquidating Trust Agreement, the other Liquidating Trust Documents, and the Confirmation Order and the Purchaser shall assume the obligations specified in the Asset Purchase Agreement.

## **ARTICLE XI RETENTION OF JURISDICTION**

Section 11.01. Exclusive Jurisdiction of Bankruptcy Court. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain after the Effective Date exclusive jurisdiction of all matters arising out of, arising in or related to the Chapter 11 Cases to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

(c) classify or establish the priority or secured or unsecured status of any Claim (whether Filed before or after the Effective Date and whether or not contingent, Disputed or unliquidated) or resolve any dispute as to the treatment of any Claim pursuant to the Plan;



(d) grant or deny any applications for allowance of compensation or reimbursement of expenses pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code or otherwise provided for in the Plan, for periods ending on or before the Effective Date;

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

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

(g) construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with section 1142 of the Bankruptcy Code, as may be necessary for the enforcement, implementation, execution and consummation of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, including, without limitation, the Disclosure Statement and the Confirmation Order, for the maintenance of the integrity of the Plan and protection of the Liquidation Trustee in accordance with sections 524 and 1141 of the Bankruptcy Code following consummation;

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

(i) hear any application of the Debtors or the Liquidation Trustee to modify the Plan after the Effective Date pursuant to section 1127 of the Bankruptcy Code and Section 12.04 hereof or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code and the Plan;

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

(k) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(l) determine any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, the Asset Purchase Agreement, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement, the Asset Purchase Agreement or the Confirmation Order, except as otherwise provided in the Plan;

(m) determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(n) hear and determine any other matters related hereto and not inconsistent with chapter 11 of the Bankruptcy Code;

(o) hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Asset Purchase Agreement;

(p) enter one or more Final Decrees closing each of the Chapter 11 Cases;

(q) determine and resolve any and all controversies relating to the rights and obligations of the Liquidation Trustee or the Disbursing Agent in connection with the Chapter 11 Cases;

(r) allow, disallow, determine, liquidate or estimate any Claim, including the compromise, settlement and resolution of any request for payment of any Claim, the resolution of any Objections to the allowance of Claims and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any Objection to such Claim (to the extent permitted under applicable law);

(s) permit the Debtors (and the Liquidation Trustee or the Purchaser, to the extent provided for in the Plan, the Asset Purchase Agreement or the Liquidating Trust Agreement) to recover all assets of the Debtors and Property of their respective Estates, wherever located;

(t) hear and determine any motions or contested matters involving taxes, tax refunds, tax attributes and tax benefits and similar or related matters with respect to the Debtors or the Debtors' respective Estates arising prior to the Effective Date or relating to the period of administration of the Chapter 11 Cases, including, without limitation, matters concerning federal, state and local taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(u) hear and determine any motions, applications, adversary proceedings, contested matters and other litigated matters pending on, Filed or commenced after the Effective Date that may be commenced by the Liquidation Trustee thereafter, including Avoidance Actions, proceedings with respect to the rights of the Liquidation Trustee to recover Property under sections 542, 543 or 553 of the Bankruptcy Code, or proceedings to otherwise collect to recover on account of any claim or Cause of Action that the Debtors may have had; and

(v) hear any other matter not inconsistent with the Bankruptcy Code.

Section 11.02. Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Debtors, including with respect to the matters set forth above in Section 11.01 hereof, this Article XI shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

Section 12.01. Binding Effect of Plan. The provisions of the Plan shall be binding upon and inure to the benefit of the Debtors, the Estates, the Liquidation Trustee, the Liquidating Trust, the Purchaser, any Holder of any Claim or Interest treated herein or any Person named or referred to in the Plan, and each of their respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors, and, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by the Plan.

Section 12.02. Withdrawal of the Plan. The Debtors reserve the right, at any time prior to Confirmation of the Plan, to withdraw the Plan. If the Plan is withdrawn, the Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors.

Section 12.03. Final Order. Except as otherwise expressly provided in the Plan, any requirement in the Plan for a Final Order may be waived by the Debtors or, after the Effective Date, the Liquidation Trustee upon written notice to the Bankruptcy Court. No such waiver shall prejudice the right of any party in interest to seek a stay pending appeal of any order that is not a Final Order.

Section 12.04. Modification of the Plan. The Debtors may alter, amend or modify the Plan in accordance with section 1127 of the Bankruptcy Code or as otherwise permitted at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of the Plan, and in accordance with the provisions of section 1127(b) of the Bankruptcy Code and the Bankruptcy Rules, the Debtors or the Liquidation Trustee may, so long as the treatment of Holders of Claims or Interests under the Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, prior notice of such proceedings shall be served in accordance with Bankruptcy Rules 2002 and 9014.

Section 12.05. Business Days. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or

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

Section 12.06. Severability. Should the Bankruptcy Court determine, prior to the Confirmation Date, that any provision of the Plan is either illegal on its face or illegal as applied to any Claim or Interest, such provision shall be unenforceable as to all Holders of Claims or Interests or to the specific Holder of such Claim or Interest, as the case may be, as to which such provision is illegal. Unless otherwise determined by the Bankruptcy Court, such a determination of unenforceability shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan. The Debtors reserve the right not to proceed with Confirmation or consummation of the Plan if any such ruling occurs.

Section 12.07. Governing Law. EXCEPT TO THE EXTENT THAT THE BANKRUPTCY CODE OR BANKRUPTCY RULES OR OTHER FEDERAL LAWS ARE APPLICABLE, AND SUBJECT TO THE PROVISIONS OF ANY CONTRACT, INSTRUMENT, RELEASE, INDENTURE OR OTHER AGREEMENT OR DOCUMENT ENTERED INTO IN CONNECTION WITH THE PLAN, THE CONSTRUCTION, IMPLEMENTATION AND ENFORCEMENT OF THE PLAN AND ALL RIGHTS AND OBLIGATIONS ARISING UNDER THE PLAN SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO CONFLICTS-OF-LAW PRINCIPLES WHICH WOULD APPLY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF DELAWARE.

Section 12.08. Dissolution of Committee. On the Effective Date, the Committee shall be automatically dissolved and all of its members, Professionals and agents shall be deemed released of their duties, responsibilities and obligations, and shall be without further duties, responsibilities and authority in connection with the Debtors, the Chapter 11 Cases, the Plan or its implementation.

Section 12.09. Payment of Statutory Fees. All U.S. Trustee's Fee Claims, as determined, if necessary, by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid on or before the Effective Date by the Purchaser.

Section 12.10. Post-Confirmation Operating Reports. The Liquidation Trustee shall file quarterly operating reports as required by the United States Trustee until such time as a Final Decree or other order is entered under section 350(a) of the Bankruptcy Code closing the Bankruptcy Cases.

Section 12.11. Notices. Any notice required or permitted to be provided under this Plan to the Debtors, or any request for information with respect to the Plan, shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

Philadelphia Newspapers, LLC  
400 N Broad Street  
Philadelphia, PA 19130  
Attn: Richard R. Thayer  
Email: rthayer@phillynews.com

With a copy to:

Proskauer Rose LLP  
70 West Madison Street  
Chicago, Illinois 60602  
Attn.: Mark K. Thomas  
Email: mthomas@proskauer.com

Section 12.12. Filing of Additional Documents. On or before substantial consummation of the Plan, the Debtors shall issue, execute, deliver, and File with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of the Plan.

Section 12.13. Section 1125 of the Bankruptcy Code.

(w) The Debtors have, and upon Confirmation of the Plan shall be deemed to have, solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code and (b) the Debtors (and each of their respective Affiliates, officers, directors, employees, consultants, agents, advisors, members, attorneys, accountants, financial advisors, other representatives and Professionals), have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer, issuance, sale, and purchase of the securities offered and sold under the Plan, and are not, and on account of such offer, issuance, sale, solicitation, and/or purchase will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the offer, issuance, sale, or purchase of the securities offered and sold under the Plan.

Section 12.14. Section 1146 Exemption. To the fullest extent permitted under section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan, if any, or the execution, delivery or recording of an instrument of transfer under the Plan, or the revesting, transfer or sale of any real or other Property of or to the Debtors or the Liquidating Trust, shall not be taxed under any state or local law imposing a stamp tax, transfer tax or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, mortgage recording tax, intangible tax or similar tax.

Section 12.15. Section 1145 Exemption. To the fullest extent permitted under section 1145 of the Bankruptcy Code, the issuance of any interests in the Liquidating Trust on or around the Effective Date shall be exempt from the registration requirements of Section 5 of the

Securities Act and any and all federal, state and local laws requiring the registration or licensing of an issuer, underwriter, broker or dealer in such securities.

Section 12.16. Time. Unless otherwise specified herein, in computing any period of time prescribed or allowed by the Plan, the day of the act or event from which the designated period begins to run shall not be included. The last day of the period so computed shall be included, unless it is not a Business Day, in which event the period runs until the end of next succeeding day that is a Business Day. Otherwise, the provisions of Bankruptcy Rule 9006 shall apply.

Section 12.17. No Attorneys' Fees. No attorneys' fees will be paid by the Debtors with respect to any Claim or Interest except as expressly specified herein or by order of the Bankruptcy Court (including the Cash Collateral Order).

Section 12.18. No Injunctive Relief. No Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable or other prospective relief.

Section 12.19. Continued Confidentiality Obligations. Pursuant to the terms thereof, members of and advisors to any Committee, any other Holder of a Claim or Interest, the Purchaser, and their respective predecessors, successors and assigns shall continue to be obligated and bound by the terms of any confidentiality agreement executed by them in connection with these Chapter 11 Cases or the Debtors, to the extent that such agreement, by its terms, may continue in effect after the Confirmation Date.

Section 12.20. No Admissions or Waivers. Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission or waiver by the Debtors with respect to any matter set forth herein, including, without limitation, liability on any Claim or Interest or the propriety of any classification of any Claim or Interest.

Section 12.21. Entire Agreement. The Plan (and all Exhibits to the Plan and the Plan Supplement) sets forth the entire agreement and undertakings relating to the subject matter hereof and supersedes all prior discussions and documents. The Debtors shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by the parties in writing.

Section 12.22. Waiver. The Debtors reserve the right to waive any provision of this Plan to the extent such provision is for the sole benefit of the Debtors and/or their officers or directors.

Section 12.23. Bar Date for Professionals. Applications for compensation for services rendered and reimbursement of expenses incurred by Professionals from the Petition Date through the Effective Date shall be Filed no later than ninety (90) days after the Effective Date or such later date as the Bankruptcy Court approves. Such applications shall be served on: (a) the Debtors; (b) Mark K. Thomas, Proskauer Rose LLP, 70 West Madison Street, Chicago, IL 60602, counsel to the Debtors; (c) Lawrence G. McMichael, Dilworth Paxson LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19102, co-counsel to the Debtors; (d) the Office of the



United States Trustee; (e) Andrew C. Kassner, Drinker, Biddle & Reath LLP, One Logan Square, Suite 2000, Philadelphia, PA 19013, counsel for the Prepetition Senior Agent; and (f) Ben Logan, O'Melvey & Myers LLP, 400 South Hope Street, Los Angeles, CA 90071, counsel to the Committee. Applications that are not timely Filed will not be considered by the Court. The Liquidation Trustee may pay any Professional fees and expenses incurred after the Effective Date without any application to the Bankruptcy Court.

### **CONFIRMATION REQUEST**

The Debtors hereby request confirmation of the Plan pursuant to section 1129(a) or section 1129(b) of the Bankruptcy Code.

Dated: August 20, 2009

**PHILADELPHIA MEDIA HOLDINGS, LLC,  
PMH ACQUISITION, LLC, BROAD STREET  
VIDEO, LLC, PHILADELPHIA  
NEWSPAPERS, LLC, PHILADELPHIA  
DIRECT, LLC, PHILLY ONLINE, LLC, PMH  
HOLDINGS, LLC, BROAD STREET  
PUBLISHING, LLC, and PHILADELPHIA  
MEDIA, LLC**

By: /s/ Richard R. Thayer

Name: Richard R. Thayer

Title: Executive Vice President Finance

1124/59219-001 Current/14283113v14

**Appendix B**

[Financial Projections]

[to come]

**Appendix C**

[Liquidation Analysis]

[to come]

**Appendix D**

[Selected Financial Data for the Periods Ended December 30, 2007 and December 28, 2008]

[to come]

**Appendix E**

[Stalking Horse Agreement]

## **ASSET PURCHASE AGREEMENT**

**DATED AS OF AUGUST 20, 2009**

**BY AND AMONG**

**PHILADELPHIA MEDIA HOLDINGS, LLC,**

**PMH ACQUISITION, LLC,**

**PHILADELPHIA NEWSPAPERS, LLC,**

**PHILADELPHIA DIRECT, LLC,**

**BROAD STREET VIDEO, LLC,**

**PHILLY ONLINE, LLC,**

**PHILADELPHIA MEDIA, LLC,**

**BROAD STREET PUBLISHING, LLC, AND**

**PMH HOLDINGS, LLC,**

**AS SELLERS,**

**AND**

**PHILLY PAPERS, LLC**

**AS PURCHASER**



**TABLE OF CONTENTS**

SECTION 1	INTERPRETATION .....	1
1.1.	Definitions .....	1
SECTION 2	PURCHASE, SALE AND ASSIGNMENT OF PURCHASED ASSETS .....	9
2.1.	Sale of Assets .....	9
2.2.	Excluded Assets .....	11
2.3.	Assumed Liabilities .....	11
2.4.	Excluded Liabilities .....	13
2.5.	Purchase Price .....	13
2.6.	Purchaser Deposit .....	14
2.7.	Allocation of Purchase Price .....	15
2.8.	Sale at Closing Date .....	15
2.9.	Excluded Assets and Liabilities .....	15
SECTION 3	REPRESENTATIONS AND WARRANTIES OF SELLERS .....	15
3.1.	Organization and Good Standing .....	15
3.2.	Authorization .....	15
3.3.	No Conflicts .....	16
3.4.	Consents and Approvals .....	16
3.5.	Compliance with Law .....	16
3.6.	Title to Assets .....	16
3.7.	Intentionally omitted .....	17
3.8.	Litigation .....	17
3.9.	Intellectual Property .....	17

3.10. Material Contracts.....	17
3.11. Real Property .....	18
3.12. No Broker or Finder.....	18
3.13. Insurance .....	18
3.14. Financial Statements .....	18
3.15. Absence of Certain Changes .....	19
3.16. Taxes .....	20
3.17. Collective Bargaining Agreements, Employment Agreements, etc. ....	20
3.18. Employee Benefit Plans.....	21
3.19. Environmental Warranties .....	23
3.20. Restricted Cash .....	24
3.21. Accounts Receivable.....	24
3.22. Transactions with Certain Persons.....	24
3.23. All Material Information.....	24
3.24. Employees.....	24
3.25. Disclaimer of Other Representations and Warranties.....	24
SECTION 4 REPRESENTATIONS AND WARRANTIES OF PURCHASER.....	24
4.1. Organization and Good Standing.....	24
4.2. Authorization .....	24
4.3. No Conflicts .....	25
4.4. Consents and Approvals .....	25
4.5. Litigation.....	25
4.6. No Broker or Finder.....	25

4.7. Capital Resources .....	25
4.8. Purchaser not a Plan.....	25
4.9. “AS IS” TRANSACTION .....	26
SECTION 5 CERTAIN COVENANTS OF SELLERS.....	26
5.1. Plan and Confirmation Order.....	26
5.2. Provision of Records.....	26
5.3. Receipt of Property Relating to Assets .....	26
5.4. Conduct of Business Pending the Closing.....	27
5.5. Access to Information .....	28
5.6. Bid Procedures Order.....	29
5.7. Transfer of Permits .....	29
5.8. Release of Encumbrances .....	29
5.9. Further Assurances .....	29
5.10. Assignment of Rights.....	29
5.11. Break-Up Fee .....	29
5.12. Cure Amounts .....	30
SECTION 6 CERTAIN COVENANTS OF PURCHASER.....	30
6.1. Performance with Respect to the Assets and the Assumed Contracts .....	30
6.2. Cure Amounts .....	30
6.3. Workers’ Compensation .....	30
6.4. Financing .....	30
6.5. Equity Ownership .....	30
6.6. Further Assurances .....	31

SECTION 7	CERTAIN MUTUAL COVENANTS.....	31
7.1.	Mutual Cooperation. ....	31
7.2.	Approvals and Filings .....	32
7.3.	Public Statements.....	33
SECTION 8	EMPLOYEE MATTERS .....	33
8.1.	Employment. ....	33
8.2.	Employee Benefit Matters. ....	34
8.3.	Seller Assumed Plans.....	34
8.4.	Compliance with WARN Act .....	35
SECTION 9	CONDITIONS TO SELLERS' OBLIGATIONS .....	36
9.1.	Representations and Warranties.....	36
9.2.	Compliance with Agreements.....	36
9.3.	Approvals; No Injunctions.....	36
9.4.	Purchaser's Closing Deliveries and Obligations .....	36
9.5.	Auction.....	36
9.6.	Entry of the Confirmation Order.....	36
SECTION 10	CONDITIONS TO PURCHASER'S OBLIGATIONS.....	37
10.1.	Representations and Warranties.....	37
10.2.	Compliance with Agreements.....	37
10.3.	Approvals; No Injunctions.....	37
10.4.	Sellers' Closing Deliveries and Obligations.....	37
10.5.	Auction.....	37
10.6.	Entry of the Confirmation Order.....	37

10.7. Collective Bargaining Agreements .....	37
10.8. Title Insurance Policies and Surveys .....	37
10.9. Material Adverse Effect.....	38
10.10. Certain Liabilities .....	38
SECTION 11 CLOSING; TERMINATION .....	38
11.1. The Closing .....	38
11.2. Termination.....	40
11.3. Effects of Termination. ....	42
SECTION 12 TAXES .....	42
12.1. Taxes Related to Purchase of Assets .....	42
12.2. Cooperation.....	43
SECTION 13 EXPENSES, EMPLOYEES, ATTORNEYS' FEES AND BROKERS' FEES..	43
13.1. Expenses .....	43
13.2. Attorneys' Fees; Brokers' Fees; Expenses .....	43
SECTION 14 MISCELLANEOUS .....	43
14.1. Sale of Assets Subject to Bankruptcy Court Approval.....	43
14.2. Survival of Representations and Warranties.....	43
14.3. Entirety of Agreement; Amendments and Waivers .....	44
14.4. Assignment .....	44
14.5. Successors and Assigns; No Third Party Beneficiaries .....	44
14.6. Governing Law; Jurisdiction .....	44
14.7. Gender and Number.....	45
14.8. Headings .....	45

14.9. Construction.....	45
14.10. Severability .....	45
14.11. Negotiated Agreement .....	45
14.12. Notices .....	45
14.13. Counterparts; Facsimile Copies .....	47



## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is made as of this 20th day of August, 2009, by and among Philly Papers, LLC, a Delaware limited liability company ("Purchaser"), Philadelphia Media Holdings, LLC ("PMH"), PMH Acquisition, LLC, a Delaware limited liability company ("Parent"), and each of Parent's direct and indirect Subsidiaries (as defined below) listed on the signature pages hereto (individually, "Seller" or "Debtor" or "Debtor-in-Possession" and collectively with PMH and Parent, "Sellers" or "Debtors" or "Debtors-in-Possession").

### W I T N E S S E T H:

WHEREAS, on February 23, 2009, each Seller, other than PMH, filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the Bankruptcy Court (as defined below), and on February 24, 2009, the Bankruptcy Court entered an order approving Sellers' application seeking administration and consolidation of Sellers' chapter 11 cases for procedural purposes only;

WHEREAS, on June 10, 2009, PMH filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court and, on June 16, 2009, the Bankruptcy Court entered an order approving PMH's application seeking administration and consolidation of its chapter 11 case with the other Sellers' chapter 11 cases for procedural purposes only;

WHEREAS, Sellers are continuing in the possession of their respective assets and in the management of their respective businesses pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Sellers are presently engaged in the Business (as defined below); and

WHEREAS, Purchaser desires to purchase from Sellers, and Sellers desire to sell, transfer and assign to Purchaser, the Assets (as defined below) in accordance with this Agreement and in accordance with and subject to the Plan and the Confirmation Order (each as defined below), pursuant to sections 105(a), 1123 and 1129 of the Bankruptcy Code;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants, promises and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### SECTION 1 INTERPRETATION

1.1. Definitions. Whenever used in this Agreement, the following words and phrases shall have the respective meanings ascribed to them as follows.

“Additional Purchase Price” has the meaning set forth in Section 2.5(a).

“Affiliate” means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person. For purposes of this definition “control” means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Ancillary Agreements” means, together, the Assignment and Assumption Agreement, the Bill of Sale, the Deeds, the Trademark Assignment and the Deposit Escrow Agreement.

“Assets” means, other than the Excluded Assets, all of Sellers’ tangible and intangible assets, properties, rights, claims and contracts owned, leased and/or licensed by any Seller of every kind, character and description, whether accrued, contingent or otherwise, existing as of the Closing (which Assets comprise substantially all of Sellers’ assets, properties, rights, claims and contracts), including, without limitation those Assets set forth in Section 2.1.

“Assignment and Assumption Agreement” means that certain assignment and assumption agreement to be executed at Closing with respect to the Assumed Contracts, in form to be agreed upon by Purchaser and Sellers.

“Assumed Contracts” has the meaning set forth in Section 2.3.

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Auction” means the auction in connection with the sale of the Assets, as described in the Bid Procedures Order.

“Avoidance Actions” means all causes of action arising under chapter 5 of the Bankruptcy Code.

“Bankruptcy Code” has the meaning set forth in the Recitals.

“Bankruptcy Court” means the United States Bankruptcy Court for the Eastern District of Pennsylvania.

“Base Purchase Price” has the meaning set forth in Section 2.5(a).

“Benefits Plans” has the meaning set forth in Section 3.18(a).

“Bid Procedures Motion” means the motion to be filed by Sellers in the Cases seeking the entry of the Bid Procedures Order.

“Bid Procedures Order” means the order of the Bankruptcy Court, the form and substance of which shall be subject to the approval of Purchaser and Sellers in their reasonable discretion.

“Bidders” has the meaning set forth in Section 11.1(d).

“Bids” has the meaning set forth in Section 11.1(d).

“Bill of Sale” means that certain bill of sale to be executed at Closing with respect to the Assets other than the Assumed Contracts, in form to be agreed upon by Purchaser and Sellers.

“Breakup Fee” has the meaning set forth in Section 5.11.

“Business” means Sellers' business of operating newspapers and publications, including those listed on Schedule 1.1(a) hereto and related websites located at the domain names listed on Schedule 1.1(b) hereto (the “Websites”).

“Business Day” means a day other than a Saturday, Sunday or any other day on which the principal national banks located in the City of Philadelphia are not open for business during normal banking hours.

“Cases” means the Chapter 11 cases of Sellers filed in the Bankruptcy Court.

“CBAs” mean, collectively, Sellers' collective bargaining agreements with any union.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the United States Environmental Protection Agency.

“Closing” has the meaning set forth in Section 11.1.

“Closing Date” has the meaning set forth in Section 11.1.

“COBRA” has the meaning set forth in Section 8.2(b).

“Code” means the Internal Revenue Code of 1986, as amended.

“Confirmation Hearing” means a hearing seeking the confirmation of the Plan pursuant to the Confirmation Order and section 1129 of the Bankruptcy Code.

“Confirmation Order” means a final, nonappealable order of the Bankruptcy Court confirming the Plan, in form and substance reasonably acceptable to Purchaser and Sellers, which order, as of the Closing Date, shall not have been stayed, vacated or otherwise rendered ineffective, and shall authorize, among other things (i) the sale of the Assets to Purchaser free and clear of all Encumbrances, (ii) the assignment of the Assumed Contracts to and the assumption of the Assumed Contracts by Purchaser and (iii) the consummation of the transactions contemplated by the Ancillary Agreements and all other transactions and agreements contemplated hereby.

“Contracts” means all commitments, contracts, leases, licenses, agreements and understandings, written or oral, relating to the Assets or the operation of the Business to which any Seller is a party or by which any Seller or any of Assets are bound.

“Cure Amounts” means all amounts payable in connection with the cure of defaults of any of the Assumed Contracts.

“Debtors” has the meaning set forth in the preamble.

“Debtors-in-Possession” has the meaning set forth in the preamble.

“Deeds” has the meaning set forth in the Section 11.1(a)(iii).

“Deposit Escrow Agent” has the meaning set forth in Section 2.6.

“Deposit Escrow Agreement” has the meaning set forth in Section 2.6.

“Disclosure Statement” means a disclosure statement under section 1125 of the Bankruptcy Code to be filed in connection with the solicitation of the Plan.

“Disputed AP” has the meaning set forth in Section 5.4(c).

“DOJ” has the meaning set forth in Section 7.2(b).

“Employee” means any employee of Sellers as of the Closing Date.

“Encumbrances” means, with respect to any Asset, any mortgage, deed of trust, deed to service debt, pledge, security interest, lien, charge, lease, claim, encumbrance, option, right of first refusal, imperfection of title, covenant, encroachment, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement, state of facts or any other restrictions or third party rights.

“Environmental Law” means any federal, state, local or foreign statute, law, ordinance, rule, regulation, code, order, writ, judgment, injunction, decree or legally binding judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment,

natural resources, or health and safety, including those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” has the meaning set forth in Section 3.18(a).

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Liabilities” means all of the obligations and liabilities of Sellers other than the Assumed Liabilities.

“Excluded Real Property” means the real property described on Schedule 2.2(b), together with all buildings, fixtures, structures, improvements, and other appurtenances thereto and thereon.

“Expense Reimbursement” has the meaning set forth in Section 5.11.

“Financial Statements” has the meaning set forth in Section 3.14.

“Fiscal Year Financial Statements” has the meaning set forth in Section 3.14.

“FTC” has the meaning set forth in Section 7.2(b).

“GAAP” means accounting principles generally accepted in the United States of America, consistently applied.

“Governmental Authority” means any United States federal, state or local government or any foreign government, or political subdivision thereof, or any multinational organization or authority or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), or any arbitrator or arbitral body.

“Hazardous Materials” means (a) petroleum or petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Intellectual Property” has the meaning set forth in Section 3.9.

“Law” means any federal, state, local or foreign statute, law, code, ordinance, order, rule or regulation or any common law requirement.

“Lease” means the Lease of the premises at 400 N. Broad Street, Philadelphia, Pennsylvania from Philadelphia Newspapers, LLC, as initial landlord, to the Purchaser, having terms as set forth on the Term Sheet attached hereto as Exhibit A, the landlord’s interest in which shall be subject to assignment to or for the benefit of the Senior Lenders in accordance with the Plan. In accordance with the Plan, the Senior Lenders shall acquire title to the Excluded Real Property subject to the rights of Purchaser under the Lease.

“Liability” means any debt, liability, duty, responsibility, obligation, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, premium or obligation of any kind, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed, including all costs and expenses relating thereto.

“Liquidation Trustee” means the trustee of the liquidation trust to be established pursuant to the Plan.

“Material Adverse Effect” means, (x) with respect to the Sellers, any material adverse effect on the business, operations, assets, condition (financial or otherwise), liabilities or results of operations of the Sellers taken as a whole, or on the ability of the Sellers to perform their obligations under this Agreement and the Ancillary Agreements and consummate the Transactions, and (y) with respect to the Assets, any material adverse effect on the condition of the Assets taken as a whole; provided, however, that in determining whether there has been a Material Adverse Effect, any effect to the extent attributable to any of the following shall be disregarded: (i) with respect to the Sellers or the Assets, the occurrence of any event materially adversely affecting the industry in which the Business operates or in which the Assets are held and not uniquely relating to the Sellers, the Business or the Assets (as applicable), (ii) with respect to the Sellers or the Assets, any change in the general condition of the regional, national or global economy; (iii) the taking of any action required to be taken by a party under the terms of this Agreement, or (iv) the announcement or existence of this Agreement or the Transactions.

“Material Contract” means any Contract that requires payment by or to Sellers of more than \$100,000 in any consecutive twelve (12) month period or is otherwise material to the business of the Sellers taken as a whole.

“Orders” has the meaning set forth in Section 7.1(c).

“Organizational Documents” means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture,



limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

“Owned Real Property” has the meaning set forth in Section 3.11.

“PMH” has the meaning set forth in the preamble.

“Parent” has the meaning set forth in the preamble.

“Permits” has the meaning set forth in Section 3.5(b).

“Permitted Encumbrances” means those Encumbrances set forth on Schedule 1.1(c), any other Encumbrances such as utility easements, zoning restrictions, tax liens (for taxes not yet due and payable), other exemptions noted on a current survey, or other customary covenants and restrictions of record that do not adversely affect the ownership or leasing of the Real Property or the conduct of the Business, and Encumbrances related to Assumed Liabilities.

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

“Plan” means the Joint Plan filed or to be filed by the Debtors in the Cases in form and substance reasonably satisfactory to Purchaser and Sellers, as amended from time-to-time.

“Pre-Closing Period” has the meaning set forth in Section 5.4(a).

“Pre-Closing Returns” has the meaning set forth in Section 3.16.

“Providing Party” has the meaning set forth in Section 7.1(b).

“Purchase Price” means the purchase price payable to Sellers for the Assets provided for in Section 2.5.

“Purchaser” has the meaning set forth in the preamble.

“Purchaser Deposit Amount” has the meaning set forth in Section 2.6.

“Qualifying Bid” has the meaning set forth in Section 11.1(e).

“Real Property” means all real property owned, leased or subleased by Sellers and all easements granted to Sellers, each of which is described on Schedule 1.1(d), together with all buildings, improvements and fixtures thereon and all appurtenances and rights thereto.

“Restricted Cash” means all cash held by insurance or credit card companies to secure Sellers’ obligations under such policies or plans.

“Restricted Cash Financing” has the meaning set forth in Section 6.2.

“Requesting Party” has the meaning set forth in Section 7.1(b).

“Scheduling Motion” means a motion to be filed with the Bankruptcy Court seeking an order (a) setting a date for the Confirmation Hearing and deadlines for submitting ballots and objections in connection with the Plan; and (b) approving the Disclosure Statement and related solicitation materials.

“Seller Assumed Plans” has the meaning set forth in Section 8.3.

“Sellers” has the meaning set forth in the preamble.

“Senior Agent” means Citizens Bank of Pennsylvania, as agent for the Senior Lenders.

“Senior Lenders” means the lenders party to the Credit and Guaranty Agreement dated as of June 29, 2006, as amended, with Debtor Philadelphia Newspapers, LLC, as borrower, and the other Debtors (other than PMH) as guarantors.

“Stub Period Balance Sheet” has the meaning set forth in Section 3.14.

“Stub Period Date” has the meaning set forth in Section 3.14.

“Stub Period Financial Statements” has the meaning set forth in Section 3.14.

“Subsidiary” means, with respect to any Person, any corporation or other business entity, whether or not incorporated, of which more than fifty percent (50%) of the securities or interests having, by their terms, ordinary voting power to elect members of the board of directors or managers, or other persons performing similar functions with respect to such entity, are held, directly or indirectly, by such Person.

“Superior Bid” has the meaning set forth in Section 11.1(d).

“Tax” or “Taxes” means (i) all federal, state, local and foreign taxes, charges, fees, imposts, levies or other assessments, including income, gross receipts, excise, employment, sales, use, transfer, license, payroll, franchise, severance, stamp, withholding, Social Security, unemployment, disability, real property, personal property, registration, alternative or add-on minimum, estimated or other taxes, charges, fees, imposts, levies or other assessments, including any interest, penalties or additions thereto, whether disputed or not, and (ii) any liability for any items

described in clause (i) payable by reason of contract, transferee liability, operation of law (including Treasury Regulation Section 1.1502-6) or otherwise.

“Tax Authority” means any domestic (whether federal, state, or local) or foreign governmental authority having responsibility for taxation.

“Tax Return” means any report, return, information return, filing, claim for refund or other information, including any schedules or attachments thereto, and any amendments to any of the foregoing required to be supplied to a taxing authority in connection with Taxes.

“Termination Date” has the meaning set forth in Section 11.2(b).

“Trademark Assignment” means that certain trademark assignment to be executed at Closing with respect to the registered trademarks of Sellers, in form to be agreed upon by Purchaser and Sellers.

“Transactions” mean the transactions contemplated by this Agreement, the Ancillary Agreements and all other transactions and agreements contemplated hereby and thereby.

“Transaction Taxes” has the meaning set forth in Section 12.1.

“Transferred Employees” has the meaning set forth in Section 8.1(a).

“Transferred Real Property” means the Owned Real Property other than the Excluded Real Property.

“Union Employees” has the meaning set forth in Section 8.1(a).

“WARN Act” means, collectively, the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any other similar statutes or regulations of any jurisdiction relating to any plant closing or mass layoff.

“Workers’ Compensation Claims” means claims asserted by employees of the Sellers generally considered as workers’ compensation claims (e.g., claims for compensation for injury or illness incurred while working for Sellers).

## **SECTION 2**

### **PURCHASE, SALE AND ASSIGNMENT OF PURCHASED ASSETS**

2.1. Sale of Assets. Subject to the terms and conditions of this Agreement, at Closing, Sellers shall sell, assign, convey, transfer and deliver to Purchaser, and Purchaser shall purchase from Sellers, all of Sellers’ right, title and interest in the Assets, free and clear of all Encumbrances other than the Permitted Encumbrances, including all of Sellers’ right, title and interest in the

following:

- (a) all tangible personal property owned or used by any Seller including, without limitation, all equipment, furniture, fixtures, newsprint, inventory, supplies, machinery, vehicles, tools and furnishings;
- (b) all Owned Real Property, together with all buildings, fixtures, structures, improvements and other appurtenances thereto and thereon, other than the Excluded Real Property;
- (c) all interests of Sellers in the Assumed Contracts;
- (d) all interests of Sellers in, and all assets relating to, the Seller Assumed Plans;
- (e) any and all claims and causes of action of Sellers or their chapter 11 estates against third parties, including, without limitation, all Avoidance Actions except as expressly set forth in Section 2.2 herein below;
- (f) all interests of Sellers in and to all Intellectual Property and all computer software, programs and similar systems (including data and related documentation) owned or licensed by Sellers;
- (g) all accounts receivable and other receivables of Sellers including, without limitation, all accounts receivable and other receivables from advertisers payable to any Seller with respect to services performed by or on behalf of any Seller on or prior to the Closing Date;
- (h) all Permits that relate to the Business;
- (i) all rights of any Seller relating to deposits and prepaid charges and expenses, and claims for refunds relating to the Assets;
- (j) Sellers' rights in all insurance policies, including workers' compensation policies, to the extent transferable and to the extent the coverage relates to the Assets or the Assumed Liabilities (including, without limitation, the Restricted Cash);
- (k) all books and records, files, data, reports, computer codes and sourcing data, advertiser and supplier lists, cost and pricing information, business plans, and manuals, blueprints, research and development files, accounting and tax files, personnel records and other records of any Seller or related to the operations of any Seller and/or the Business;
- (l) all marketing, advertising and promotional materials; and

- (m) all goodwill associated with the Business and/or the Assets.

2.2. Excluded Assets. Notwithstanding the generality of Section 2.1, the following assets are not a part of the sale and purchase contemplated by this Agreement and are excluded from the Assets (collectively, the “Excluded Assets”):

- (a) all cash and cash equivalents of Sellers (other than the Restricted Cash);
- (b) the Excluded Real Property;
- (c) any Contracts other than the Assumed Contracts;
- (d) those assets of Sellers set forth on Schedule 2.2(d);
- (e) the Purchase Price;
- (f) all rights, claims and causes of action of Sellers relating to this Agreement;
- (g) all assets relating to Benefit Plans, other than Seller Assumed Plans;
- (h) all corporate minute books, stock transfer books, the corporate seal of Sellers and all other corporate books and records relating to Sellers’ organization and existence; and
- (i) any shares of stock or other equity interests in any Parent or Subsidiary of Parent.

2.3. Assumed Liabilities. Schedule 2.3 lists those Contracts that Purchaser may elect to assume and request Sellers to assign to Purchaser at the Closing. No less than ten (10) days prior to the Confirmation Hearing, Purchaser shall designate which of such Contracts it wishes to have Sellers assign to Purchaser (the “Assumed Contracts”), which (subject to Sections 6.3 and 10.10 below) Assumed Contracts shall expressly include the workers’ compensation and other insurance policies identified on Schedule 2.3. Appropriate deletions shall be made to Schedule 2.3 at the Closing and a schedule of Assumed Contracts and any Cure Amounts relating thereto, shall be filed by Sellers with the Bankruptcy Court prior to the Confirmation Hearing. At Closing, Purchaser shall be required to provide adequate assurance of future performance with respect to the Assumed Contracts. Effective as of the Closing Date, Purchaser shall assume and thereafter in due course pay, fully satisfy, discharge and perform the Liabilities of Sellers arising after the Closing under the Assumed Contracts and the other Liabilities of Sellers referred to in this Section 2.3 (collectively, the “Assumed Liabilities”), as follows:

- (a) all trade payables arising after February 23, 2009 and all accrued liabilities (including, without limitation, any accrued salaries, vacation pay or other compensation expense) and all deferred revenues as of the Closing Date that arose in the ordinary course of

Sellers' business;

- (b) all Liabilities relating to the Seller Assumed Plans;
- (c) all Liabilities relating to ownership or use of the Assets or otherwise relating to the Business, in each case arising after the Closing;
- (d) all Cure Amounts with respect to the Assumed Contracts;
- (e) all claims having statutory priority pursuant to sections 503 or 507 of the Bankruptcy Code (other than employee Liabilities assumed by Purchaser pursuant to Section 2.3(a)), to the extent allowed in the Cases;
- (f) all Liabilities for Workers' Compensation Claims pending at the Closing or asserted thereafter;
- (g) all Liabilities to pay for, purchase or acquire assets, supplies or services ordered but not received and consumed by Sellers on or prior to the Closing Date (whether pursuant to purchase orders or otherwise) in the ordinary course of Sellers' business; and
- (h) any Liability of Sellers for indemnification to any officer, director, manager, employee or agent pursuant to any litigation set forth on Schedule 2.3(h) or any other litigation commenced on or after the date hereof and prior to the Closing.

Notwithstanding the foregoing, on or prior to two Business Days prior to the bidding deadline set forth in the Bid Procedures Order, Purchaser shall have the right to reject and not assume some or all of the following Liabilities: (i) Liabilities for any salary, accrued vacation or other employee compensation obligation under clause (a) above, and/or (ii) Liabilities relating to Sellers' indemnification obligations to any officer, director, manager, employee or agent under clause (h) above. Sellers shall promptly provide all information and materials reasonably requested by Purchaser relating to these Liabilities and shall otherwise cooperate and assist Purchaser, at Purchaser's request, in evaluating these Liabilities, including, without limitation, providing Purchaser with a detailed accounting of the cash value of such Liabilities. Purchaser shall deliver Sellers written notice on or prior to two Business Days prior to the bidding deadline set forth in the Bid Procedures Order of any Liability with respect to which it elects to exercise its rights under the preceding sentence to reject and not assume (in which case, any such Liability shall be an Excluded Liability).

In addition, and notwithstanding anything to the contrary contained herein, the dollar amount of the liabilities to be assumed by Purchaser under Section 2.3(e) above for claims that have statutory priority pursuant to sections 503 and 507 of the Bankruptcy Code shall in no event exceed (x) the amount of the Restricted Cash released to Purchaser in connection with the Restricted Cash Financing less (y) the amount payable by Purchaser pursuant to Section 2.5(b) below.



2.4. Excluded Liabilities. Under no circumstance shall Purchaser assume or be obligated to pay, and none of the Assets shall be or become liable for or subject to, any of the Excluded Liabilities, including, but not limited to, the following liabilities, which shall be and remain Liabilities of Sellers:

- (a) Liabilities which are not Assumed Liabilities;
- (b) Liabilities associated with any Excluded Assets;
- (c) Liabilities associated with any and all indebtedness of any Seller for borrowed money not included in the Assumed Liabilities;
- (d) Liabilities arising out of or in connection with claims, litigation and proceedings (whether instituted prior to or after Closing) for acts or omissions that occurred, or arise from events that occurred, prior to the Closing Date (other than as set forth in Section 2.3(h) hereof);
- (e) Liabilities arising out of any CBAs;
- (f) Liabilities arising out of any Benefit Plans, other than the Seller Assumed Plans and any other Benefit Plan that Purchaser expressly agrees to assume in its sole discretion pursuant to a written amendment to Section 2.3 above;
- (g) penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation by any Seller of any Law prior to the Closing Date;
- (h) Liabilities arising out of or resulting from layoffs or termination of employees by any Seller prior to Closing and/or the consummation of the Transactions sufficient in the aggregate to require notice under the WARN Act; and
- (i) all Liabilities for expenses (i) relating to the negotiation and preparation of this Agreement and (ii) relating to the Transactions, in each case to the extent incurred by Sellers and including those related to legal counsel, accounting, brokerage and investment advisors fees and disbursements.

2.5. Purchase Price.

- (a) The aggregate purchase price for the Assets shall equal \$30,000,000.00 (the “Base Purchase Price”), exclusive of and in addition to the assumption of the Assumed Liabilities, (i) plus the amount (the “Additional Purchase Price”) by which the Restricted Cash exceeds the sum of (x) the Assumed Liabilities described in Section 2.3(e) above with respect to statutory priority pursuant to sections 503 or 507 of the Bankruptcy Code, to the

extent allowed in the Cases, and (y) the payment to be made pursuant to Section 2.5(b) below (it being acknowledged and agreed that the Restricted Cash shall be used to satisfy the obligations in clauses (x) and (y) hereof), and (ii) less the amount of any Disputed AP as of the Closing Date. The Base Purchase Price shall be payable in immediately available funds on behalf of Sellers to the Senior Agent for the benefit of the Senior Lenders and the Additional Purchase Price shall be payable in immediately available funds to Sellers, each in accordance with the wire instructions to be delivered by Sellers to Purchaser prior to the Closing; and

(b) In addition, Purchaser shall pay from the Restricted Cash the amount of the Unsecured Creditor Fund (as defined in the Plan), which amount shall not exceed the amount of the Restricted Cash released to Purchaser in connection with the Restricted Cash Financing less the amount of Assumed Liabilities under Section 2.3(e), in immediately available funds to the Liquidation Trustee on behalf of Sellers in accordance with the wire instructions to be provided by the Liquidation Trustee to Purchaser at or before Closing.

2.6. Purchaser Deposit. Simultaneously with the execution of this Agreement, pursuant to the terms of an escrow agreement substantially in the form attached hereto as Exhibit B (the "Deposit Escrow Agreement"), Purchaser is depositing with the escrow agent under the Deposit Escrow Agreement (the "Deposit Escrow Agent") the sum of \$3,000,000 by certified check or wire transfer of immediately available funds (the "Purchaser Deposit Amount"), to be released by the Escrow Agent and delivered to either Purchaser or Sellers in accordance with the provisions of the Deposit Escrow Agreement and the terms of this Agreement as follows:

(a) If the Closing shall occur, the Purchaser Deposit Amount, together with all accrued interest and investment income thereon, shall be applied in accordance with Section 11.1(b) below towards the Purchase Price payable by Purchaser under Section 2.5(a) hereof;

(b) If this Agreement is terminated by Sellers pursuant to Section 11.2(e), the Purchaser Deposit Amount, together with all accrued interest and investment income thereon, shall be delivered to Sellers. Sellers' right to the Purchaser Deposit Amount shall be in lieu of any and all other rights and remedies that Seller may otherwise have against Purchaser on account of, and in full satisfaction of, any breach, violation or default by Purchaser under this Agreement; and

(c) If this Agreement is terminated for any reason other than by Sellers pursuant to Section 11.2(e), the Purchaser Deposit Amount, together with all accrued interest and investment income thereon, shall be returned to Purchaser and, if payable pursuant to the terms hereof, Purchaser shall be paid the Breakup Fee and Expense Reimbursement, in lieu of any and all other remedies that Purchaser may otherwise have against Sellers on account of, and in full satisfaction of, any breach, violation or default by Sellers under this

Agreement.

2.7. Allocation of Purchase Price. To the extent required by Law, promptly following the Closing Date, Purchaser and Sellers shall prepare and file those statements or forms (including Form 8594) required by Section 1060 of the Code and the Treasury regulations thereunder and shall file such statements or forms with their respective applicable federal income Tax Returns due after the Closing Date. The parties shall prepare such statements or forms consistently with the allocation of all or a portion of the Purchase Price plus the Assumed Liabilities among the Assets as proposed by Purchaser and consented to by Sellers (which such consent shall not be unreasonably withheld, conditioned or delayed) prior to the Closing. Each party shall provide the other party with a copy of such statements or forms as filed. Each party agrees that it shall take no position with respect to the allocation of the Purchase Price that is adverse to any other party.

2.8. Sale at Closing Date. The sale, transfer, assignment, conveyance and delivery by Sellers of the Assets to Purchaser and the assumption by Purchaser of the Assumed Liabilities, as provided herein and in the Ancillary Agreements, shall be effected on the Closing Date by (i) the execution and delivery by Sellers and Purchaser of the Assignment and Assumption Agreement with respect to the Assumed Contracts and the Assumed Liabilities, (ii) the execution and delivery by Sellers to Purchaser of Deeds with respect to the Transferred Real Property, (iii) the execution and delivery by Sellers of the Trademark Assignment with respect to Sellers' registered trademarks, and (iv) the execution and delivery by Sellers to Purchaser of the Bill of Sale with respect to all of the Assets other than the Assumed Contracts and the Transferred Real Property.

2.9. Excluded Assets and Liabilities. Notwithstanding anything to the contrary contained herein, Purchaser shall not purchase any of the Excluded Assets nor assume any liability for any of the Excluded Liabilities.

### **SECTION 3** **REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers hereby jointly and severally represent and warrant to Purchaser as follows:

3.1. Organization and Good Standing. Schedule 3.1 sets forth for each Seller its name and jurisdiction of organization. Each Seller is (a) validly existing and in good standing under the laws of the jurisdiction of its organization and (b) duly qualified to do business and in good standing in each jurisdiction in which the ownership, use or leasing of its assets and properties, or the conduct or nature of its business, makes such qualification, licensing or admission necessary, except for such failures to be so qualified, licensed or admitted and in good standing which, individually or in the aggregate, would have a Material Adverse Effect.

3.2. Authorization. Subject to entry of the Confirmation Order, each Seller has all requisite power and authority to execute and deliver, and carry out its obligations under, this

Agreement and the Ancillary Agreements and consummate the Transactions, and is not under any prohibition or restriction, contractual, statutory or otherwise, against doing so. Each of this Agreement and the Ancillary Agreements has been or will be duly executed and delivered by each Seller and, assuming due authorization, execution and delivery by Purchaser, constitutes or will constitute the legal, valid and binding obligation of such Seller, enforceable against it in accordance with its terms, subject to entry of the Confirmation Order.

3.3. No Conflicts. Subject to entry of the Confirmation Order and approval, if required, under the HSR Act and other than as set forth on Schedule 3.3 hereto, the execution, delivery and performance by each Seller of this Agreement and each of the Ancillary Agreements and the consummation by each Seller of the Transactions shall not, with or without the giving of notice or lapse of time, (i) violate any provision of the Organizational Documents of such Seller, (ii) violate any Law to which such Seller is subject, (iii) conflict with, result in any violation of any term or condition of, result in a breach or termination of, or constitute a default under any Contract to which such Seller is a party or result in the creation of any Encumbrance upon any of the Assets (including any Assumed Contract), or (iv) conflict with, or result in a breach or default under, any term or condition of any other agreement or other instrument to which such Seller is a party or by which such Seller is bound, except as would not have a Material Adverse Effect.

3.4. Consents and Approvals. Subject to entry of the Confirmation Order and approval, if required, under the HSR Act and other than as set forth on Schedule 3.4 hereto, the execution, delivery and performance by each Seller of this Agreement and the Ancillary Agreements and the consummation of the Transactions do not require the consent or approval of, or filing with, any Governmental Authority.

3.5. Compliance with Law.

(a) Sellers are in compliance with Sellers' Organizational Documents and with all Laws relating to the Assets, except as would not have a Material Adverse Effect on the Sellers or the Assets.

(b) Schedule 3.5(b) sets forth a true and complete list of all material approvals, permits, certificates, qualifications, authorizations, licenses, franchises, consents, orders and registrations, together with all modifications, amendments, supplements and extensions thereof, of all United States federal, state and local Governmental Authorities and any other Person that are necessary for Sellers to own the Assets (collectively, the "Permits"). To Sellers' knowledge, the Permits are valid and in full force and effect and are fully and freely transferable by Sellers to Purchaser except as would not have a Material Adverse Effect. Except as set forth on Schedule 3.5(b), none of the Permits shall be terminated or become terminable as a result of the Transactions.

3.6. Title to Assets. Except as set forth in Schedule 3.6 hereto, Sellers are the owners of

the Assets as of the date hereof. Subject to entry of the Confirmation Order, Sellers have, and at the Closing Purchaser shall receive, good, valid and marketable title to the Assets, free and clear of any and all Encumbrances except for the Permitted Encumbrances. The Assets consisting of personal property are in good operating condition and repair (reasonable wear and tear excepted), are suitable for the purposes for which they are presently used and presently proposed to be used and are located at the Real Property. At Closing, this Agreement and the Ancillary Agreements will effectively vest in Purchaser all of Sellers' right, title and interest in the Assets and Purchaser will require no material assets other than the Assets in order to conduct the Business as conducted by Seller immediately prior to Closing. No Seller has taken any action, or failed to take any action, which action or failure would preclude or prevent Purchaser as a legal matter from conducting the Business in the manner now conducted (subject to the Excluded Real Property). No Asset is subject to any agreement, written or oral, for its sale or use by any Person other than Sellers.

3.7. Intentionally omitted.

3.8. Litigation. No lawsuit, governmental investigation or legal, administrative or arbitration action or proceeding is pending or, to the best of Sellers' knowledge, has been threatened against any Seller, or any director or officer of any Seller in his or her capacity as such, which questions the validity of this Agreement or seeks to prohibit, enjoin or otherwise challenge the consummation of the Transactions, or which relates to, or could have a Material Adverse Effect on, the Assets.

3.9. Intellectual Property. Except as would not have a Material Adverse Effect, one or more Sellers own, or is licensed or otherwise possesses legally enforceable rights to use, all material trademarks, trade names, service marks, service names, mark registrations, logos, assumed names, registered and unregistered copyrights, patents or applications and registrations used in the Business as currently conducted (collectively, the "Intellectual Property"). Except as would not have a Material Adverse Effect, (a) as of the date hereof, there are no pending or, to the best of Sellers' knowledge, threatened claims by any Person alleging infringement of any material Intellectual Property rights of any Person by Sellers as a result of their use of the Intellectual Property used in the Business, (b) to the best of Sellers' knowledge, the conduct of the Business does not infringe any material intellectual property rights of any Person, (c) no Seller has made any claim of a violation or infringement by others of its rights to or in connection with the Intellectual Property included in the Assets, and (d) to the best of Sellers' knowledge, no person is infringing any Intellectual Property included in the Assets.

3.10. Material Contracts. True and complete copies (including all modifications, amendments and supplements) of each of the Material Contracts have been made available by Sellers to Purchaser. Except as has not had or would not have a Material Adverse Effect, or as would be cured pursuant to this Agreement and the Plan, no Seller and, to the best of Sellers' knowledge, no other party to any Material Contract is in default, violation or failure to perform under any Material Contract. To the best of Sellers' knowledge, no Seller has assigned, delegated or

otherwise transferred to any third party any of its rights or obligations with respect to any Material Contract. To the best of Sellers' knowledge, no party to any of the Material Contracts has threatened or is intending to cancel, terminate, materially alter, or not renew any of the Material Contracts.

3.11. Real Property. Schedule 3.11 sets forth a list of real property currently owned ("Owned Real Property") or leased by Sellers and used in the operation of the Business. Except as would not have a Material Adverse Effect, one or more Sellers own and has valid title to all of the Owned Real Property and has valid leasehold interests in all of the leased properties used in the operation of the Business, free and clear of any and all Encumbrances (except for Permitted Encumbrances). Except as would not have a Material Adverse Effect, to Sellers' knowledge, each material lease agreement to which any Seller is a party is valid and enforceable and no Seller is in default under any such agreement other than as would be cured pursuant to this Agreement and the Plan, and no circumstances exist which, with notice, the passage of time or both, would reasonably be expected to constitute a default by any Seller under any such lease agreement.

3.12. No Broker or Finder. Except for Sonenshine Partners, no broker, finder or financial advisor has been engaged by any Seller in connection with the Transactions.

3.13. Insurance. All insurance policies maintained by Sellers are with reputable insurance carriers, and provide coverage appropriate in character and amount for the Assets. Each such insurance policy is in full force and effect, and all premiums due and payable in respect thereof have been paid.

3.14. Financial Statements. Sellers have delivered to Purchaser the consolidated balance sheet of Sellers as of, and consolidated statements of earnings and retained earnings and cash flows for the fiscal years ended, December 28, 2008 and December 30, 2007 (collectively, the "Fiscal Year Financial Statements"). The Fiscal Year Financial Statements have been prepared in accordance with GAAP consistently applied in accordance with Sellers' past practice throughout the periods indicated. Sellers have also delivered to Purchaser an unaudited balance sheet for Sellers as of June 28, 2009 (the "Stub Period Balance Sheet") and the related income statement for the six (6)-month period then ending (collectively, the "Stub Period Financial Statements"). The Stub Period Financial Statements have been prepared in accordance with GAAP consistently applied in accordance with Sellers' past practice except for the absence of footnotes and customary year-end adjustments. The Fiscal Year Financial Statements and the Stub Period Financial Statements (together the "Financial Statements") (a) are true, correct and complete in all material respects, (b) are in accordance in all material respects with the books and records of Sellers, and (b) fairly present in all material respects the financial position of Sellers at the dates specified and the results of their operations for the period covered. The copies of the Financial Statements delivered to Purchaser are true, correct and complete copies. Except as set forth on Schedule 3.14, at June 28, 2009 (the "Stub Period Date"), Sellers did not have any material liabilities or obligations of any kind or nature which are not fully reflected in accordance with GAAP on the Stub Period Balance Sheet. Except as set



forth on Schedule 3.14, Sellers have not guaranteed any obligation of any other Person.

3.15. Absence of Certain Changes. Except as set forth on Schedule 3.15, from February 22, 2009 to the date hereof, taking into account Sellers' bankruptcy filing and the supervision of Sellers by the Bankruptcy Court, the Business has been conducted by Sellers in the ordinary and usual course and specifically but without limitation, there has not been any:

(a) damage, destruction or other casualty loss to any of their assets (whether or not covered by insurance);

(b) material increase in the compensation payable or to become payable by any Seller to any employee or material increase in any bonus, insurance, pension or other employee benefit plan (including material increases in benefits or employer costs associated with any such pension or other employee benefit plans), payment or arrangement made by any Seller for or with respect to any employee, except for compensation increases in the ordinary course of business consistent with past practice of Sellers or as required by law;

(c) labor dispute, or any activity or proceeding by a labor union or representative thereof to organize any employees, or lockouts, strikes, slowdowns, work stoppages or threats thereof by or with respect to any such employees;

(d) obligation or liability incurred by any Seller, or creation or assumption by any Seller of any Encumbrance on any Asset, or making of any loan, advance or capital contribution to or investment in any Person, except in the ordinary course of business consistent with past practice of Sellers;

(e) declaration, setting aside or payment of any dividend or other distribution in respect of capital stock or any other security of any Seller, or direct or indirect redemption, purchase or other acquisition of capital stock or any other security of Sellers;

(f) payment, discharge or satisfaction of any obligation or liability of any Seller, other than in the ordinary course of business consistent with past practice of Sellers;

(g) sale, transfer, or other disposition of any tangible or intangible asset of any Seller, other than in the ordinary course of business consistent with past practice of Sellers;

(h) change in the accounting methods or practices followed by Sellers;

(i) cancellation of any indebtedness or claims, or termination or waiver of any rights of any Seller, other than in the ordinary course of business consistent with past practice of Sellers;

(j) disposal or lapse of any material Intellectual Property owned by Sellers;

(k) assignment, lapse, cancellation, sale or other disposition of any rights or interests of any Seller under any Material Contract; or

(l) agreement entered into by any Seller (other than any arrangement provided for in this Agreement) to take any of the actions specified in the foregoing subsections (a) through (k).

3.16. Taxes. Each Seller has filed all Tax Returns required to be filed by it on or before the Closing Date with any Taxing Authority (collectively, the “Pre-Closing Returns”). The Pre-Closing Returns have been filed in accordance with all applicable Laws and, as of the time of filing, were correct and complete in all material respects regarding the income, costs, business, assets, operations, activities and status of Sellers and any other items of information shown therein. Each Seller has timely paid, withheld or reserved all Taxes shown as due and payable in the Pre-Closing Returns except for such Taxes that are being contested in good faith by appropriate proceedings and which are listed on Schedule 3.16. No Seller is delinquent in the payment of any Tax due and payable as shown on any Pre-Closing Return, nor, except as set forth on Schedule 3.16, has any Seller requested an extension of time within which to file or send any Pre-Closing Return which has not since been filed or sent. Except as set forth on Schedule 3.16, no Seller has granted any extension or waiver of the limitation period applicable to any Pre-Closing Returns to any Taxing Authority. There is no claim, audit, action, suit, proceeding, or investigation pending or, to the knowledge of Sellers, threatened, against or with respect to any Seller in respect of any Tax except as set forth on Schedule 3.16. No Seller has a pending request for a ruling with any Taxing Authority. Except as set forth on Schedule 3.16, there are no liens for Taxes upon the assets of Sellers except liens for current Taxes not yet due or as set forth on Schedule 3.16. Since its organization, no Seller has been a member of an affiliated group filing any return with any Taxing Authority (except with respect to any other Sellers), or filed or been included in a combined, consolidated or unitary return. No Seller is under any contractual obligation to indemnify any other Person (other than another Seller) with respect to Taxes nor, except as set forth on Schedule 3.16 is any Seller a party to any material agreement providing for payments with respect to Taxes.

3.17. Collective Bargaining Agreements, Employment Agreements, etc.

(a) Schedule 3.17 lists all employee benefit plans, all union, collective bargaining or other employee association agreements, and all other written agreements (in each case, other than the Benefit Plans set forth on Schedule 3.18(a)) providing for any material salary, bonus, benefits, perquisites, severance, management fees or other compensation relating to service to be paid to any director, officer, employee or independent contractor (other than for professional services) of Sellers.

(b) No Seller (i) has breached or otherwise failed to comply in any material respect with any provision of any plan or agreement set forth on Schedule 3.17, (ii) has employees organized as a bargaining unit or the like by any labor organization except as

disclosed on Schedule 3.17, (iii) is and has been within the last two (2) years, subject to any unfair labor practice complaints before the National Labor Relations Board or is subject to any current union representation questions involving any employees, (iv) is or has been within the last two (2) years subject to any activities or proceedings of any labor union (or representatives thereof) to organize any unorganized employees, and (v) is or has been within the last two (2) years subject to any strikes, organized slowdowns, work stoppages or lockouts.

(c) No Seller is in violation in any material respect, and no Seller has received within the last two (2) years written notice of any claim with respect to a material violation or alleged material violation, of any federal or state civil rights law, the Fair Labor Standards Act, as amended, the Age Discrimination in Employment Act, as amended, the National Labor Relations Act, as amended, the Occupational Safety and Health Act, as amended, the Americans with Disabilities Act, as amended, ERISA (with respect to the Seller Assumed Plans), or the Vocational Rehabilitation Act of 1973, as amended.

3.18. Employee Benefit Plans.

(a) Schedule 3.18(a) lists all: (i) employee pension or welfare benefit plans (as defined in Section 3(2) and 3(1) of ERISA), respectively, (A) which were maintained or administered by any Seller, or any entity that along with any Seller is treated as a “single employer” under Section 414 of the Code (“ERISA Affiliates”) within the last two (2) years; (B) to which any Seller or any ERISA Affiliate contributed, or was legally obligated to contribute, within the last two (2) years; or (C) under which any Seller or any ERISA Affiliate had any liability within the last two (2) years, with respect to its current or former employees, and (ii) all other material plans or arrangements maintained by Sellers for the benefit of current or former employees, their beneficiaries or dependents (collectively, the “Benefit Plans”).

(b) Except as set forth on Schedule 3.18(b), no Seller has contributed and does not now contribute to any “multiemployer plan” within the meaning of Section 4201 of ERISA nor incurred any withdrawal liability within the meaning of Section 4201 of ERISA with respect to any multiemployer plan.

(c) With respect to each Seller Assumed Plan, Sellers have delivered to Purchaser a true and correct copy of (i) the annual reports (Form 5500), if any, filed with the IRS or the United States Department of Labor for the most recent plan year, (ii) the plan document(s) and, all amendments thereto, if any, and all summary plan descriptions, summaries of material modifications, sample enrollment forms and copies or samples of all other administrative documents for such Seller Assumed Plan, and (iii) each trust agreement, group annuity contract and insurance policy, if any, relating to such Seller Assumed Plan. Except as set forth on Schedule 3.18(c), each Seller Assumed Plan (A) has been

administered in all material respects in accordance with its terms and (B) complies in all material respects in form with, and has been operated and administered in all material respects in accordance with, any and all applicable laws, including ERISA and the Code. Each Seller Assumed Plan and each trust (in each case including any amendments to such plans) that is intended to qualify under Section 401(a) and 501(a) of the Code is covered by a favorable determination or opinion letter from the IRS that remains in effect on the date hereof, and remains current with respect to any actual or legally required plan amendment for which the applicable remedial amendment period under IRS Revenue Procedure 2007-44 has expired.

(d) Except as set forth on Schedule 3.18(d), all contributions and premiums required by law under any Seller Assumed Plan or by the terms of any Seller Assumed Plan or any agreement relating thereto have been timely made.

(e) Except as set forth on Schedule 3.18(e), with respect to the Seller Assumed Plans, individually and in the aggregate, to the knowledge of Sellers, no event has occurred that could subject any Seller or any of its ERISA Affiliates to any material liability under ERISA, the Code or any other applicable Law, including any “prohibited transaction” (as defined in Section 406 of ERISA and Section 4975(c) of the Code).

(f) There are now, and during the two (2) years preceding the date of this Agreement there were, no material pending legal proceedings against any Seller Assumed Plan, the assets of any such plan or against Sellers, the plan administrator, or fiduciary of any Seller Assumed Plan with respect to the operation of any such plan (other than routine benefit claims), and, to the knowledge of Sellers, there are no facts or circumstances which could form the basis for any such legal proceedings. To the knowledge of Sellers, neither Sellers nor any fiduciary of any Seller Assumed Plan has engaged in any material nonexempt prohibited transaction described in Section 406 of ERISA or Section 4975 of the Code, or is in default with respect to any order, writ, judgment or decree of any court or governmental department, bureau, agency or instrumentality, with respect to any Seller Assumed Plan insofar as it relates to any current or former employee.

(g) Except as set forth on Schedule 3.18(g), Sellers have at all times complied with the requirements of COBRA and Schedule 3.18(g) lists all of the individuals covered under any health care plan of Sellers pursuant to COBRA, the date for each such individual when COBRA coverage began.

(h) Except as set forth on Schedule 3.18(h), Sellers have no obligations under any of the Seller Assumed Plans to provide health or life insurance benefits to former employees (or their beneficiaries or dependents) for periods after termination of employment, except as specifically required by COBRA or any other applicable state or Federal law.

3.19. Environmental Warranties. Except as set forth on Schedule 3.19, since June 26, 2006:

(a) All facilities and property (including underlying ground water) owned, leased, or used by Sellers in connection with the Business have been, and continue to be, owned, leased and used by Sellers in compliance in all material respects with all Environmental Laws.

(b) There have been no past, pending or, to the knowledge of Sellers, threatened, (i) claims, complaints, notices or requests for information received by Sellers with respect to any alleged violation of any Environmental Law by any Seller, or (ii) complaints, notices or inquiries to any Seller regarding potential liability under any Environmental Law in respect of premises occupied by any Seller or any Seller's operations.

(c) There have been no releases of Hazardous Materials at, on or under any property now or previously owned or leased or otherwise used, by any Seller while owned, leased, or used by a Seller which would violate in any material respect any Environmental Laws.

(d) Sellers have been issued, and have been in material compliance with, all material permits, certificates, approvals, licenses and other authorizations relating to environmental matters that are necessary for the conduct of the Business.

(e) No property now or previously owned, leased or otherwise used by any Seller has been listed or, to the knowledge of Sellers, proposed for listing (with respect to owned property only) on the National Priorities List pursuant to CERCLA, on the Comprehensive Environmental Response Compensation Liability Information System List ("CERCLIS") or on any similar state list of sites requiring investigation or clean-up.

(f) To the knowledge of Sellers, there have been no underground storage tanks, active or abandoned, including petroleum storage tanks, on or under any property now or previously owned, leased or otherwise used by any Seller.

(g) To the knowledge of Sellers, Sellers have not directly transported or directly arranged for the transportation of any Hazardous Material to any location which is listed or proposed for listing on the National Priorities List pursuant to CERCLA, on the CERCLIS or on any similar state list, or which is the subject of federal, state or local, enforcement actions or other investigations which may lead to any material claims against any Seller for any remedial work, damage to natural resources or personal injury, including claims under CERCLA.

(h) To the knowledge of Sellers, there have been no polychlorinated biphenyls or friable asbestos present at any property now or previously owned, leased or otherwise used,

by any Seller.

3.20. Restricted Cash. Schedule 3.20 attached hereto sets forth the amount of Restricted Cash and the name and address of the party holding such Restricted Cash.

3.21. Accounts Receivable. Each accounts receivable that constitutes an Asset is a true and correct statement of the account for goods delivered to or services actually performed for and accepted by, such account debtor.

3.22. Transactions with Certain Persons. Except as set forth on Schedule 3.22, no Affiliate of any Seller is currently a party to any Contract with any Seller.

3.23. All Material Information. No representation or warranty made herein by Sellers and no statement contained in any schedule or certificate furnished or to be furnished to Purchaser by Sellers in connection with the transactions contemplated by this Agreement contains or shall contain an untrue statement of a material fact or omits to state any material fact necessary in order to make any representation, warranty, or other statement of Sellers not misleading.

3.24. Employees. Schedule 3.24 is a complete and correct list of the names and annualized compensation, bonus, commission, other consideration, and material perquisite arrangements, written or unwritten, for each current employee of each Seller whose aggregate annual compensation equals or exceeds \$200,000.

3.25. Disclaimer of Other Representations and Warranties. Except as expressly set forth in this Section 3, Sellers make no representation or warranty, statutory, express or implied, at law or in equity, in respect of Sellers or any of their assets, liabilities or operations, and any such other representations or warranties are hereby expressly disclaimed, and there are no other warranties, statutory, express or implied that extend beyond the warranties contained in this Agreement. Purchaser hereby acknowledges and agrees that, except to the extent specifically set forth in this Section 3, Purchaser is purchasing the Assets on an "as-is, where-is" basis and "with all faults."

#### **SECTION 4**

#### **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Sellers as follows:

4.1. Organization and Good Standing. Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power and authority to enter into and carry out its obligations under this Agreement.

4.2. Authorization. Purchaser has all requisite power and authority to execute and deliver and carry out its obligations under this Agreement and the Ancillary Agreements, and consummate the Transactions, and is not under any prohibition or restriction, contractual, statutory or otherwise,



against doing so. Each of this Agreement and the Ancillary Agreements has been or will be duly executed and delivered by Purchaser and, assuming due authorization, execution and delivery by each Seller, constitutes or will constitute the legal, valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other Laws affecting the rights of creditors generally and by general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

4.3. No Conflicts. Subject to approval, if required, under the HSR Act, the execution, delivery and performance by Purchaser of this Agreement and the consummation by Purchaser of the Transactions shall not, with or without the giving of notice or lapse of time, (i) violate any provision of the Organizational Documents of Purchaser, (ii) violate any Law to which Purchaser is subject, or (iii) conflict with, or result in a breach or default under, any term or condition of any other agreement or other instrument to which Purchaser is a party or by which Purchaser is bound.

4.4. Consents and Approvals. Subject to entry of the Confirmation Order and approval, if required, under the HSR Act, the execution, delivery and performance by Purchaser of this Agreement and the Ancillary Agreements and the consummation of the Transaction do not require the consent or approval of, or filing with, any Governmental Authority.

4.5. Litigation. No lawsuit, governmental investigation or legal, administrative or arbitration action or proceeding is pending or, to the best of Purchaser's knowledge, has been threatened against Purchaser, or any director or officer of Purchaser in his or her capacity as such, which questions the validity of this Agreement or seeks to prohibit, enjoin or otherwise challenge the consummation of the Transactions or would otherwise have a material adverse effect on Purchaser's ability to finance or otherwise consummate the Transactions.

4.6. No Broker or Finder. No broker, finder or financial advisor has been engaged by Purchaser in connection with the Transactions.

4.7. Capital Resources. True, accurate and complete copies of executed equity commitment letters in the form of Exhibit C hereto to provide equity financing to Purchaser to provide funding for the Purchase Price have been delivered to Sellers prior to the date hereof. As of the date hereof, each of the foregoing commitment letters, in the form so delivered, is a legal, valid and binding obligation of the parties thereto. As of the date hereof, each of the foregoing commitment letters is in full force and effect and has not been withdrawn or terminated (and no party thereto has indicated an intent to so withdraw or terminate) or otherwise amended or modified in any respect and Purchaser is not in breach of any of the terms or conditions set forth therein.

4.8. Purchaser not a Plan. Purchaser is not an "employee benefit plan" as defined in ERISA, whether or not subject to ERISA, or a "plan" as defined in Section 4975 of the Code and none of Purchaser's assets constitutes (or is deemed to constitute for purposes of ERISA or Section

4975 of the Code, or any substantially similar federal, state or municipal law) “plan assets” for purposes of 29 CFR Section 2510.3-101, as amended by Section 3(42) of ERISA or otherwise for purposes of ERISA or Section 4975 of the Code.

4.9. **“AS IS” TRANSACTION.** PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE ASSETS. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ASSETS. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE ASSETS AS PERMITTED IN THE SHORTENED TIME-FRAME OF THIS ASSET PURCHASE PROCESS AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, PURCHASER WILL ACCEPT THE ASSETS AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.”

## **SECTION 5** **CERTAIN COVENANTS OF SELLERS**

5.1. **Plan and Confirmation Order.** Within 10 days after the execution of this Agreement, Sellers shall file with the Bankruptcy Court the Plan, the Disclosure Statement, the Bid Procedures Motion and the Scheduling Motion and shall commence the prosecution of the confirmation of the Plan pursuant to the Confirmation Order.

5.2. **Provision of Records.** Sellers shall arrange at Purchaser’s cost as soon as practicable following the Closing Date for transportation to Purchaser of the documents in the possession of any Seller relating to the Assets, to the extent not previously delivered in connection with the Transactions, including all agreements and filings with Governmental Authorities, but excluding documents relating to the Excluded Assets or the Excluded Liabilities.

5.3. **Receipt of Property Relating to Assets.** If any of the Sellers or any of their respective Affiliates, or any other Person acting for or in concert with any of the foregoing Persons, shall receive any money, check, note, draft, instrument, payment or other property as proceeds of the Assets or the Assumed Liabilities or any part thereof, each such Person shall receive all such items in trust for, and as the sole and exclusive property of, Purchaser and, immediately upon receipt thereof, shall notify Purchaser in writing of such receipt and shall remit the same (or cause the same to be remitted) to Purchaser in the manner specified by Purchaser.

5.4. Conduct of Business Pending the Closing.

(a) From the date hereof through the Closing Date or the earlier termination of this Agreement (the "Pre-Closing Period"), except as may be expressly permitted or contemplated by this Agreement or as otherwise agreed to in writing by Purchaser, each Seller shall continue to operate its business in the ordinary course (it being understood that such ordinary course may take into account the fact that the Business is being operated while in bankruptcy) and as a Debtor and Debtor-in-Possession in the Cases. Without limiting the generality of the foregoing, during the Pre-Closing Period, except as may be expressly permitted or contemplated by this Agreement or as otherwise agreed to in writing by Purchaser, no Seller shall:

(i) sell (including by sale-leaseback), lease, transfer, license (whether on an exclusive or non-exclusive basis), mortgage or otherwise dispose of, encumber or subject to any Encumbrance, any Assets or interests therein;

(ii) fail to maintain in full force and effect any policy of insurance covering the Assets;

(iii) incur or permit the incurrence of any Liability that would constitute an Assumed Liability, except in the ordinary course of business;

(iv) enter into any contract, license or other agreement that contains any provision that, as a result of the consummation of the Transactions, would (assuming that the other party's consent or approval is not obtained, to the extent required) result in any penalty, additional payments or forfeiture that would be payable or sufferable by Purchaser on or after the Closing Date;

(v) except as previously disclosed to or known by Purchaser, materially modify, amend, supplement or terminate any Assumed Contract;

(vi) except as would not adversely affect Purchaser, change any method of Tax accounting, make any material Tax election, file any Tax Return other than in a manner consistent with past practice, or settle any material Tax claim;

(vii) (A) perform any act which would cause (1) any representation, warranty, covenant, condition or agreement of Sellers in this Agreement that is qualified by materiality or Material Adverse Effect to be or become untrue in any respect or (2) any representation, warranty, covenant, condition or agreement of Sellers in this Agreement that is not qualified by materiality or Material Adverse Effect to be or become untrue in any material respect, or (B) intentionally omit to take any action necessary to prevent (1) any such representation, warranty, covenant, condition or agreement that is qualified by materiality or Material Adverse Effect

from being or becoming untrue in any respect or (2) any such representation, warranty, covenant, condition or agreement that is not qualified by materiality or Material Adverse Effect from being or becoming untrue in any respect;

(viii) fail to comply in any material respect with any Law applicable to the Assets or Permits, except in connection with the filing of the Cases or as permitted by the Bankruptcy Court;

(ix) waive or compromise any material claim or right with respect to any of the Assets or fail to renew any Permit;

(x) collect or discount any accounts receivable other than in the ordinary course of business; or

(xi) authorize any of, or commit or agree to take any of, the foregoing actions.

(b) Sellers shall promptly notify Purchaser in writing of (i) any event known to any Seller which would render any representation or warranty of any Seller contained in this Agreement, if made on or prior to the Closing Date, untrue or inaccurate in any material respect, (ii) any change, condition or event known to any Seller that has or could reasonably be expected to have a Material Adverse Effect on the Assets or (iii) any failure of a Seller to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied hereunder.

(c) In addition, during the Pre-Closing Period, Sellers shall (i) collect their accounts receivable consistent with their past practices and in the ordinary course of business and (ii) promptly and timely pay their accounts payable consistent with their past practices and in the ordinary course of business, but no later than on "net 30 day" terms, other than such accounts payable or the applicable portion thereof that Sellers are contesting in good faith by appropriate proceedings (such accounts payable, the "Disputed AP"). Sellers shall provide Purchaser with a detailed accounting of all Disputed AP at Purchaser's request.

5.5. Access to Information. Upon reasonable notice by Purchaser, Purchaser and its representatives shall have reasonable access during normal business hours throughout the period from the date hereof through the Closing Date, or the earlier termination of this Agreement in accordance with its terms, to the Assets and documents relating thereto, and during such period Sellers shall furnish promptly to Purchaser, at Purchaser's expense, all information concerning the Assets as Purchaser may reasonably request. Sellers shall provide or cause to be provided to Purchaser, at Purchaser's expense, such copies or extracts of documents relating to the Assets as Purchaser may reasonably request. Any inspections, examinations and audits shall be conducted during normal business hours by Purchaser's employees or agents upon reasonable advance notice.

5.6. Bid Procedures Order. Each Seller shall use its commercially reasonable efforts to obtain entry of the Bid Procedures Order by the Bankruptcy Court.

5.7. Transfer of Permits. Except for those Permits that are not transferable by Law, Sellers shall use commercially reasonable efforts to cause the issuance or transfer at Purchaser's expense of all Permits relating to the Assets to Purchaser on or before the Closing Date. Sellers shall give and make all notices and reports Sellers are required to make to the appropriate Governmental Authorities and other Persons, each at Purchaser's expense, with respect to the Permits that may be necessary for the sale of the Assets to Purchaser at the Closing.

5.8. Release of Encumbrances. Sellers' obligation to deliver the Assets free and clear of any Encumbrances (other than Permitted Encumbrances) shall be limited to Sellers' efforts to obtain the Confirmation Order that provides for the delivery of the Assets free and clear of any Encumbrances (other than Permitted Encumbrances). If Purchaser desires to have any Encumbrances released and discharged other than by means of the Confirmation Order, Purchaser, at its sole cost and expense, shall obtain such releases or discharges.

5.9. Further Assurances. Upon the request of Purchaser, each Seller shall, at Purchaser's expense, forthwith execute and deliver such documents as Purchaser or its counsel may reasonably request to effectuate the purposes of this Agreement.

5.10. Assignment of Rights. If, in connection with the Auction or sale referred to in the Bid Procedures Order, Sellers or any of their Affiliates enter into confidentiality or similar agreements with any Person, Sellers shall assign all rights under those agreements to the extent relating to the Business to Purchaser at the Closing and to the extent such rights are assignable.

5.11. Break-Up Fee. Sellers hereby agrees, in the event that a Bankruptcy Court enters an order that becomes final approving a Transaction with a party other than Purchaser and such Transaction is consummated, Sellers shall owe to Purchaser (a) a break-up fee (the "Breakup Fee") in the amount of \$1,000,000, which such amount shall be earned and shall be paid upon consummation of such sale, and (b) an amount equal to all of the out-of-pocket expenses incurred by Purchaser or its Affiliates in connection with the transactions contemplated by this Agreement up to a maximum of \$500,000 (the "Expense Reimbursement"), which amounts shall be paid only upon consummation of such Transaction, without further order of the Bankruptcy Court. The Breakup Fee and Expense Reimbursement are intended to compensate Purchaser and its Affiliates for the time and expense dedicated to this transaction and the value added by Purchaser and its Affiliates in (i) establishing a bid standard or minimum for other bidders, (ii) placing Sellers' estate property in a sales configuration mode attracting other bidders to the auction and (iii) for serving, by its name and its expressed interest, as a catalyst for other potential or actual bidders. The Breakup Fee and Expense Reimbursement shall constitute allowed super priority administrative claims against Sellers' estate under Sections 503(b) and 507(a)(1) of the Bankruptcy Code and in connection with the entry of the order approving any other sale transaction, Purchaser shall be granted a lien on the deposit

made by the alternate purchaser in order to secure the payment of the Breakup Fee and Expense Reimbursement.

5.12. Cure Amounts. Within ten (10) business days of the date hereof, Sellers shall provide Purchaser with a schedule of the true and correct monetary Cure Amounts with respect to each of the Contracts consistent with their books and records.

## **SECTION 6** **CERTAIN COVENANTS OF PURCHASER.**

6.1. Performance with Respect to the Assets and the Assumed Contracts. Purchaser agrees that from and after the Closing Date, that it shall (i) assume all Assumed Liabilities, and (ii) take all actions necessary to satisfy its obligations and liabilities with respect to the Assumed Liabilities (including, without limitation, under the terms and conditions of each Assumed Contract).

6.2. Cure Amounts. Purchaser shall pay all Cure Amounts with respect to the Assumed Contracts within five Business Days from the Closing Date.

6.3. Workers' Compensation. On or before the Closing Date, Purchaser shall either (i) assume Sellers' workers' compensation policies or (ii) arrange for workers' compensation insurance coverage for all of Sellers' employees on terms similar to Sellers' current workers' compensation insurance policies for the period from and after the Closing Date. At the Closing, (1) Purchaser shall post a letter of credit or make other arrangements so that the Restricted Cash held by the providers of workers' compensation insurance to Sellers and by certain credit card companies is released (provided, however, in no event shall Purchaser be required to post a letter of credit or obtain loans or additional equity in an aggregate amount in excess of \$17,400,000)(the "Restricted Cash Financing"), (2) Purchaser shall apply that Restricted Cash to pay the priority claims assumed by Purchaser pursuant to Section 2.3(e) and to make the payment pursuant to Section 2.5(b), and (3) Purchaser shall pay over the excess to Sellers as additional Purchase Price as provided in Section 2.5(a).

6.4. Financing. On or prior to two Business Days prior to the bidding deadline set forth in the Bid Procedures Order, Purchaser shall deliver to Sellers (i) an executed debt commitment letter in form reasonably acceptable to Sellers pursuant to which, and subject to the terms and conditions thereof, certain lenders have committed to provide on behalf of Purchaser the Restricted Cash Financing, and (ii) an executed debt commitment letter in form reasonably acceptable to Sellers pursuant to which, and subject to the terms and conditions thereof, certain lenders have committed to provide Purchaser with loans in an amount of at least \$10,000,000, the proceeds of which may be used to provide working capital to support Purchaser's operations after Closing.

6.5. Equity Ownership. Purchaser shall structure and regulate its ownership for U.S. federal income tax purposes on the Closing Date and thereafter so that the losses incurred by Sellers



from the sale of the Assets to Purchaser are not subject to Section 707(b) of the Code, and Purchaser shall at the Closing provide to Sellers evidence of such ownership. Purchaser's liability for breach of this section 6.5, either before or after the Closing, shall be limited to \$3,000,000.

6.6. Further Assurances. Upon the request of Sellers, Purchaser shall, at Sellers' expense, forthwith execute and deliver such documents as Sellers or their counsel may reasonably request to effectuate the purposes of this Agreement.

## **SECTION 7**

### **CERTAIN MUTUAL COVENANTS**

#### **7.1. Mutual Cooperation.**

(a) Sellers, on one hand, and Purchaser, on the other hand, shall promptly give notice to the other upon becoming aware that any action is pending or threatened by or before any Governmental Authority with respect to the Transactions. Sellers, on the one hand, and Purchaser, on the other hand, (i) shall cooperate with each other in connection with the prosecution, investigation or defense of any such action, (ii) shall supply promptly all information requested by the other, by any such Governmental Authority or by any party to any such action that is legally required to be produced, and (iii) shall each use commercially reasonable efforts to cause any such action to be determined as promptly as practicable and in a manner which does not impact adversely on, and is consistent with, the Transactions.

(b) After the Closing Date, each of Sellers and Purchaser shall use commercially reasonable efforts to provide to any other party to this Agreement (the "Requesting Party") such records and information and to make available to the Requesting Party such employees or other personnel, in each case as may be reasonably requested in writing by the Requesting Party, for the purpose of assisting the Requesting Party in responding to governmental inquiries, making required governmental filings or defending or prosecuting any action or other proceeding involving any Person other than the party providing such information or records or making available such employees or other personnel (the "Providing Party") and in resolving all claims, preparing all tax returns, and handling all matters necessary to administer and close the Cases; provided, however, that no Providing Party shall be required to (i) incur any out-of-pocket expenses, (ii) provide information, records or employees or other personnel under circumstances which the Providing Party believes in its sole reasonable determination may expose it to liability to any Person or may prejudice any commercial, legal or other interest of the Providing Party, or (iii) take any action that in the Providing Party's reasonable determination unreasonably interferes with its business.

(c) Each of Sellers and Purchaser shall use its reasonable best efforts to cooperate, assist and consult with each other to procure the entry of the Bid Procedure Order

and the Confirmation Order (together with the Bid Procedures Order, the “Orders”) as promptly thereafter as practicable. Without limiting the generality of the foregoing, Sellers shall (i) comply with all requirements under the Bankruptcy Code and Federal Bankruptcy Rules in connection with obtaining the Orders, (ii) agree to proceed with the Cases pursuant to and in accordance with the terms and provisions contemplated by the Orders, in each case after the order has been entered by the Bankruptcy Court and (iii) comply or cause the compliance with the notice requirements of the Orders, in each case after the order has been entered by the Bankruptcy Court, and any other applicable order of the Bankruptcy Court as they relate to the Cases, the Federal Bankruptcy Rules (including, without limitation, Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure) and any applicable rules of the Bankruptcy Court with respect to the Transactions contemplated by this Agreement. In the event that the Orders or any other orders of the Bankruptcy Court relating to this Agreement shall be appealed by any party (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such order), Sellers and Purchaser will cooperate in taking such steps diligently to defend against such appeal, petition or motion and Sellers and Purchasers shall use their reasonable best efforts to obtain an expedited resolution of any such appeal, petition or motion. Neither Purchaser nor Sellers shall make any filing in the Bankruptcy Court with respect to the Orders (or otherwise take any position in the Bankruptcy Court proceedings with respect thereto) without the express written consent of the other party, which may not be unreasonably withheld, conditioned or delayed, or otherwise that would be reasonably likely to result in the failure of the transactions contemplated hereby. Notwithstanding anything to the contrary herein, however, nothing shall be deemed to prohibit or otherwise restrain Sellers from accepting a Superior Bid in accordance with the terms of the Bid Procedures Order or Purchaser from making any filing in the Bankruptcy Court to challenge or object to the entry of an order by the Bankruptcy Court approving the entry by Sellers into a Superior Bid.

(d) Subject to the terms and conditions of this Agreement, Sellers and Purchaser shall take all reasonable steps to close the sale of the Assets pursuant to this Agreement on or prior to the Termination Date.

7.2. Approvals and Filings. (a) Subject to the terms and conditions of this Agreement, including the possible closing of a Superior Bid, each of the parties hereto shall use all commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws and regulations to consummate and make effective the Transactions, including using commercially reasonable efforts to obtain all necessary or appropriate waivers, consents and approvals, and effecting all necessary registrations and filings. Purchaser shall make or cause to be made all filings and submissions under Laws applicable to Purchaser, if any, as may be required for the consummation of the Transactions. Sellers shall make or cause to be made all such other filings and submissions under Laws applicable to any Seller, if any, as may be required for the

consummation of the Transactions. Purchaser, on the one hand, and Sellers, on the other hand, shall coordinate and cooperate in exchanging such information and reasonable assistance as may be requested by either of them in connection with the filings and submissions contemplated by this Section 7.2. Purchaser, on the one hand, and Sellers, on the other hand, shall each promptly provide the other or their respective counsel with copies of all filings made by such party with any Governmental Authority in connection with this Agreement and the Ancillary Agreements and the Transactions.

(b) HSR. Each of Purchaser and Sellers shall file with the United States Federal Trade Commission (the “FTC”) and the United States Department of Justice (the “DOJ”) the notification and report form, if any, required for the consummation of the Transactions and any supplemental information requested in connection therewith pursuant to the HSR Act. Any such notification and report form and supplemental information shall be in substantial compliance with the requirements of the HSR Act. Each of Purchaser and Sellers shall furnish to the other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of any filing or submission which is necessary under the HSR Act. Sellers and Purchaser shall keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC and the DOJ. If such a filing is made, each of Purchaser and Sellers shall seek early termination of the waiting period under the HSR Act and use its best efforts to obtain as promptly as possible any clearance required under the HSR Act for the consummation of the Transactions.

7.3. Public Statements. The parties shall consult with each other prior to issuing any press release or making any public announcement with respect to this Agreement, the Ancillary Agreements, or the Transactions (including the financial terms hereunder and thereunder), and shall not issue any such press release or public announcement prior to such consultation or to which the other party shall reasonably object, except as may be required by Law or judicial process. No party to this Agreement shall make any statement to, or otherwise communicate (whether orally or in writing) with, any employee or advertiser of, or supplier to, any Seller, regarding this Agreement, the Ancillary Agreements or the Transactions except for any statement or communication with respect to which the other parties hereto shall have previously consented in writing.

## **SECTION 8** **EMPLOYEE MATTERS**

### 8.1. Employment.

(a) Purchaser will offer to employ, commencing upon Closing, each Employee of Sellers who is, as of immediately prior to the Closing, (i) actively at work in connection with the Business, (ii) on short-term disability or workers’ compensation in connection with the Business, or (iii) on a leave of absence approved by Sellers in connection with the Business,

but not including any person on long-term disability, layoff with or without recall rights or on a leave of absence with no prior agreement or understanding to return to employment with Sellers at the end of such disability, layoff or leave. Employees who accept such offer of employment will be referred to in this Agreement as “Transferred Employees.” With respect to each Employee of Seller who is, as of immediately prior to Closing, subject to any of the CBAs (“Union Employees”), the terms and conditions of employment upon Closing shall be established by the collective bargaining agreements entered into between Purchaser and Debtor’s Unions, as set forth in Section 10.7 below. Schedule 8.1(a) sets forth all Employees who are on long-term disability or on a leave of absence with a prior agreement or understanding to return to employment with Sellers at the end of such disability, layoff or leave. Notwithstanding the foregoing, nothing in this Agreement will, after the Closing Date, impose on the Purchaser any obligation to retain any Transferred Employee in its employment.

(b) Except as described in the remaining sentences of this Section 8.1(b), the employment of each such Transferred Employee with Purchaser will commence immediately upon the Closing. In the case of any individual who is absent from active employment and receiving short-term disability or workers’ compensation benefits, the employment of such individual with Purchaser will commence upon his or her return to active work, and such individual will become an Transferred Employee as of such date.

## 8.2. Employee Benefit Matters.

(a) As of the Closing, all of the Transferred Employees will cease participation in any of Benefit Plans that are not Seller Assumed Plans that such Transferred Employees participated in immediately prior to the Closing.

(b) In accordance with Treasury Regulation Section 54.4980B-9 Q&A-7, as of the Closing Date, Purchaser will assume all liability for providing and administering all required notices and benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) to all current and former employees of Sellers (including, without limitation, Transferred Employees). Prior to the Closing Date, Seller shall provide to Purchaser detailed information (including without limitation all pertinent information concerning individuals who have elected or continue to have a right to elect COBRA continuation coverage and/or any COBRA subsidy pursuant to the American Recovery and Reinvestment Act of 2009) sufficient to enable Purchaser to carry out its obligations under this Section 8.2(b). Sellers will have no COBRA liability or obligations to such current and former employees after the Closing Date, except with respect to any violations of law that occurred prior to the Closing Date.

8.3. Seller Assumed Plans. Purchaser shall adopt and assume, as of the Closing Date, each and every Benefit Plan of Sellers (other than plans that cover exclusively Union Employees and

multiemployer plans) and all contracts and liabilities thereunder, all of which are identified on Schedule 8.3 attached hereto (“Seller Assumed Plans”, provided, however, on or prior to two Business Days prior to the bidding deadline set forth in the Bid Procedures Order Purchaser may elect to exclude any Seller Plan from being a “Seller Assumed Plan”) with respect to all persons entitled to benefits under the provisions of such Seller Assumed Plan. With respect to each Seller Assumed Plan, Purchaser or any entity designated by Purchaser, will be substituted for the applicable Seller as the plan sponsor under each such Seller Assumed Plan and Purchaser shall have all rights of such Seller thereunder, including, without limitation, full authority to maintain, amend or terminate any such Seller Plan at any time, in Purchaser's sole discretion. Sellers agree to cooperate with Purchaser in adopting and effectuating any plan amendments to the Seller Assumed Plans reasonably desired by Purchaser, so long as such amendments are effective as of, or after, the Closing Date and are consistent with applicable law and applicable collective bargaining agreements and other agreements under which Sellers are obligated. The parties agree to cooperate in all respects and take any actions necessary to implement the assumption by Purchaser of the Seller Assumed Plans. Before, or as soon as administratively practicable after, the Closing, Sellers will supply Purchaser with (i) all records concerning participation, vesting, accrual of benefits, payment of benefits, and election forms of benefits under each Seller Assumed Plan, and (ii) any other information reasonably requested by Purchaser as necessary or appropriate for the administration of each Seller Assumed Plan. Purchaser will make all required filings or reports with or to the IRS, or any other governmental agency, and the participants and their beneficiaries with respect to each Seller Assumed Plan (the “Required Filings”) on a timely basis for all plan years ending before, on or after the Closing Date or as may be required with respect to such Seller Plan. All parties recognize that a reasonable transition period may be necessary after the Closing Date and prior to Purchaser's implementation of its assumption of the Seller Assumed Plans before full compliance with this Section 8.3 is achieved, during which some or all of the Transferred Employees and other participants and beneficiaries of the Seller Assumed Plans may not be able to (i) make (and Purchaser may not be able to process) elective deferral contributions, loan repayments, investment changes, distribution requests, benefit payment requests or reimbursement requests or (ii) exercise or enjoy other rights or features of the Seller Assumed Plans, and that during such transition period Purchaser shall not be considered to be in violation of this Section 8.3. Notwithstanding the foregoing, other than as may be expressly agreed to by Purchaser in its sole discretion in a written amendment to Section 2.3 above, Purchaser shall not assume or succeed to any of Seller's past, current or future liabilities or obligations (including without limitation any withdrawal liability, termination liability or mass withdrawal liability) with respect to any multiemployer plan (collectively, “Multiemployer Plans”) to which any Seller contributes or has ever contributed.

8.4. Compliance with WARN Act. With respect to the Employees, Purchaser will have full responsibility under the WARN Act caused by any action of the Purchaser on or after the Closing Date. For these purposes, a plant closing or a mass layoff will be deemed to have been caused by Purchaser on or after the Closing Date if such plant closing or mass layoff would not have occurred but for Purchaser's failure to make offers of employment to Employees in accordance with this Article VIII, Purchaser's failure to employ the Transferred Employees on the Closing Date in



accordance with the terms of this Agreement and/or Purchaser's failure to continue to employ the Transferred Employees thereafter. Sellers shall be responsible for all other WARN Act liabilities relating to the periods prior to the Closing Date.

## **SECTION 9**

### **CONDITIONS TO SELLERS' OBLIGATIONS**

The obligations of Sellers to consummate the Transactions are subject to the satisfaction (unless waived in writing by Sellers) of each of the following conditions on or prior to the Closing Date:

9.1. Representations and Warranties. The representations and warranties of Purchaser contained in this Agreement that are not qualified by materiality or a material adverse effect shall be true and correct in all material respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and the representations and warranties of Purchaser contained in this Agreement that are qualified by materiality or a material adverse effect shall be true and correct in all respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case they shall be true and correct as of such earlier date.

9.2. Compliance with Agreements. Purchaser shall have performed and complied in all material respects with all covenants and conditions under this Agreement and the Ancillary Agreements to be performed or complied with by it on or prior to the Closing Date.

9.3. Approvals; No Injunctions. Any material Permit or approval required by a Governmental Authority to close the Transactions shall have been obtained or provided by an order of the Bankruptcy Court including the expiration or termination of any waiting period (and each extension thereof, if any) applicable to the sale of the Assets under the HSR Act. Such Permits or approvals shall be in full force and effect on the Closing Date. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation or non-appealable judgment, decree, injunction or other order that is in effect on the Closing Date and prohibits the consummation of the Closing.

9.4. Purchaser's Closing Deliveries and Obligations. Purchaser shall have delivered all items and satisfied all obligations pursuant to Sections 11.1(b) and 11.1(c).

9.5. Auction. Purchaser shall be the successful bidder at the Auction in accordance with the Bid Procedures Order.

9.6. Entry of the Confirmation Order. The Bankruptcy Court shall have entered the Confirmation Order, and such order shall be in full force and effect.



**SECTION 10**  
**CONDITIONS TO PURCHASER'S OBLIGATIONS**

The obligation of Purchaser to consummate the Transactions is subject to the satisfaction (unless waived in writing by Purchaser) of each of the following conditions on or prior to the Closing Date:

10.1. Representations and Warranties. The representations and warranties of the Sellers contained in this Agreement that are not qualified by materiality or a Material Adverse Effect shall be true and correct in all material respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and the representations and warranties of the Sellers contained in this Agreement that are qualified by materiality or a Material Adverse Effect shall be true and correct in all respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case they shall be true and correct as of such earlier date.

10.2. Compliance with Agreements. Each Seller shall have performed and complied in all material respects with all covenants and conditions under this Agreement and the Ancillary Agreements to be performed or complied with by it on or prior to the Closing Date.

10.3. Approvals; No Injunctions. Any material Permit or approval required by a Governmental Authority to close the Transactions shall have been obtained or provided by an order of the Bankruptcy Court including the expiration or termination of any waiting period (and each extension thereof, if any) applicable to the sale of the Assets under the HSR Act. Such Permits or approvals shall be in full force and effect on the Closing Date. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation or non-appealable judgment, decree, injunction or other order that is in effect on the Closing Date and prohibits the consummation of the Closing.

10.4. Sellers' Closing Deliveries and Obligations. Each Seller shall have delivered all items and satisfied all obligations pursuant to Sections 5.9 and 11.1(a).

10.5. Auction. Purchaser shall be the successful bidder at the Auction in accordance with the Bid Procedures Order.

10.6. Entry of the Confirmation Order. The Bankruptcy Court shall have entered the Confirmation Order, and such order shall be in full force and effect.

10.7. Collective Bargaining Agreements. Purchaser shall have completed negotiation and execution of collective bargaining agreements with the Debtors' Unions acceptable to Purchaser in its reasonable discretion.

10.8. Title Insurance Policies and Surveys. Purchaser shall have received from a reputable

title insurance company a commitment to issue as of the Closing Date an owners title insurance policy for the real property in amounts, in a form and with such endorsements and surveys of the Transferred Real Property and improvements thereon, all as are generally customary for properties similar to the Real Property, and certified to Purchaser, the title insurance company and such other persons as Purchaser may designate.

10.9. Material Adverse Effect. No Material Adverse Effect shall have occurred since the date of the Agreement.

10.10. Certain Liabilities. Purchaser shall have determined in its sole and absolute discretion that its potential Liability for (i) Workers' Compensation Claims in Section 2.3(f) (taking into account the insurance policies to be transferred to Purchaser) and (ii) the Cure Amounts with respect to any Assumed Contracts under Section 2.3(d), is acceptable to Purchaser; provided, however, that this condition shall be deemed to be satisfied at the Closing unless Purchaser provides written notice that it is not so satisfied by two Business Days prior to the bidding deadline set forth in the Bid Procedures Order.

## **SECTION 11** **CLOSING; TERMINATION**

11.1. The Closing. The Closing of the purchase by Purchaser from Sellers and sale by Sellers to Purchaser of the Assets (the "Closing") shall be held on December 28, 2009 assuming the satisfaction or waiver of the conditions set forth in Sections 9 and 10 of this Agreement (excluding those conditions which by their nature are to be satisfied as part of the Closing), or at such other time as the parties hereto may agree (the "Closing Date"). The Closing shall be held at the offices of Dilworth Paxson LLP, 1500 Market Street, 3500E, Philadelphia, Pennsylvania 19102 or at such other location as the parties hereto may agree. At the Closing, all of the transactions provided for in Section 2 hereof shall be deemed to be consummated on a concurrent and simultaneous basis.

(a) Sellers' Deliveries at Closing. At the Closing, Sellers shall deliver (or cause to be delivered) to Purchaser the following:

- (i) the duly executed Assignment and Assumption Agreement;
- (ii) the duly executed Bill of Sale;
- (iii) the duly executed special warranty deeds in form to be agreed upon by Purchaser and Sellers (collectively, the "Deeds") conveying to Purchaser good and marketable fee title to the Transferred Real Property free and clear of all Encumbrances other than the Permitted Encumbrances;
- (iv) the duly executed Trademark Assignment;

- (v) the duly executed Lease;
  - (vi) a certified copy of the Confirmation Order and case docket reflecting that the Confirmation Order is in effect;
  - (vii) copies of each Assumed Contract;
  - (viii) certified resolutions of the governing body of each Seller approving and authorizing the Transactions;
  - (ix) officer's certificates, executed by a duly authorized officer of each Seller to the effect that all conditions to Closing set forth in Section 10.1 and Section 10.2 have been satisfied;
  - (x) affidavits executed by each Seller stating that such Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code; and
  - (xi) such other documents as Purchaser or its counsel shall reasonably require in order to effect the Transactions.
- (b) Purchaser's Payment of Purchase Price. At the Closing, Purchaser shall deliver (or cause to be delivered) the Purchase Price (less the Purchaser Deposit Amount, together with all accrued interest and investment income thereon (which shall be released by the Deposit Escrow Agent to Sellers in accordance with Section 2.5 and Section 2.6)) in accordance with Section 2.5.
- (c) Purchaser's Deliveries to Sellers at Closing. At the Closing, Purchaser shall deliver (or cause to be delivered) to Sellers the following:
- (i) the duly executed Assignment and Assumption Agreement;
  - (ii) the duly executed Lease;
  - (iii) certified resolutions of the governing body of Purchaser approving and authorizing the Transactions;
  - (iv) a certificate, executed by a duly authorized officer of Purchaser, to the effect that all conditions to Closing set forth in Section 9.1 and Section 9.2 have been satisfied; and
  - (v) such other documents as Sellers or their counsel shall reasonably require in order to effect the Transactions.

(d) Other Bids. Purchaser acknowledges that Sellers will solicit bids (“Bids”) from other prospective purchasers (collectively, “Bidders”) for the sale of the Assets in accordance with Auction procedures to be set forth in the Bid Procedures Order. Each Bidder will submit two copies of this form of asset purchase agreement marked to show changes from this Agreement. Sellers shall have the right to select the Bid or Bids which will create the highest net return to the bankruptcy estate (the “Superior Bid”). Sellers acknowledge that Sellers will strongly favor Bids for all of the Assets or for all of Sellers' assets or for such assets which Sellers determine, in their sole discretion, cannot otherwise be easily sold.

(e) Overbid Protection. The Bid Procedures Order shall contain the following overbid protections: (i) a higher Bid will not be considered by Sellers unless such Bid is more than the sum of (w) the Purchase Price set forth in this Agreement and the assumption of the Assumed Liabilities, (x) the Breakup Fee, (y) the Expense Reimbursement and (z) \$250,000 and (ii) any bids thereafter must be higher than the then existing highest or better bid (as determined in the reasonable discretion of Sellers) by at least \$100,000 ((i) and (ii) constituting, as applicable, a “Qualifying Bid”); provided, however, that there shall be no overbid protection if Purchaser has not confirmed in writing that its condition set forth in Section 10.10 has been satisfied on or prior to the date of the Auction.

(f) Breakup Fee. If Sellers, after consultation with its creditor constituencies, (i) determines that a Qualifying Bid (or Bids) (which is not Purchaser's Bid) is the Superior Bid, and (ii) executes a definitive agreement embodying such Superior Bid, then upon consummation of the sale pursuant to the Superior Bid, Sellers will pay to Purchaser the Breakup Fee and the Expense Reimbursement.

11.2. Termination. Anything in this Agreement to the contrary notwithstanding, this Agreement and the Transactions may be terminated in any of the following ways at any time before the Closing and in no other manner, subject to the provisions hereof:

(a) at any time by mutual written consent of Purchaser and Sellers;

(b) by Purchaser or Sellers, if the Closing shall not have occurred on or before December 31, 2009 or such later date as Sellers and Purchaser agree or is necessary due solely to the scheduling and availability of the Bankruptcy Court (the “Termination Date”); provided, however, that Purchaser or Sellers may not terminate this Agreement pursuant to this Section 11.2(b) if the Closing shall not have occurred on or before the Termination Date due to a breach by Purchaser or Sellers, as the case may be, of any representations, warranties, covenants or agreements of Purchaser or Sellers, as the case may be, contained in this Agreement;

(c) by Sellers, if any condition to the obligations of Sellers set forth in Section 9

shall have become incapable of fulfillment (including failure of Purchaser to be the successful bidder at the Auction) other than as a result of a breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers or if Purchaser gives notice pursuant to Section 10.10 that it is not satisfied with its potential liability for Workers' Compensation Claims in Section 2.3(f) or the Cure Amounts in Section 2.3(d);

(d) by Purchaser, if any condition to the obligations of Purchaser set forth in Section 10 shall have become incapable of fulfillment (including failure of Purchaser to be the successful bidder at the Auction) other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;

(e) by Sellers, if Purchaser is in breach in any respect of any of its representations made in this Agreement that are qualified by materiality or Material Adverse Effect or in material breach in any respect of any of its representations not so qualified, or is in violation or default in any material respect of any of its covenants or agreements in this Agreement, if such breach, violation or default has not been cured or waived within ten (10) days following receipt of written notice from Sellers specifying, in reasonable detail, such claimed breach, violation or default and demanding its cure or satisfaction;

(f) by Sellers, if in compliance with the terms of the Bid Procedures Order;

(g) by Purchaser or Sellers, if the Bid Procedures Order is not issued within 30 days of filing of the Bid Procedures Motion or if the Bankruptcy Court denies the Bid Procedures Motion;

(h) by Purchaser, if the Sellers are in breach in any respect of any of their representations made in this Agreement that are qualified by materiality or Material Adverse Effect or in material breach in any respect of any of their representations not so qualified, or are in violation or default in any material respect of any of their covenants or agreements in this Agreement, if such breach, violation or default has not been cured or waived within ten (10) days following receipt of written notice from Purchaser specifying, in reasonable detail, such claimed breach, violation or default and demanding its cure or satisfaction;

(i) by Sellers or Purchaser if there shall be in effect a final non-appealable order of a Governmental Authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions, it being agreed that the parties hereto shall promptly appeal any adverse determination which is not non-appealable (and pursue such appeal with reasonable diligence);

(j) by Purchaser, if, as a result of an order of the Bankruptcy Court, the Cases are

dismissed, converted to chapter 7 and a chapter 7 trustee is appointed with respect to Sellers;

(k) automatically, if any Seller closes or consummates the sale of the Assets pursuant to a Superior Bid; or

(l) by Purchaser or Sellers, if the Bankruptcy Court shall not have entered the Confirmation Order by December 7, 2009.

### 11.3. Effects of Termination.

(a) If this Agreement is terminated pursuant to Section 11.2, this Agreement (other than Section 11.3 (Effects of Termination), Section 13 (Expenses, Employees, Attorneys' Fees and Brokers' Fees) and Section 14.6 (Governing Law; Jurisdiction), each of which shall remain in full force and effect) shall forthwith become null and void and no party hereto shall have any liability or further obligation to any other party hereto, except as provided in this Section 11.3.

(b) Notwithstanding anything in Section 11.3(a) to the contrary, (x) if this Agreement is terminated by Sellers pursuant to Section 11.2(e), Section 2.6(b) shall remain in full force and effect, and (y) if this Agreement is terminated for any reason other than by Sellers pursuant to Section 11.2(e), Section 2.6(c) shall remain in full force and effect.

(c) Sellers' liability under or arising from this Agreement is and shall be limited to Sellers' return of the Purchaser Deposit Amount and payment of the Breakup Fee and the Expense Reimbursement if payable pursuant to the terms hereof.

(d) Purchaser's liability under or arising from this Agreement shall be limited to its forfeiture of the Purchaser Deposit Amount.

## **SECTION 12**

### **TAXES**

12.1. Taxes Related to Purchase of Assets. The parties recognize and acknowledge that they may be exempt under section 1146(c) of the Bankruptcy Code and the Confirmation Order from state and local transfer, recording, stamp or other similar transfer Taxes (collectively "Transaction Taxes") that may be imposed by reason of the sale, transfer, assignment and delivery of the Assets; provided, however, that if Transaction Taxes are assessed for any reason, Purchaser shall be solely responsible for the payment of such Transaction Taxes along with any recording and filing fees. Purchaser and Sellers agree to cooperate to determine the amount of Transaction Taxes payable in connection with the Transactions. At the Closing, Purchaser shall remit to Sellers such properly completed resale exemption certificates and other similar certificates or instruments as are applicable to claim available exemptions from the payment of sales, transfer, use or other similar Taxes under applicable law. Purchaser and Sellers shall cooperate in preparing such forms and shall execute and



deliver such affidavits and forms as are reasonably requested by the other party.

12.2. Cooperation. Purchaser and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Assets as is reasonably necessary for the preparation and filing of any Tax Return, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution or defense of any suit or other proceeding relating to Taxes and for the answer of any governmental or regulatory inquiry relating to Taxes. Purchaser agrees to retain possession of all Tax files, books and records delivered to Purchaser by Sellers for a period of at least five years from the Closing Date. If Purchaser determines to destroy or discard any of such files, books or records after the end of such five-year period, Purchaser shall give Sellers reasonable notice thereof and shall allow Sellers to take possession of such files, books and records at Sellers' expense. From and after the Closing Date, Purchaser agrees that it shall provide reasonable access to Sellers and their attorneys, accountants and other representatives (after reasonable notice and during normal business hours and without charge) to such files, books and records as Sellers may reasonably deem necessary to prepare for, file, prove, answer, prosecute or defend any claim, suit, inquiry or other proceeding, related to Taxes in connection with the Assets.

### SECTION 13

#### **EXPENSES, EMPLOYEES, ATTORNEYS' FEES AND BROKERS' FEES**

13.1. Expenses. Except as otherwise provided under this Agreement, Sellers shall be responsible for all expenses, liabilities and obligations arising out of or relating to the Assets and the Assumed Liabilities or the use, possession, ownership or operation thereof accruing on or prior to the Closing, as applicable. Purchaser shall be responsible for all expenses, liabilities and obligations arising out of or relating to the Assets and the Assumed Liabilities or the use, possession, ownership or operation thereof accruing after the Closing.

13.2. Attorneys' Fees; Brokers' Fees; Expenses. Each party shall be responsible for the payment of its own attorneys', brokers' and other fees and expenses in connection with the Transactions.

### SECTION 14

#### **MISCELLANEOUS**

14.1. Sale of Assets Subject to Bankruptcy Court Approval. This Agreement, the sale of the Assets and Sellers' ability to perform under this Agreement is conditioned and contingent upon Bankruptcy Court approval of the Plan and entry of the Confirmation Order.

14.2. Survival of Representations and Warranties. Until the Closing, all representations and warranties herein shall be operative and in full force and effect, and the parties hereto shall be entitled to rely thereon, regardless of any investigation made by or for them. All representations and

warranties and covenants contained herein shall terminate and shall not survive the Closing, except the covenants contained in Sections 2, 5.3, 6, 7, 11.3, 12, and 13.

14.3. Entirety of Agreement; Amendments and Waivers. This Agreement (including all schedules and exhibits hereto), together with the Ancillary Agreements and certificates delivered hereunder, state the entire agreement of the parties with respect to the subject matter hereof, merge all prior negotiations, agreements and understandings, if any, and state in full all representations, warranties, covenants and agreements which have induced this Agreement. Each of Sellers and Purchaser otherwise makes no other representations or warranties including any implied representations or warranties. Each party agrees that in dealing with third parties no contrary representations shall be made. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

14.4. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties without the prior written consent of the other party except, in the case of Purchaser, to an Affiliate (but only if such Affiliate becomes a party to this Agreement and agrees to be bound by the representations, warranties, covenants and obligations herein and Purchaser guarantees such Affiliate's obligations herein and; provided, however, that no such assignment shall relieve Purchaser of its obligations hereunder). No party shall be relieved of any liability hereunder in respect of any assignment pursuant to this Section 14.4, unless such assignor has received a written release expressly excepting such assignor from any liability that may arise hereunder.

14.5. Successors and Assigns; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. This Agreement shall not confer any rights or remedies upon any Person other than the parties hereto and their respective heirs, personal representatives, legatees, successors and permitted assigns.

14.6. Governing Law; Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware applicable to contracts made and to be entirely performed therein. In the event of any controversy or claim arising out of or relating to this Agreement or the breach or alleged breach hereof, each of the parties hereto irrevocably (i) submits to the exclusive jurisdiction of the Bankruptcy Court, (ii) waives any objection which it may have at any time to the laying of venue of any action or proceeding brought in the Bankruptcy

Court, (iii) waives any claim that such action or proceeding has been brought in an inconvenient forum, and (iv) agrees that service of process or of any other papers upon such party by registered mail at the address to which notices are required to be sent to such party under Section 14.12 shall be deemed good, proper and effective service upon such party.

14.7. Gender and Number. In this Agreement, words importing the singular include the plural and vice versa and words importing a specific gender include all genders.

14.8. Headings. The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

14.9. Construction. In this Agreement (i) words denoting the singular include the plural and vice versa, (ii) "it" or "its" or words denoting any gender include all genders, (iii) the word "including" shall mean "including without limitation," whether or not expressed, (iv) any reference to a statute shall mean the statute and any regulations thereunder in force as of the date of this Agreement or the Closing Date, as applicable, unless otherwise expressly provided, (v) any reference herein to a Section, Exhibit or Schedule refers to a Section of, or Exhibit or Schedule to, this Agreement, unless otherwise stated, (vi) any reference to "knowledge" shall mean, with respect to Sellers the actual knowledge of Brian Tierney, Scott Baker or Richard Thayer and with respect to Purchaser the actual knowledge of the investors of Purchaser and (vii) when calculating the period of time within or following which any act is to be done or steps taken, the date which is the reference day in calculating such period shall be excluded and if the last day of such period is not a Business Day, then the period shall end on the next day which is a Business Day.

14.10. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the legality, validity and enforceability of the remaining provisions shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision, the parties shall negotiate in good faith to add a provision similar in terms to such illegal, invalid or unenforceable provision as may be possible while giving effect to the benefits and burdens for which the parties have bargained hereunder.

14.11. Negotiated Agreement. Each of Sellers and Purchaser acknowledges that it has been advised and represented by counsel in the negotiation, execution and delivery of this Agreement and accordingly agrees that, if an ambiguity exists with respect to any provision of this Agreement, such provision shall not be construed against any party because such party or its representatives drafted such provision.

14.12. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as

Federal Express), one Business Day after delivery to such courier; (c) if sent by facsimile transmission before 5:00 p.m. in Philadelphia, when transmitted and receipt is confirmed; (d) if sent by facsimile transmission after 5:00 p.m. in Philadelphia and receipt is confirmed, on the following Business Day; and (e) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

Purchaser: Philly Papers, LLC  
250 Gibraltar Road  
Horsham, PA 19044  
Attn: Bruce E. Toll

with a copy to: Klehr, Harrison, Harvey, Branzburg & Ellers LLP  
260 S. Broad Street  
Philadelphia, PA 19102  
Facsimile: (215) 568-6603  
Attn: Jeffrey D. Kurtzman, Esq.

Also with a copy to: Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808  
Facsimile: (215) 994 2222  
Attn: David S. Denious, Esq.

Sellers: Philadelphia Newspapers, LLC  
400 N. Broad Street  
Philadelphia, PA 19130  
Facsimile: (215) 854-5105  
Attn: Scott Baker

with a copy to: Proskauer Rose LLP  
70 W. Madison Street  
Chicago, IL 60602  
Facsimile: (312) 962-3551  
Attn: Paul V. Possinger

Any party hereto may change its address for service from time to time by notice given to other parties hereto in accordance with the foregoing.


14.13. Counterparts; Facsimile Copies. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signed facsimile copies of this Agreement shall legally bind the parties to the same extent as original documents.

**[Remainder of Page Intentionally Left Blank]**


IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date first above written.

**SELLERS:**


**PHILADELPHIA MEDIA HOLDINGS,  
LLC**

By:   
Name: Brian P. Tierney  
Title: Chief Executive Officer

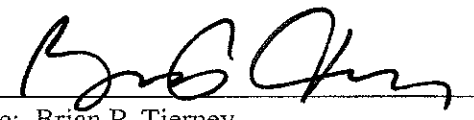
**PMH ACQUISITION, LLC**

By:   
Name: Brian P. Tierney  
Title: Chief Executive Officer

**BROAD STREET VIDEO, LLC**


By:   
Name: Brian P. Tierney  
Title: Chief Executive Officer

**PHILADELPHIA NEWSPAPERS, LLC**

By:   
Name: Brian P. Tierney  
Title: Chief Executive Officer



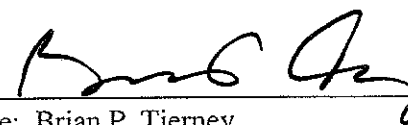
**PHILADELPHIA DIRECT, LLC**

By:   
Name: Brian P. Tierney  
Title: Chief Executive Officer

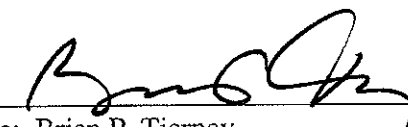
**PHILLY ONLINE, LLC**

By:   
Name: Brian P. Tierney  
Title: Chief Executive Officer

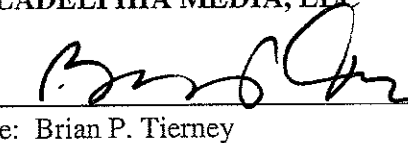
**PMH HOLDINGS, LLC**

By:   
Name: Brian P. Tierney  
Title: Chief Executive Officer

**BROAD STREET PUBLISHING, LLC**

By:   
Name: Brian P. Tierney  
Title: Chief Executive Officer

**PHILADELPHIA MEDIA, LLC**

By:   
Name: Brian P. Tierney  
Title: Chief Executive Officer

[Signature Page to ASSET PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**PURCHASER:**

**PHILLY PAPERS, LLC**

(x) By: Bruce E. Toll  
Name: Bruce E. Toll  
Title: Chairman

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

**In re:**

**Philadelphia Newspapers, LLC, *et al.*,<sup>1</sup>**

**Debtors.**

)  
) **Chapter 11**  
)  
) **Case No. 09-11204(SR)**  
)  
) **Jointly Administered**

**ORDER AND NOTICE FOR HEARING  
ON DISCLOSURE STATEMENT**

To the debtor, its creditors, and other parties in interest:

A disclosure statement and a plan under chapter 11 of the Bankruptcy Code having been filed by Philadelphia Newspapers, LLC, et al. on August 20, 2009,

IT IS ORDERED and notice is hereby given, that:

1. The hearing to consider the approval of the disclosure statement shall be held at: the United States Bankruptcy Court For the Eastern District of Pennsylvania, Robert N.C. Nix, Sr. Federal Bldg, Courtroom #4, 900 Market Street, Philadelphia, PA 19107, on September 29, 2009, at 10 o'clock a.m.

2. September 24, 2009 is fixed as the last day for filing and serving in accordance with Fed.R. Bankr. P. 3017(a) written objections to the disclosure statement.

3. Within five (5) days after entry of this order, the disclosure statement and plan shall be distributed in accordance with Fed. R. Bankr. P. 3017(a).

4. Requests for copies of the disclosure statement and plan shall be mailed to the debtor in possession Philadelphia Newspapers LLC, et al. c/o Dilworth Paxson LLP, Anne M. Aaronson, Esquire, 1500 Market Street, Suite 3500E, Philadelphia, PA 19102.

Dated:

BY THE COURT:

---

Stephen Raslavich  
Chief Judge  
United States Bankruptcy Court

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PMH Acquisition, LLC (1299), Broad Street Video, LLC (4665), Philadelphia Newspapers, LLC (3870), Philadelphia Direct, LLC (4439), Philly Online, LLC (5185), PMH Holdings, LLC (1768), Broad Street Publishing, LLC (4574), Philadelphia Media, LLC (0657), and Philadelphia Media Holdings, LLC (4680).