

Shares shall be cancelled and (e) each Claim filed or to be filed against any Debtor shall be deemed filed only against Rouge Industries and shall be deemed a single Claim against and a single obligation of Rouge Industries. On the Effective Date, and in accordance with the terms of the Plan and consolidation of the assets and the liabilities of the Debtors, all Claims based upon guarantees of collection, payment or performance made by the Debtors as the obligations of another Debtor shall be released and of no further force and effect. The foregoing shall not, and shall not be deemed to, prejudice the Causes of Action or any rights of the Debtors, their Estates, the Liquidation Trust or the Liquidation Trustee under any doctrine of setoff or recoupment (or any similar doctrine), which shall survive entry of the Substantive Consolidation Order for the benefit of the Debtors, their Estates and the Liquidation Trust as if there had been no substantive consolidation.

Section 1123(a)(5)(C) of the Bankruptcy Code authorizes the substantive consolidation of multiple debtors under a plan. See, e.g., In re Stone & Webster, Inc., 286 B.R. 532, 546 (Bankr. D. Del. 2002). Section 1123(a)(5)(C) provides that notwithstanding otherwise applicable non-bankruptcy law, a plan shall provide adequate means for the plan's implementation such as the "merger or consolidation of the debtor with one or more persons." 11 U.S.C. § 1123(a). In In re Owens Corning, the United States Court of Appeals for the Third Circuit recently articulated the test for approving a substantive consolidation. 419 F.3d 195 (3d Cir. 2005). In that case, the court stated that substantive consolidation is appropriate if the debtors (1) prepetition disregarded separateness so significantly their creditors relied on the breakdown of entity borders and treated them as one legal entity, or (2) postpetition the debtors assets and liabilities are so entangled that separating them is prohibitive and hurts all creditors. Id. at 211.

Under the Owens Corning analysis, the Plan Proponents believe that substantive consolidation is appropriate in these Chapter 11 Cases. The Debtors believe that consolidation will benefit all creditors because, in general, the Debtors prepetition acted as a combined entity and creditors relied on the creditworthiness of the Debtors as a single economic unit rather than that of one particular Debtor. The majority of the Debtors assets and liabilities are concentrated in Rouge Steel, which was the operating entity and through which most business was conducted. Substantive consolidated is further warranted by the fact that events which have transpired postpetition have resulted in the further entanglement of the Debtors' assets and liabilities such that separating them would be prohibitive an contrary to the interests of all creditors. Such events include Court approved debtor-in-possession for which all Debtors were obligated, the sale of substantially all of the Debtors' assets in a single transaction and the application of proceeds thereof, and numerous settlements over the duration of the Chapter 11 Cases to which all Debtors were party. Finally, no creditors will be harmed by substantive consolidation of the Chapter 11 Cases for reasons including that the substantial majority of the Debtors' assets and liabilities were concentrated in Rouge Steel. Therefore, the Plan Proponents believe that substantive consolidation is warranted and appropriate.

The Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Chapter 11 Cases. If no objection to substantive consolidation is timely filed and served by Holder of an Impaired Claim affected by the Plan as provided herein on or before the Voting Deadline or such other date as may be established by the Bankruptcy Court, the Substantive Consolidation Order (which may be the Confirmation Order) may be

approved by the Bankruptcy Court. If any such objections are timely filed and served, a hearing with respect to the substantive consolidation of the Chapter 11 Cases and the objections thereto shall be scheduled by the Bankruptcy Court, which hearing may be, but is not required to, coincide with the Confirmation Hearing.

## **2. The Liquidation Trust**

### **(a) Execution of the Liquidation Trust Agreement**

On the Effective Date, the Liquidation Trust Agreement, in a form reasonably acceptable to the Debtors and the Creditors' Committee, shall be executed, and all other necessary steps shall be taken to establish the Liquidation Trust and the beneficial interests therein.

### **(b) Purpose of the Liquidation Trust**

The Liquidation Trust shall be established for the sole purpose of liquidating and distributing its assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

### **(c) Funding of Liquidation Trust**

The Liquidation Trust shall consist of the Liquidation Trust Assets. Any Cash or property whenever received by the Liquidation Trust from third parties shall constitute Liquidation Trust Assets. On the Effective Date, the Debtors shall transfer all of the Liquidation Trust Assets to the Liquidation Trust free and clear of all Liens, claims, interests and encumbrances, except to the extent otherwise provided herein. The Liquidation Trustee and the beneficiaries of the Liquidation Trust shall utilize consistent valuations of the Liquidation Trust Assets and such valuations shall be used for all federal income tax purposes.

### **(d) Governance of the Liquidation Trust**

The Liquidation Trust shall be administered by the Liquidation Trustee, subject to the oversight of the Plan Committee, in accordance with this Plan and the Liquidation Trust Agreement.

### **(e) Tax Treatment of Liquidation Trust**

The Liquidation Trust shall be treated for federal income tax purposes as a "liquidating trust", as defined in Treasury Regulation Section 301.7701-4(d), and will, therefore, be taxed as a grantor trust of which the beneficiaries will be treated as the owners and grantors thereof. For federal tax purposes, the transfer of assets to the Liquidation Trust shall be treated as a deemed transfer from the Debtors to Holders of Allowed Claims followed by a deemed transfer by the Holders of Allowed Claims to the Liquidation Trust. The Liquidation Trustee and the beneficiaries of the Liquidation Trust shall utilize consistent valuations of the Liquidation trust Assets and such valuations shall be used for all federal income tax purposes. The Liquidation Trustee shall file federal tax returns for the Liquidation Trust as a grantor trust

pursuant to Treasury Regulation Section 1.671-4(a). The Liquidation Trust has been structured with the intention of complying with the guidelines for a liquidating trust established by Internal Revenue Service Rev. Proc. 94-45, 1994-2 C.B. 684, which modifies and amplifies Rev. Proc. 82-58, 1982-2 C.B. 847 and Rev. Proc. 91-15, 1991-1 C.B. 484, and all provisions of the Plan, the Disclosure Statement and the Liquidation Trust Agreement shall be construed in accordance with that intent.

(f) The Liquidation Trustee

Steven L. Victor shall serve as the initial Liquidation Trustee.

(g) Rights, Powers and Duties of the Liquidation Trustee

The Liquidation Trustee shall receive and retain all the rights, powers and duties necessary to carry out its responsibilities under the Plan, subject to the Trust Oversight Procedures and the limitations set forth in this Plan, the Confirmation Order and the Liquidation Trust Agreement. Such rights, powers and duties, which shall be exercisable by the Liquidation Trustee on behalf of the Liquidation Trust (or if the Liquidation Trustee is unable to act, by the Plan Committee) pursuant to the Plan and the Liquidation Trust Agreement, shall include, among others:

- (i) to effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Liquidation Trust Agreement;
- (ii) to invest the Cash Liquidation Trust Assets, including but not limited to Cash held in the Reserves, in (a) direct obligations of the United States of America or obligations of any agency or instrumentality thereof that are backed by the full faith and credit of the United States of America, including funds consisting of solely or predominantly such securities, (b) money market deposit accounts, checking accounts, savings accounts or certificates of deposit, or other time deposit accounts that are issued by a commercial bank or savings institution organized under the laws of the United States of America or any state thereof or (c) any other investment that may be a permissible investment for a liquidating trust under applicable federal tax laws;
- (iii) to liquidate the non-Cash Liquidation Trust Assets;
- (iv) to enforce, prosecute, abandon, settle, dismiss or release any Causes of Action, including, but not limited to, any Avoidance Action;
- (v) to make the distributions contemplated by the Plan and the Liquidation Trust Agreement;
- (vi) to establish, fund, maintain and administer the Reserves, to the extent applicable, with amounts of the Cash Liquidation Trust Assets that

are sufficient to fund the expenses and Claims for which such Reserves and accounts were established;

(vii) to obtain such insurance deemed reasonably necessary, including but not limited to any tail coverage with respect to current insurance policies for the Debtors' current officers and directors;

(viii) to employ, supervise and compensate professionals and other agents;

(ix) to make and file tax returns for any of the Debtors or the Liquidation Trust, as applicable;

(x) to object to or seek to subordinate Claims or Equity Interests filed against any of the Debtors or their Estates on any basis;

(xi) to seek estimation of contingent or unliquidated Claims under section 502(c) of the Bankruptcy Code;

(xii) to seek a determination of tax liability under section 505 of the Bankruptcy Code;

(xiii) to prosecute, settle, dismiss or otherwise dispose of turnover actions under sections 542 and/or 543 of the Bankruptcy Code; and

(xiv) to close the Chapter 11 Cases in accordance with the Plan, the Bankruptcy Code and the Bankruptcy Rules.

Subject to and in accordance with the Plan and the Liquidation Trust Agreement, the Liquidation Trustee under the direction of the Plan Committee (or if the Liquidation Trustee is unable to act, the Plan Committee) shall be responsible for all decisions and duties with respect to the Liquidation Trust and the Liquidation Trust Assets. In all circumstances, the Liquidation Trustee shall act in the best interests of the beneficiaries of the Liquidation Trust and in furtherance of the purposes of the Liquidation Trust.

#### (h) Trust Oversight Procedures

As a general matter, whenever reasonably possible, the Liquidation Trustee shall attempt in good faith to consult with the Plan Committee concerning any material actions or decisions affecting the administration of the Liquidation Trust. Such consultation may occur by any reasonable means, including, but not limited to, the Liquidation Trustee's negative solicitation of the Plan Committee members via e-mail or other electronic communication. Additionally, notwithstanding anything in this Plan, the Liquidation Trustee is not authorized to and shall not, except with the consent of a majority of the Plan Committee, do or cause to occur any of the following:

(i) consent to the allowance of any Administrative Claim, Other Priority Claim, Priority Tax Claim or Secured Claim against the

Debtors, their Estates or the Liquidation Trust in an amount in excess of \$50,000;

- (ii) consent to the allowance of any Unsecured Claim against the Debtors, their Estates or the Liquidation Trust in an amount in excess of \$200,000;
- (iii) abandon, settle, assign or release any Cause of Action in which the amount in controversy exceeds \$100,000;
- (iv) within any calendar month, make or cause to be made disbursements from the Liquidation Trust Assets in excess of \$50,000 in the aggregate (other than (i) to the Holders of Allowed Claims in accordance with the Plan, (ii) to the Liquidation Trustee on account of compensation and reimbursement of expenses due the Liquidation Trustee under the Liquidation Trust Agreement, (iii) to the Plan Committee members on account of reimbursement obligations owed to them under this Plan or the Liquidation Trust Agreement and (iv) to professionals retained by the Liquidation Trustee and the Plan Committee on account of fees and expenses incurred by the Liquidation Trust or Plan Committee such professionals);
- (v) within any calendar month, incur or cause the Liquidation Trust to incur indebtedness in an aggregate amount in excess of \$50,000 (other than (i) to the Liquidation Trustee on account of compensation and reimbursement of expenses due the Liquidation Trustee under the Liquidation Trust Agreement, (ii) to the Plan Committee members on account of reimbursement obligations owed to them under the Plan or the Liquidation Trust Agreement and (iii) to professionals retained by the Liquidation Trustee and the Plan Committee on account of fees and expenses incurred by the Liquidation Trust or Plan Committee such professionals);
- (vi) extend the term of the Liquidation Trust beyond the Initial Liquidation Trust Term; and
- (vii) seek to have the Chapter 11 Case of Rouge Industries closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or consent to a request by another Person for such relief.

The foregoing procedures governing the administration of the Liquidation Trust are collectively referred to herein as the "Trust Oversight Procedures."

(i) Estate Representative Status

Additionally, the Liquidation Trustee, the Liquidation Trust and the Plan Committee shall be “representative[s] of the estate” under section 1123(b)(3) of the Bankruptcy Code and successors of the Debtors under section 1145 of the Bankruptcy Code.

(j) Costs and Expenses of Liquidation Trustee

Subject to and in accordance with the Liquidation Trust Agreement, the costs and expenses of the Liquidation Trust, including the fees and expenses of the Liquidation Trustee and its retained professionals, shall be paid first out of the Operating Reserve and then out of the other Liquidation Trust Assets. In the event Cash remains in the Operating Reserve after the obligations of the Liquidation Trustee and the Liquidation Trust pursuant to the Plan have been satisfied, the Liquidation Trustee shall distribute such Cash to the beneficiaries of the Liquidation Trust in accordance with the Plan and the Liquidation Trust Agreement.

(k) Compensation of the Liquidation Trustee

The Liquidation Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy proceedings and as set forth in the Liquidation Trust Agreement.

(l) Insurance for the Liquidation Trustee and the Plan Committee

Subject to the Trust Oversight Procedures, the Liquidation Trustee shall be authorized to obtain and pay for out of the Operating Reserve all reasonably necessary insurance coverage for itself and the members of the Plan Committee, and their respective agents, representatives, employees, independent contractors and the Liquidation Trust, including, but not limited to, coverage with respect to (a) any property that is or may in the future become property of the Liquidation Trust and (b) the liabilities, duties and obligations of the Liquidation Trustee and the members of the Plan Committee and their respective agents, representatives, employees or independent contractors under the Liquidation Trust Agreement (in the form of an errors and omissions policy or otherwise), the latter of which insurance coverage may remain in effect for a reasonable period after the termination of the Liquidation Trust Agreement.

(m) Distribution of Liquidation Trust Assets

The Liquidation Trustee shall distribute Available Liquidation Trust Assets in accordance with the Plan and the Liquidation Trust Agreement.

(n) Retention of Professionals by the Liquidation Trustee

The Liquidation Trustee may retain and reasonably compensate counsel and other professionals to assist in its duties as Liquidation Trustee on such terms as the Liquidation Trustee deems appropriate without Bankruptcy Court approval. Professionals that may be retained by the Liquidation Trustee may include, without limitation, current counsel for the Debtors, current counsel for the Creditors’ Committee and any professionals who represented parties in interest in the Chapter 11 Cases.

(o) Removal or Replacement of Liquidation Trustee

The Liquidation Trustee may resign at any time upon twenty-one (21) days' prior written notice to the Plan Committee; provided, however, that notwithstanding anything to the contrary in the Plan and unless otherwise ordered by the Court, no such resignation shall become effective until a permanent or interim successor Liquidation Trustee has been appointed by the Plan Committee. Such resignation may become effective prior to the expiration of such twenty-one (21) day notice period upon the appointment of a permanent or interim successor Liquidation Trustee by the Plan Committee. The Liquidation Trustee may be removed: (a) by unanimous vote of the Plan Committee for cause shown upon twenty-one (21) days' prior written notice to the Liquidation Trustee (provided that absent exigent circumstances and the approval of the Bankruptcy Court, the Plan Committee shall not remove the Liquidation Trustee without having first selected a successor Liquidation Trustee); or (b) by the Bankruptcy Court upon application a party in interest for cause shown. In the event of any such resignation, removal, death, dissolution or incapacity of the Liquidation Trustee, the Plan Committee may designate a Person to serve as successor Liquidation Trustee. If the Plan Committee shall fail to appoint a successor within ten (10) days after the Liquidation Trustee's resignation, removal, death or incapacity, the successor Liquidation Trustee shall be appointed by the Bankruptcy Court based upon submissions from interested parties. No Liquidation Trustee shall in any event have any liability or responsibility for the acts or omissions of any of his, her or its predecessors. Every successor Liquidation Trustee appointed shall execute, acknowledge and deliver to the Plan Committee an instrument in writing accepting such appointment, and thereupon such successor Liquidation Trustee, without any further act, shall become fully vested with all of the rights, powers, duties and obligations of his, her or its predecessor.

(p) Termination of Liquidation Trust

The Liquidation Trustee shall be discharged and the Liquidation Trust shall be terminated, at such time as (a) all Disputed Claims have been resolved, (b) all Liquidation Trust Assets have been liquidated, (c) all distributions required to be made by the Disbursing Agent under the Plan and the Liquidation Trust Agreement have been made and (d) all duties and obligations of the Liquidation Trustee under the Plan and the Liquidation Trust Agreement have been fulfilled; provided, however, that in no event shall the Liquidation Trust be terminated later than the fifth (5th) anniversary of the Effective Date (the "Initial Liquidation Trust Term"); provided, however, that the Liquidation Trustee may extend the term of the Liquidation Trust for additional one (1) year periods by filing a notice of the Liquidation Trustee's intent to extend the term of the Liquidation Trust with the Bankruptcy Court and obtaining the approval of the Bankruptcy Court (upon a determination that such extension is necessary to facilitate or complete the recovery and liquidation of the Liquidation Trust Assets) within six (6) months of the beginning of the applicable term extension; provided, however, that the total period of all extensions of the Initial Liquidation Trust Term shall not exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extensions would not adversely affect the status of the Liquidation Trust as a liquidating trust for federal income tax purposes.

(q) Indemnification of Liquidation Trustee

The Liquidation Trustee or the individuals comprising the Liquidation Trustee, as the case may be, and the Liquidation Trustee's agents and professionals (in their respective capacities as agents and professionals to the Liquidation Trustee in connection with the Chapter 11 Cases or related actions and proceedings) shall not be liable for actions taken or omitted in its capacity as, or on behalf of, the Liquidation Trust and the Liquidation Trustee, except those acts arising out of its or their own willful misconduct or gross negligence, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Liquidation Trustee, except for any actions or inactions involving willful misconduct or gross negligence. The Liquidation Trustee shall be entitled to rely, in good faith, on the advice of its retained professionals.

(r) Closing of Chapter 11 Cases

As soon as reasonably practicable following the dissolution of the Debtors in accordance with the Plan, the Liquidation Trustee shall seek authority from the Bankruptcy Court to close in accordance with the Bankruptcy Code and Bankruptcy Rules all of the Chapter 11 Cases other than the Chapter 11 Case of Rouge Industries. When all Disputed Claims filed against the Debtors have become Allowed Claims or have been disallowed by Final Order and all of the Liquidation Trust Assets have been distributed in accordance with the Plan or such earlier date as may have been consented to by the Plan Committee, the Liquidation Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Case of Rouge Industries in accordance with the Bankruptcy Code and the Bankruptcy Rules.

**3. Dissolution of Creditors' Committee; Establishment of Plan Committee**

(a) Dissolution of the Creditors' Committee

The Creditors' Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Bankruptcy Court prior to the Effective Date. On the Effective Date, the Creditors' Committee shall be dissolved and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Creditors' Committee's attorneys, financial advisors and other agents shall terminate, except with respect to (i) requests by Professionals or other Persons for awards by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 327, 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code and (ii) any appeals of the Confirmation Order.

(b) Creation of the Plan Committee and Procedures Related Thereto

On the Effective Date, the Plan Committee may be formed and constituted with at least three (3) initial members. Eligibility to be appointed as an initial member of the Plan



Committee shall be limited to Holders of Claims, other creditor representatives (including current and former members of the Creditor's Committee and individuals who served as professionals for the Creditor's Committee) and current or former officers or directors of one or more of the Debtors who served in such capacity after the Petition Date. The initial members of the Plan Committee shall be appointed by the Creditors' Committee in consultation with the Debtors. The identities of the Plan Committee members shall be disclosed in the Plan Supplement. In the event that a member of the Plan Committee resigns from its position on the Plan Committee, such member shall have the right to designate its successor on the Plan Committee. To the extent that a resigning member of the Plan Committee does not exercise its right to designate its successor on the Plan Committee within ten (10) days after such member's resignation from the Plan Committee, the non-resigning members of the Plan Committee shall have the right, if they so choose, to designate a successor to the resigning member of the Plan Committee. Notwithstanding anything contrary in the Plan or Confirmation Order, in the event that the Plan Committee is not formed by the designation of the members in the Plan Supplement or no Person is willing to serve on the Plan Committee or there shall have been no Plan Committee members for a period of thirty (30) consecutive days, then the Liquidation Trustee may, if there is no Plan Committee formed or during such vacancy and thereafter, ignore any reference in the Plan, the Liquidation Trust Agreement and/or the Confirmation Order to a Plan Committee, and all references to the Plan Committee's ongoing duties and rights in the Plan, the Liquidation Trust Agreement and/or the Confirmation Order shall be deemed inapplicable.

(c) Standing of the Plan Committee

The Plan Committee shall have independent standing to appear and be heard in the Bankruptcy Court as to any matter relating to the Plan, the Liquidation Trust Agreement or the Liquidation Trust, including any matter as to which the Bankruptcy Court has retained jurisdiction pursuant to Article XII of the Plan. The Plan Committee may employ and reasonably compensate (in both cases without approval of the Bankruptcy Court) attorneys to represent its interests, which attorneys may be the same attorneys as are representing the Liquidation Trustee, subject only to applicable ethical rules governing attorneys.

(d) Function and Duration of the Plan Committee

The Plan Committee shall have the rights and responsibilities set forth in the Liquidation Trust Agreement, including, but not limited, supervising the Liquidation Trustee with respect to its responsibilities under the Plan and the Liquidation Trust Agreement and performing such other duties that may be necessary and proper to assist the Liquidation Trustee and its retained professionals. The Plan Committee shall remain in existence, except as otherwise provided in the Plan, until such time as the final distributions under the Plan have been made and the Liquidation Trust has been dissolved in accordance with the terms of the Plan. The members of the Plan Committee shall be entitled to reimbursement of reasonable expenses incurred in connection with their membership on the Plan Committee.

(e) Liability and Indemnification of Plan Committee and Its Members

Neither the Plan Committee, nor any of its members, designees, agents or representatives, or any of their respective employees, shall be liable for the act or omission of

any other member, designee, agent or representative of the Plan Committee, nor shall any member of the Plan Committee be liable for any act or omission taken or omitted to be taken in its capacity as a member of the Plan Committee, other than acts or omissions resulting from such member's willful misconduct or gross negligence. The Plan Committee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by its professionals. The Plan Committee and each of its members, designees, professionals, agents and representatives (acting in such capacity) shall be defended, held harmless and indemnified from time to time from all liabilities, losses, damages, claims, costs and expenses (including, but not limited to, attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of these actions or omissions) with respect to the Liquidation Trust or carrying out their duties in connection with the Debtor's Estates; provided, however, that no indemnification will be made to such Persons for actions or omissions as a result of willful misconduct or gross negligence.

**(f) Recusal of Plan Committee Members**

A Plan Committee member shall recuse itself from any decisions or deliberations regarding actions taken or proposed to be taken by the Liquidation Trustee with respect to the Claims, Causes of Action, Liens or Equity Interests of such Plan Committee Member, the entity appointing such Plan Committee member or any affiliate of the foregoing.

**4. Corporate Action**

Upon the Effective Date, the Debtors shall perform each of the actions and effect each of the transfers required by the terms of the Plan, in the time period allocated therefor, and all matters provided for under the Plan that would otherwise require approval of the stockholders, partners, members, directors or comparable governing bodies of the Debtors shall be deemed to have occurred and shall be in effect from and after the Effective Date pursuant to the applicable general corporation law (or other applicable governing law) of the respective states in which each of the Debtors is incorporated or organized, without any requirement of further action by the stockholders, members or directors (or other governing body) of the Debtors. The Debtors shall be authorized and directed, following the completion of all disbursements, transfers and other actions required of the Debtors by the Plan to file their respective certificates of cancellation or dissolution as contemplated by the Plan. The filing of such certificate of cancellation or dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order or rule, including, without express or implied limitation, any action by the stockholders, partners, members, directors or comparable governing bodies of the Debtors.

**5. Effectuating Documents and Further Transactions**

Each of the officers of the Debtors is authorized and directed to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan including, but not limited to, (i) filing a petition

pursuant to 29 U.S.C. § 1342(b)(2) in *Pension Benefit Guaranty Corp. vs. Rouge Steel Company Salaried Employee Retirement Plan, et al.*, Civil Action No. 03-75092, United States District Court Eastern District of Michigan (the "PBGC Involuntary Termination Action"), seeking appointment of a trustee in accordance with 29 U.S.C. § 1342(b) to administer the Rouge Steel Hourly Plans and the Rouge Steel Salaried Plans in accordance with 29 U.S.C. § 1342 or, (ii) obtaining pursuant to 29 U.S.C. § 1342(b)(3), with the written consent of the UAW pursuant to the Agreement and Stipulation between Debtors and the UAW dated March 2, 2004, the agreement of the PBGC to the appointment of a trustee to administer the Rouge Steel Hourly Plans and the Rouge Steel Salaried Plans in accordance with 29 U.S.C. § 1342(b); provided, notwithstanding anything to the contrary herein, as of the Effective Date, if the Debtors have been unable to obtain or agree to the appointment of a trustee to administer the Rouge Steel Salaried Plans and/or the Rouge Steel Hourly Plans, the Liquidating Trustee shall assume the authority with respect to the Rouge Steel Salaried Plan and the Rouge Steel Hourly Plan to obtain or agree to the appointment of such a trustee.

#### **6. Sources for Plan Distributions**

All Cash necessary for the Disbursing Agent to make distributions in accordance with the terms of the Plan shall be obtained from the proceeds of Causes of Action and any Cash or other assets which are the property of one or more of the Debtors, including without limitation the Debtors' cash balances and the liquidation of the Debtors' and the Estates' remaining non-Cash assets, if any. Cash payments to be made pursuant to the Plan shall be made by the Disbursing Agent.

#### **7. Books and Records; Preservation of Privilege**

Upon the Effective Date, the Debtors shall be deemed to have transferred and assigned to the Liquidation Trustee full title to, and the Liquidation Trustee shall be authorized to take possession of, all of the books and records of the Debtors. Similarly, upon the Effective Date, any then existing contractual or other right of access to the Debtors' current or former books and records in the possession, custody or control of the Debtors or any other Person shall be preserved and transferred to the Liquidation Trustee. The Liquidation Trustee shall have the responsibility of storing and maintaining books and records transferred hereunder for at least one year after the date the Debtors are dissolved in accordance with the Plan or such longer period as the Liquidation Trustee in its sole discretion deems to be appropriate. For purposes of this provision, books and records include computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books and records or data, along with books and records of the Debtors maintained by or in possession of third parties and all of the claims and rights of the Debtors in and to their books and records, wherever located.

Upon the Effective Date, the Liquidation Trust and the Liquidation Trustee shall succeed to the attorney-client privilege formerly held by the Debtors, including, but not limited to, the attorney-client privilege held by the Debtors immediately prior to the consummation of the Severstal Sale with respect to any books and records transferred to Severstal and any

privileged communications contained therein. To the extent that documents are requested from current counsel to the Debtors by any Person, after the Effective Date, only the Liquidation Trustee shall have the ability to waive such attorney-client privilege. In addition, current counsel to the Debtors have no obligation to produce any documents currently in their possession as a result of or arising in any way out of their representation of the Debtors unless (a) the Person requesting such documents serves its request on the Liquidation Trustee; (b) the Liquidation Trustee consents in writing to such production and any waiver of the attorney-client privilege such production might cause; and (c) the Liquidation Trustee or the person requesting such production agrees to pay the reasonable costs and expenses incurred by current counsel for the Debtors in connection with such production. Upon the third (3rd) anniversary of the termination of the Liquidation Trust, any and all documents in the possession of the Debtors' current counsel and the Creditors' Committee's current counsel as a result of or arising in any way out of their representation of the Debtors and the Creditors' Committee, respectively, shall be deemed destroyed (even if not actually destroyed) and no Person shall be entitled to obtain such documents.

Upon the Effective Date, the Plan Committee shall succeed to the attorney-client privilege formerly held by the Creditors' Committee. To the extent that any documents are requested from current counsel to the Creditors' Committee by any Person, after the Effective Date, only the Plan Committee shall have the ability to waive such attorney-client privilege. In addition, current counsel to the Creditors' Committee shall have no obligation to produce any documents currently in their possession as a result of or arising in any way out of their representation of the Creditors' Committee unless (a) the Plan Committee consents in writing to such production and any waiver of the attorney-client privilege such production might cause and (b) the Plan Committee or the Person requesting such production agrees to pay the reasonable costs and expenses incurred by current counsel for the Creditors' Committee in connection with such production.

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

Except as provided in the Plan, the Confirmation Order or other Final Order of the Bankruptcy Court, in accordance with section 1123(b) of the Bankruptcy Code, and after giving effect to the exculpatory and injunctive provisions in Article XI of the Plan, any and all Causes of Action that the Debtors or their Estates may hold against any Person, whether or not specifically disclosed in the Plan, the Disclosure Statement or other filing with the Bankruptcy Court, will be preserved for, transferred to and vested in the Liquidation Trust in accordance with the Plan and may be pursued by the Liquidation Trustee, subject to and in accordance with the Plan. A non-exclusive list of Causes of Action is annexed as Exhibit A to the Plan. In addition, the Plan expressly reserves the right to pursue or adopt any claims alleged in any lawsuit in which any Debtor is a defendant or an interested party against any Person, including, without limitation, the plaintiffs and co-defendants in such lawsuits. No Cause of Action shall abate or be suspended by reason of the dissolution of the Debtors or the closing of any Chapter 11 Case as provided for in the Plan.

Except as otherwise provided in the Plan, on and after the Effective Date, the Liquidation Trustee shall have the exclusive right to prosecute and enforce any and all Causes of

Action against any Person and shall be deemed substituted for the Debtors or the Creditors' Committee, as applicable, as the party prosecuting any Cause of Action commenced prior to the Effective Date. Except as otherwise provided in the Plan, the Liquidation Trustee may abandon, settle or release any and all Causes of Action as it deems appropriate, without the need to obtain approval or any other or further relief from the Bankruptcy Court.

The Debtors have not conducted an investigation into all possible Causes of Action. Accordingly, in considering the Plan, each party in interest should understand that any and all Causes of Action that may exist against such Person may be pursued by the Liquidation Trustee regardless of whether, or the manner in which, such Causes of Action are identified in the Plan or the Disclosure Statement. The failure of the Debtors to list a claim, right of action, suit or proceeding on in the Plan shall not constitute a waiver or release by the Debtors or their Estates of such claim, right of action, suit or proceeding. The substantive consolidation of the Debtors, their Estates and the Chapter 11 Cases pursuant to the Confirmation Order and the Plan shall not, and shall not be deemed to, prejudice any of the Causes of Action, which shall survive entry of the Confirmation Order for the benefit of the Debtors and their Estates, and, upon the Effective Date, for the benefit of the Liquidation Trust and the Liquidation Trustee.

No preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon or after the confirmation or consummation of the Plan.

#### **9. No Revesting of Assets**

The property of the Debtors' Estates shall not be vested in the Debtors on or following the Effective Date, but shall be vested in the Liquidation Trust and continue to be subject to the jurisdiction of the Bankruptcy Court following confirmation of the Plan until such property is distributed to Holders of Allowed Claims in accordance with the provisions of the Plan, the Liquidation Trust Agreement and the Confirmation Order. From and after the Effective Date, all such property shall be distributed in accordance with the provisions of the Plan, the Liquidation Trust Agreement and the Confirmation Order. The Liquidation Trustee may, however, subject to the terms and conditions of the Liquidation Trust Agreement, pay fees and expenses that it incurs after the Effective Date for professionals, without application to or approval by the Bankruptcy Court.

#### **10. Accounts and Reserves**

##### **(a) General**

The Debtors or the Liquidation Trustee shall (i) establish one or more general accounts into which shall be deposited all funds not required to be deposited in any other account or Reserve and (ii) create, fund and withdraw funds from, as appropriate, the Priority Claims Reserve, the Disputed Claims Reserve, the Holdback Reserve and such other accounts and Reserves maintained or established by the Liquidation Trustee.

(b) Holdback Reserve

On or before the Effective Date, the Debtors shall fund the Holdback Reserve in the amount of the aggregate Professional Fee Estimate. The Liquidation Trustee shall (i) segregate and shall not commingle the Cash held therein and (ii) subject to the terms and conditions of the Liquidation Trust Agreement, pay each Allowed Professional Fee Claim from the Holdback Reserve upon entry of a Final Order allowing such Claim. In the event that Cash remains in the Holdback Reserve after payment of all Allowed Professional Fee Claims, such Cash shall become Available Cash and shall be distributed in accordance with the terms of the Plan and the Liquidation Trust Agreement. Neither the Debtors nor the Liquidation Trustee, as applicable, shall permit the distribution of any portion of the Holdback Reserve to any Person other than a Professional entitled to payment from the Holdback Reserve (and then such payment shall only be permitted in accordance with the terms of the Plan) unless and until all Allowed Professional Fee Claims have been paid in full and all other Professional Fee Claims have been disallowed or otherwise resolved.

(c) Priority Claims Reserve

On or before the Effective Date, the Debtors shall fund the Priority Claims Reserve, to the extent applicable, in the amount of the Priority Claims Estimate. The Liquidation Trustee shall (i) segregate and shall not commingle the Cash held therein and (ii) subject to the terms and conditions of the Liquidation Trust Agreement, pay each Allowed Administrative Claim (except for Professional Fee Claims which shall be paid from the Holdback Reserve), Allowed Priority Tax Claim and Allowed Other Priority Claim from the Priority Claims Reserve upon entry of a Final Order allowing such Claim. In the event that Cash remains in the Priority Claims Reserve after payment of all Allowed Administrative Claims (except for Professional Fee Claims which shall be paid from the Holdback Reserve), Allowed Priority Tax Claims and Allowed Other Priority Claims, such Cash shall become Available Cash and shall be distributed in accordance with the Plan and the Liquidation Trust Agreement. Neither the Debtors nor the Liquidation Trustee shall be permitted to distribute any of the Priority Reserve to any Person other than a Person entitled to payment from the Priority Claims Reserve (and then such payment shall be permitted only in accordance with the terms of the Plan) unless and until all Allowed Administrative Claims (except for Professional Fee Claims which shall be paid from the Holdback Reserve), Allowed Priority Tax Claims and Allowed Other Priority Claims have been paid in full and all other Administrative Claims (except for Professional Fee Claims which shall be paid from the Holdback Reserve), Priority Tax Claims and Other Priority Claims have been disallowed or otherwise resolved.

(d) Operating Reserve

In accordance with the terms of the Liquidation Trust Agreement, the Liquidation Trustee shall fund the Operating Reserve on or as soon as practicable after the Effective Date.

**11. Cancellation of Notes, Instruments, Debentures and Equity Interests**

On the Effective Date, except to the extent provided otherwise in the Plan, all notes, instruments, debentures, certificates and other documents evidencing Claims and all Equity Interests in any of the Debtors shall be canceled and deemed terminated and surrendered (regardless of whether such notes, instruments, debentures, certificates or other documents are in fact surrendered for cancellation to the appropriate indenture trustee, if any, or other such Person). On the Effective Date, all indentures, if any, to which any Debtor is a party shall be deemed canceled as permitted by section 1123(a)(5) of the Bankruptcy Code.

**12. Insurance Preservation; Directors and Officers Insurance; Indemnification**

Nothing in the Plan, including any releases, shall diminish or impair the enforceability of any policies of insurance that may cover any claims against the Debtors or any other Person.

The Liquidation Trust shall assume the pre-Effective Date obligations to the Debtors' directors and officers (a) solely to the extent that such obligations are covered by directors and officers insurance policies or (b) as determined in the sole discretion of the Debtors or the Liquidation Trustee, as applicable, pursuant to the Director/Officer Order. Other than as set forth in the preceding sentence, the Liquidation Trust shall not be liable or responsible in any way for any pre-Effective Date obligations to the Debtors or their directors and officers and all such obligations are rejected, to the extent executory.

**13. Release of Liens; Preservation of Rights to Contest Liens**

Except as otherwise provided in the Plan, the Confirmation order or other Final Order of the Bankruptcy Court, on the Effective Date, all Liens, claims, interests and encumbrances against the property of the Estates or against the Liquidation Trust Assets, as applicable, shall be released.

Except as provided in the Plan, the Confirmation Order or other Final Order of the Bankruptcy Court, any right of the Debtors or the Estates to contest the validity, priority, extent and amount of any asserted Lien of any Holder of Secured Claims will be preserved for, transferred to and vested exclusively in the Liquidation Trust and the Liquidation Trustee.

**14. Securities Exempt**

The issuance of the beneficial interests in the Liquidation Trust satisfies the requirements of section 1145 of the Bankruptcy Code and, therefore, such issuance is exempt from registration under the Securities Act of 1933, as amended, and any state or local law requiring registration.

**15. Debtors' Post-Confirmation Functions; Liquidation of the Debtors**

The Debtors shall continue to operate as a debtor-in-possession during the period from the Confirmation Date through and until the Effective Date.

On the Effective Date, the Debtors shall be deemed to transfer the Liquidation Trust Assets to the Liquidation Trust. Immediately thereafter, the Debtors shall be deemed to have been liquidated as of the Effective Date without the need for further action by the Bankruptcy Court or any Person.

Subject to and consistent with the provisions of the Plan, as soon as practicable after the Effective Date, each of the Debtors shall file with the office of the Secretary of State or other appropriate office for the state of its organization a certificate of cancellation or dissolution.

**16. Exclusivity Period**

Subject to further order of the Bankruptcy Court, the Debtors shall, pursuant to section 1121 of the Bankruptcy Code, retain the exclusive right to amend the Plan and solicit acceptances thereof until the Effective Date.

**17. Employee Programs**

Except as otherwise expressly provided by the Bankruptcy Code or a Final Order, and except as provided below with respect to the Rouge Steel Hourly Plans and the Rouge Steel Salaried Plans, on the Effective Date, and to the extent not earlier terminated in accordance with their terms, all employee programs, including and not limited to any retirement plans, or agreements, and health benefit plans and disability plans shall be terminated. The Rouge Steel Hourly Plans and the Rouge Steel Salaried Plans are not terminated by this Plan; provided, however, as of the Effective Date the Debtors' fiduciary and ministerial responsibilities with respect to the Rouge Steel Hourly Plans and the Rouge Steel Salaried Plans, if any, and the fiduciary and ministerial responsibilities of Debtors' officers and directors with respect to the Rouge Steel Hourly Plans and the Rouge Steel Salaried Plans, if any, shall end. Debtors are authorized to take any and all action Debtors deem necessary to effectuate the provisions of this Section IV.F.17.

**18. Accounting**

Any and all Reserves maintained by the Liquidation Trustee or the Disbursing Agent, as applicable, may be, in connection with the distribution of funds on account of the Allowed Claims, may be maintained by bookkeeping entries alone; the Liquidation Trustee or Disbursing Agent, as applicable, need not (but may) establish separate bank accounts for such purposes.



## **19. Settlement of Claims and Controversies**

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims or controversies relating to the contractual, legal and subordination rights that a Holder of a Claim may have with respect to any Allowed Claim with respect thereto, or any distribution to be made on account of such an Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders of Claims and is fair, equitable and reasonable.

### **G. PROVISIONS GOVERNING DISPUTED CLAIMS**

#### **1. Objections to Claims; Prosecution of Disputed Claims**

No later than the Claims Objection Deadline (unless extended by order of the Bankruptcy Court), the Liquidation Trustee may file objections to Claims with the Bankruptcy Court and serve such objections upon the Holders of each of the Claims to which objections are made. The Claims Objection Deadline may be extended upon motion of the Liquidation Trustee, without notice or hearing, but subject to the Trust Oversight Procedures.

All objections shall be litigated to Final Order; provided, however, that the Liquidation Trustee shall have the authority and sole discretion to file, settle, compromise or withdraw any objections to Claims, without approval of the Bankruptcy Court, but subject to the Trust Oversight Procedures.

Any objections to Claims and settlement thereof shall be dealt with as the Liquidation Trustee in its discretion (subject to the Trust Oversight Procedures), deems to be appropriate. Further, the Liquidation Trustee shall have the discretion (subject to the Trust Oversight Procedures) to decide not to review and/or object to proofs of Claim below a certain dollar amount to the extent such review and/or objection would be uneconomical.

Unless otherwise provided by the Plan or the Liquidation Trust Agreement, no Bankruptcy Court approval shall be required in order for the Liquidation Trustee to settle and/or compromise any Claim, objection to Claim, Cause of Action, or right to payment of or against the Debtors, their Estates or the Liquidation Trust.

#### **2. Estimation of Claims**

The Liquidation Trustee may at any time request that the Bankruptcy Court estimate any contingent, unliquidated or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtors or the Liquidation Trustee previously have objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation.

concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Except as otherwise provided in the plan, subject to the provisions of section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or Disputed Claim, the amount so estimated shall constitute the maximum allowable amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Liquidation Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

### **3. No Distributions Pending Allowance**

Notwithstanding any other provision of the Plan or the Liquidation Trust Agreement, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtors, the Estates, the Liquidation Trust or the Liquidation Trustee, as applicable, on account of a Cause of Action, no payments or distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter. All Tort Claims shall be deemed Disputed Claims unless and until they become Allowed Claims, are disallowed or are otherwise resolved.

On each Periodic Distribution Date, the Disbursing Agent will make distributions (a) on account of any Disputed Claim that has become an Allowed Claim since the preceding Periodic Distribution Date and (b) on account of previously Allowed Claims from the Disputed Claims Reserve, of property that would have been distributed to such Claim Holders on the dates distribution previously were made to Holders of Allowed Claims had the Disputed Claims that have become Allowed Claims been allowed on such dates. Such distributions will be made pursuant to the provisions of the Plan governing the applicable Class.

### **4. Disputed Claims Reserve**

On the Effective Date and on each subsequent Periodic Distribution Date, the Disbursing Agent shall subject to the provisions of the Plan, including with respect to estimation, withhold on a Pro Rata basis from property that would otherwise be distributed to Classes of Claims entitled to distributions under the Plan on such date, in a separate Disputed Claims Reserve, such amounts or property as may be necessary to equal one hundred percent (100%) of distributions to which Holders of such Disputed Claims would be entitled under this Plan if such Disputed Claims were allowed in their Disputed Claims Amount. With respect to any Disputed Claim that has been estimated by the Bankruptcy Court, the Disbursing Agent shall withhold the applicable portion of the Disputed Claims Reserve with respect to such Claims based upon the

estimated amount of each such Claim as estimated by the Bankruptcy Court. If the Liquidation Trustee elects not to request an estimation of a Disputed Claim from the Bankruptcy Court with respect to a Disputed Claim that is contingent or unliquidated, the Disbursing Agent shall withhold the applicable Disputed Claims Reserve based upon the good faith estimate of the amount of such Claim by the Liquidation Trustee. Nothing in the Plan, the Disclosure Statement or the Liquidation Trust Agreement shall be deemed to entitle the Holder of a Disputed Claim to postpetition interest on such Claim.

## **5. Distributions After Allowance**

Payments and distributions from the Disputed Claims Reserve to each respective Holder of a Disputed Claim, to the extent that such Disputed Claim ultimately becomes an Allowed Claim, will be made in accordance with the provisions of the Plan that govern distributions to such Holders. On the first Periodic Distribution Date following the date when a Disputed Claim becomes an Allowed Claim, the Disbursing Agent will distribute to the Holder of such Allowed Claim any Cash from the Disputed Claims Reserve that would have been distributed on the dates distributions were previously made to Holders of Allowed Claims in that Class had such Allowed Claim been an Allowed Claim on such dates. After a Final Order has been entered or other final resolution has been reached with respect to all Disputed Claims, any remaining Cash held in the Disputed Claims Reserve shall constitute Available Cash that shall be distributed in accordance with other provisions of the Plan.

## **H. PROVISIONS GOVERNING DISTRIBUTIONS**

### **1. Distributions for Claims Allowed as of the Effective Date and Thereafter**

Except as otherwise provided in the Plan, all distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date by the Disbursing Agent. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of the Plan. Notwithstanding any other provisions of the Plan to the contrary, no distribution shall be made on account of any Claim or portion thereof that: (a) whether or not such Claim is an Allowed Claim, has been satisfied after the Petition Date pursuant to an order of the Bankruptcy Court; (b) is listed in the Schedule of Assets and Liabilities as contingent, disputed, unliquidated or in a zero amount, and for which a proof of claim has not been timely filed; or (c) is evidenced by a proof of Claim or request for payment of an Administrative Claim that has been amended by a subsequently filed Proof of Claim or request for payment of an Administrative Claim that purports to amend, or in the sole discretion of the Distribution Agent appears to amend, such Claim (without prejudice to the allowance of such Claim on the basis of the later filed proof of Claim or request for payment of Administrative Claim).

## **2. Disbursing Agent**

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

## **3. Means of Cash Payment**

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

## **4. Delivery of Distributions**

Subject to the provisions of Rule 2002(g) of the Bankruptcy Rules, and except as otherwise provided herein, distributions and deliveries to Holders of Allowed Claims shall be made at the address of each such Holder as set forth on the Schedule of Assets and Liabilities filed with the Bankruptcy Court, unless superseded by the address set forth on timely filed proof(s) of claim or some other writing filed with the Bankruptcy Court and served upon the Disbursing Agent.

Distributions shall be made from the Reserves, as applicable, in accordance with the terms of the Plan and the Liquidation Trust Agreement. To the extent that Cash remains in any of the Reserves after payment of all Allowed Claims included in such Reserve, such Cash shall become Available Cash and shall be distributed in accordance with the terms of the Plan and the Liquidation Trust Agreement to Holders of Allowed Unsecured Claims in Classes 3, 4, and/or 5 on a Pro Rata basis in accordance with Section III.B of the Plan.

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

If in the discretion of the Liquidation Trustee the Liquidation Trust has been "fully administered" and the Liquidation Trust Assets remaining are equal to or less than

\$100,000, then the Disbursing Agent shall be authorized (without further Order of the Bankruptcy Court, but subject to the consent of a majority of the Plan Committee) to donate such sum to the Children's Hospital of Michigan Foundation. Solely for the purposes of this section the Liquidation Trust shall be deemed "fully administered" if in the discretion of the Liquidation Trustee (a) all Disputed Claims have been resolved, (b) all non-Cash Liquidation Trust Assets have been liquidated, (c) all current and anticipated operating expenses of the Liquidation Trust have been fully reserved for or paid, and (d) all distributions required under the Plan, the Liquidation Trust Agreement or any Final Order of the Bankruptcy Court have been made to the Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims and Allowed Other Priority Claims. If the remaining Liquidation Trust Assets are greater than \$100,000, the Disbursing Agent shall make further distributions to the Holders of the Allowed Unsecured Claims in accordance with the terms of the Plan and Liquidation Trust Agreement.

## **5. Undeliverable Distributions**

If any distribution to any Holder is returned to the Disbursing Agent as undeliverable, no further distributions shall be made to such Holder unless and until the Disbursing Agent is notified by such Holder, in writing, of such Holder's then-current address. Upon such an occurrence, the appropriate distribution shall be made as soon as reasonably practicable after such distribution has become deliverable. All Persons ultimately receiving previously undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan shall require the Liquidation Trustee or the Disbursing Agent, as applicable, to attempt to locate any Holder of an Allowed Claim or an Allowed Equity Interest.

Any Holder of an Allowed Claim entitled to an undeliverable or unclaimed distribution that does not provide notice of such Holder's correct address to the Liquidation Trustee and the Disbursing Agent within the later of one hundred and eighty (180) days after (a) the Effective Date or (b) the date of the initial distribution made by the Disbursing Agent to such Holder, shall be deemed to have forfeited its claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed distribution against any of the Debtors, the Estates, the Liquidation Trustee, the Liquidation Trust, their respective agents, attorneys, representatives, employees or independent contractors and/or any of its and their property. In such cases, any Cash otherwise reserved for undeliverable or unclaimed distributions shall become the property of the Liquidation Trust free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be distributed in accordance with the terms of the Plan and the Liquidation Trust Agreement to the Holders of Allowed Unsecured Claims in Classes 3, 4, and/or 5 on a Pro Rata basis, in accordance with Section III.B herein, as a final distribution.

## **6. Withholding and Reporting Requirements**

In connection with the Plan and all distributions thereunder, the Disbursing Agent to the extent applicable shall comply with all tax withholding and reporting requirements imposed by any U.S. federal, state or local or non-U.S. taxing authority, and all distributions

hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such distribution, and (b) the Disbursing Agent reserves the option, in its discretion, to not make a distribution to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such tax obligations or has, to the Disbursing Agent's satisfaction, established an exemption therefrom. Any distributions to be made pursuant to the Plan shall, pending the implementation of such withholding and reporting requirements, be treated as undeliverable pursuant to Section VIII.E of the Plan.

**7. Distribution Record Date**

The Disbursing Agent will have no obligation to recognize the transfer or sale of any participation in any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes to recognize and distribute only to those Holders of Allowed Claims who are Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date. Instead, the Disbursing Agent shall be entitled to recognize and deal for all purposes under the Plan with only those record Holders stated on the official claims register as of the close of business on the Distribution Record Date.

**8. Allocation of Plan Distributions Between Principal and Interest**

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

**9. Time Bar to Cash Payments**

Checks issued by the Disbursing Agent on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof. Requests for reissuance of any check shall be made directly to the Disbursing Agent by the Holder of the Allowed Claim. Any claim relating to such voided check shall be made on or before the later of one hundred and eighty (180) days after (a) the Effective Date and (b) the date of issuance of such check. After such date, all claims relating to such voided checks shall be discharged and forever barred.

#### **10. Distributions After the Effective Date**

Distributions made after the Effective Date to Holders of Claims that are not Allowed Claims as of the Effective Date, but which later become Allowed Claims, shall be deemed to have been made on the Effective Date.

#### **11. Interest on Claims**

Unless otherwise specifically provided for in the Plan or the Confirmation Order, or required by the Bankruptcy Code, interest, fees, costs and other charges accruing or incurred on or after the Petition Date shall not be paid on any Claims, and no Holder of a Claim shall be entitled to interest, fees, costs or other charges accruing or incurred on or after the Petition Date on a Claim. To the extent provided for in the Plan, the Confirmation Order or required by the Bankruptcy Code, postpetition interest shall accrue on Claims at the applicable nondefault rate unless another rate is specified in the Plan or the Confirmation Order. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date such Claim becomes an Allowed Claim.

#### **12. Fractional Dollars; De Minimis Distributions**

Notwithstanding anything contained in the Plan to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. The Disbursing Agent will not make any payment of less than twenty dollars (\$20) on account of any Allowed Claim, unless a specific request therefor is made in writing to the Liquidation Trustee on or before ninety (90) days after the Effective Date.

#### **13. Disputed Payments**

If any dispute arises as to the identity of a Holder of an Allowed Claim who is to receive any distribution, the Liquidation Trustee may, in lieu of making such distribution to such Person, make such distribution into an escrow account until the disposition thereof shall be determined by order of the Bankruptcy Court or by written agreement among the interested parties to such dispute.

#### **14. Setoff**

The Liquidation Trustee may, but shall not be required to, setoff, recoup or otherwise offset against any Allowed Claim and the distributions to be made pursuant to the Plan on account thereof, the claims, rights and causes of action of any nature that the Debtors, their Estates, the Liquidation Trust or the Liquidation Trustee may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff, recoupment or other offset nor the allowance of any Claim under the Plan shall constitute a waiver or release by

the Debtors, their Estates, the Liquidation Trust or the Liquidation Trustee of any such claims, rights and Causes of Action that the Debtors, their Estates, the Liquidation Trust or the Liquidation Trustee may possess against such Holder. Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date any right or defense of setoff held or asserted by any Person against any of the Debtors, any of the Debtors' property or any property in which the Debtors have an interest shall be deemed extinguished unless such setoff was previously completed or preserved in accordance with applicable law.

## **15. No Recourse**

Notwithstanding that the allowed amount of any particular Disputed Claim is reconsidered under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules or is allowed in an amount for which there is insufficient Cash in the relevant fund or reserve to provide a recovery equal to that received by other Holders of Allowed Claims in the relevant Class, no Claim Holder shall have recourse to the Debtors, the Estates, the Creditors' Committee or any member thereof, the Liquidation Trust, the Liquidation Trustee, the Plan Committee or the members thereof, the Holder of any other Claim, or any of their respective professionals, successors, assigns, property or interest in property. **THUS, THE BANKRUPTCY COURT'S ENTRY OF AN ESTIMATION ORDER MAY LIMIT THE DISTRIBUTION TO BE MADE ON INDIVIDUAL DISPUTED CLAIMS, REGARDLESS OF THE AMOUNT FINALLY ALLOWED ON ACCOUNT OF SUCH DISPUTED CLAIMS.**

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

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

Any executory contracts or unexpired leases which have not (a) expired by their own terms on or prior to the Effective Date, or (b) been assumed, assumed and assigned, or rejected with the approval of the Bankruptcy Court, shall be deemed rejected by the Debtors as of the Effective Date, and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of the rejections of such executory contracts and unexpired leases pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

### **2. Rejection Damages Claim**

Each entity that is a party to an executory contract or unexpired lease that is rejected as of the Effective Date pursuant to the Plan and the Confirmation Order will be entitled to file, not later than thirty (30) days following the Effective Date, a proof of Claim for damages alleged to have been suffered due to such rejection; provided, however, that the opportunity afforded a Person whose executory contract or unexpired lease is rejected as of the Effective Date pursuant to the Plan and the Confirmation Order to file a proof of Claim shall not extend the time for any Person that to assert or attempt to assert a claim on account of an executory contract or unexpired lease that was previously rejected by the Debtors for which the Existing Bar Date applies or another filing deadline was established. Any Person that has a Claim for



damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Plan that does not file a proof of Claim in accordance with the terms and provisions of the Plan with the Bankruptcy Court (and serve such proof of Claim upon the Liquidation Trustee) will be forever barred from asserting that Claim against, and such Claim shall be unenforceable against, the Debtors, the Estates, the Liquidation Trustee, the Liquidation Trust or their respective property.

## **J. ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS**

### **1. Professional Claims**

#### **(a) Final Fee Applications**

All final requests for payment of Professional Fee Claims (the “Final Fee Applications”) must be filed no later than forty-five (45) days after the Effective Date. Objections, if any, to Final Fee Applications of such Professionals must be filed and served on the Liquidation Trustee and its counsel, the Creditors’ Committee and its counsel, the requesting Professional and the Office of the United States Trustee no later than thirty (30) days from the date on which each such Final Fee Application is served and filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules and prior Final Orders of the Bankruptcy Court, the allowed amounts of such Professional Claims shall be determined by the Bankruptcy Court.

#### **(b) Employment of Professionals after the Effective Date**

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

### **2. Bar Date for Substantial Contribution Claims and Other Administrative Claims**

Any Person who wishes to assert a Substantial Contribution Claim or other Administrative Claim (excluding a Professional Fee Claim) must file a request for payment with the clerk of the Bankruptcy Court, on or before the Administrative Claim Plan Bar Date, and serve such request for payment on counsel for the Debtors or the Liquidation Trustee, as applicable, and as otherwise required by Bankruptcy Code, Bankruptcy Rules and orders of the Bankruptcy Court on or before the Administrative Claim Plan Bar Date, or be forever barred from seeking such compensation or expense reimbursement; provided, however, that any Person who is serving as an officer or director of any Debtor as of the Confirmation Date is excused from the obligation to file with the clerk of the Bankruptcy Court a request for payment with respect to any Claim such Person has arising from or relating to such Person’s service as an officer or director of any Debtor on or after the Petition Date. Objections, if any, to such

Substantial Contribution Claims and Administrative Claims must be filed no later than the Claims Objection Deadline. Nothing in the Plan shall revise or otherwise entitle a Person to file or assert a Substantial Contribution Claim or other Administrative Claim which is subject to an Existing Bar Date. *Any Person that is required to and fails to properly file and serve such a request for payment of a Substantial Contribution Claim or other Administrative Claim (excluding a Professional Fee Claim) on or before the Administrative Claim Plan Bar Date shall be forever barred from asserting such Claim against the Debtors, the Estates, the Liquidation Trust, the Liquidation Trustee, the members of the Plan Committee, or their respective property or interests in property, such Claim shall be discharged and the Holder thereof shall be enjoined from commencing or continuing any action, employment of process or acts to collect, offset or recover such Claim.*

**K. CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE**

**1. Conditions Precedent to Confirmation Date of the Plan**

The occurrence of the Confirmation Date shall be subject to satisfaction of the following conditions precedent:

- (a) The Bankruptcy Court shall have entered an order approving the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.
- (b) The Substantive Consolidation Order, which may be the Confirmation Order, shall be in form and substance reasonably acceptable to the Plan Proponents, and shall have been entered by the Bankruptcy Court prior to or contemporaneously with the Confirmation Order.
- (c) The Confirmation Order, in a form and substance reasonably acceptable to the Plan Proponents, shall have been entered by the Bankruptcy Court.

**2. Conditions Precedent to the Effective Date of the Plan**

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

- (a) The Confirmation Order as entered by the Bankruptcy Court shall be a Final Order in full force and effect, in form and substance reasonably satisfactory to the Plan Proponents .
- (b) All actions, documents and agreements necessary to implement the Plan shall have been effected or executed, including the Liquidation Trust Agreement.

### **3. Waiver of Conditions Precedent**

To the extent legally permissible, each of the conditions precedent in Sections XI.A & B of the Plan may be waived, in whole or in part, by the Debtors in their sole discretion, but after consultation with the Creditors' Committee. Any such waiver of a condition precedent may be affected at any time, without notice or leave or order of the Bankruptcy Court and without any formal action other than proceeding as if such condition did not exist. The failure of the Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights. Upon the waiver of any conditions to the Effective Date set forth in the Plan, and subject to the satisfaction in full of each of the remaining conditions set forth in the Plan, the Plan shall become effective in accordance with its terms without notice to third parties or any other formal action.

### **4. The Confirmation Order**

If the Confirmation Order is vacated for whatever reason, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, any of the Debtors; (b) prejudice in any manner the rights of the Debtors or the Creditors' Committee; or (c) constitute an admission, acknowledgment, offer or undertaking by the Debtors or the Creditors' Committee in any respect.

## **L. EFFECT OF PLAN CONFIRMATION**

### **1. Binding Effect**

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

### **2. Discharge of the Debtors**

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that no Holder of a Claim or Equity Interest may, on account of such Claim or Equity Interest, seek or recover any payment or other distribution from, or seek recourse against, any Debtor, any Estate, the Creditors' Committee, the Liquidation Trust, the Liquidation Trustee, the Plan Committee and/or their respective successors, assigns and/or property, except as expressly provided in the Plan.

### **3. Injunction**

Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that from and after the Effective Date all Persons who have held, hold or may hold Claims against or Equity Interests in the Debtors are permanently enjoined from taking any of the following actions against the Debtors, the Estates, the Creditors' Committee, the Liquidation Trust, the Liquidation Trustee, the Plan Committee or any of their property on account of any such Claims or Equity Interests: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (c) creating, perfecting or enforcing any Lien, claim, interest or encumbrance; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtors; and (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan.

The Confirmation Order shall further provide that all Persons are permanently enjoined from obtaining any documents or other materials from current counsel for the Debtors or the Creditors' Committee that is in the possession of such counsel as a result of or arising in any way out of their representation of the Debtors and/or the Creditors' Committee, except in accordance with Section VI.G of the Plan.

### **4. Terms of Injunctions or Stays**

*Unless otherwise expressly provided in the Plan, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date.*

### **5. Satisfaction of Subordination Rights**

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

## **6. Exculpation**

Except as otherwise specifically provided in the Plan, the Debtors, the Liquidation Trust, the Liquidation Trustee, the Creditors' Committee, the Plan Committee, the members of the Creditors' Committee and/or the Plan Committee in their capacities as such, the Disbursing Agent and any of such parties' respective present and former members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers or agents and any of such parties' successors and assigns, shall not have or incur any claim, obligation, cause of action, or liability to one another or to any Holder of a Claim or Equity 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 or omission originating or occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Debtors, the Chapter 11 Cases, the negotiation and filing of the Plan or any prior chapter 11 plans, the Disclosure Statement or any prior disclosure statement, the Severstal Sale, the consummation of the Plan, the administration of the Plan or the property to be liquidated and/or distributed under the Plan, except for their willful misconduct or gross negligence as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Without limiting the generality of the foregoing, no current or former officer or director of any Debtor who served in such capacity on or after the Petition Date shall have or incur any claim, obligation, cause of action, or liability to any governmental unit (as such term is defined in section 101(27) of the Bankruptcy Code) in connection with a tax for which any Debtor is or may be liable in any capacity, except if (a) such tax was one required to be collected or withheld by such Debtor from a third party or (b) the nonpayment of such tax directly resulted from the willful misconduct or gross negligence of such officer or director, in either case as determined by a Final Order of the Bankruptcy Court.

## **M. RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain and have exclusive jurisdiction after the Effective Date over any matter arising under the Bankruptcy Code, arising in or related to the Chapter 11 Cases or the Plan, or that relates to the following, in each case to the greatest extent permitted by applicable law:

1. to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan;
2. to determine any and all motions, adversary proceedings, applications and contested or litigated matters that may be pending on the Effective Date or that, pursuant to the Plan, may be instituted by the Liquidation Trustee after the Effective Date; provided, however, that the Liquidation Trustee shall reserve the right to commence collection actions, actions to recover receivables and other similar actions in all appropriate jurisdictions;

3. to ensure that distributions to Holders of Allowed Claims are accomplished as provided in the Plan;
4. to hear and determine any timely objections to Claims and Equity Interests filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Equity Interest, and to allow, disallow, determine, liquidate, classify, estimate or establish the priority of or secured or unsecured status of any Claim, in whole or in part;
5. to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed or vacated;
6. to issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;
7. to consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;
8. to hear and determine all applications for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Confirmation Date;
9. to hear and determine disputes arising in connection with or relating to the Plan or the interpretation, implementation, or enforcement of the Plan or the extent of any Person's obligations incurred in connection with or released or exculpated under the Plan;
10. to issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Person with consummation or enforcement of the Plan;
11. to determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Liquidation Trust Agreement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan or the Disclosure Statement to be executed in connection with the Plan;
12. to hear and determine the Causes of Action;
13. to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
14. to hear any other matter or for any purpose specified in the Confirmation Order that is not inconsistent with the Bankruptcy Code; and
15. to enter a final decree closing the Chapter 11 Cases.

## **N. MISCELLANEOUS**

### **1. Modification of Plan**

The Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, in their sole discretion, but after consultation with the Creditors' Committee, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. Upon entry of the Confirmation Order, the Debtors may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such Holder and the votes of each Class for or against the Plan shall be counted and used in connection with the modified chapter 11 plan.

### **2. Revocation, Withdrawal or Non-Consummation**

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if the Confirmation Order confirming the Plan shall not be entered or become a Final Order, then (a) the Plan shall be null and void in all respects, including, without limitation, any letter of support provided by the Creditors' Committee with respect to the Plan, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity Interests), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors or any other Person, (ii) prejudice in any manner the rights of the Debtors or any other Person, (iii) constitute an admission of any sort by the Debtors or any other Person, or (iv) constitute a release of any Causes of Action possessed or maintained by the Debtors.

### **3. Substantial Consummation**

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

### **4. Payment of Statutory Fees**

All fees payable pursuant to 28 U.S.C. § § 1930, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date to the extent required by applicable law. All such fees which become due and payable thereafter by the

Debtors shall be paid by the Liquidation Trustee or the Disbursing Agent, as applicable, pending the dismissal, conversion or closure of such Debtor's Chapter 11 Case.

**5. Exemption from Certain Transfer Taxes.**

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

**6. Business Day**

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.

**7. Severability**

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

**8. Further Assurances**

The Debtors, the Liquidation Trustee, all Holders of Claims receiving distributions under the Plan, and all other parties in interest shall, from time to time, prepare, execute and deliver agreements or documents and take other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.



9. Notices

All notices, requests, and demands required by the Plan or otherwise, to be effective, shall be in writing, including by facsimile transmission, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered to all of the following, or in the case of notice by facsimile transmission, when received by all of the following, addressed as follows or to such other addresses as filed with the Bankruptcy Court:

(a) If to the Debtors,

ROUGE INDUSTRIES, INC.  
c/o Steven L. Victor  
Development Specialists, Inc.  
Three First National Plaza  
70 West Madison Street  
Suite 2300  
Chicago, Illinois 60602-4250

*with a copy to*

Gregory W. Werkheiser, Esq.  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
1201 North Market Street  
P.O. Box 1347  
Wilmington, Delaware 19899-1347

(b) If to the Creditors' Committee,

Claudia Z. Springer, Esq.  
REED SMITH LLP  
2500 One Liberty Place  
1650 Market Street  
Philadelphia, Pennsylvania 19103-7301

*with a copy to*

[To be supplied, if necessary]

(c) If to the Liquidation Trustee, to the Person(s) designated in the Confirmation Order.

(d) If to the Plan Committee, to the Person(s) designated in the Confirmation Order.

## **10. Successors and Assigns**

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

## **11. Section Headings**

The section headings contained in the Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

## **12. Plan Supplement(s)**

Any Plan Supplement (and amendments thereto) filed by the Debtors shall be deemed an integral part of the Plan and shall be incorporated by reference as if fully set forth therein. Upon its filing, the Plan Supplement may be inspected in the offices of the Clerk of the Bankruptcy Court during normal business hours or downloaded from the Bankruptcy Court's web site at [www.deb.uscourts.gov](http://www.deb.uscourts.gov). Please note that prior registration with the PACER Service Center and payment of a fee may be required to access such documents. Parties in interest may sign up for a PACER account by visiting the PACER website at <http://pacer.psc.uscourts.gov> or by calling (800) 676-6856. Additionally, Holders of Claims and Equity Interests may obtain a copy of the Plan Supplement upon written request to the Debtors. The documents contained in the Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

# **V.**

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

### **A. CLASSES ENTITLED TO VOTE**

Each Impaired Class of Claims that may receive or retain property or any interest in property under the Plan is entitled to vote to accept or reject the Plan. Classes 3, 4 and 5 shall be entitled to vote to accept or reject the Plan.

### **B. ACCEPTANCE BY IMPAIRED CLASSES**

An Impaired Class of Claims shall be deemed to have accepted the Plan if (1) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of at least two-thirds in amount of the allowed claims actually voting in such Class have voted to accept the Plan and (2) the Holders (other than any Holder designated under section 1126(e) of the Bankruptcy Code) of more than one-half in number of the allowed claims actually voting in such Class have voted to accept the Plan.

### **C. PRESUMED ACCEPTANCE OF THE PLAN**

By operation of law, each Class of Claims that is Unimpaired is deemed to have accepted the Plan and, therefore, is not entitled to vote. Classes 1 and 2 are Unimpaired under the Plan, and, therefore, are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

### **D. PRESUMED REJECTION OF THE PLAN**

By operation of law, Holders of Impaired Claims and Impaired Equity Interests that are not entitled to receive or retain any property under the Plan are presumed to have rejected the Plan and, therefore, are not entitled to vote. Classes 6, 7 and 8 are Impaired under the Plan and are not entitled to receive or retain any property under the Plan and, thus, are presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

## **VI.**

### **PROCEDURES FOR VOTING ON THE PLAN**

The following is a brief summary regarding the acceptance and confirmation of the Plan. Holders of Claims are encouraged to review the relevant provisions of the Bankruptcy Code and/or to consult their own attorneys. Additional information regarding voting procedures is set forth in the Notices accompanying this Disclosure Statement.

#### **A. VOTING DEADLINE**

The Voting Deadline to accept or reject the Plan is 5:00 p.m. (ET) on \_\_\_\_\_, 2009, unless the Bankruptcy Court or the Debtors extend the period during which votes will be accepted by the Debtors, in which case the Voting Deadline for such solicitation shall mean the last time and date to which such solicitation is extended.

#### **B. VOTING RECORD DATE**

The Voting Record Date for purposes of determining which Holders of Claims are entitled to vote on the Plan is \_\_\_\_\_, 2009 at 5:00 p.m. (ET).

#### **C. VOTING INSTRUCTIONS**

This Disclosure Statement, accompanied by a Ballot to be used for voting on the Plan, is being distributed to Holders of Claims in Classes 3, 4 and 5. Only Holders in Classes 3, 4 and 5 are entitled to vote to accept or reject the Plan and may do so by completing the Ballot and returning it in the envelope provided. *In light of the benefits of the Plan for each Class of Claims, the Debtors and the Committee recommend that Holders of Claims in Class 3, 4 and 5 vote to accept the Plan and return the Ballot.*

BALLOTS CAST BY HOLDERS OF CLAIMS IN CLASSES 3, 4 AND 5 MUST BE RECEIVED BY THE SOLICITATION AGENT BY THE VOTING DEADLINE AT THE FOLLOWING ADDRESSES:

(a) If delivered by U.S. mail, to:

Rust Consulting, Inc.  
P.O. Box 1689  
Faribault, Minnesota 55021-1689  
Attn: Rouge Industries, Inc., et al. Plan Ballot

(b) If delivered by hand, courier or overnight service, to:

Rouge Industries, Inc., et al., Plan Ballot  
c/o Rust Consulting, Inc.  
201 South Lyndale Avenue  
Faribault, Minnesota 55021

IF YOU HAVE ANY QUESTIONS ON VOTING PROCEDURES, PLEASE CALL THE SOLICITATION AGENT AT (800) 999-7940 (TOLL FREE).

BALLOTS ARE ACCOMPANIED BY RETURN ENVELOPES WHENEVER POSSIBLE. ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED.

ANY BALLOT WHICH IS EXECUTED BY THE HOLDER OF AN ALLOWED CLAIM BUT WHICH DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN OR WHICH INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN SHALL NOT BE COUNTED, INCLUDING FOR PURPOSE OF SECTION 1126(E) OF THE BANKRUPTCY CODE.

NOTWITHSTANDING THE FOREGOING, A VOTE TO ACCEPT THE PLAN CONSTITUTES AN ACCEPTANCE AND ASSENT TO THE MUTUAL RELEASES SET FORTH IN THE PLAN. PLEASE REFER TO THE PLAN FOR FURTHER INFORMATION ABOUT THE MUTUAL RELEASES.

The Debtors will publish the Confirmation Hearing Notice once within five (5) business days after the entry of the order approving the Disclosure Statement in the national edition of *The Wall Street Journal* and the *Detroit Free Press*, in order to provide notification to persons who may not otherwise receive notice by mail.

*For all Holders:*

By signing and returning a Ballot, each Holder of Claims in Classes 3, 4 and 5 will also be certifying to the Bankruptcy Court and the Debtors that, among other things:

- **such person or entity is the Holder of the aggregate face amount of the Claims set forth in the Ballot and has full power and authority to vote to accept or reject the Plan;**

- such Holder has received and reviewed a copy of the Disclosure Statement, the Plan, and related Ballot and acknowledges that the solicitation of votes to accept or reject the Plan is being made pursuant to the terms and conditions set forth therein;
- such Holder has cast the same vote on every Ballot completed by such Holder with respect to holdings of such Class of Claims;
- no other Ballots with respect to such Class of Claims have been cast or, if any other Ballots have been cast with respect to such Class of Claims, such earlier Ballots are thereby revoked;
- the Debtors have made available to such Holder or its agents all documents and information relating to the Plan and related matters reasonably requested by or on behalf of such Holder;
- except for information provided by the Debtors in writing, and by its own agents, such Holder has not relied on any statements made or other information received from any person with respect to the Plan; and
- all authority conferred or agreed to be conferred pursuant to the Ballot, and every obligation of the Holder thereunder, shall be binding upon the transferees, successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives of the Holder and shall not be affected by, and shall survive, the death or incapacity of the Holder.

#### **D. VOTING TABULATION**

In tabulating votes the Debtors' shall follow the rules approved in the Solicitation Procedures Order.

#### **E. VOTING PROCEDURES AND STANDARD ASSUMPTIONS**

The voting procedures shall be set forth in the Solicitation Procedures Order entered by the Bankruptcy Court.

To ensure that its vote is counted, each Holder of a Claim must (a) complete a Ballot; (b) indicate the Holder's decision either to accept or reject the Plan in the boxes provided in the respective Ballot; and (c) sign and return the Ballot so that it is received by the Solicitation Agent on or before the Voting Deadline: (a) if by U.S. Mail to, Rust Consulting, Inc., P.O. Box 1689, Faribault, Minnesota 55021-1689, Attn: Rouge Industries, Inc., et al. Plan Ballot; and (b) if by hand delivery, courier or overnight service to Rouge Industries, Inc., et al. Plan Ballot, c/o Rust Consulting, Inc., 201 South Lyndale Avenue, Faribault, Minnesota 55021.

Except to the extent the Debtors determine in their reasonable judgment, after consultation with the Committee, or as permitted by the Bankruptcy Court, Ballots received after

the Voting Deadline will not be accepted or counted by the Debtors in connection with the Debtors' request for confirmation of the Plan, provided, however, that the Committee shall retain the right to object to such determination to accept late Ballots. **The method of delivery of Ballots to be sent to the Solicitation Agent is at the election and risk of each Holder of a Claim, provided that**, except as otherwise provided herein, such delivery will be deemed made only when the original, executed Ballot is actually received by the Solicitation Agent. In all cases, sufficient time should be allowed to assure timely delivery. **Original executed Ballots are required. Delivery of a Ballot by facsimile, e-mail or any other electronic means will not be accepted. No Ballot should be sent to the Debtors, any indenture trustee, or the Debtors' Professionals.** The Debtors expressly reserve the right to amend, at any time and from time to time, the terms of the Plan (subject to compliance with the requirements of section 1127 of the Bankruptcy Code and the terms of the Plan regarding modification). If the Debtors make material changes in the terms of the Plan or if the Debtors waive a material condition, the Debtors will disseminate additional solicitation materials and will extend the solicitation, in each case to the extent directed by the Bankruptcy Court.

#### **F. THE CONFIRMATION HEARING**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing for \_\_\_\_\_.m. (ET) on \_\_\_\_\_, 2009, before the Honorable Mary F. Walrath, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 Market Street, 5<sup>th</sup> Floor, Wilmington, Delaware 19801. The Debtors may, in consultation with the Creditors' Committee, adjourn the Confirmation Hearing without further notice except announcement of the adjourned date made at the Confirmation Hearing and/or otherwise by Agenda letter under the local rules and the filing of a notice, which notice shall be served on the 2002 list and any person who informally or formally in writing objected to the Plan. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

Objections to confirmation of the Plan must be filed and served on or before 4:00 p.m. (ET) on \_\_\_\_\_, 2009 (the "Plan Objection Deadline"). All objections to the Plan must be filed with the Bankruptcy Court on or before the Plan Objection Deadline and served in a manner so that they are actually received on or before 4:00 p.m. (ET), on the Plan Objection Deadline by the following parties (the "Notice Parties"):

<p><b><u>Bankruptcy Counsel to Debtors and Debtors-in-Possession</u></b></p> <p>Robert J. Dehney  Eric D. Schwartz  Gregory W. Werkheiser  MORRIS, NICHOLS, ARSHT &amp; TUNNELL  1201 North Market Street  P.O. Box 1347  Wilmington, Delaware 19899-1347  (302) 658-9200</p>	<p><b><u>Special and Conflict Counsel to the Debtors and Debtors in Possession</u></b></p> <p>Adam G. Landis  Kerri K. Mumford  LANDIS RATH &amp; COBB LLP  919 Market Street, Suite 600  Wilmington, Delaware 9801  (302) 467-4400</p>
<p><b><u>United States Trustee</u></b></p> <p>Mark S. Kenney  Office of the U.S. Trustee  844 King Street  Suite 2207, Lockbox 35  Wilmington, Delaware 19801</p>	<p><b><u>Counsel to the Committee</u></b></p> <p>Kurt F. Gwynne  REED SMITH LLP  1201 Market Street  Suite 1500  Wilmington, Delaware 19801</p> <p>and</p> <p>Claudia Z. Springer  REED SMITH LLP  2500 One Liberty Place  1650 Market Street  Philadelphia, Pennsylvania 19103-7301</p>

The Bankruptcy Court shall only consider timely filed and served written objections. All objections must (1) state with particularity the legal and factual grounds for such objection, (2) provide, where applicable, the specific text that the objecting party believes to be appropriate to insert into the Plan, and (3) describe the nature and amount of the objector's claim. Objections not timely filed and served in accordance with these procedures shall be overruled. With regard to any timely-filed objection(s), the Debtors shall be allowed to file an omnibus reply on or before the date which is three (3) business days before the Confirmation Hearing.

## **VII.**

### **STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN**

#### **A. GENERALLY**

At the Confirmation Hearing, the Bankruptcy Court shall determine whether the requirements of section 1129 of the Bankruptcy Code have been satisfied. If so, the Bankruptcy Court shall enter the Confirmation Order. The Plan Proponents believe that the Plan satisfies or will satisfy the applicable requirements, as follows:

- **The Plan complies with the applicable provisions of the Bankruptcy Code.**
- **The Debtors, as Plan proponents, will 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 under the Plan for services or for costs and expenses in, or in connection with, these Chapter 11 Cases, or in connection with the Plan and incident to these Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment made before the Confirmation of the Plan is reasonable, or if such payment is to be fixed after the Confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.**
- **With respect to each Class of Impaired Claims or Equity Interests, either each Holder of a Claim or Equity Interest of such Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on such date under chapter 7 of the Bankruptcy Code.**
- **Except with respect to Class 4 or to the extent that the Holder of a particular Claim will agree to a different treatment of such Claim, the Plan provides that Allowed Administrative Claims, Allowed Priority Tax Claims and Allowed Other Priority Claims will be paid in full on the Effective Date, or as soon thereafter as practicable.**
- **At least one Class of Impaired Claims will accept the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of 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.**

- **All fees of the type described in 28 U.S.C. § 1930, including the fees of the United States Trustee will be paid as of the Effective Date.**

The Plan Proponents believe that (1) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (2) it has complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code; and (3) the Plan has been proposed in good faith.

## **B. FEASIBILITY**

The Bankruptcy Code requires that confirmation of a plan is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor. The Plan contemplates that all assets of the Debtors will ultimately be liquidated to Cash and all Cash proceeds will be distributed to the creditors pursuant to the terms of the Plan. Since no further financial reorganization of the Debtors will be possible, the Plan Proponents believe that the Plan meets the feasibility requirement. In addition, the Debtors believe that sufficient funds will exist at confirmation to make all payments required by the Plan.

## **C. “BEST INTERESTS” TEST**

With respect to each Impaired Class of Claims and Equity Interests, confirmation of the Plan requires that each such Holder either (1) accepts the Plan or (2) receives or retains under the Plan property of a value, as of the Effective Date of the Plan, that is not less than the value that each such Holder would receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code.

This analysis requires the Bankruptcy Court to determine what the Holders of Allowed Claims in each Impaired Class would receive from the liquidation of the Debtors' assets and properties in the context of chapter 7 liquidation cases. The cash amount available to satisfy unsecured claims of the Debtors would consist of the proceeds resulting from the disposition of the unencumbered assets of the Debtors, augmented by the unencumbered Cash held by the Debtors at the time of the commencement of the liquidation cases. Such cash amount would be reduced by the costs and expenses of the liquidation and by such additional administrative and priority claims that may result from the termination of the Debtors' businesses and the use of chapter 7 for the purposes of liquidation.

The Debtors' costs of liquidation under chapter 7 also would include the fees payable to a trustee in bankruptcy, as well as those payable to attorneys, investment bankers and other professionals that such trustee may engage, plus any unpaid expenses incurred by the Debtors during the Chapter 11 Cases, such as compensation for attorneys, advisors, accountants and costs and expenses of members of any official committees that are allowed in the chapter 7 cases. In addition, Claims could arise by reason of the breach or rejection of obligations incurred and executory contracts entered into or assumed by the Debtors during the pendency of the Chapter 11 Cases.

The foregoing types of Claims and such other Claims which may arise in the liquidation cases or result from the pending Chapter 11 Cases would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay pre-petition Claims.

To determine if the Plan is in the best interests of each Impaired Class, the value of the distributions from the proceeds of the liquidation of the Debtors' assets and properties (after subtracting the amounts attributable to the aforesaid claims) is then compared with the value offered to such classes of claims and equity interests under the Plan.

In applying the "best interests" test, it is possible that claims and equity interests in the chapter 7 cases may not be classified according to the seniority of such claims and equity interests. In the absence of a contrary determination by the Bankruptcy Court, all pre-chapter 11 unsecured claims that have the same rights upon liquidation would be treated as one class for the purposes of determining the potential distribution of the liquidation proceeds resulting from the chapter 7 cases of the Debtors. The distributions from the liquidation proceeds would be calculated on a Pro Rata basis according to the amount of the Claim held by each creditor. Therefore, creditors who claim to be third-party beneficiaries of any contractual subordination provisions might have to seek to enforce such contractual subordination provisions in the Bankruptcy Court or otherwise. The Plan Proponents believe that the most likely outcome of liquidation proceedings under chapter 7 would be the application of the rule of absolute priority of distributions. Under that rule, no junior creditor receives any distribution until all senior creditors are paid in full with interest and no stockholder receives any distribution until all creditors are paid in full with post-petition interest.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Chapter 11 Cases, including: (1) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee and (2) the increases in claims which would be satisfied on a priority basis or on parity with creditors in the Chapter 11 Cases, the Plan Proponents believe that Confirmation of the Plan will provide each Holder of an Allowed Claim with as much or more than the amount it would receive pursuant to liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

#### **D. ACCEPTANCE BY IMPAIRED CLASS**

The Bankruptcy Code requires, as a condition to Confirmation, that each class of claims or equity interests that is impaired under a plan accept the plan, with the exception described below. A class that is not "impaired" under a plan of reorganization is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is "impaired" unless the plan (1) leaves unaltered the legal, equitable and contractual rights to which the claim or equity interest entitles the holder of such claim or equity interest; (2) cures any default and reinstates the original terms of the obligation; or (3) provides that on the consummation date, the holder of the claim or interest receives cash equal to the allowed amount of such claim or, with respect to any interest, any fixed liquidation preference to which the interest holder is entitled or any fixed price at which the debtor may redeem the security.

## **E. NON-CONSENSUAL CONFIRMATION**

The Bankruptcy Court may confirm the Plan over the dissent of any Impaired Class if the Plan satisfies all of the requirements for (1) consensual confirmation under section 1129(a), other than section 1129(a)(8), of the Bankruptcy Code and (2) nonconsensual confirmation under section 1129(b) of the Bankruptcy Code.

To obtain nonconsensual confirmation of the Plan under a procedure commonly known as “cramdown,” it must be demonstrated to the Bankruptcy Court that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each impaired, non-accepting class. A plan does not discriminate unfairly if the legal rights of a dissenting class are treated in a manner consistent with the treatment of other classes whose legal rights are substantially similar to those of the dissenting class and if no class receives more than it is entitled to for its claims or interests. The Plan Proponents believe that the Plan satisfies this requirement.

The Bankruptcy Code provides a non-exclusive definition of the phrase “fair and equitable.” The Bankruptcy Code establishes tests for determining what is “fair and equitable” for secured creditors, unsecured creditors and equity holders, as follows:

### **1. Secured Claims**

Either (a) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred cash payments having a present value equal to the amount of its allowed secured claim, (b) each impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim, or (c) the property securing the claim is sold free and clear of liens, with such liens to attach to the proceeds of the sale and the treatment of such liens with respect to such proceeds as provided in clause (a) or (b).

### **2. Unsecured Claims**

Either (a) each impaired unsecured creditor receives or retains, under the plan, property of a value equal to the amount of its allowed claim or (b) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

### **3. Equity Interests**

Either (a) each holder of an equity interest will receive or retain, under the plan, property of value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled, or the value of the interest or (b) the holder of an interest that is junior to the non-accepting class will not receive or retain any property under the plan.

The Debtors reserve the right to pursue confirmation of the Plan without having previously obtained sufficient acceptances of the Plan from all Classes of Impaired Claims and Equity Interests. In such case, the Debtors may request confirmation of the Plan under section 1129(b) of the Bankruptcy Code notwithstanding that such Class or Classes did not accept the Plan.

**THE PLAN PROPONENTS BELIEVE THAT THE PLAN MAY BE CONFIRMED ON A NONCONSENSUAL BASIS (PROVIDED AT LEAST ONE IMPAIRED CLASS OF CLAIMS VOTES TO ACCEPT THE PLAN). ACCORDINGLY, THE PLAN PROPONENTS WILL DEMONSTRATE AT THE CONFIRMATION HEARING THAT THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1129(b) OF THE BANKRUPTCY CODE AS TO ANY NON-ACCEPTING CLASS.**

## **VIII.**

### **PLAN-RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMING AND CONSUMMATING THE PLAN**

**ALL IMPAIRED HOLDERS SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT, PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN.**

#### **A. FINANCIAL INFORMATION; DISCLAIMER**

Although the Debtors have used their best efforts to ensure the accuracy of the financial information provided in this Disclosure Statement, the financial information contained in this Disclosure Statement has not been audited and is based upon an analysis of data available at the time of the preparation of the Plan and Disclosure Statement. While the Plan Proponents believe that such financial information fairly reflects the financial condition of the Debtors, the Debtors are unable to warrant or represent that the information contained herein and attached hereto is without inaccuracies.

#### **B. CERTAIN BANKRUPTCY CONSIDERATIONS**

##### **1. Classification Risk**

Under Section 1123(a)(4) of the Bankruptcy Code, a plan of reorganization must provide the same treatment for each claim or interest of a particular class, unless the holder of the particular claim or interest agrees to a less favorable treatment of such particular claim or interest. The Plan Proponents can provide no assurance that the Bankruptcy Code will not disapprove of the classifications of Claims and Equity Interests contained in the Plan.

##### **2. The Plan Proponents May Not be Able to Secure Confirmation of the Plan**

There can be no assurance that the Debtors will receive the requisite acceptances to confirm the Plan. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of a Claim or Equity

Interest of the Debtors might challenge the adequacy of this Disclosure Statement or contend that the balloting procedures and results are not in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met, including that the terms of the Plan are fair and equitable to non-accepting Classes. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that the Plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting Classes, confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial reorganization, and the value of distributions to non-accepting Holders of claims and interests within a particular class under the Plan will not be less than the value of distributions such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. While there can be no assurance that these requirements will be met, the Plan Proponents believe that the Plan will not be followed by a need for further liquidation and that non-accepting Holders within each Class under the Plan will receive distributions at least as great as they would receive following a liquidation under chapter 7 of the Bankruptcy Code when taking into consideration all administrative claims and costs associated with any such chapter 7 case.

**3. The Confirmation and Consummation of the Plan Are Also Subject to Certain Conditions as Described Herein**

If the Plan is not confirmed, it is unclear whether another liquidating plan could be implemented and what distributions Holders of Claims or Equity Interests ultimately would receive with respect to their Claims or Equity Interests. If an alternative liquidating plan could not be agreed to, it is possible that the Debtors would have to liquidate their assets under chapter 7 of the Bankruptcy Code, in which case it is likely Holders of Claims would receive substantially less favorable treatment than they would receive under the Plan.

**4. The Debtors May Object to the Amount or Classification of a Claim**

The Debtors reserve the right to object to the amount or classification of any Claim or Equity Interest. The estimates set forth in this Disclosure Statement cannot be relied on by any Holder of a Claim or Equity Interest whose Claim or Equity Interest is subject to an objection. Any such Claim or Equity Interest Holder may not receive its specified share of the estimated distributions described in this Disclosure Statement.

**5. Nonconsensual Confirmation**

Pursuant to the “cramdown” provisions of section 1129(b) of the Bankruptcy Code, the Bankruptcy Court can confirm the Plan at the Debtors’ request if at least one Impaired Class has accepted the Plan (with such acceptance being determined without including the acceptance of any “insider” in such Class) and, as to each Impaired Class which has not accepted the Plan, the Bankruptcy Court determines that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to such Impaired Classes (discussed further in Article VII

above). The Debtors believe that the Plan satisfies these requirements, and pursuant to the Plan, will request such nonconsensual confirmation in accordance with section 1129(b) of the Bankruptcy Code in the event an impaired class entitled to vote accepts the Plan and another has rejected the Plan.

## **6. Substantive Consolidation Risks**

Pursuant to Section VI.A. of the Plan, the Plan contemplates substantive consolidation of the Debtors. Substantive consolidation is a process by which the assets and liabilities of different debtor entities are consolidated and the various debtor entities are treated as a single entity. The consolidated assets create a single fund from which all of the claims against the consolidated debtors are satisfied. Creditors of single debtors before consolidation become creditors of the consolidated debtors, sharing in the assets of the consolidated estate. Substantive consolidation also eliminates inter-company claims of the debtor entities and duplicate claims against the related debtors. In addition, creditors of the consolidated debtor entities are combined for purposes of voting on a plan of reorganization for the consolidated entity.

The Plan Proponent can provide no assurance, however, that (a) the relevant Classes will approve such consolidation; (b) the Bankruptcy Court will determine such consolidation is appropriate; or (c) a Holder will not object to such consolidation. Failure to consolidate the Debtors into one entity would affect the distribution of property currently provided in the Plan.

## **7. Delays of Confirmation and/or the Effective Date**

Any delays of either Confirmation or of the Effective Date could result in, among other things, increased Claims of Professionals. These or any other negative effects of delays of either Confirmation or the Effective Date could endanger the ultimate approval of the Plan by the Bankruptcy Court.

## **C. DISTRIBUTION RISKS**

*The Plan contemplates the resolution of many Disputed Claims after the Effective Date. Some of the Disputed Claims are substantial, and, if resolved unfavorably, could have a significant negative impact on the recoveries of the holders of Allowed Unsecured Claims. While the Debtors believe they have defenses and may have counterclaims respecting many of the Disputed Claims, and consequently that such Disputed Claims are without merit, adverse resolution of these Claims will reduce the Distributions to holders of Allowed Unsecured Claims.*

## **D. LIQUIDATION UNDER CHAPTER 7**

The Plan Proponents believe that the Plan affords Holders of Claims and Equity Interests the potential for the greatest recovery and, therefore, is in the best interests of such Holders. If, however, the Plan is not confirmed in the Chapter 11 Cases, the Debtors may be

forced to liquidate under chapter 7 of the Bankruptcy Code pursuant to which a trustee would be elected or appointed to liquidate the Debtors' assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective holders of claims against or interests in the Debtors.

As described herein, however, the Plan Proponents believe that in a liquidation under chapter 7 of the Bankruptcy Code, before creditors receive any distribution, additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants and other professionals to assist such trustees would cause a substantial diminution in the value of the Debtors' estates. 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, which would arise by reason of the liquidation.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors, including (1) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in a bankruptcy and professional advisors to such trustee and (2) substantial increases in claims which would be satisfied on a priority basis, **THE PLAN PROPONENTS HAVE DETERMINED THAT CONFIRMATION OF THE PLAN WILL PROVIDE THE CREDITORS AND EQUITY INTEREST HOLDERS WITH A RECOVERY THAT IS NOT LESS THAN THEY WOULD RECEIVE PURSUANT TO A LIQUIDATION OF THE DEBTORS UNDER CHAPTER 7 OF THE BANKRUPTCY CODE.**

## IX.

### CERTAIN FEDERAL INCOME TAX CONSEQUENCES

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to the Debtors and to Holders of Allowed Claims. This discussion is based on the Internal Revenue Code ("IRC"), Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the IRS as in effect on the date hereof. Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims (including Claims within the same Class) and Equity Interests, the Holders' status and method of accounting (including Holders within the same Class) and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are subject to significant uncertainties. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to any of the issues discussed below. Furthermore, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtors and the Holders of Allowed Claims.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or the Holders of Allowed Claims in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S. federal income tax laws (including, but not limited to,

banks, governmental authorities or agencies, pass-through entities, brokers and dealers in securities, insurance companies, financial institutions, tax-exempt organizations, small business investment companies, regulated investment companies and foreign taxpayers). This discussion does not address the tax consequences to Holders of Claims who did not acquire such Claims at the issue price on original issue. No aspect of foreign, state, local or estate and gift taxation is addressed.

THE FOLLOWING SUMMARY IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE PERSONAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR EQUITY INTEREST. EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

## **A. CONSEQUENCES TO DEBTORS**

### **1. Cancellation of Debt**

Upon implementation of the Plan, the amount of the Debtors' aggregate outstanding indebtedness will be substantially reduced. A portion of the reduction will be treated as income from the discharge of indebtedness (also known as "Cancellation of Debt" or "COD"), i.e., the amount by which the debt discharged exceeds any consideration paid in exchange therefor. In general, the IRC provides that a corporate or individual debtor in a case under the Bankruptcy Code does not recognize such income for federal tax purposes but rather such debtor must reduce its tax attributes by any COD.

For this purpose a debtor's tax attributes include: (a) net operating losses ("NOLs") for the taxable year of the discharge and NOL carryovers to such taxable year, (b) general business credit carryforwards; (c) minimum tax credit carryforwards; (d) capital loss carryforwards; (e) the tax basis of the debtor's depreciable and non-depreciable assets; (f) passive activity loss and credit carryforwards; and (g) foreign tax credit carryforwards. Because any attribute reduction will be applied only after determination of the tax liability of the Debtors for the taxable year of the discharge, any reduction in tax attributes will not affect the utilization of such attributes against any income or gain recognized upon implementation of the Plan; however, NOL carryovers, suspended passive losses and other tax attributes that otherwise might be available to the Debtors in subsequent taxable years may be substantially reduced, if not eliminated.

In the event that the amount of COD attributable to a Debtor exceeds all of the tax attributes of the Debtor and certain affiliates, no income will be realized by such Debtor as long as such cancellation occurs in connection with the Debtor's Reorganization Case.

### **2. Limitation on NOL Carryovers and Other Tax Attributes**

Under IRC Section 382, if a loss corporation undergoes an ownership change, the amount of its pre-change losses that may be utilized to offset future taxable income generally will be subject to an "annual limitation." Such annual limitation also may apply to subsequently



recognized “built-in” losses, i.e., losses economically accrued but unrecognized as of the date of the ownership change. In general, the annual limitation would be equal to the product of (i) the value of the loss corporation’s outstanding stock immediately before the ownership change (with certain adjustments) and (ii) the “long-term tax-exempt rate” in effect for the month in which the ownership change occurs. Any unused portion of the annual limitation would be available in subsequent years.

In general, an ownership change occurs if the percentage of the value of the loss corporation’s stock owned by one or more direct or indirect five percent (5%) shareholders (as specially defined for purposes of IRC Section 382) has increased by more than fifty (50) percentage points over the lowest percentage of that value owned by such five percent (5%) shareholders at any time during a three-year test period. Under the Regulations, the IRS, in certain circumstances, may treat certain non-stock interests in a corporation (including debt) as stock for IRC Section 382 purposes if such interests offer a potential significant participation in the growth of the corporation.

### **3. Alternative Minimum Tax**

In general, an alternative minimum tax (“AMT”) is imposed to the extent that twenty percent (20%) of a corporation’s alternative minimum taxable income exceeds the corporation’s regular Federal income tax. For purposes of computing taxable income for AMT purposes, certain tax deductions and other beneficial allowances are modified or eliminated. In particular, even though a corporation might otherwise be able to offset all of its taxable income for regular income tax purposes by available NOL carryovers, only ninety percent (90%) of the corporation’s taxable income for AMT purposes may be offset by available NOL carryovers (as recomputed for AMT purposes). In addition, if a corporation undergoes an ownership change within the meaning of IRC Section 382, and is in a net built-in loss position on the change date (as determined for AMT purposes), the corporation’s aggregate tax basis in its assets would be reduced for certain AMT purposes to the fair market value of such assets as of the change date.

### **4. Sale or Transfer of Assets by the Debtors**

Pursuant to the Plan, it is possible that some or substantially all of the Assets will be sold or otherwise transferred. If this happens, such sales or transfers of the Assets may result in taxable gain or loss to the Debtors. Nevertheless, due to available NOL carryforwards, and additional NOLs and other losses expected to be incurred in connection with such transfers, the Debtors do not anticipate that a significant federal income tax liability, if any, will be incurred as a result of such transfers.

## **B. FEDERAL INCOME TAX TREATMENT OF LIQUIDATION TRUST**

### **1. Classification of Liquidation Trust**

Pursuant to the Plan, the Debtors will transfer the Liquidation Trust Assets to the Liquidation Trust and the Liquidation Trust will become obligated to make Distributions in

accordance with the Plan. The Plan provides, and this discussion assumes, that the Liquidation Trust will be treated for federal income tax purposes as a "liquidating trust," as defined in Treasury Regulation Section 301.7701-4(d), and will, therefore, be taxed as a grantor trust, of which the beneficiaries will be treated as the owners and grantors thereof (the "Beneficiaries"). Accordingly, because a grantor trust is treated as a pass-through entity for federal income tax purposes, no tax should be imposed on the Liquidation Trust itself or on the income earned or gain recognized by the Liquidation Trust. Instead, the Beneficiaries will be taxed on their allocable shares of such net income or gain in each taxable year (determined in accordance with the Liquidation Trust Agreement), whether or not they receive any distributions from the Liquidation Trust in such taxable year. For federal tax purposes the transfers to the Liquidation Trust will be treated as a deemed transfer from the Debtors to the Beneficiaries followed by a deemed transfer by the Beneficiaries to the Liquidation Trust, which will be treated as a grantor trust with respect to the Beneficiaries.

Although the Liquidation Trust has been structured with the intention of complying with guidelines established by the IRS in Rev. Proc. 94-45, 1994-2 C.B. 684, which modifies and amplifies Rev. Proc. 82-58, 1982-2 C.B. 847 and Rev. Proc. 91-15, 1991-1 C.B. 484, for the formation of liquidating trusts, it is possible that the IRS could require a different characterization of the Liquidation Trust, which could result in different and possibly greater tax liability to the Liquidation Trust and/or the Holders of Allowed Claims. No ruling has been or will be requested from the IRS concerning the tax status of the Liquidation Trust and there can be no assurance the IRS will not require an alternative characterization of the Liquidation Trust. If the Liquidation Trust is determined by the IRS to be taxable not as a liquidating trust, as described in Treasury Regulation Section 301.7701-4(d), the taxation of the Liquidation Trust and the transfer of assets by the Debtors to the Liquidation Trust could be materially different than is described herein and could have a material adverse effect on the Holders of Allowed Claims.

## **2. Tax Reporting**

The Liquidation Trustee will file tax returns with the IRS for the Liquidation Trust as a grantor trust in accordance with Treasury Regulation Section 1.671-4(a). The Liquidation Trustee will also send to each Beneficiary a separate statement setting forth the Beneficiary's allocable share of items of income, gain, loss, deduction or credit and will instruct the Beneficiary to report such items on such Beneficiary's federal income tax return.

## **3. Claim Reserve for Disputed Claims**

The Liquidation Trustee will establish the Claim Reserve on account of any distributable amounts required to be set aside on account of Disputed Claims. Such amounts, net of certain expenses, shall be distributed as such Disputed Claims are resolved as such amounts would have been distributable had the Disputed Claims been Allowed Claims as of the Effective Date, together with any net earnings related thereto. The Liquidation Trust will pay taxes on the taxable net income or gain allocable to Holders of Disputed Claims on behalf of such Holders and, when such Disputed Claims are ultimately resolved, Holders whose Disputed Claims are determined to be Allowed Claims will receive distributions from the Liquidation Trust net of taxes which the Liquidation Trust had previously paid on their behalf.

## C. CONSEQUENCES TO HOLDERS OF CLAIMS

The federal income tax consequences of the Plan to a Holder of a Claim will depend upon several factors, including but not limited to: (1) the manner in which a Holder acquired a Claim; (2) the length of time the Claim has been held; (3) whether the Claim was acquired at a discount; (4) whether the Holder has taken a bad debt deduction with respect to the Claim (or any portion thereof) in the current or a prior tax year; (5) whether the Holder has previously included accrued or unpaid interest with respect to the Claim; (6) the method of tax accounting of the Holder; and (7) whether the Holder receives distributions under the Plan in more than one taxable year. **HOLDERS ARE STRONGLY ADVISED TO CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX TREATMENT OF THEIR PARTICULAR CLAIMS UNDER THE PLAN.**

### 1. Holders of Allowed Claims

Generally, a Holder of an Allowed Claim will recognize gain or loss equal to the difference between the "amount realized" by such Holder and such Holder's adjusted tax basis in the Allowed Claim. The "amount realized" is equal to the sum of the Cash and the fair market value of any other consideration received under the Plan in respect of a Holder's Claim, including, to the extent such Holder is a Beneficiary of the Liquidation Trust, the fair market value of each such Holder's proportionate share of the assets transferred to the Liquidation Trust on behalf of and for the benefit of such Holder (to the extent that such Cash or other property is not allocable to any portion of the Allowed Claim representing accrued but unpaid interest (see discussion below)).

The transfer of the Liquidation Trust Assets to the Liquidation Trust by the Debtors should be treated for federal income tax purposes as a deemed transfer of such Liquidation Trust Assets to the Holders of Allowed Claims to the extent they are Beneficiaries of the Liquidation Trust, followed by a deemed transfer of such Liquidation Trust Assets by such Beneficiaries to the Liquidation Trust. As a result of such treatment, such Holders of Allowed Claims will have to take into account the fair market value of their Pro Rata share, if any, of the Liquidation Trust Assets transferred on their behalf to the Liquidation Trust in determining the amount of gain realized and required to be recognized upon consummation of the Plan on the Effective Date. In addition, since a Holder's share of the assets held in the Liquidation Trust may change depending upon the resolution of Disputed Claims, the Holder may be prevented from recognizing any loss in connection with consummation of the Plan until the time that all such Disputed Claims have been resolved. The Liquidation Trustee will provide the Holders of Allowed Claims with valuations of the assets transferred to the Liquidation Trust on behalf of and for the benefit of such Holders and such valuations should be used consistently by the Liquidation Trust and such Holders for all federal income tax purposes. **HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE RECOGNITION OF GAIN OR LOSS, FOR FEDERAL INCOME TAX PURPOSES, ON THE SATISFACTION OF THEIR ALLOWED CLAIMS.**

## **2. Distributions in Discharge of Accrued but Unpaid Interest**

Pursuant to the Plan, distributions received in respect of Allowed Claims will be allocated first to the principal amount of such Allowed Claims, with any excess allocated to accrued but unpaid interest. However, there is no assurance that the IRS will respect such allocation for federal income tax purposes. Holders of Allowed Claims not previously required to include in their taxable income any accrued but unpaid interest on an Allowed Claim may be treated as receiving taxable interest, to the extent any consideration they receive under the Plan is allocable to such accrued but unpaid interest. Holders previously required to include in their taxable income any accrued but unpaid interest on an Allowed Claim may be entitled to recognize a deductible loss, to the extent that such accrued but unpaid interest is not satisfied under the Plan. **HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE ALLOCATION OF CONSIDERATION RECEIVED IN SATISFACTION OF THEIR ALLOWED CLAIMS AND THE FEDERAL INCOME TAX TREATMENT OF ACCRUED BUT UNPAID INTEREST.**

## **3. Character of Gain or Loss; Tax Basis; Holding Period**

The character of any gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss recognized by a Holder of an Allowed Claim under the Plan will be determined by a number of factors, including, but not limited to, the status of the Holder, the nature of the Allowed Claim in such Holder's hands, the purpose and circumstances of its acquisition, the Holder's holding period of the Allowed Claim, and the extent to which the Holder previously claimed a deduction for the worthlessness of all or a portion of the Allowed Claim. The Holder's aggregate tax basis for any consideration received under the Plan will generally equal the amount realized in the exchange (less any amount allocable to interest as described in the preceding paragraph). The holding period for any consideration received under the Plan will generally begin on the day following the receipt of such consideration.

## **D. CONSEQUENCES TO HOLDERS OF EQUITY INTERESTS**

Pursuant to the Plan, all Equity Interests in all of the Debtors are being extinguished. A Holder of any Equity Interest extinguished under the Plan should generally be allowed a "worthless stock deduction" in an amount equal to the Holder's adjusted basis in the Holder's Equity Interest. A "worthless stock deduction" is a deduction allowed to a Holder of a corporation's stock for the taxable year in which such stock becomes worthless. If the Holder held the Equity Interest as a capital asset, the loss will be treated as a loss from the sale or exchange of such capital asset. Capital gain or loss will be long-term if the Equity Interest was held by the Holder for more than one year and otherwise will be short-term. Any capital losses realized generally may be used by a corporate Holder only to offset capital gains, and by an individual Holder only to the extent of capital gains plus \$3,000 of other income.

## **E. WITHHOLDING**

All Distributions to Holders of Allowed Claims under the Plan are subject to any applicable withholding, including employment tax withholding. The Debtors and/or the

Liquidation Trust will withhold appropriate employment taxes with respect to payments made to a Holder of an Allowed Claim which constitutes a payment for compensation. Payors of interest, dividends, and certain other reportable payments are generally required to comply with backup withholding requirements by withholding at a rate not in excess of 28% of such payments if the payee fails to furnish such payee's correct taxpayer identification number (social security number or employer identification number), to the payor. The Debtors and/or the Liquidation Trust may be required to withhold a portion of any payments made to a Holder of an Allowed Claim if the Holder (i) fails to furnish the correct social security number or other taxpayer identification number ("TIN") of such Holder, (ii) furnishes an incorrect TIN, (iii) has failed to properly report interest or dividends to the IRS in the past, or (iv) under certain circumstances, fails to provide a certified statement signed under penalty of perjury, that the TIN provided is the correct number and that such Holder is not subject to backup withholding. Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Holder of an Allowed Claim's United States federal income tax liability, and a Holder of an Allowed Claim may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions.

**AS INDICATED ABOVE, THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY AND NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. ACCORDINGLY, EACH HOLDER OF A CLAIM OR EQUITY INTEREST IS URGED TO CONSULT SUCH HOLDER'S TAX ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.**

## **X.**

### **RECOMMENDATION**

In the opinion of the Plan Proponents, the Plan is preferable to the alternatives described herein because it provides for a larger distribution to the Holders of Claims than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to the Holders of Claims. *Accordingly, the Plan Proponents recommend that Holders of Claims entitled to vote on the Plan support confirmation of the Plan and vote to accept the Plan.*

Dated: December \_\_, 2008

Respectfully submitted,

Rouge Industries, Inc.  
Rouge Steel Company  
QS Steel, Inc.  
Eveleth Taconite Company

By: \_\_\_\_\_  
Name: Steven L. Victor  
Title: Chief Restructuring Officer of Rouge  
Industries, Inc., Rouge Steel Company, QS Steel Inc.  
and Eveleth Taconite Company

Official Committee of Unsecured Creditors

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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