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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re

USA DISCOUNTERS, LTD., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-11755 (CSS)

(Jointly Administered)

**DISCLOSURE STATEMENT FOR THE JOINT CHAPTER 11 PLAN OF LIQUIDATION OF  
USA DISCOUNTERS, LTD. AND ITS AFFILIATED DEBTORS**

Dated: Wilmington, Delaware  
November 21, 2016

Laura Davis Jones (DE Bar No. 2436)  
James E. O'Neill (DE Bar No. 4042)  
Colin R. Robinson (DE Bar No. 5524)  
PACHULSKI STANG ZIEHL & JONES LLP  
919 North Market Street, 17th Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705 (Courier 19801)  
Tel: (302) 652-4100; Fax: (302) 652-4400  
Email: ljones@pszjlaw.com  
jo'neill@pszjlaw.com  
crobinson@pszjlaw.com

-and-

Lee R. Bogdanoff, Esq.  
Michael L. Tuchin, Esq.  
Whitman L. Holt, Esq.  
Sasha M. Gurvitz, Esq.  
KLEE, TUCHIN, BOGDANOFF & STERN LLP  
1999 Avenue of the Stars, 39<sup>th</sup> Floor  
Los Angeles, CA 90067  
Tel: (310) 407-4023; Fax: (310) 407-9090  
Email: lbogdanoff@ktbslaw.com  
mtuchin@ktbslaw.com  
wholt@ktbslaw.com  
sgurvitz@ktbslaw.com

*Counsel to the Debtors and Debtors in Possession*

<sup>1</sup> The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: USA Discounters, Ltd. (5123); USA Discounters Holding Company, Inc. (8192); and USA Discounters Credit, LLC (3128). The Debtors' address is 6353 Center Drive, Building 8, Suite 101, Norfolk, Virginia, 23502.



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**DISCLAIMER**

**THIS DISCLOSURE STATEMENT PROVIDES INFORMATION REGARDING THE *JOINT CHAPTER 11 PLAN OF LIQUIDATION OF USA DISCOUNTERS, LTD. AND ITS AFFILIATED DEBTORS*, WHICH THE DEBTORS ARE SEEKING TO HAVE CONFIRMED BY THE BANKRUPTCY COURT. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES TO, AND CONFIRMATION OF, THE PLAN AND MAY NOT BE RELIED ON FOR ANY OTHER PURPOSE. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT REGARDING THE FAIRNESS OR THE MERITS OF THE PLAN.**

**THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, AND CERTAIN DOCUMENTS RELATING TO THE PLAN. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR, ACCURATE, AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF, OR ARE INCONSISTENT WITH, ANY SUCH DOCUMENTS. IN THE EVENT OF ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLAIMS SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN.**

**THE STATEMENTS CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND EQUITY INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN. ALTHOUGH THE DEBTORS HAVE MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY THE RECOVERY UNDER THE PLAN, THIS DISCLOSURE STATEMENT IS QUALIFIED TO THE EXTENT CERTAIN EVENTS DO OR DO NOT OCCUR.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR ANY OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) OR ANY FEDERAL, STATE, LOCAL, OR FOREIGN REGULATORY AGENCY, NOR HAS THE SEC OR ANY OTHER SUCH AGENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT. PERSONS OR ENTITIES HOLDING OR TRADING IN, OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING, SECURITIES OR CLAIMS OF THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE SPECIFIC PURPOSE FOR WHICH THE DOCUMENTS WERE PREPARED.**

**THE DEBTORS MAKE STATEMENTS IN THIS DISCLOSURE STATEMENT THAT MAY BE CONSIDERED FORWARD-LOOKING STATEMENTS UNDER THE FEDERAL SECURITIES LAWS. STATEMENTS CONCERNING THESE AND OTHER MATTERS ARE NOT GUARANTEES AND REPRESENT THE DEBTORS’ ESTIMATES AND ASSUMPTIONS ONLY AS OF THE DATE SUCH STATEMENTS WERE MADE AND INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES, AND OTHER UNKNOWN FACTORS THAT COULD IMPACT THE DEBTORS’ PLAN OR DISTRIBUTIONS THEREUNDER. IN ADDITION TO STATEMENTS THAT EXPLICITLY DESCRIBE SUCH RISKS AND UNCERTAINTIES, READERS ARE URGED TO CONSIDER STATEMENTS LABELED WITH THE TERMS “BELIEVES,” “BELIEF,” “EXPECTS,” “INTENDS,” “ANTICIPATES,” “PLANS,” OR SIMILAR TERMS TO BE UNCERTAIN AND FORWARD-LOOKING. CREDITORS AND OTHER INTERESTED PARTIES SHOULD ALSO REVIEW THE SECTION OF THIS DISCLOSURE STATEMENT ENTITLED “RISK FACTORS” FOR A DISCUSSION OF CERTAIN FACTORS THAT MAY AFFECT THE PLAN AND DISTRIBUTIONS THEREUNDER.**

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**EXHIBITS**

**EXHIBIT A** Joint Chapter 11 Plan of Liquidation

**EXHIBIT B** Orderly Liquidation Analysis

<p><b>THE DEBTORS HEREBY ADOPT AND INCORPORATE THE EXHIBITS ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN</b></p>
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## **I. INTRODUCTION**

USA Discounters, Ltd. (“USA Discounters”), USA Discounters Holding Company, Inc. (“Holdings”), and USA Discounters Credit, LLC (“Credit LLC”), the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), hereby submit this disclosure statement (the “Disclosure Statement”) pursuant to sections 1125 and 1126(b) of title 11 of the United States Code (the “Bankruptcy Code”), in connection with the solicitation of votes on the *Joint Chapter 11 Plan of Liquidation of USA Discounters, Ltd. and Its Affiliated Debtors*, dated as of November 21, 2016 (as amended, modified, or supplemented from time to time pursuant to its terms, the “Plan”). A copy of the Plan is attached hereto as **Exhibit A**.<sup>2</sup>

The purpose of this Disclosure Statement is to enable Creditors whose Claims are Impaired under the Plan and who are entitled to vote on the Plan to make an informed decision in exercising their right to accept or reject the Plan. This Disclosure Statement sets forth certain information regarding the Debtors’ prepetition operating and financial history, their reasons for seeking protection under chapter 11 of the Bankruptcy Code, the course of these Chapter 11 Cases, and the anticipated orderly liquidation of the Estate Assets. This Disclosure Statement also describes certain terms and provisions of the Plan, certain effects of Confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the Confirmation process and the voting and election procedures that Creditors entitled to vote under the Plan must follow for their votes to be counted.

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

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

A bankruptcy plan is a vehicle for satisfying the rights of holders of claims against and equity interests in a debtor. Confirmation of a plan is the overriding purpose of a chapter 11 case. Upon confirmation and effectiveness, a plan becomes binding on the debtor and all of its creditors and equity interest holders.

In these Chapter 11 Cases, the Plan contemplates a liquidation of each of the Debtors and is therefore referred to as a “plan of liquidation.” The Debtors’ remaining assets are largely limited to the Receivables, Cash, the Preserved Claims, and the GUC Trust Avoidance Actions under the Plan.

The Plan provides for the appointment of a Plan Administrator and a GUC Trustee who will administer and liquidate all remaining property of the Debtors and their Estates, as described more fully in Section IV.C of this Disclosure Statement. The Plan also provides for Distributions to be made to certain Holders of Administrative Claims, Professional Fee Claims, Priority Tax Claims, Prepetition Credit Document Claims, Priority Claims, and General Unsecured Claims, and for the funding of the Plan Administrator and the GUC Trustee. Finally, the Plan provides for the eventual cancellation of all Equity Interests in the Debtors, the dissolution and wind-up of the affairs of the

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<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings provided to those Defined Terms in the Plan. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between the summary herein and the Plan, the Plan shall govern.

Debtors, and the administration of any remaining assets of the Debtors' Estates by the Plan Administrator or the GUC Trustee, as applicable.

**THE DEBTORS BELIEVE THAT THE PLAN IS FAIR AND EQUITABLE, WILL MAXIMIZE RECOVERIES TO CREDITORS, AND IS IN THE BEST INTERESTS OF THE DEBTORS AND THEIR CONSTITUENTS. FOR THESE REASONS, THE DEBTORS URGE HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN.**

## **2. Material Terms of the Plan**

The following is a general overview of certain material terms of the Plan:

- All Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Priority Claims will be paid or otherwise satisfied in full as required by the Bankruptcy Code, unless otherwise agreed to by the Holders of such Claims and the Plan Administrator.
- The Prepetition Credit Document Claims, which are secured by liens on substantially all assets of USA Discounters, will be finally Allowed against all the Debtors in a specified amount under the Plan. The Holders of the Prepetition Credit Document Claims will receive monthly distributions of any Available Cash until (x) the allowed claim amount (including post-Effective-Date interest thereon) has been paid in full or (y) there is not and will not be any further Available Cash. Repayment of these Claims will be secured by the Retained Prepetition Lien.
- Holders of Allowed General Unsecured Claims against USA Discounters will receive (i) a Pro Rata share of the GUC Trust Interests—Class A, or (ii) such other less favorable treatment as to which a particular Holder and the GUC Trustee shall have agreed upon in writing.
- Holders of Allowed General Unsecured Claims against Holdings will receive a Pro Rata share of any Cash owned by Holding.
- Holders of Allowed General Unsecured Claims against Credit LLC will receive a Pro Rata share of any Cash owned by Credit LLC.
- Unless otherwise elected by the Prepetition Agent (with the Debtors' consent), Holders of Opt-Out Claims (i.e., Holders of General Unsecured Claims against USA Discounters who "opt out" of certain releases under the Plan) will receive (i) a Pro Rata share of the GUC Trust Interests—Class B, or (ii) such other less favorable treatment as to which a particular Holder and the GUC Trustee shall have agreed upon in writing.
- Holders of Subordinated Claims will not be entitled to any distribution or recovery on account of such Claims.



- As of the Effective Date, all Equity Interests in Holdings shall be deemed void, cancelled, and of no further force and effect. On and after the Effective Date, Holders of Equity Interests in Holdings shall not be entitled to, and shall not receive or retain any property or interest in property under the Plan on account of such Equity Interests

### 3. Summary of Treatment of Claims and Equity Interests Under the Plan

The table below summarizes the classification and treatment of Claims and Equity Interests under the Plan.

**THE PROJECTED RECOVERIES FOR GENERAL UNSECURED CLAIMS SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND ACTUAL RECOVERIES MAY DIFFER. FOR A COMPLETE DESCRIPTION OF THE DEBTORS' CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS, REFERENCE SHOULD BE MADE TO THE PLAN.**

CLASS	DESCRIPTION	IMPAIRED/ UNIMPAIRED	PROJECTED RECOVERY
None	Administrative Claims	Unimpaired	100%
None	Professional Fee Claims	Unimpaired	100%
None	Priority Tax Claims	Unimpaired	100%
Class 1	Prepetition Credit Document Claims	Impaired	33-50% <sup>3</sup>
Class 2	Other Secured Claims	Unimpaired	100%
Class 3	Priority Claims	Unimpaired	100%
Class 4	General Unsecured Claims Against USA Discounters	Impaired	[ ]% <sup>4</sup>

<sup>3</sup> The projected recovery range set forth herein is based on the amount of the Prepetition Credit Document Claims as of October 15, 2016 and is subject to change based on subsequent reductions in the amount of the Prepetition Credit Document Claims.

<sup>4</sup> Estimated recoveries for Class 4 are based upon the total amount of Filed and Scheduled Claims to date, without taking into account any potential increase in the Class 4 pool as a result of any potential claims that may be filed by customers in connection with the Supplemental Customer Claims Bar Date and any potential decrease in the Class 4 pool as a result of any potential future objections to Filed or Scheduled General Unsecured Claims. Estimated recoveries will be affected by, among other things, the ultimate pool of Allowed General Unsecured Claims and the amount of GUC Trust Expenses. In estimating recoveries for Class 4, the

(FOOTNOTE CONTINUED)

<b>CLASS</b>	<b>DESCRIPTION</b>	<b>IMPAIRED/ UNIMPAIRED</b>	<b>PROJECTED RECOVERY</b>
Class 5	General Unsecured Claims Against Holdings	Impaired	No Allowed Claims are anticipated
Class 6	General Unsecured Claims Against Credit LLC	Impaired	No Allowed Claims are anticipated
Class 7	Opt-Out Claims	Impaired	TBD based on voting results and the amount, if any, of recoveries on account of GUC Trust Avoidance Actions; Class size is unknown
Class 8	Subordinated Claims	Impaired	0%
Class 9	Equity Interests in Holdings	Impaired	0%

**THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF CLAIMS AGAINST THE DEBTORS AND THUS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN. THE PLAN IS SUPPORTED BY THE PREPETITION LENDERS AND THE CREDITORS' COMMITTEE.**

## **B. Plan Voting Instructions and Procedures**

### **1. Voting Rights**

Under the Bankruptcy Code, only classes of claims or interests that are “impaired” and that are not deemed as a matter of law to have rejected a plan under Bankruptcy Code section 1126 are entitled to vote to accept or reject such plan. Any class that is “unimpaired” is not entitled to vote to accept or reject a plan and is conclusively presumed to have accepted such plan. As set forth in Bankruptcy Code section 1124, a class is “impaired” if the legal, equitable, or contractual rights attaching to the claims or equity interests of that class are modified or altered by the proposed plan. Holders of claims or interests within an impaired class are entitled to vote to accept or reject a plan if such claims or interests are “allowed” under Bankruptcy Code section 502.

Under the Bankruptcy Code, acceptance of a plan by a class of claims is determined by calculating the number and the amount of allowed claims voting to accept such plan. Acceptance by a class of claims requires more than one-half of the number of total allowed claims voting in the class to vote in favor of the plan and at least two-thirds in dollar amount of the total allowed claims

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Debtors have not included projected recoveries, if any, on account of GUC Trust Avoidance Actions or the availability of Remaining Cash.

voting in the class to vote in favor of the plan; only those holders that actually vote to accept or reject the plan are counted for purposes of determining whether these dollar and number thresholds are met. Thus, a Class of Claims will have voted to accept the Plan only if two-thirds in amount and a majority in number that actually vote cast their Ballots in favor of acceptance.

Pursuant to the Plan, Claims in Class 1, Class 4, Class 5, Class 6, and Class 7 are Impaired by, and entitled to receive a Distribution under, the Plan, and only the Holders of Allowed Claims in those Classes are entitled to vote to accept or reject the Plan. Only Holders of Allowed Claims in Class 1, Class 4, Class 5, Class 6, or Class 7 as of **[January 6], 2017** (the “Voting Record Date”) may vote to accept or reject the Plan.

Pursuant to the Plan, Claims in Class 2 and Class 3 are Unimpaired by the Plan, and such Holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

Pursuant to the Plan, Claims and Equity Interests in Class 8 and Class 9 will not receive or retain any property under the Plan on account of such Claims or Equity Interests, as applicable, and are, therefore, deemed to reject the Plan and are not entitled to vote on the Plan.

## **2. Solicitation Materials**

The Debtors, with the approval of the Bankruptcy Court, have engaged Kurtzman Carson Consultants LLC (the “Voting Agent”) to serve as the voting agent to process and tabulate Ballots and to generally oversee the voting process. The following materials constitute the solicitation package (the “Solicitation Package”):

- This Disclosure Statement, including the Plan and all other Exhibits thereto;
- The Bankruptcy Court order approving this Disclosure Statement (the “Disclosure Statement Order”) (excluding exhibits);
- The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan (the “Confirmation Hearing Notice”);
- One or more Ballots, to be used in voting to accept or to reject the Plan, and applicable instructions with respect thereto (the “Voting Instructions”);
- A pre-addressed, postage pre-paid return envelope; and
- Such other materials as the Bankruptcy Court may direct or approve.

The Debtors, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Solicitation Package is also available without charge at the Debtors’ restructuring website at <http://www.kccllc.net/USADiscounters>.

On or before the date that is seven (7) days prior to the Voting Deadline (defined below), the Debtors will File a Plan Supplement. As the Plan Supplement is updated or otherwise modified, it

will be made available without charge at the Debtors' restructuring website at <http://www.kccllc.net/USADiscounters>.

If you are the Holder of a Claim and believe that you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent by writing to Kurtzman Carson Consultants LLC, Re: USA Discounters, 2335 Alaska Ave., El Segundo, CA 90245. If your Claim is subject to a pending claim objection and you wish to vote on the Plan, you must File a motion pursuant to Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim for voting purposes and your Claim or portion thereof, as applicable, must be temporarily allowed by the Bankruptcy Court for voting purposes by the Voting Deadline or you will not be entitled to vote to accept or reject the Plan.

**THE DEBTORS, THE PLAN ADMINISTRATOR, AND THE GUC TRUST, AS APPLICABLE, RESERVE THE RIGHT, THROUGH THE CLAIM OBJECTION PROCESS, TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM FOR DISTRIBUTION PURPOSES.**

### **3. Voting Instructions and Procedures**

All votes to accept or reject the Plan must be cast by using the Ballots enclosed with the Solicitation Packages or otherwise provided by the Debtors or the Voting Agent. No votes other than ones using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has fixed the Voting Record Date for the determination of the Holders of Claims who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan.

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

**The deadline to vote on the Plan is [February 10], 2017 at 4:00 p.m. (prevailing Eastern Time) (the “Voting Deadline”).** In order for your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions on the Ballot, and actually received no later than the Voting Deadline at the following address:

**By Regular Mail, Overnight Courier, or Hand Delivery, to:**

USA Discounters, Ltd. Ballot Processing  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

Only the Holders of Allowed Claims in Class 1, Class 4, Class 5, Class 6, or Class 7 as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning those Ballots in the envelope provided to the Voting Agent so as to be actually received by the Voting Agent by the Voting Deadline. Each

Holder of a Claim must vote its entire Claim either to accept or to reject the Plan and may not split such vote. The Ballots will clearly indicate the appropriate return address. It is important to follow the specific Voting Instructions provided on each Ballot.

Unless otherwise provided in the Voting Instructions accompanying the Ballots, the following Ballots will not be counted in determining whether the Plan has been accepted or rejected:

- Any Ballot that fails to clearly indicate an acceptance or rejection, or that indicates both an acceptance and a rejection, of the Plan;
- Any Ballot received after the Voting Deadline, except if the Debtors have granted an extension of the Voting Deadline with respect to such Ballot in writing, or by order of the Bankruptcy Court;
- Any Ballot containing a vote that the Bankruptcy Court determines was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code;
- Any Ballot that is illegible or contains insufficient information to permit the identification of the Claim Holder;
- Any Ballot cast by a Person that does not hold a Claim in the voting Class; and
- Any unsigned Ballot or Ballot without an original signature.

The Ballots also permit Holders of Class 4 Claims to opt out of the releases set forth in Section 11.11 of the Plan by checking the appropriate box on their Ballots to elect the Release Opt-Out. Submission of such a Release Opt-Out will result in the Claims of the electing Creditor being placed in Class 7, where such Claims will then receive the treatment prescribed for that Class. Specifically, under the Plan, Holders of Class 4 Claims that elect a Release Opt-Out will not be entitled to receive their Pro Rata share of the GUC Settlement Fund and will instead be entitled to receive their Pro Rata share of the proceeds, if any, of the GUC Trust Assets *other than* the GUC Settlement Fund. Holders of Claims that do not submit a Release Opt-Out will be deemed, as of the Effective Date, to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged the Released Parties from any and all claims and causes of action to the extent provided in Section 11.11 of the Plan.

Any party who has previously submitted to the Voting Agent prior to the Voting Deadline a properly completed Ballot may revoke such Ballot and change its vote by submitting to the Voting Agent prior to the Voting Deadline a subsequent properly completed Ballot for acceptance or rejection of the Plan. In the case where multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot. Any party who has delivered a properly completed Ballot for the acceptance or rejection of the Plan that wishes to withdraw such acceptance or rejection rather than changing its vote may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. To be valid, a notice of withdrawal must (i) contain the description of the Claims to which it relates and the aggregate principal amount represented by such

Claims, (ii) be signed by the withdrawing party in the same manner as the Ballot being withdrawn, (iii) contain a certification that the withdrawing party owns the Claims and possesses the right to withdraw the vote sought to be withdrawn, and (iv) be actually received by the Voting Agent prior to the Voting Deadline.

**ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.**

If you have any questions about (a) the procedure for voting your Claim, (b) the Solicitation Package that you have received, or (c) the amount of your Claim, or if you wish to obtain, at your own expense (unless otherwise specifically required by Bankruptcy Rule 3017(d)), an additional copy of the Plan, this Disclosure Statement, or any appendices or exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement, and other documents Filed in these Chapter 11 Cases may be obtained free of charge at the Debtors' restructuring website at <http://www.kccllc.net/usadiscounters>. Documents Filed in these Chapter 11 Cases may also be examined between the hours of 8:00 a.m. and 4:00 p.m., prevailing Eastern Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801.

The Voting Agent will process and tabulate Ballots for the Classes entitled to vote to accept or reject the Plan and will File a voting report (the "Voting Report") on or before [February 17], 2017. The Voting Report will, among other things, describe every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity, including, but not limited to, those Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures, lacking necessary information, or damaged.

**THE DEBTORS URGE HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN BY THE VOTING DEADLINE.**

#### **4. Confirmation Hearing and Deadline for Objections to Confirmation**

Objections to Confirmation of the Plan must be Filed and served on the Debtors and certain other entities, all in accordance with the Confirmation Hearing Notice, so that such objections are actually received by no later than **[February 13], 2017 at 4:00 p.m.** prevailing Eastern Time). Unless objections to Confirmation of the Plan are timely served and Filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court. For further information, refer to Section VI of this Disclosure Statement, "Confirmation of the Plan."

## **II. GENERAL HISTORICAL INFORMATION ABOUT THE DEBTORS**

### **A. Background and Organizational Structure**

USA Discounters was founded in May 1991 in the City of Norfolk, Virginia, under the name USA Furniture Discounters, Ltd. Following a series of transactions and ownership changes, the Debtors raised additional capital through an investment by Parallel Big Wheel Investco, LLC. This investment helped fund USA Discounters' business operations and expansion through 2014.

USA Discounters' retail business focused on providing flexible financing options to consumers for the purchase of brand-name consumer products, including furniture, appliances, televisions, computers, smartphones, jewelry, and other consumer goods. These goods were sold through two groups of stores – one group of specialty retail stores operating under the “USA Living” brand, typically in standalone locations, and seven additional retail stores operating under the “Fletcher’s Jewelers” brand, typically in major shopping malls.

Much of USA Discounters' customer base included consumers with limited resources or tarnished credit profiles. A large percentage of the customer base included members of the armed services and their families and other government workers. USA Discounters thus developed its business model around the provision of consumer credit in a fashion that would allow its customer base to purchase products that might otherwise be out of reach.

Holdings is a Delaware corporation that was organized in May 2007. Holdings has a six-member board of directors, of which four director positions are presently filled.<sup>5</sup> USA Discounters is a Virginia corporation and a wholly-owned subsidiary of Holdings. The sole director of USA Discounters is Timothy W. Dorsey, who is also its Vice President, Secretary, and General Counsel. Credit LLC is a Delaware limited liability company that was organized in May 2007. Credit LLC's managers are Timothy W. Dorsey and Joe Sciametta. Credit LLC is a non-operating company whose sole purpose was to facilitate the transfer of certain assets in connection with the 2007 investment by Parallel Big Wheel Investco, LLC.

## **B. Business Overview**

### **1. Employees and Stores**

As of the Petition Date, USA Discounters employed approximately 154 individuals on a full-time basis and 8 individuals on a part-time basis. None of the employees are unionized.

As of the Petition Date, USA Discounters operated (i) seven “Fletcher’s Jewelers” retail stores, which were located in five states, and (ii) corporate offices, which are located in Norfolk, Virginia. All of the stores and corporate offices were operated in leased premises.

On October 14, 2015, the Bankruptcy Court authorized USA Discounters to commence store closing or “going out of business” sales in its seven remaining “Fletcher’s Jewelers” stores (collectively, the “GOB Sales”). *See* Docket No. 201. USA Discounters concluded the GOB Sales on December 27, 2015, and then surrendered and rejected the applicable nonresidential real property leases in respect of all the “Fletcher’s Jewelers” stores effective as of December 30, 2015. *See* Docket No. 401. On March 4, 2016, the Bankruptcy Court authorized USA Discounters to sell certain remaining inventory that was not otherwise sold during the GOB Sales (the “Inventory Sale”). *See* Docket No. 504. The Inventory Sale successfully closed on or about March 10, 2016. As such, USA Discounters no longer operates any retail stores or engages in new retail business.

<sup>5</sup> The current directors of Holdings are F. Barron Fletcher III, Richard Dell’Aquila, Alan P. Shor, and Chris Perry. Jordan E. Slone and Norman Slone resigned from the board of Holdings on March 20, 2015, and following their resignations, Slone Management, LLC did not appoint any replacement directors as contemplated by that certain *Stockholders Agreement* dated as of May 18, 2007.

As of October 31, 2016, USA Discounters employed 62 employees, including 9 corporate employees and 53 people in the collections/legal recovery departments. At several points throughout the Chapter 11 Cases, USA Discounters has sought and obtained authority to make certain modest retention payments to certain non-insider employees. *See* Docket Nos. 456, 497, 563, 621, 816, 847, 924 & 950.

## **2. Accounts Receivable Generated Through Extensions of Credit**

USA Discounters operated as a retailer of furniture, appliances, electronics, bedding, jewelry, and other products. USA Discounters' retail business was operated through two separate brands, USA Living and Fletcher's Jewelers. With many of its stores located near military bases and other installations, USA Discounters has had a long and important relationship with the military community.

The vast majority of the products sold by USA Discounters were purchased through consumer financing provided by USA Discounters. At the point of sale, USA Discounters would provide consumer credit through revolving or retail installment sales contracts (the "Customer Contracts"), the installment contracts typically having a term of 30 months, a fixed monthly payment, and including a security interest in the merchandise purchased by the consumer. These Customer Contracts included a purchase price, an interest component and other finance charges, and provisions for late charges and other fees, all of which, together with fees for ancillary products, collectively created an anticipated revenue stream payable to USA Discounters (collectively, the "Receivables").

USA Discounters retains and services its Receivables portfolio internally. The portfolio is geographically dispersed and no concentrations exist within the portfolio. The Receivables are analyzed collectively for impairment and in determining the allowance for doubtful accounts.

As of August 15, 2015, the Receivables consisted of approximately 31,394 open Customer Contracts, with an aggregate unpaid gross balance of approximately \$114 million and a remaining average term of approximately 25 months. This aggregate gross balance is subject to reduction for impairment and doubtful accounts, which, as of July 31, 2015, was estimated in an aggregate amount of approximately \$5.7 million. This aggregate gross balance is also subject to reduction for the debt-cancellation reserve, which, as of July 31, 2015, was estimated in an aggregate amount of approximately \$3.3 million. The Receivables were USA Discounters' most significant asset on the Petition Date.

As of October 31, 2016, the Receivables consisted of approximately 11,635 open Customer Contracts, with an aggregate unpaid gross balance of approximately \$30 million and a remaining average term of approximately 17 months. This aggregate gross balance is subject to reduction for impairment and doubtful accounts and for the debt-cancellation reserve, which, as of October 31, 2016, was estimated in an aggregate amount of approximately \$3 million. The preceding figures are after giving effect to the Multistate Settlement Agreement, as discussed further in Section III.L.2 below.

In addition to open Customer Contracts, as of October 1, 2016, the Receivables also consisted of charged off Customer Contracts for which collections are estimated to be in an



aggregate amount of approximately \$3 million. The Receivables remain USA Discounters' most significant asset.

### 3. Customer Warranties

In addition to selling goods, USA Discounters historically offered to sell its products with an extended warranty plan against defects in material and workmanship for the original owner pursuant to separate warranty agreements ("Product Warranty"). The term of a Product Warranty typically runs through the term of the applicable Customer Contract or until the customer defaults under the Customer Contract. Separate jewelry warranty plans ("Jewelry Warranty") were also sold that are warranties to make certain repairs to purchased jewelry (Product Warranty and Jewelry Warranty are, collectively, the "Warranties"). The cost of the Warranties for the customer was included as an item purchased and, in turn, the amount financed. Payment for the Warranties, therefore, is spread out over the term as part of the monthly charges due under the applicable Customer Contract. USA Discounters stopped selling Warranties for new customers in April 2015. Nevertheless, USA Discounters continued to honor its commitment to customers with existing Warranties by permitting them to continue and expand their warranty plans as part of any new purchases through USA Discounters' "add-on" purchase program (which effectively refinances the customer's preexisting purchases and Warranties into a combined arrangement that also includes the "add-on" items). The "add-on" purchase program itself was eliminated following closure of the remaining "USA Living" stores.

As of September 13, 2016, there were approximately 4,439 open Product Warranty contracts and approximately 12,256 open Jewelry Warranty contracts, covering approximately \$9 million worth of Receivables.<sup>6</sup> As of September 30, 2016, USA Discounters had established warranty reserves in Oklahoma, Texas, and California in the aggregate amount of approximately \$1.1 million.

### 4. Military Allotments

Historically, a large percentage of USA Discounters' military customers made their monthly payments utilizing the "allotment" system established by the Department of Defense.

An "allotment" occurs when the military paymaster automatically deducts money from an individual's military paycheck and pays it to a third party, often in satisfaction of a debt obligation. The use of allotments is generally subject to the discretion and consent of the affected military service member, although a process does exist (and is used by USA Discounters as one of its debt collection methods) to obtain involuntary allotments to satisfy judgments for commercial indebtedness. The allotment system is subject to detailed regulatory requirements pursuant to the Department of Defense's Financial Management Regulation (DoD 7000.14-R, Volume 7A, Chapters 40 and 42, *available at* <http://comptroller.defense.gov/FMR.aspx>).

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<sup>6</sup> As of August 1, 2015, the Debtors estimated there were approximately 20,625 open Product Warranty contracts and approximately 5,178 open Jewelry Warranty contracts, covering approximately \$88 million worth of Receivables; this estimate was based on preliminary data available as of the Petition Date, however, and has since been revised as set forth above.

## C. Prepetition Capital Structure

### 1. Secured Debt

USA Discounters is the borrower under that certain *Loan and Security Agreement* dated as of October 3, 2012 (as subsequently amended, supplemented, or modified, including on July 24, 2013, September 30, 2014, and June 24, 2015, the “Prepetition Loan Agreement” and together with the Credit Documents, as defined in the Prepetition Loan Agreement, the “Prepetition Credit Documents”), whereby a syndicate of lenders (the “Prepetition Lenders”) agented by Wells Fargo Bank, N.A. (in such capacity, the “Prepetition Agent,” and, together with the Prepetition Lenders, the “Secured Parties”) provided an asset-backed revolving credit facility of up to an original maximum principal amount of \$85,000,000 and with a stated maturity date of October 3, 2015 (the “Prepetition Facility”). As of the Petition Date, the outstanding principal amount of all Obligations (as defined in the Prepetition Loan Agreement) owing by USA Discounters to the Secured Parties under and in connection with the Prepetition Credit Documents was approximately \$60 million, plus additional amounts on account of accrued and accruing interest, charges, fees, costs, and expenses (including attorneys’ fees and legal expenses).

Borrowings under the Prepetition Credit Documents are secured by valid, perfected, enforceable, and non-avoidable first priority security interests and liens on substantially all of the personal property of USA Discounters (the “Prepetition Collateral”), including all its accounts receivable, inventory, and general intangibles, as well as cash and non-cash proceeds of any collateral. As discussed below, the Prepetition Agent not only is the depository bank on many of USA Discounters’ deposit accounts, but also has extant deposit account control agreements regarding USA Discounters’ primary deposit accounts.

An event of default occurred under the Prepetition Loan Agreement in April 2015 (due to USA Discounters failing to meet certain financial covenants). Neither Holdings nor Credit LLC is a borrower, guarantor, or otherwise liable with respect to the Prepetition Facility.

USA Discounters had certain other typical secured indebtedness, largely in respect of leased equipment such as vehicles, laptops, and copy machines (to the extent that such leases are recharacterized as disguised financing transactions, or insofar as the applicable lease grants the lessor a security interest in the subject equipment and the lessor has filed a UCC-1 financing statement). USA Discounters previously sold goods consigned from certain consignors, including three consignors that filed UCC-1 financing statements, but USA Discounters returned all consigned goods to the applicable consignors during the week of June 22, 2015, and thus held no consigned goods as of the Petition Date.

### 2. Unsecured Debt

As of the Petition Date, unsecured claims against the Debtors included: (i) approximately \$77,000 in the aggregate owing in respect of four separate installment promissory notes payable to Branch Banking and Trust Company (collectively, the “BB&T Notes”), which BB&T Notes matured on June 14, 2015; (ii) accrued and unpaid trade and other unsecured debt incurred in the ordinary course of USA Discounters’ businesses; (iii) claims by landlords for unpaid rent and other amounts under the Debtors’ leases; (iv) claims arising from the closure of 24 of USA Discounters’ “USA

Living” retail stores before the Petition Date; and (v) other miscellaneous unsecured debts. Creditors and interested parties should review the Debtors’ Schedules (defined below) Filed with the Bankruptcy Court for more complete information concerning the nature and amount of the Debtors’ liabilities as of the Petition Date.

Based on the Debtors’ Schedules and preliminary internal estimates, the Debtors generally estimate that unsecured Claims against USA Discounters should total about \$[12] million. This estimate, however, does not account for the fact that certain Creditors may assert amounts in their proofs of claim that exceed the amounts that the Debtors have scheduled and other parties may file proofs of claim related to alleged obligations that are not included on the Debtors’ Schedules at all. Thus, the total amount of Allowed General Unsecured Claims may greatly exceed or fall short of the estimates set forth herein.

The Plan does not propose to substantively consolidate the three Debtors, and thus Holders of Claims against multiple Debtors based on the same debt, to the extent such Claims are Allowed in more than one Debtor’s Chapter 11 Case, shall be treated as holding a separate Claim against each applicable Debtor; *provided, however*, that no Creditor shall receive Distributions under the Plan if and to the extent such Distributions, when combined with any recoveries received by such Creditor on its underlying Claim from all other Debtor- and non-debtor sources, would result in more than a full recovery on the applicable Claim. Thus, the Holders of Allowed General Unsecured Claims against Holdings or Credit LLC, if any, will receive distributions on account of the Estate Assets belonging to those particular Debtors.

### **3. Equity Interests**

Holdings is privately owned by two investment funds: (i) Parallel Big Wheel Investco, LLC, which owns 100% of the Series A Convertible Preferred Stock and 65% of the Series B Preferred Stock; and (ii) Slone Management, LLC, which owns 35% of the Series B Preferred Stock and 100% of the Common Stock.

In May 2007, Holdings established the *USA Discounters Holding Company, Inc. 2007 Management Incentive Plan* (the “Management Incentive Plan”). Under the Management Incentive Plan, which covers primarily key employees, Holdings reserved a pool of shares of Common Stock which may be granted in the form of incentive stock options. As of the Petition Date, there were 6,602 such options outstanding, none of which had been exercised.

Each of USA Discounters and Credit LLC is a wholly-owned subsidiary of Holdings.

### **D. Prepetition Litigation**

As of the Petition Date, USA Discounters was a defendant in certain litigation matters relating to claims arising out of its operations in the normal course of business.

Among other cases, a putative class action by way of counterclaims in a collections matter was filed in the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia captioned *USA Discounters Ltd. v. Demera A. Gaskins*, Civ. A. No. 2014-SC3-3915 (D.C. Super. Ct.) (the “D.C. Small Claims Action”). On August 21, 2015, the D.C. Small Claims Action was transferred to the Superior Court for the District of Columbia and captioned *USA Discounters*

*Ltd. v. Demera A. Gaskins*, Civ. A. No. 2015-CA-6537 (D.C. Super. Ct.) (the “D.C. Superior Court Action”). The filing of the Chapter 11 Cases automatically stayed continuation of the D.C. Superior Court Action, but further litigation took place with Ms. Gaskins before the Bankruptcy Court, as discussed further in Section III.K.1 below.

On the Petition Date, USA Discounters was also party to a lawsuit commenced by Julie Ann Meade, Administrator of the Colorado Uniform Consumer Credit Code (the “Colorado Administrator”), through the office of the Colorado Attorney General, on July 13, 2015, in Colorado State District Court, for the City and County of Denver Colorado, as *Meade v. USA Discounters, Ltd.*, Case No. 2015CV032520 (the “Colorado AG Lawsuit”). In the Colorado AG Lawsuit, the Colorado Administrator alleged that USA Discounters violated various provisions of the Colorado Uniform Consumer Credit Code and sought injunctive relief against further violations, as well as damages, civil penalties, and other relief. USA Discounters filed an answer to the complaint in the Colorado AG Lawsuit on August 28, 2015. The Colorado AG Lawsuit was settled during the course of the Chapter 11 Cases, as discussed further in Section III.L.1 below.

### **E. Events Leading to the Filing of the Chapter 11 Cases**

In the period before the Petition Date, USA Discounters faced a series of business challenges, including declining revenues and earnings, state and federal regulatory investigations, cutbacks in military spending and personnel caused by budget sequestration and policy shifts in the military relating to promotion, reenlistment, and retention, negative press reports, and substantial maturing secured indebtedness.

After fully considering the situation, the Holdings’ Board and USA Discounters’ senior management concluded that there was no viable route through which to rehabilitate the business model and allow it to continue operating as a standalone entity outside of the bankruptcy process. Thus, beginning in early 2015, the Debtors explored numerous alternatives, including a potential out-of-court wind down, a sale of some or all of their assets to third parties in or out of the bankruptcy context, a foreclosure by the Prepetition Agent, and chapter 7 bankruptcy filings.

In connection with its exploration of alternatives, USA Discounters retained Stephens, Inc. (“Stephens”) in April 2015 to act as its financial advisor in connection with the potential sale of all or a portion of USA Discounters’ Receivables, inventory, and related assets to one or more purchasers. Stephens engaged in discussions with various potentially interested parties in an effort to locate the best possible proposal. Although Stephens procured several indications of interest and transaction proposals, neither the Debtors nor USA Discounters’ secured lenders believed that any of those proposals were likely to maximize value, including because the proposals involved deeply-discounted purchase prices, many contingencies or similar execution risks, or other problematic terms.

After considering all alternatives and after consulting with USA Discounters’ secured lenders, the Debtors concluded that the path most likely to maximize value for their respective stakeholders would be to complete an internally-administered wind down of USA Discounters’ Receivables, inventory, and other assets, including by using the tools available to debtors in possession under chapter 11 of the Bankruptcy Code.

Once the Debtors concluded that the optimal path forward was an internally-administered wind-down process, USA Discounters negotiated a further amendment to the Prepetition Loan Agreement with its secured lenders (the “Third Amendment”). Among other things, the Third Amendment provided for a forbearance period and agreed funding pursuant to a budget that would enable USA Discounters to initiate the first phase of the wind-down process out of court. Following the execution of the Third Amendment, USA Discounters restructured its relationships with its non-insider workforce through individualized contracts designed to ensure the retention of workers who were necessary to initiate and complete the internal wind-down process, provide employees with some certainty in the face of difficult circumstances, and protect the interests of USA Discounters and its stakeholders.

As part of the internal wind-down process and following entry into the Third Amendment, on or about June 25, 2015, USA Discounters commenced a sales process in its stores, with a focus on conducting special inventory or similar sales in accordance with applicable agreements and non-bankruptcy law. As of the Petition Date, USA Discounters had completed the sales process in and closed all 24 of its “USA Living” stores and all of its warehouses. As of the Petition Date, USA Discounters had not completed the sales process in any of the “Fletcher’s Jewelers” stores and was still evaluating the available options with respect to the remaining “Fletcher’s Jewelers” stores and related inventory.

Additional detailed factual background relating to the Debtors and the events leading to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Timothy W. Dorsey in Support of First Day Motions* [Docket No. 3].

### **III. THE CHAPTER 11 CASES**

On August 24, 2015, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The Chapter 11 Cases are being jointly administered under the caption *In re USA Discounters, Ltd., et al.*, Case No. 15-11755 (CSS) (Bankr. D. Del.). An immediate effect of commencement of the Chapter 11 Cases was the imposition of the automatic stay under Bankruptcy Code section 362(a), which, with limited exceptions, enjoins the commencement or continuation of all collection efforts by Creditors, the enforcement of liens against property of the Debtors, and the continuation of litigation against the Debtors during the pendency of the Chapter 11 Cases. The automatic stay will remain in effect, unless modified by the Bankruptcy Court, until the Effective Date.

#### **A. First Day Orders**

On or about the Petition Date, the Debtors Filed certain “first day” motions and applications with the Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of these Chapter 11 Cases and to facilitate the Debtors’ transition to debtor-in-possession status. The Bankruptcy Court held a hearing on these first-day motions on August 26, 2015, with a subsequent hearing scheduled for September 18, 2015. In connection with these hearings, the Bankruptcy Court entered a series of customary “First Day” and “Second Day” orders. *See* Docket Nos. 37, 38, 39, 40, 41, 42, 43, 55, 118, 119 & 120.

## **B. Use of Cash Collateral**

On or about the Petition Date, the Debtors Filed a motion seeking Bankruptcy Court orders authorizing the use of cash collateral, granting adequate protection to the Prepetition Agent and the Prepetition Lenders as set forth therein, modifying the automatic stay as set forth therein, and granting related relief. The motion was granted on an interim and then a final basis. *See* Docket Nos. 64 & 133.

The Cash Collateral Order entered by the Bankruptcy Court contains various important features, including:

- An agreement by the Secured Parties to allow USA Discounters to use cash collateral in accordance with an agreed Budget, as it may be updated from time to time;
- Detailed carve-outs providing for the payment of certain expenses incurred during the Chapter 11 Cases, including amounts that may be payable to USA Discounters' employees during the bankruptcy process and to professionals retained by the Debtors and the Creditors' Committee;
- Certain deadlines, including deadlines to file and obtain confirmation of a plan acceptable to the Secured Parties (the Debtors understand that the Plan is acceptable to those parties);
- Standard waivers of certain provisions of the Bankruptcy Code, including under Bankruptcy Code sections 506(c) and 552, as well as adequate protection liens on certain Estate Assets; and
- Detailed stipulations, releases, and/or waivers regarding the Prepetition Agent, the Prepetition Lenders, the Prepetition Facility, and the Prepetition Collateral package, all of which are subject to a "Challenge Period" in favor of the Creditors' Committee and other parties in interest.

The Cash Collateral Order was amended on December 8, 2015, to adjust the mechanism whereby periodic adequate protection payments are made to the Secured Parties (the amendment replaced a borrowing-base-based test with a weekly sweep of excess cash). *See* Docket Nos. 332 & 337.

The Creditors' Committee subsequently Filed a motion seeking to further amend the Cash Collateral Order, including its provisions regarding the payment of postpetition interest to the Secured Parties. *See* Docket No. 560. The Prepetition Agent and the Debtors opposed this motion, *see* Docket Nos. 593 & 596, and the Bankruptcy Court ultimately denied the motion after a hearing on May 17, 2016, *see* Docket No. 652.

The Debtors have complied with their obligations under the Cash Collateral Order, including by Filing periodic Budget updates on the docket of the Chapter 11 Cases. *See, e.g.*, Docket Nos. 166, 233, 314, 350, 406, 443, 524, 572 & 925.

### **C. Going Out of Business Sales**

Prior to the Petition Date, USA Discounters began a process of liquidating its retail inventory and closing the associated stores. During the pre-bankruptcy period, USA Discounters liquidated inventory in and closed all 24 of its “USA Living” stores and all of its warehouses. USA Discounters had not completed the sales process in any of the “Fletcher’s Jewelers” stores, however. To the contrary, USA Discounters had determined that the optimal period for such “Fletcher’s Jewelers” sales to occur was at least through the 2015 holiday season.

Following the Petition Date, USA Discounters continued to negotiate possible transactions with potentially interested parties, including a possible “agency agreement” arrangement with a national liquidation firm. Ultimately, however, the parties were unable to reach agreement on material business terms. After considering the options available at the juncture, USA Discounters determined that continuing to conduct an internal, standalone liquidation of the “Fletcher’s Jewelers” stores was the path most likely to maximize value for the estates under the circumstances.

Prior to mid-October 2015, USA Discounters was not advertising or otherwise informing the general public that its “Fletcher’s Jewelers” store sales were being conducted as part of store closings or a liquidation. Based on their own analysis and input from multiple sales consultants, the Debtors believed, however, that it was crucial that USA Discounters commence a separate stage of the process for the “Fletcher’s Jewelers” stores on the timeline formulated by USA Discounters in order to maximize value for the Debtors’ estates and all stakeholders while minimizing administrative expenses. As such, on September 25, 2015, the Debtors filed a motion seeking authority for USA Discounters to commence store closing or “going out of business” sales in its seven (7) remaining “Fletcher’s Jewelers” stores granting related relief (the “GOB Motion”). *See* Docket No. 150.

On October 14, 2015, the Bankruptcy Court entered an order granting the GOB Motion. *See* Docket No. 201. USA Discounters kicked off the court-approved sales process in all the “Fletcher’s Jewelers” stores on Monday, October 19, 2015.

USA Discounters concluded the GOB Sales on December 27, 2015, and then surrendered and rejected the applicable nonresidential real property leases in respect of all the “Fletcher’s Jewelers” stores effective as of December 30, 2015. *See* Docket No. 401. Upon surrender and rejection of these leases, USA Discounters’ former retail footprint had been eliminated.

On March 4, 2016, the Bankruptcy Court authorized USA Discounters to sell in bulk all remaining jewelry inventory that was not otherwise sold during the GOB Sales to Harris Originals of NY, Inc. (as topping bidder) (such sale, the “Inventory Sale”). *See* Docket No. 504. The Inventory Sale successfully closed on or about March 10, 2016. As such, USA Discounters no longer operates any retail stores or engages in new retail business.

### **D. Rejection and Assumption of Executory Contracts and Unexpired Leases**

On or about the Petition Date, the Debtors Filed a motion to reject certain executory contracts and unexpired leases, including leases relating to the 24 “USA Living” stores and the warehouses that were closed in the period prior to the Petition Date, and a motion to establish procedures for the rejection of other executory contracts and unexpired leases of non-residential real property in these

Chapter 11 Cases. *See* Docket Nos. 15 & 16. On September 17, 2015, the Bankruptcy Court entered orders granting the foregoing motions. *See* Docket Nos. 121 & 122.

The Debtors subsequently filed an omnibus motion seeking authority to reject 54 leases regarding personal property that USA Discounters had used in connection with the operation of its “USA Living” stores prior to the Petition Date. *See* Docket No. 91. On September 29, 2015, the Bankruptcy Court entered an order granting this rejection motion. *See* Docket No. 164.

On October 9, 2015, the Debtors filed a first notice of rejection of certain unexpired personal property leases, primarily related to certain vehicle leases. *See* Docket No. 184. On October 27, 2015, the Bankruptcy Court entered an order granting this rejection notice. *See* Docket No. 231. The Debtors subsequently filed rejection notices regarding their contract with Stephens and various real and personal property leases relating to the closed “Fletcher’s Jewelers” stores, *see* Docket Nos. 224 & 371, which rejection notices were also approved by the Bankruptcy Court. *See* Docket Nos. 270 & 401.

After negotiating a consensual, albeit brief, extension of the outside statutory deadline to assume or reject nonresidential leases under Bankruptcy Code section 365, *see* Docket No. 486, USA Discounters entered into a *2016 Lease Modification Agreement*, which would modify the terms of the lease regarding the Debtors’ corporate headquarters in Norfolk, Virginia, including by reducing the term and footprint of the leased premises. The Debtors then Filed a motion seeking authority to assume the headquarters lease, as modified by the modification agreement. *See* Docket No. 562. The Bankruptcy Court granted the Debtors’ motion on April 25, 2016, *see* Docket No. 616, and the modification agreement was thereafter consummated. The modification agreement expressly inures to the benefit of successors to the Debtors, including a plan administrator.

The Debtors are not party to any other nonresidential real property leases.

#### **E. Additional Orders**

On and after the Petition Date, the Debtors Filed various motions and applications to retain professionals and to streamline the administration of the Chapter 11 Cases. The Bankruptcy Court entered the following orders granting the foregoing motions and applications:

- Order Under Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure, and Local Rule 2014-1, Authorizing Employment and Retention of Klee, Tuchin, Bogdanoff & Stern LLP as Counsel for the Debtors and Debtors in Possession *Nunc Pro Tunc* to the Petition Date [Docket No. 123];
- Order Pursuant to 11 U.S.C. §§ 327(a), 328, and 330, Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure, and Local Rules 2014-1 and 2016-2 Authorizing the Employment and Retention of Kurtzman Carson Consultants, as Administrative Agent for the Debtors, *Nunc Pro Tunc* to the Petition Date [Docket No. 124];



- Order Authorizing the Employment and Retention of Williams Mullen as Special Counsel for the Debtors Effective *Nunc Pro Tunc* to the Petition Date [Docket No. 125];
- Order Authorizing the Employment and Retention of Holland & Hart LLP as Special Counsel for the Debtors Effective *Nunc Pro Tunc* to the Petition Date [Docket No. 126];
- Order Pursuant to Section 327(a) of the Bankruptcy Code, Rule 2014 of the Federal Rules of Bankruptcy Procedure and Local Rule 2014-1 Authorizing the Employment and Retention of Pachulski Stang Ziehl & Jones LLP as Co-Counsel for the Debtors and Debtors in Possession *Nunc Pro Tunc* to the Petition Date [Docket No. 127];
- Interim Order Authorizing the Debtors to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtors in the Ordinary Course of Business on an Interim Basis [Docket No. 128];
- Order, Pursuant to 11 U.S.C. §§ 105(a) and 363(b), Authorizing the Debtors to (I) Employ and Retain Alvarez & Marsal North America, LLC to Provide the Debtors a Chief Executive Officer, Chief Financial Officer, and Certain Additional Personnel, and (II) Designate Joseph J. Sciametta as Chief Executive Officer and Laurence Sax as Interim Chief Financial Officer for the Debtors *Nunc Pro Tunc* to the Petition Date [Docket No. 131];<sup>7</sup>
- Order Authorizing the Employment of Diconza Taurig Kadish LLP as Special Transactional Counsel for USA Discounters, Ltd. Effective *Nunc Pro Tunc* to the Petition Date [Docket No. 163];
- Final Order Authorizing the Debtors to Retain, Employ, and Compensate Certain Professionals Utilized By the Debtors in the Ordinary Course of Business [Docket No. 202];
- Order Authorizing the Employment and Retention of Troutman Sanders as Special Counsel for the Debtors Effective *Nunc Pro Tunc* to the Petition Date [Docket No. 226]; and
- Order Authorizing the Employment and Retention of Goodwin Procter LLP as Special Counsel for the Debtors Effective *Nunc Pro Tunc* to February 1, 2016 [Docket No. 530].

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<sup>7</sup> On April 5, 2016, the Creditors' Committee Filed a motion to amend the terms of this engagement order. *See* Docket No. 561. After an initial response by the Debtors [Docket Nos. 597 & 598], this motion was resolved on a consensual basis through an agreed order amending the retention terms of Alvarez & Marsal North America, LLC, *see* Docket No. 649.

In addition, the Creditors' Committee Filed applications to retain professionals and the Bankruptcy Court entered the following orders granting such applications:

- Order Authorizing the Employment and Retention of Kelley Drye & Warren LLP as Lead Counsel to the Official Committee of Unsecured Creditors, *Nunc Pro Tunc* to September 1, 2015 [Docket No. 197];
- Order Authorizing the Employment and Retention of FTI Consulting, Inc. as Financial Advisor for the Official Committee of Unsecured Creditors [Docket No. 199]; and
- Order Pursuant to 11 U.S.C. § 1103(a) Approving the Employment and Retention of Klehr Harrison Harvey Branzburg LLP as Delaware Co-Counsel to the Official Committee of Unsecured Creditors *Nunc Pro Tunc* to September 1, 2015 [Docket No. 200].

#### **F. United States Trustee**

The U.S. Trustee has appointed Jane M. Leamy, Esq. as the attorney for the U.S. Trustee in connection with these Chapter 11 Cases. The Debtors and the Creditors' Committee have worked cooperatively to address concerns and comments from the U.S. Trustee's office during these Chapter 11 Cases.

#### **G. Appointment of the Creditors' Committee**

On September 1, 2015, the U.S. Trustee appointed the Creditors' Committee in these Chapter 11 Cases. *See* Docket No. 73. The members of the Creditors' Committee are Nassimi Realty, LLC, Florida State Games, Inc., Demera Gaskins, Kodiak Properties/Coliseum Partners LLC, and GGP Limited Partnership. GGP Limited Partnership and Demera Gaskins were the original co-chairs of the Creditors' Committee. The counsel to the Creditors' Committee is Kelley Drye & Warren LLP and Klehr Harrison Harvey Branzburg LLP, and the financial advisor to the Creditors' Committee is FTI Consulting, Inc. Ms. Gaskins resigned from the Creditors' Committee, effective as of October 25, 2016. *See* Docket No. 923.

#### **H. Meeting of Creditors**

The initial meeting of creditors under Bankruptcy Code section 341(a) was held on Thursday, October 1, 2015, at the J. Caleb Boggs Federal Building, 844 King St., Room 5209, Wilmington, Delaware 19801. At the initial meeting of creditors, the U.S. Trustee and creditors asked questions of a representative of the Debtors.

After the Debtors Filed the Schedules (as defined and described below), a further meeting of creditors under Bankruptcy Code section 341(a) was held on December 7, 2015, at the J. Caleb Boggs Federal Building, 844 King St., Room 5209, Wilmington, Delaware 19801. At the further meeting of creditors, the U.S. Trustee and creditors asked questions of a representative of the Debtors. After the completion of this further meeting, the U.S. Trustee closed the process.

## **I. Schedules, Statements of Financial Affairs, Claims Bar Dates, and Filed Claims**

The Debtors Filed their Schedules of Assets and Liabilities and Statements of Financial Affairs (the “Schedules”) on October 23, 2015 [Docket Nos. 214 – 219]. A Creditor whose Claim is set forth in the Schedules and not identified as contingent, unliquidated, or disputed may, but need not, file a proof of claim to be entitled to participate in the Chapter 11 Cases or to receive a distribution under the Plan.

The Bankruptcy Court established (i) **December 29, 2015** at 5:00 p.m. (prevailing Eastern Time) as the deadline (or “bar date”) for Creditors (other than governmental units) to File proofs of claim against the Debtors (including Claims arising under section 503(b)(9) of the Bankruptcy Code); and (ii) **February 22, 2016** at 5:00 p.m. (prevailing Eastern Time) as the initial deadline for any governmental unit (as such term is defined in Bankruptcy Code section 101(27)) to File proofs of claim against the Debtors. *See* Docket No. 292. The Debtors subsequently agreed to extend the governmental bar date solely for the attorneys general of any state and the District of Columbia (and the Hawaii Office of Consumer Protection, which performs certain duties similar to those performed by attorneys general in other states) through and including 5:00 p.m. (prevailing Eastern Time) on **May 23, 2016**. *See* Docket Nos. 444 & 448.

As of October 31, 2016, approximately 205 proofs of claim appear on the official claims register, although some of those claims have been withdrawn or superseded by other claims. Although the Debtors have not completed claim reconciliation work (and do not anticipate doing so before the Effective Date of the Plan), the Debtors have prosecuted a first omnibus claim objection, which sought to correct the classification of numerous filed claims. *See* Docket No. 792. The Bankruptcy Court granted this omnibus claim objection on September 8, 2016. *See* Docket No. 848. The Debtors anticipate filing two additional omnibus claim objections, which will object to proofs of claim based on claims that have already been paid or otherwise satisfied and to proofs of claim that are asserted against the wrong legal entity.

In connection with the prosecution of the Plan, the Debtors are asking the Bankruptcy Court to establish the Supplemental Customer Claims Bar Date as the deadline by which customers of USA Discounters who did not previously receive mailed notice of the General Bar Date must File any Claims. The Supplemental Customer Claims Bar Date will be the same as the Voting Deadline – i.e., **[February 10], 2017 at 4:00 p.m. (prevailing Eastern Time)**. The Debtors cannot predict the extent to which any additional Claims will be timely filed.

## **J. Venue Hearing**

On August 25, 2015, the Bankruptcy Court entered an *Order to Show Cause* (the “OSC”) to show cause why, pursuant to Bankruptcy Rule 1014(a)(1), venue of the Chapter 11 Cases should not be transferred to another district. *See* Docket No. 21.

The Debtors responded to the OSC on September 11, 2015, detailing their position why the Bankruptcy Court should not transfer the Chapter 11 Cases to any other district. *See* Docket No. 96. Joinders to the Debtors’ response were also filed by the Creditors’ Committee and the Prepetition

Agent. *See* Docket Nos. 98 & 99. No party filed a response to the OSC seeking to have the Chapter 11 Cases transferred elsewhere.

A Rule to Show Cause hearing was held before the Bankruptcy Court on September 18, 2015. After that hearing, the Bankruptcy Court ruled that the Debtors had established that Delaware is a proper venue for the Chapter 11 Cases and that transfer to another venue was not warranted. The Bankruptcy Court thereafter vacated the OSC. *See* Docket No. 137.

## **K. Postpetition Litigation**

Parties in interest have commenced two adversary proceedings related to the Chapter 11 Cases, which are described (along with associated contested matters) below.

### **1. Gaskins Litigation**

As discussed in Section II.D above, Demera A. Gaskins had asserted putative class action counterclaims against USA Discounters in a pre-bankruptcy litigation matter pending in the local courts for the District of Columbia. Ms. Gaskins continued to pursue litigation on various fronts after the filing of the Chapter 11 Cases.

**First**, on October 28, 2015, Ms. Gaskins filed the *Motion of Demera A. Gaskins for Class Certification* [Docket No. 236] and the *Motion of Demera A. Gaskins for Order Applying Fed. R. Bankr. P. 7023, Pursuant to Fed. R. Bankr. P. 9014(c), to Motion for Class Certification* [Docket No. 238] (together, the “Class Motions”) in the Bankruptcy Court. In the Class Motions, Ms. Gaskins sought to obtain certification of various putative classes of claimants against USA Discounters. The parties engaged in initial settlement discussions (as contemplated by a stipulation continuing a hearing on the Class Motions, *see* Docket No. 294) and thereafter agreed to a consensual scheduling order regarding discovery and further briefing about the Class Motions, *see* Docket No. 485.

**Second**, on October 29, 2015, Ms. Gaskins filed a proof of claim in the Chapter 11 Cases, which proof of claim was assigned claim number 50 on the official claims register (the “Gaskins Proof of Claim”). The Gaskins Proof of Claim asserted various putative class action claims against USA Discounters in an unliquidated amount.

**Third**, on March 22, 2016, Ms. Gaskins commenced an adversary proceeding in the Bankruptcy Court, styled as *Gaskins et al. v. USA Discounters, Ltd. (In re USA Discounters, Ltd.)*, Adv. Proc. No. 16-50412-CSS (Bankr. D. Del.) (the “Gaskins Adversary”). *See* Docket No. 541. In the Gaskins Adversary, Ms. Gaskins, allegedly on behalf of herself and all similarly situated persons, sought disgorgement of certain funds received by USA Discounters and permanent injunctive relief against the Debtors. The parties agreed to extend the Debtors’ deadline to answer or otherwise respond to the complaint in the Gaskins Adversary.

**Fourth**, on March 22, 2016, Ms. Gaskins Filed a *Motion for Temporary Restraining Order and Preliminary Injunction Requiring Escrow of Proceeds from Collection of Accounts Receivable* [Adv. Proc. Docket No. 4] in the Gaskins Adversary (the “TRO Motion”). On April 11, 2016, the Debtors filed their opposition to the TRO Motion [Adv. Proc. Docket No. 5].

The Debtors subsequently negotiated a comprehensive settlement that would resolve all of the foregoing litigation pursued by Ms. Gaskins. In exchange for Ms. Gaskins' dismissal or withdrawal of all of the foregoing complaints, motions, and claims with prejudice and broad releases of all asserted or potential claims, the Debtors agreed that, within five (5) business days of the entry of an order approving the settlement, the Debtors will tender payment to "Demera A. Gaskins" in the amount of \$5,000 and cancel all outstanding balances that the Debtors allege to be owed by Ms. Gaskins as of the date of the settlement agreement. Then, on the earlier of December 30, 2016, and the effective date of a chapter 11 plan confirmed in these Cases, the Debtors will tender a payment to "Tycko & Zavareei LLP Trust Account" in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00).

On September 9, 2016, the Debtors Filed a motion seeking the Bankruptcy Court's approval of the settlement with Ms. Gaskins. *See* Docket No. 853. The Bankruptcy Court entered an approval order on September 29, 2016 [Docket No. 886], and the settlement subsequently became effective. The Gaskins Adversary has been dismissed, the Class Motions have been withdrawn, and the Gaskins Proof of Claim has been deemed withdrawn with prejudice.

## **2. Committee Challenge Complaint**

The Cash Collateral Order established a "Challenge Period" during which the Creditors' Committee and other Persons were able to investigate and seek to pursue potential challenges to the scope and extent of the Secured Parties' claims and liens. The Creditors' Committee, the Debtors, and the Prepetition Agent entered into multiple stipulations to extend the deadline for such a challenge to be pursued by the Creditors' Committee. *See* Docket Nos. 247, 249, 313, 316, 415 & 417.

On February 26, 2016, the Creditors' Committee Filed a motion seeking leave, standing, and authority to commence, prosecute, and settle certain claims on behalf of the Debtors' estates [Docket No. 489] (the "Committee Standing Motion"). The Debtors Filed a limited objection to the Committee Standing Motion [Docket No. 546] (which objection was resolved via changes to the proposed form of order), and the Prepetition Agent Filed an objection to the Committee Standing Motion [Docket No. 550]. After a hearing on May 17, 2016, the Bankruptcy Court granted the Committee Standing Motion. *See* Docket No. 665.

On June 20, 2016, the Creditors' Committee Filed its *Complaint (I) to Avoid Unperfected Lien on Various Collateral, (II) to Avoid Preferential Transfer, and (III) for Declaratory Relief* [Docket No. 716] (the "Committee Challenge Complaint"), thereby commencing the adversary proceeding styled as *Official Committee of Unsecured Creditors of USA Discounters, Ltd. v. Wells Fargo Bank, N.A., as Agent (In re USA Discounters, Ltd.)*, Adv. Proc. No. 16-51011-CSS (Bankr. D. Del.) (the "Committee Adversary"). The Committee Challenge Complaint contains five counts in which the Creditors' Committee seeks to avoid allegedly unperfected liens on certain assets (to wit, commercial tort claims, a prepaid "Pex Account," motor vehicles, and assets of Holdings and Credit LLC) and to avoid and recover an allegedly preferential transfer related to the attachment of the Prepetition Agent's lien on certain income tax refunds.

The Plan will finally settle and resolve all issues that were or could have been raised in the Committee Challenge Complaint. As such, the Plan provides that, in order to give effect to the Plan's

comprehensive compromise and settlement, the Committee Adversary shall be dismissed with prejudice effective as of the Effective Date and payment of the GUC Settlement Fund to the GUC Trust.

## **L. Regulatory Settlements**

During the Chapter 11 Cases, the Debtors and the Creditors' Committee have successfully negotiated and obtained Bankruptcy Court approval of several settlements that resolved significant regulatory issues.

### **1. Colorado AG Settlement**

As discussed in Section II.D above, USA Discounters had been sued in the Colorado AG Lawsuit before the commencement of the Chapter 11 Cases. This litigation continued apace after the Petition Date as a result of the exception to the automatic stay contained in Bankruptcy Code section 362(b)(4). In addition, on February 22, 2016, the Colorado Administrator timely filed a proof of claim against USA Discounters in the amount of \$15,629,828.66 for restitution, civil penalties, and attorneys' fees and costs in respect of the Colorado AG Lawsuit.

On the eve of trial in the Colorado AG Lawsuit, USA Discounters negotiated a comprehensive settlement with the Colorado Administrator, which was memorialized in a final consent judgment (the "CO Consent Judgment"). As qualified in its entirety by the full text of the CO Consent Judgment, the following is a summary of key terms of the CO Consent Judgment:<sup>8</sup>

- a) **Release of Claims:** Subject to certain conditions set forth in the CO Consent Judgment, the CO Consent Judgment is a complete settlement and release of claims of the Colorado Administrator against USA Discounters and its directors, employees, managers, and officers (as well as the officers and directors of Holdings).
- b) **Liability:** USA Discounters neither admits nor denies any wrongdoing, and is agreeing to the CO Consent Judgment only for settlement purposes.
- c) **Injunctive Relief:** USA Discounters is immediately and permanently enjoined from violating any provision of the Colorado statutes enforced by the Colorado Administrator. Upon entry of the CO Consent Judgment by the Colorado state court, USA Discounters will cease and desist from certain practices with respect to Colorado consumers identified in the CO Consent Judgment.
- d) **Monetary Provisions:** Within thirty (30) days of entry of the CO Consent Judgment, USA Discounters will afford specified debt relief to certain consumers. More specifically, for all judgments arising from lawsuits filed in Virginia against a Colorado consumer, USA Discounters will provide debt relief of sixty percent (60%) of the judgment at the time it was issued (which will result in downward adjusted balances on unsatisfied judgments, not to go below \$0). In addition, the Colorado

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<sup>8</sup> The description of the CO Consent Judgment contained herein is for convenience of reference only and does not supplement or alter the terms or conditions of the CO Consent Judgment.

state court will immediately enter judgment for a civil penalty against USA Discounters in the amount of \$1,000,000, which will then be reflected in the amended proof of claim discussed below.

- e) **Amendment of Proof of Claim:** Promptly following the effectiveness of the CO Consent Judgment, the Colorado Administrator will file an amended proof of claim in the amount of the above-referenced \$1,000,000 penalty, which claim shall be deemed allowed in such amended amount as a general, non-priority unsecured claim against USA Discounters' bankruptcy estate. The Colorado Administrator will not file, assert, or otherwise pursue any other or further claims in the Chapter 11 Cases, whether unsecured, secured, priority, administrative, or otherwise.

On June 29, 2016, the Debtors Filed a motion seeking the Bankruptcy Court's approval of the CO Consent Judgment and associated settlement. *See* Docket No. 729. The Bankruptcy Court entered an approval order on July 18, 2016 [Docket No. 771], and the state court overseeing the Colorado AG Lawsuit thereafter entered the CO Consent Judgment, thereby resolving this litigation.

## 2. Multistate AG Settlement

Prior to the Petition Date, certain state attorneys general initiated an investigation of USA Discounters' business practices and organized a multistate group to conduct discovery and engage in discussions with the Debtors. Over the course of the Chapter 11 Cases, the membership of the multistate group has expanded and USA Discounters has cooperated with the investigation, including by producing over 4,500 pages of documents to the attorneys general. Collectively, the attorneys general alleged that USA Discounters' business practices violated various state and federal consumer protection laws under which the attorneys general are empowered to seek both legal and equitable relief, including injunctive relief, restitution, damages, penalties, and costs.

Moreover, certain of the state attorneys general timely filed proofs of claim against USA Discounters, generally in an unliquidated amount, asserting claims for restitution, damages, penalties, and costs arising from alleged violations of various state and federal consumer protection laws. *See* Claim Nos. 147–50, 168–73, 175, 176, 178–80, 182–89, 191–94 & 196–201.

In early June 2016, the Debtors participated in a voluntary mediation process with representatives of the attorneys general, the Creditors' Committee, and the Prepetition Agent. After exchanging position papers about the issues, the parties convened in Washington D.C. for a series of in-person mediation sessions led by Alexia Morrison, a mediator with The McCammon Group, Ltd. *See* Docket No. 687. The mediation resulted in an agreement in principle among the parties and the development of a settlement term sheet, which has since been formalized in a settlement agreement among the Debtors and all of the States in the United States of America, other than Colorado (which separately settled with the Debtors), as well as the District of Columbia, acting through their respective Attorneys General, Departments of Justice, or Offices of Consumer Protection (the "Multistate Settlement Agreement"). As qualified in its entirety by the full text of the Multistate

Settlement Agreement, the following is a summary of key terms of the Multistate Settlement Agreement:<sup>9</sup>

- a) **Release of Claims:** Each of the Attorneys General agrees to release, waive, and forever discharge each of the Released Parties from any and all civil Consumer Protection claims, obligations, suits, governmental enforcement actions, rights, controversies, damages, remedies, causes of action, and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing which relate to Consumer Protection law, in law, equity, or otherwise, that the Attorney General of that state, and to the extent allowed by law, the consumer protection agency (or similar agency) of that state, or any other agency or office deriving its power from that state and authorized to bring a Consumer Protection claim, could have asserted under (i) any civil Consumer Protection statute, regulation, rule, common law, or other law of that state that relates to Consumer Protection, or (ii) any federal statute, regulation, rule, common law, or other federal law relating to Consumer Protection, for any act or omission occurring in connection with the activities of USA Discounters and/or the activities of USA Discounters on or before the Effective Date of the Multistate Settlement Agreement. The acts and omissions subject to this release include, but are not limited to, any act or omission related to USA Discounters' (i) sale and financing of products, debt cancellation agreements, warranties, and credit insurance, (ii) collection of accounts, including the collection of accounts by litigation, (iii) advertising of products, and (iv) obtaining or failure to obtain licenses, registrations, or certifications to the extent that the obtaining or failure to do so would result in liability under Consumer Protection laws.
- b) **Covenant Not to Sue:** Each of the Attorneys General covenants not to sue or otherwise commence or maintain any Claim or any Consumer Protection action or proceeding against any of the Released Parties, before any local, state, federal, or other court, tribunal, or agency, based in whole or in part on any act or omission occurring in connection with the activities of USA Discounters on or before the Effective Date of the Multistate Settlement Agreement.
- c) **Liability:** USA Discounters denies any wrongdoing and is agreeing to the Multistate Settlement Agreement solely for settlement purposes.
- d) **Injunctive and Other Relief:** USA Discounters is permanently enjoined from violating any applicable state or federal Consumer Protection law. USA Discounters will cease and desist from certain practices identified in the Multistate Settlement Agreement and will modify certain collection procedures as set forth in the Multistate Settlement Agreement. In particular, USA Discounters

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<sup>9</sup> The description of the Multistate Settlement Agreement contained herein is for convenience of reference only and does not supplement or alter the terms or conditions of the Multistate Settlement Agreement. Capitalized terms used in the description have the meanings ascribed by the Multistate Settlement Agreement.



has agreed to (i) deem satisfied and cease collecting on all “Out of State Judgments” and all “USA Discounters Inactive Accounts,” (ii) credit the amount of all “Local Forum Military Judgments” in an amount equal to 50% of the original judgment amount, and (iii) provide a \$100 credit to all active accounts (in each case, credits will not be applied in a fashion that results in negative balances). Furthermore, within thirty (30) days after the Effective Date of the Multistate Settlement Agreement, USA Discounters will take other specified corrective actions, all as set forth in detail in the Multistate Settlement Agreement. In addition, USA Discounters will provide updated reports to credit bureaus.

e) **Monetary Provisions:** On the Effective Date of the Multistate Settlement Agreement, the Attorneys General shall be allowed a subordinated unsecured penalty claim against the bankruptcy estate of USA Discounters in the aggregate amount of Forty Million Dollars (\$40,000,000.00) (the “Allowed Payment Claim”), the amount of which Allowed Payment Claim shall be allocated among the Attorneys General as set forth on **Schedule 1** to the Multistate Settlement Agreement and which will be reflected in the deemed amended proofs of claim described below. The Allowed Payment Claim shall be (i) deemed allowed and hence not be subject to objection, disallowance, offset, or defense by USA Discounters or by any other party in interest; (ii) subordinated in all respects to all secured, administrative, priority, and general unsecured claims that are allowed in these chapter 11 Cases; and (iii) the sole and exclusive right to payment that the Attorneys General shall have to any distribution or recovery in these chapter 11 Cases.

f) **Withdrawal of Proofs of Claim:** On the Effective Date of the Multistate Settlement Agreement, each of the Attorneys General agrees that all the proofs of claim set forth on **Schedule 2** to the Multistate Settlement Agreement shall be deemed withdrawn with prejudice and that the claims register in these Cases may be revised to reflect the withdrawal of such claims in these Cases other than the allocated portion of the Allowed Payment Claim and agrees not to file, assert, or otherwise pursue against USA Discounters any further Consumer Protection claims or causes of action in or in connection with the chapter 11 Cases or in any other forum (regardless whether such claims or causes of action are unsecured, secured, priority, administrative, seek money damages, seek non-monetary relief, or otherwise).

On September 13, 2016, the Debtors Filed a motion seeking the Bankruptcy Court’s approval of the Multistate Settlement Agreement. *See* Docket No. 857. The Bankruptcy Court entered an approval order on September 29, 2016 [Docket No. 887], and the Multistate Settlement Agreement subsequently became effective on October 14, 2016. *See* Docket No. 908.

The Plan provides that the Multistate Settlement Agreement is incorporated as part of the Plan. As such, from and after the Effective Date of the Plan, USA Discounters and the Plan Administrator will continue to be bound by, and will comply with, the Multistate Settlement Agreement in all respects.

#### IV. SUMMARY OF THE JOINT CHAPTER 11 PLAN

This section provides a summary of the structure and means for implementation of the Plan and the classification and treatment of Claims and Equity Interests under the Plan and is qualified in its entirety by reference to the Plan (as well as the exhibits thereto and definitions therein).

The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statement of such terms and provisions.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Equity Interests in the Debtors under the Plan and will, upon the occurrence of the Effective Date, be binding on all Holders of Claims against and Equity Interests in the Debtors, the Debtors' Estates, all parties receiving property under the Plan, and other parties in interest. In the event of any conflict, inconsistency, or discrepancy between this Disclosure Statement and the Plan, the Confirmation Order, the Plan Supplement, or any other operative document, the terms of the Plan, Confirmation Order, Plan Supplement, and/or such other operative document, as applicable, shall govern and control; *provided* that, in any event, the terms of (1) the Confirmation Order and then (2) the Plan, in that order, shall govern and control over all other related documents.

##### A. **Purpose and Effect of the Plan**

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of its constituents. Chapter 11 also specifically allows a debtor to formulate and consummate a plan of liquidation. *See* 11 U.S.C. § 1129(a)(11). A plan of liquidation sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of liquidation by a bankruptcy court makes that plan binding on the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

The Plan provides for the distribution of the proceeds of the liquidation of all Estate Assets to various Creditors as contemplated under the Plan and for the wind-up the Debtors' corporate affairs. More specifically, the Plan provides for the appointment of a Plan Administrator and the creation of a GUC Trust to administer and liquidate all remaining property of the Debtors, including Preserved Claims and GUC Trust Avoidance Actions, and for the funding of such Plan Administrator and GUC Trust.

Under the Plan, Claims against, and Equity Interests in, the Debtors are divided into Classes according to their relative seniority and other criteria. If the Plan is confirmed by the Bankruptcy Court and consummated, the Claims and Equity Interests of the various Classes will be treated in accordance with the provisions in the Plan for each such Class and the Plan Administrator or the GUC Trust, as applicable, will make Distributions as provided in the Plan. A general description of the Classes of Claims and Equity Interests created under the Plan, the treatment of those Classes under the Plan, and the property to be distributed under the Plan are described below.

## **B. Comprehensive Compromise and Settlement Under the Plan**

Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims and controversies relating to the rights that a Holder of a Claim or an Equity Interest may have with respect to any Allowed Claim, Allowed Equity Interest, or any Distribution on account thereof. The Debtors request that the entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that all such compromises or settlements are (a) in the best interest of the Debtors, the Estates, and their respective property and stakeholders; and (b) fair, equitable, and reasonable.

The Debtors believe that the comprehensive compromise and settlement to be effected by the Plan is appropriate for several reasons.

**First**, the Plan proposes to provide general releases from the Debtors and the Estates in favor of the Released Parties (which include the Secured Parties, Parallel, and certain Related Parties), and also contemplates potential consensual third-party releases in favor of the Released Parties. The Debtors believe such releases in favor of the Secured Parties and their Related Parties are appropriate for many reasons, including because:

- The Secured Parties have agreed to support and effectively provide funding for a bankruptcy plan that will (i) provide for the payment in full of all administrative and priority claims; (ii) fund the GUC Trust, thereby assuring that Holders of Allowed General Unsecured Claims will receive a recovery in the Chapter 11 Cases; and (iii) provide the potential for additional recoveries by Holders of Allowed General Unsecured Claims if the Receivables are sold by the Plan Administrator and the Prepetition Credit Document Claims are paid in full.
- In multiple pre-bankruptcy agreements (including the Third Amendment), USA Discounters granted general releases of any claims it may have held against the Secured Parties. The Debtors believe that such releases would be enforceable against the Estates if litigated, which limits the universe of claims that could potentially be asserted against any of the Secured Parties absent the Plan.
- The Secured Parties dispute and would fiercely litigate the only potentially material claim of which the Debtors are aware against them: a potential preference claim arising from the arguable attachment of the Prepetition Agent's lien on an approximately \$2.5 million expected income tax refund as of April 30, 2015. Although certain case law supports the avoidance of this transfer as a preference,<sup>10</sup> and although USA Discounters entered into an agreement to preserve this potential claim notwithstanding the fact that it did not file a bankruptcy case within 90 days after April 30, 2015, the Debtors nevertheless believe that the settlement and release

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<sup>10</sup> See *Official Comm. of Unsecured Creditors v. Citicorp N. Am. (In re TOUSA, Inc.)*, 406 B.R. 421, 431-32 (Bankr. S.D. Fla. 2009); *Brandt v. Fleet Capital Corp. (In re TMCI Elecs.)*, 279 B.R. 552, 558-61 (Bankr. N.D. Cal. 2000).

of this claim through the Plan is fair and reasonable. Among other things, (i) the Secured Parties would likely argue that the case law to date does not represent the law regarding the operation of Article 9 of the Uniform Commercial Code in the applicable states or is wrongly decided; (ii) the Secured Parties would dispute whether they in fact received more than they would have received in a hypothetical liquidation and would further argue that any judgment should be reduced by the amount of the distributions they would have received on any resulting deficiency claim; and (iii) the Secured Parties have *not* consented to the use of any cash collateral to pursue the potential preference claim, which would require that it be pursued on a contingency fee or similar basis. In light of these and other complications, the Debtors believe that the prosecution of the potential preference claim would be a risky and highly uncertain endeavor. In contrast, the Plan locks in certain concessions from the Secured Parties, which the Debtors believe have an economic value that equals or exceeds the ultimate expected value of the potential preference claim.

**Second**, the Plan further provides general releases from the Debtors and the Estates in favor of Parallel and the Related Parties of the Debtors, including the Debtors' officers and directors who were serving in such capacities on the Petition Date. The Debtors are unaware of any viable Causes of Action against Parallel or against any of their Related Parties. Moreover, the Debtors believe that their Related Parties have provided many valuable contributions to the progress of the Chapter 11 Cases, including stewarding the Debtors through the bankruptcy process, negotiating concessions from the Secured Parties, negotiating and implement settlements with various parties, pursuing Confirmation of the Plan, and otherwise preserving Estate Assets for the benefit of all stakeholders. In addition, Parallel has agreed that the Confirmation Order will provide that, on the Effective Date of the Plan, Parallel will be deemed to have waived and released any and all Claims against each of the Debtors, and therefore Parallel will not receive or participate in any Distribution under the Plan, which resolves potential disputes regarding the allowance of claims that Parallel might assert against one or more of the Debtors. In light of these different contributions, the releases and exculpations as part of the overall compromise and settlement embodied by the Plan are fair, equitable, reasonable, and well within the boundaries permitted by law.

**Third**, the Plan is a vehicle for the near-term resolution of the Chapter 11 Cases. In addition to advancing the general public interest in the timely completion of bankruptcy cases and distributions of value to creditors, this prompt resolution minimizes costs and delay that otherwise could lead to the conversion of the Chapter 11 Cases or the creation of administrative expenses in excess of funds available to pay such expenses. If these Chapter 11 Cases become mired in litigation or otherwise run off track, the Secured Parties are unlikely to continue to consent to the use of their cash collateral to fund the bankruptcy process. Given the scope and extent of the Secured Parties' prepetition liens, as well as the additional adequate protection provided under the Cash Collateral Order, the Estates could be left in an administratively insolvent position, which would leave the Holders of General Unsecured Claims and even Priority Claims with no recovery whatsoever. In contrast, the Plan provides a mechanism for potentially material distributions to be made to these Creditors in a timely and orderly fashion.

In sum, the Debtors are strongly of the view that all elements of the comprehensive compromise and settlement to be effected under the Plan are superior to the disorderly and uncertain

alternatives. Under these circumstances, the Debtors believe that the Plan's allowance of the Prepetition Credit Document Claims and the various releases provided under the Plan represent a fair and reasonable result that satisfies the standards for approval under Bankruptcy Rule 9019.

### **C. The Plan Administrator and the OLA**

The Plan contemplates the appointment of a Plan Administrator for each of the Debtors and their respective Estates. The Plan Administrator will then proceed to liquidate the Revested Assets in an orderly fashion. During this time, the Plan Administrator will make Distributions to certain Creditors, including monthly distributions of any Available Cash to the Holders of Allowed Class 1 Claims.

The liquidation process may be administered by the Plan Administrator. The net proceeds of this liquidation process have been estimated in the OLA. A copy of the current OLA is attached hereto as **Exhibit B**. As set forth in the current OLA:

- The Debtors estimate an ultimate range of aggregate recoveries on the Receivables and other Estate Assets of \$13 million to \$20 million, net of operating and other expenses, with a base case recovery of \$17 million, during the period from November 1, 2016 through the end of the OLA projection period.
- The Debtors have not ascribed any value to recoveries that may be realized by the Plan Administrator in respect of any Preserved Claims.
- Based on the preceding, the Debtors anticipate that the Available Cash for payment of the Allowed Class 1 Claims (after funding the GUC Settlement Fund and paying the anticipated unpaid Allowed Administrative Claims) will total approximately \$16 million, less the aggregate amount of any professional fees and related expenses incurred by the Plan Administrator.
- Based on the preceding, the Debtors do not anticipate that there will be any Remaining Cash.

It is important to emphasize that the OLA relies on various assumptions and is subject to material modifications from time to time. If the OLA is revised by the Debtors prior to the Confirmation Hearing, any such revision will be included in a Plan Supplement. If the Plan is confirmed and the Effective Date occurs, the OLA is subject to revision by the Plan Administrator.

On or before the date that is seven (7) days prior to the Voting Deadline (defined below), the Debtors will File a Plan Supplement. As the Plan Supplement is updated or otherwise modified, it will be made available without charge at the Debtors' restructuring website at <http://www.kccllc.net/usadiscounters>.

### **D. Estimated Recoveries for Holders of General Unsecured Claims**

The Debtors estimate that Holders of Allowed General Unsecured Claims against USA Discounters in these Chapter 11 Cases should recover approximately [ ]% of the total amount of their Allowed General Unsecured Claims, assuming that (i) there will be no Remaining Funds in

accordance with the “base case” of the current OLA; (ii) there are no recoveries with respect to the GUC Trust Avoidance Actions that the GUC Trust may pursue; (iii) there are no significant adjustments to the total preliminary estimated amount of General Unsecured Claims based on the proofs of claims Filed against and Scheduled by the Debtors thus far; and (iv) there are no significant increases or reductions of General Unsecured Claims based on (x) the assumption and assignment or rejection, respectively, of additional contracts and leases of the Debtors or (y) additional Claims that might be filed by the Supplemental Customer Claims Bar Date.<sup>11</sup>

The Debtors do not anticipate there being any Holders of Allowed General Unsecured Claims against Holdings or against Credit LLC in these Chapter 11 Cases and thus have not estimated a recovery percentage for any such Holders.

The Debtors have calculated the foregoing ranges of projected recoveries for Holders of General Unsecured Claims taking into account two variables: (i) the total estimated amount of General Unsecured Claims, in accordance with the Debtors’ Schedules; and (ii) the total estimated amount of value expected to be available for Distributions to Holders of Allowed General Unsecured Claims in accordance with the Plan and the OLA.

It is important to emphasize that many factors will bear on whether there is any Remaining Cash available in the event the Plan Administrator sells the Receivables. The Debtors’ Cash consists or will consist primarily of (i) the Cash in the Estates on the Effective Date, *less* the amounts necessary to fund the Professional Fee Reserve; (ii) Cash realized by the collection of the Receivables over time or via a one-time sale of some or all of the Receivables; (iii) Cash realized by sale or disposition of all other Estate Assets; and (iv) recoveries with respect to the Preserved Claims. However, this Cash has been or will be reduced by, among other things, (i) the Distributions to be made under the Plan with respect to Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Priority Claims; (ii) certain statutory and other fees payable in connection with the Chapter 11 Cases; and (iii) the Plan Administration Expenses, as the same may be updated by the Plan Administrator. Only after these amounts have been paid or reserved will there be any Available Cash available for periodic Distributions to be made to Holders of Allowed Class 1 Claims. And only after the Allowed Class 1 Claim Amount (including post-Effective-Date interest thereon) has been indefeasibly paid in full will there even potentially be any Remaining Cash to fund additional Distributions for the benefit of Holders of Allowed General Unsecured Claims. There can be no guarantee that any Remaining Cash will exist after any sale process is completed for the Receivables, and in fact the Debtors do not anticipate that scenario to occur.

#### **E. Treatment of Unclassified Claims**

In accordance with Bankruptcy Code section 1123(a)(1) of the Bankruptcy Code, certain Claims have not been classified and the respective treatment of such unclassified Claims is set forth in Article 3.1 of the Plan.

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<sup>11</sup> In calculating the projected recovery to Holders of Allowed General Unsecured Claims against USA Discounters, the Debtors have excluded certain Proofs of Claim filed in contingent and/or unliquidated amounts.

### **1. Administrative Claims**

Except as otherwise provided for in the Plan, and subject to the requirements of the Plan, on or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) thirty (30) calendar days following the date on which an Administrative Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim shall receive from the Plan Administrator, in full satisfaction, settlement, and release of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other less favorable treatment as to which such Holder and the Plan Administrator shall have agreed upon in writing; *provided, however*, that Allowed Administrative Claims representing liabilities incurred in the ordinary course of business by a Debtor or other obligations so incurred by such Debtor shall be paid in full and performed by such Debtor in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

### **2. Professional Fee Claims**

All final requests for payment of Professional Fee Claims pursuant to Bankruptcy Code sections 327, 328, 330, 331, 363, 503(b), or 1103 must be made by application Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Prepetition Agent, and counsel to the U.S. Trustee no later than forty-five (45) calendar days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Plan Administrator, counsel to the Prepetition Agent, counsel to the Creditors' Committee, counsel to the U.S. Trustee, and the requesting Professional on or before the date that is fifteen (15) calendar days after the date on which the applicable application was served (or such longer period as may be allowed by order of the Bankruptcy Court or by agreement with the requesting Professional). All Professional Fee Claims shall be paid by the Plan Administrator to the extent approved by order of the Bankruptcy Court within five (5) Business Days after entry of such order. On the Effective Date, the Plan Administrator shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Plan Administrator and shall be maintained by the Plan Administrator in accordance with the Plan. The Plan Administrator shall fully fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtors, the Prepetition Agent, and the Creditors' Committee prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. If the Debtors, the Prepetition Agent, and the Creditors' Committee are unable to agree on an amount by which the Professional Fee Reserve is to be funded, then any of those parties may submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required funding. All Professional Fee Claims that have not previously been paid, otherwise satisfied, or withdrawn shall be paid from the Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released to the Plan Administrator to be used for other purposes consistent with the Plan.

### **3. Priority Tax Claims**

In full satisfaction, settlement, and release of and in exchange for such Claims, Allowed Priority Tax Claims shall be paid by the Plan Administrator, at the Plan Administrator's option, as follows: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax

Claim on the later of the Effective Date or thirty (30) calendar days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim; (b) in regular installment payments in Cash over a period not exceeding three (3) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs (*provided* that such election shall be without prejudice to the right to prepay any such Allowed Priority Tax Claim in full or in part without penalty); or (c) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the Plan Administrative shall have agreed upon in writing.

## **F. Classification and Treatment of Claims and Interests**

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

### **1. Class 1: Prepetition Credit Document Claims**

Class 1 consists of all Prepetition Credit Document Claims. Class 1 is Impaired under the Plan.

Class 1 Claims shall be finally Allowed against all three of the Debtors on the Effective Date in the Allowed Class 1 Claim Amount, which Allowed Claims shall not be subject to any Causes of Action, defense, counterclaim, subordination, offset, or challenge of any kind. Without limiting the generality of the preceding sentence, on the Effective Date, the “Challenge Period” under the Cash Collateral Order shall have been deemed to have expired for all purposes and the Debtors’ representations and the releases set forth in the Cash Collateral Order shall be fully binding on the Estates and all Persons.

Interest shall accrue on the Allowed Class 1 Claim Amount from and after the Effective Date at the non-default rate of interest that would otherwise be applicable under Section 2.6(a) of the Prepetition Loan Agreement (i.e., in the absence of any default, acceleration, or maturity).

Commencing on the month-end of the first full calendar month following the Effective Date and continuing on each calendar month-end thereafter, in full satisfaction, settlement, and release of and in exchange for such Claims, Holders of Allowed Class 1 Claims will receive periodic Distributions of any Available Cash as of such month-end, but only until (x) the Allowed Class 1 Claim Amount (including post-Effective-Date interest thereon) has been paid in full or (y) there is not and will not be any further Available Cash, as determined by the Plan Administrator in its sole discretion.

In order to secure the payment of all amounts required to be paid to Holders of Allowed Class 1 Claims under the Plan, the Prepetition Agent is granted and will retain on and after the Effective Date the Retained Prepetition Lien on all property and assets of the Liquidating Debtors, including all Revested Assets and any other assets or properties that are or would constitute



“Collateral” under the Cash Collateral Order (other than the GUC Trust Assets and the Professional Fee Reserve (except for any excess funds in the Professional Fee Reserve that are released to the Plan Administrator pursuant to Section 11.2 of the Plan), both of which will not be subject to the Retained Prepetition Lien). The Retained Prepetition Lien will be valid, binding, enforceable, non-avoidable, and automatically perfected on the Effective Date, without the necessity of the execution by any of the Liquidating Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents. The Retained Prepetition Lien will be subordinate to the payment of Allowed SAP Claims pursuant to the Plan.

Notwithstanding anything else in the Plan, (i) all Distributions to which Holders of Allowed Class 1 Claims are entitled shall be paid in bulk by the Plan Administrator to the Prepetition Agent for distribution to the Prepetition Lenders in accordance with the Prepetition Loan Agreement; and (ii) the Holders of Allowed Class 1 Claims will have no right to receive any Distribution from, or otherwise share in, any of the GUC Trust Assets.

## **2. Class 2: Other Secured Claims**

Class 2 consists of all Other Secured Claims. Each Class 2 Claim shall constitute its own subclass. Class 2 is Unimpaired under the Plan.

All Claims in Class 2 will be Allowed on the Effective Date. The legal, equitable, and contractual rights of Holders of Allowed Class 2 Claims are unaltered by the Plan, provided that all such Claims shall remain subject to any and all defenses, counterclaims, and setoff or recoupment rights with respect thereto. Unless the Holder of an Allowed Class 2 Claim in a particular Class 2 subclass agrees to other treatment, on or as soon as is reasonably practicable after the Effective Date, such Holder shall receive, at the Plan Administrator’s option: (i) Cash in the Allowed amount of such Holder’s Allowed Class 2 Claim; (ii) the return of the Collateral securing such Allowed Class 2 Claim, without representation or warranty by or recourse against the Plan Administrator; or (iii) (A) the cure of any default, other than a default of the kind specified in Bankruptcy Code section 365(b)(2), that Bankruptcy Code section 1124(2) requires to be cured, with respect to such Holder’s Allowed Class 2 Claim, without recognition of any default rate of interest or similar penalty or charge, and upon such cure, no default shall exist; (B) the reinstatement of the maturity of such Allowed Class 2 Claim as the maturity existed before any default, without recognition of any default rate of interest or similar penalty or charge; and (C) its unaltered legal, equitable, and contractual rights with respect to such Allowed Class 2 Claim.

The Bankruptcy Court shall retain jurisdiction and power to determine the amount necessary to satisfy any Allowed Class 2 Claim for which treatment is elected under clause (i) or clause (iii) of the immediately foregoing paragraph. With respect to any Allowed Class 2 Claim for which treatment is elected under clause (i), any Holder of such Allowed Class 2 Claim shall release (and by the Confirmation Order shall be deemed to release) all Liens against any Estate Assets. Notwithstanding anything else in the Plan, the Holders of Allowed Class 2 Claims will have no right to receive any Distribution from, or otherwise share in, any of the GUC Trust Assets.

**3. Class 3: Priority Claims**

Class 3 consists of all Priority Claims. Class 3 is Unimpaired under the Plan.

On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) the date on which a Priority Claim becomes payable pursuant to and as specified by an order of the Bankruptcy Court, the Holder of such Allowed Priority Claim shall receive from the Plan Administrator, in full satisfaction, settlement, and release of and in exchange for such Allowed Priority Claim, either (i) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Claim or (ii) such other less favorable treatment to which such Holder and the Plan Administrator shall have agreed upon in writing. Notwithstanding anything else in the Plan, the Holders of Allowed Class 3 Claims will have no right to receive any Distribution from, or otherwise share in, any of the GUC Trust Assets.

**4. Class 4: General Unsecured Claims Against USA Discounters**

Class 4 consists of all General Unsecured Claims against USA Discounters that are not Opt-Out Claims. Class 4 is Impaired under the Plan.

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed Class 4 Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Claim, (i) its Pro Rata share of the GUC Trust Interests—Class A, or (ii) such other less favorable treatment as to which such Holder and the GUC Trustee shall have agreed upon in writing.

**5. Class 5: General Unsecured Claims Against Holdings**

Class 5 consists of all General Unsecured Claims against Holdings. Class 5 is Impaired under the Plan.

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed Class 5 Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Claim, its Pro Rata share of any Cash owned by Holding. In the event that there are no Allowed Class 5 Claims, any Cash owned by Holdings shall be utilized to pay Plan Administration Expenses.

**6. Class 6: General Unsecured Claims Against Credit LLC**

Class 6 consists of all General Unsecured Claims against Credit LLC. Class 6 is Impaired under the Plan.

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed Class 6 Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Claim, its Pro Rata share of any Cash owned by Credit LLC. In the event that there are no Allowed Class 6 Claims, any Cash owned by Credit LLC shall be utilized to pay Plan Administration Expenses.

**7. Class 7: Opt-Out Claims**

Class 7 consists of all Opt-Out Claims. Class 7 is Impaired under the Plan.

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed Class 7 Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Claim, (i) its Pro Rata share of the GUC Trust Interests—Class B, or (ii) such other less favorable treatment as to which such Holder and the GUC Trustee shall have agreed upon in writing.

At any time prior to the commencement of the Confirmation Hearing, the Prepetition Agent, with the Debtors' consent, may elect to allow all holders of Class 7 Claims to instead receive a Pro Rata share of the GUC Trust Interests—Class A as if such Claims were included in Class 4 (without altering the effect of such Release Opt-Out vis-à-vis the releases set forth in Section 11.11 of the Plan). If the Prepetition Agent makes such election, then such Claims shall be reclassified and the Ballots previously cast by the Holders of such Claims shall be counted in, and the Claims shall receive the treatment prescribed in, Class 4 without the necessity of resoliciting any votes on the Plan.

#### **8. Class 8: Subordinated Claims**

Class 8 consists of all Subordinated Claims. Class 8 is Impaired under the Plan.

On and after the Effective Date, Holders of Subordinated Claims shall not be entitled to, and shall not receive or retain any property or interest in property under the Plan on account of such Subordinated Claims. Class 8 is deemed to have rejected the Plan and therefore Holders of Subordinated Claims are not entitled to vote on the Plan.

#### **9. Class 9: Equity Interests in Holdings**

Class 9 consists of all Equity Interests in Holdings. Class 9 is Impaired under the Plan.

As of the Effective Date, all Equity Interests in Holdings shall be deemed void, cancelled, and of no further force and effect. On and after the Effective Date, Holders of Equity Interests in Holdings shall not be entitled to, and shall not receive or retain any property or interest in property under the Plan on account of such Equity Interests. Class 9 is deemed to have rejected the Plan and therefore Holders of Equity Interests in Holdings are not entitled to vote on the Plan.

### **G. Acceptance or Rejection of the Plan**

#### **1. Impaired Class of Claims Entitled to Vote**

Only the votes of Holders of Allowed Claims in Class 1, Class 4, Class 5, Class 6, and Class 7 shall be solicited with respect to the Plan.

#### **2. Acceptance by an Impaired Class**

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

### **3. Presumed Acceptances by Unimpaired Classes**

Class 2 and Class 3 are Unimpaired under the Plan. Under Bankruptcy Code section 1126(f), the Holders of Claims in such Unimpaired Classes are conclusively presumed to have accepted the Plan, and, therefore, the votes of such Holders shall not be solicited.

### **4. Impaired Classes Deemed to Reject Plan**

Holders of Claims and Equity Interests in Class 8 and Class 9 are not entitled to receive or retain any property or interests in property under the Plan. Under Bankruptcy Code section 1126(g), such Holders are deemed to have rejected the Plan, and, therefore, the votes of such Holders shall not be solicited.

### **5. Confirmation Pursuant to Bankruptcy Code Section 1129(b)**

Because at least one Impaired Class is deemed to have rejected the Plan, the Debtors will request Confirmation of the Plan under Bankruptcy Code section 1129(b). The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the Plan Supplement, or any schedule or exhibit, including to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

### **6. Elimination of Vacant Classes**

Any Class of Claims or Equity Interests that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of an Allowed Claim or Equity Interest, or a Holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Plan for purposes of determining acceptance of the Plan by such Class under Bankruptcy Code section 1129(a)(8).

### **7. Severability of Joint Plan**

The Plan represents a joint plan comprised of three individual plans for each of the three Debtors. As further discussed in Section 11.6 of the Plan, the Debtors may alter, amend, or modify the Plan before the Confirmation Date, including to remove one or more Debtors from the Plan.

## **H. Implementation of the Plan**

The Plan will be implemented by, among other things, the establishment of the Plan Administrator, the establishment of the GUC Trust, and the making of Distributions by the Plan Administrator and the GUC Trust in accordance with the Plan.

### **1. The Liquidating Debtors' Post-Effective-Date Corporate Affairs**

#### **(a) Debtors' Existing Directors, Officers, and Managers**

On the Effective Date, each of the Debtors' existing directors, officers, and managers shall be terminated automatically without the need for any corporate action or approval and without the need

for any corporate filings, and shall have no continuing obligations to the Debtors or the Estates following the occurrence of the Effective Date.

(b) Wind Down and Dissolution of the Liquidating Debtors

On the Effective Date, one new share of Holdings common stock will be issued to the Plan Administrator to hold in its capacity as Plan Administrator and as the sole shareholder of Holdings. No intercompany Equity Interests shall be cancelled pursuant to the Plan, and all intercompany Equity Interests shall be unaffected by the Plan and continue in place following the Effective Date, solely for the administrative convenience of maintaining the Debtors' existing corporate structure.

On the Effective Date, each of the Liquidating Debtors shall maintain the applicable Debtor's current corporate form. After the Effective Date, the Plan Administrator may decide to (i) maintain each Liquidating Debtor as a corporation or limited liability company, as applicable, in good standing until such time as all aspects of the Plan pertaining to such Liquidating Debtor have been completed, or (ii) at such time as the Plan Administrator considers appropriate and consistent with the implementation of the Plan pertaining to such Liquidating Debtor, merge, dissolve, or otherwise terminate the existence of such Liquidating Debtor and complete the winding down of such Liquidating Debtor without the necessity for any other or further actions to be taken by or on behalf of such dissolving Liquidating Debtor or any other Person or any payments to be made in connection therewith. On and as of the Closing Date, each of the Liquidating Debtors that was not previously dissolved by the Plan Administrator shall be dissolved automatically without the need for any corporate action or approval and without the need for any corporate filings.

On and after the Effective Date, pursuant to the Plan, the Plan Administrator shall have the right, but not the obligation, to wind down, sell, and otherwise liquidate all Revested Assets in accordance with the OLA.

(c) Corporate Documents and Corporate Authority

As of the Effective Date, the certificate of incorporation, bylaws, or articles of organization, as applicable, of each Debtor shall be deemed amended to the extent necessary to carry out the provisions of the Plan.

The entry of the Confirmation Order shall constitute authorization for the Debtors, the Liquidating Debtors, the Plan Administrator, and the GUC Trustee, as applicable, to take or cause to be taken all actions (including, if applicable, corporate actions) necessary or appropriate to implement all provisions of, and to consummate, the Plan prior to, on, and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act, or action under any applicable law, order, rule, or regulation.

## 2. Plan Administrator

### (a) Appointment

On and after the Effective Date, the initial Plan Administrator identified in the Plan Supplement shall become and serve as Plan Administrator.

### (b) Vesting of Revested Assets

On the Effective Date, the Debtors and each of their Estates shall irrevocably vest in the applicable Liquidating Debtor for purposes of administration, by the Plan Administrator, of all of their respective rights, title, and interest in and to all Revested Assets (including all of the Receivables and the customer contracts underlying the Receivables), and in accordance with Bankruptcy Code section 1141. Except as specifically provided in the Plan or the Confirmation Order, the Revested Assets shall automatically vest in the applicable Liquidating Debtor free and clear of all Claims, Liens, encumbrances, or interests, and such vesting shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The Plan Administrator shall be the exclusive representative of the Estates appointed pursuant to Bankruptcy Code section 1123(b)(3)(B) regarding all Revested Assets.

### (c) Authority

The Plan Administrator shall have the sole authority and right on behalf of each of the Debtors, the Liquidating Debtors, and their respective Estates, without the need for Bankruptcy Court approval (unless otherwise indicated), to carry out and implement all provisions of the Plan, including to:

- (a) review, reconcile, compromise, settle, or object to SAP Claims and resolve such objections as set forth in the Plan, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules;
- (b) calculate the amount of Distributions to be made to Holders of Allowed SAP Claims in accordance with the Plan, and use Cash to make Distributions in accordance with the Plan;
- (c) review, reconcile, enforce, collect, compromise, settle, or elect not to pursue any or all Preserved Claims or similar actions, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules;
- (d) retain, compensate, and employ professionals and other Persons to represent the Plan Administrator with respect to and in connection with its rights and responsibilities;
- (e) establish, maintain, and administer all documents and accounts of the Liquidating Debtors as appropriate, which shall be segregated to the extent appropriate in accordance with the Plan;
- (f) maintain, conserve, supervise, prosecute, collect, settle, and protect the Revested Assets (subject to the limitations described in the Plan);

- (g) sell, liquidate, transfer, assign, distribute, abandon, or otherwise dispose of the Revested Assets or any part thereof (including, for the avoidance of doubt, any or all of the Receivables) or any interest therein upon such terms as the Plan Administrator determines to be necessary, appropriate, or desirable in its sole discretion;
- (h) invest Cash of the Liquidating Debtors and the Estates, including any Cash realized from the liquidation of the Revested Assets;
- (i) pay the Plan Administration Expenses;
- (j) prepare and file any and all informational returns, reports, statements, returns, and other documents or disclosures relating to the Debtors or the Liquidating Debtors that are required under the Plan, by any governmental unit, or by applicable law;
- (k) take such actions as are necessary or appropriate to close or dismiss any or all of the Chapter 11 Cases;
- (l) comply with the Plan, exercise the Plan Administrator's rights, and perform the Plan Administrator's obligations; and
- (m) exercise such other powers as deemed by the Plan Administrator to be necessary and proper to implement the provisions of the Plan.

To the extent necessary to give full effect to its exclusive administrative rights and duties under the Plan, the Plan Administrator shall be deemed to be vested with all rights, powers, privileges, and authorities of (i) a board of directors or an appropriate corporate officer of each of the Liquidating Debtors under any applicable non-bankruptcy law and (ii) a "trustee" of each of the Liquidating Debtors under Bankruptcy Code sections 704 and 1106.

(d) Tax Reporting

The Plan Administrator shall file any and all tax returns for the Liquidating Debtors and the Estates, as applicable.

The Plan Administrator shall be responsible for payment, out of the Revested Assets, of any taxes imposed on the Liquidating Debtors or the Revested Assets.

The Plan Administrator shall distribute such tax-related notices to the applicable Holders of Allowed Claims as the Plan Administrator determines are necessary or desirable.

(e) Preservation of All Preserved Claims

The Plan Administrator shall have the exclusive right, on behalf of the Estates, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Preserved Claims without any further order of the Bankruptcy Court, except as otherwise provided in the Plan. From and after the Effective Date, the Plan Administrator, in accordance with Bankruptcy Code section 1123(b)(3), shall serve as a representative of the Estates with respect to any and all Preserved

Claims and shall retain and possess the right to commence, pursue, settle, compromise, or abandon, as appropriate, any and all Preserved Claims in any court or other tribunal.

(f) Removal of the Plan Administrator

The Plan Administrator may be removed for cause, as determined by an order of the Bankruptcy Court pursuant to a regularly-noticed motion by a party in interest in the Chapter 11 Cases.

(g) Resignation of the Plan Administrator

The Plan Administrator may resign by giving not less than thirty (30) calendar days' prior notice thereof in a notice Filed in the Chapter 11 Cases.

(h) Successor Plan Administrator

In the event the Plan Administrator is removed or resigns, or if the Plan Administrator otherwise vacates the position, a successor Plan Administrator shall be nominated by the Prepetition Agent, with the appointment of such nominee as successor Plan Administrator effective upon filing a notice with the Bankruptcy Court. Any successor Plan Administrator appointed hereunder shall execute an instrument accepting such appointment and shall deliver such acceptance to the Bankruptcy Court. Thereupon, such successor Plan Administrator shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of the predecessor Plan Administrator with like effect as if originally named therein; *provided, however*, that a removed or resigning Plan Administrator shall, nevertheless, when requested in writing by the successor Plan Administrator, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Plan Administrator all the estates, properties, rights, powers, trusts, and duties of such removed or resigning Plan Administrator.

(i) Termination of the Plan Administrator

The Plan Administrator's role as Plan Administrator shall be terminated on the Wind Down End Date.

**3. GUC Trust**

(a) Creation and Governance of the GUC Trust

On the Effective Date, the Debtors and the GUC Trustee shall execute the GUC Trust Agreement and shall take all steps necessary to establish the GUC Trust in accordance with the Plan and the beneficial interests therein, which shall be for the benefit of the GUC Trust Beneficiaries. Additionally, on the Effective Date the Debtors shall irrevocably transfer and shall be deemed to have irrevocably transferred to the GUC Trust all rights, title, and interest in and to all of the GUC Trust Assets, and in accordance with Bankruptcy Code section 1141, the GUC Trust Assets shall automatically vest in the GUC Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the GUC Trust Interests and the GUC Trust Expenses, as provided for in the GUC Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The GUC Trustee shall be the exclusive



trustee of the GUC Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to Bankruptcy Code section 1123(b)(3) regarding all GUC Trust Assets. The GUC Trust shall be governed by the GUC Trust Agreement and administered by the GUC Trustee. The powers, rights, and responsibilities of the GUC Trustee shall be specified in the GUC Trust Agreement. The GUC Trust shall hold and distribute the GUC Trust Assets in accordance with the provisions of the Plan and the GUC Trust Agreement. Other rights and duties of the GUC Trustee and the GUC Trust Beneficiaries shall be as set forth in the GUC Trust Agreement. After the Effective Date, the Liquidating Debtors shall have no interest in the GUC Trust Assets.

(b) Purpose of the GUC Trust

The GUC Trust shall be established for the purpose of pursuing or liquidating the GUC Trust Assets, reconciling and objecting to General Unsecured Claims, and making Distributions to the GUC Trust Beneficiaries 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) GUC Trustee and GUC Trust Agreement

The GUC Trust Agreement generally will provide for, among other things:

- (i) the payment of the GUC Trust Expenses;
- (ii) the payment of other reasonable expenses of the GUC Trust;
- (iii) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation without Bankruptcy Court approval;
- (iv) the investment of Cash by the GUC Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly liquidation of the GUC Trust Assets;
- (vi) litigation of any GUC Trust Avoidance Actions, which may include the prosecution, settlement, release, waiver, abandonment, or dismissal of any such GUC Trust Avoidance Actions; and
- (vii) the prosecution and resolution of objections to General Unsecured Claims; and
- (viii) the abandonment, in any commercially reasonable manner, of any assets that in the GUC Trustee's reasonable judgment cannot be sold in a commercially reasonable manner or that the GUC Trustee believes in good faith have inconsequential value to the GUC Trust.

The GUC Trust Expenses shall be payable solely from the GUC Trust Assets in accordance with the Plan and GUC Trust Agreement. The GUC Trustee may, but shall not be obligated to, physically segregate and maintain separate account or sub-accounts for GUC Trust Expenses. Reserves may be merely bookkeeping entries or accounting methodologies, which may be revised

from time to time, to enable the GUC Trustee to determine reserves and amounts to be paid to Holders of Allowed General Unsecured Claims.

The GUC Trustee, on behalf of the GUC Trust, may employ, without further order of the Bankruptcy Court, professionals (including those previously retained by the Creditors' Committee) to assist in carrying out its duties under the Plan and the GUC Trust Agreement and may compensate and reimburse the reasonable expenses of these professionals without further order of the Bankruptcy Court from the GUC Trust Assets in accordance with the Plan and the GUC Trust Agreement.

The GUC Trust Agreement may include reasonable and customary provisions that allow for indemnification by the GUC Trust in favor of the GUC Trustee. Any such indemnification shall be the sole responsibility of the GUC Trust and payable solely from the GUC Trust Assets.

In furtherance of and consistent with the purpose of the GUC Trust and the Plan, the GUC Trustee, for the benefit of the GUC Trust, shall: (a) hold the GUC Trust Assets for the benefit of the GUC Trust Beneficiaries, (b) make Distributions to the GUC Trust Beneficiaries as provided in the Plan and in the GUC Trust Agreement, and (c) have the sole power and authority to prosecute and resolve any GUC Trust Avoidance Actions and objections to General Unsecured Claims, without approval of the Bankruptcy Court. The GUC Trustee shall be responsible for all decisions and duties with respect to the GUC Trust and the GUC Trust Assets, except as otherwise provided in the GUC Trust Agreement. In all circumstances, the GUC Trustee shall act in the best interests of the GUC Trust Beneficiaries.

(d) Preservation of Privileges and Defenses

The actions taken by the Debtors, Liquidating Debtors, or Plan Administrator in connection with the Plan shall not be (or be deemed to be) a waiver of any privilege of the Debtors, the Liquidating Debtors, or the Plan Administrator, as applicable, including any attorney-client privilege or work-product privilege attaching to any document or communications (whether written or oral). Notwithstanding any Debtors or Liquidating Debtors providing any privileged information to the GUC Trustee, the GUC Trust, or any party or person associated with the GUC Trust, such privileged information shall be without waiver in recognition of the joint and/or successor interest in prosecuting the GUC Trust Avoidance Actions or objections to Claims, as applicable, and shall remain privileged. Except as provided in Section 11.21.2 of the Plan, the GUC Trustee shall have no right to waive the attorney-client privilege, work-product privilege, or other protection of information received from the Debtors, the Liquidating Debtors, or Plan Administrator, as applicable. The Debtors, Liquidating Debtors, or Plan Administrator, as applicable, shall retain the right to waive their own privilege.

(e) Cooperation and Access to Books and Records

The Liquidating Debtors and Plan Administrator, as applicable, shall use commercially reasonable efforts to cooperate with the GUC Trustee in connection with investigating and prosecuting GUC Trust Avoidance Actions and/or objections to Disputed Claims, including with respect to promptly providing evidence and information as requested by the GUC Trustee (including reasonable access to the Debtors' books and records).

## (f) Compensation and Duties of GUC Trustee

The salient terms of the GUC Trustee's employment, including the GUC Trustee's duties and compensation shall be set forth in the GUC Trust Agreement. The GUC Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

## (g) Limitation of Liability

Neither the GUC Trustee, nor its members, designee, agents, advisors, representatives, or professionals shall be liable for the act or omission of any other member, designee, agent, advisor, representative, or professional, nor shall the GUC Trustee be liable for any act or omission taken, or omitted to be taken, in its capacity as GUC Trustee, respectively, other than for specific actions or omissions resulting from its willful misconduct, gross negligence, or fraud. The GUC Trustee shall enjoy all of the rights, powers, immunities, and privileges applicable to a chapter 7 trustee. The GUC Trustee may, in connection with the performance of its functions, in its sole and absolute discretion, consult with its attorneys, accountants, advisors, and agents, and shall not be liable for any act taken, or omitted to be taken, or suggested to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions were in writing. Notwithstanding such authority, the GUC Trustee shall be under no obligation to consult with any such attorneys, accountants, advisors, or agents, and its determination not to do so shall not result in the imposition of liability on the GUC Trustee or its members unless such determination is based on willful misconduct, gross negligence, or fraud. Persons dealing with the GUC Trustee shall look only to the GUC Trust Assets to satisfy any liability incurred by the GUC Trustee to such person in carrying out the terms of the Plan or the GUC Trust Agreement, and the GUC Trustee shall have no personal obligation to satisfy such liability.

## (h) Indemnification

Subject to Section 5.4.10 of the Plan, the GUC Trust shall indemnify the GUC Trust Indemnified Parties for, and shall hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) incurred without gross negligence or willful misconduct on the part of the GUC Trust Indemnified Parties (which gross negligence or willful misconduct, if any, must be determined by a Final Order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the GUC Trust Indemnified Parties in connection with the acceptance, administration, exercise, and performance of their duties under the Plan or the GUC Trust Agreement, as applicable. An act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence or willful misconduct. In addition, the GUC Trust shall, to the fullest extent permitted by law, indemnify and hold harmless the GUC Trust Indemnified Parties, from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the GUC Trust or the implementation or administration of the Plan if the GUC Trust Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the GUC Trust. To the extent the GUC Trust indemnifies and holds harmless any GUC Trust Indemnified Parties as provided above, the legal fees and related costs incurred by

counsel to the GUC Trustee in monitoring or participating in the defense of such claims giving rise to the right of indemnification shall be paid as GUC Trust Expenses. The costs and expenses incurred in enforcing the right of indemnification in Section 5.4.8 of the Plan shall be paid by the GUC Trust and Section 5.4.8 of the Plan shall survive the termination of the GUC Trust Agreement and the resignation, replacement, or removal of the GUC Trustee.

(i) Insurance

The GUC Trustee shall be authorized, but not required, to obtain any reasonably necessary insurance coverage, at the GUC Trust's sole expense, for itself and its respective agents, including coverage with respect to the liabilities, duties, and obligations of the GUC Trustee, which insurance coverage may, at the sole option of the GUC Trustee, be extended for a reasonable period after the termination of the GUC Trust Agreement.

(j) United States Federal Income Tax Treatment of the GUC Trust

For all United States federal income tax purposes, the parties shall treat the transfer of the GUC Trust Assets to the GUC Trust as: (a) a transfer of the GUC Trust Assets directly to the applicable Holders of Allowed General Unsecured Claims, followed by (b) the transfer by the Holders of such Allowed General Unsecured Claims to the GUC Trust of such GUC Trust Assets in exchange for the GUC Trust Interests; *provided, however*, that the GUC Trust Assets will be subject to any post-Effective-Date obligations incurred by the GUC Trust relating to the pursuit of GUC Trust Assets. Accordingly, the applicable GUC Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the GUC Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

(k) Tax Reporting

The GUC Trustee shall file tax returns for the GUC Trust treating the GUC Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a).

The GUC Trustee shall be responsible for payment, solely from the GUC Trust Assets, of all taxes (if any) imposed on the GUC Trust or its assets.

The GUC Trustee shall distribute such notices to the applicable GUC Trust Beneficiaries as the GUC Trustee determines are necessary or desirable.

(l) GUC Trust Assets

The GUC Trustee shall have the exclusive right, on behalf of the GUC Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all GUC Trust Avoidance Actions without any further order of the Bankruptcy Court, except as otherwise provided in the GUC Trust Agreement. From and after the Effective Date, the GUC Trustee, in accordance with Bankruptcy Code section 1123(b)(3), and on behalf of the GUC Trust, shall serve as a representative of the Estates with respect to any and all GUC Trust Avoidance Actions and shall retain and possess the right to commence, pursue, settle, compromise, release, waive, or abandon, as appropriate, any and all GUC Trust Avoidance Actions in any court or other tribunal.

## (m) GUC Trust Expenses

From and after the Effective Date, the GUC Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay, solely from the GUC Trust Assets, the reasonable and documented fees, expenses, and costs incurred by the GUC Trustee in connection with carrying out the obligations of the GUC Trust.

## (n) Distributions to GUC Trust Beneficiaries

The GUC Trustee, in its discretion, may make Distributions to the GUC Trust Beneficiaries at any time following the Effective Date or use the GUC Trust Assets or proceeds thereof, provided that such Distributions or use is otherwise permitted under, and not inconsistent with, the terms of the Plan, the GUC Trust Agreement, and applicable law.

## (o) Cash Investments

The GUC Trustee may invest Cash (including any earnings thereon or proceeds therefrom); *provided, however*, that such investments must be investments that are permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

## (p) Pour-Over of Remaining Cash

Solely in the event that a sale of the Receivables is consummated that results in there being Remaining Cash, such Remaining Cash will be transferred to the GUC Trust for the benefit of the GUC Trust Beneficiaries. Notwithstanding the possibility of there being Remaining Cash, neither the Plan Administrator, nor the Liquidating Debtors, nor any other Person (other than the GUC Trustee) will have any post-Effective-Date duties or responsibilities to, or any fiduciary or similar relationship with, the GUC Trust, the GUC Trustee, or any GUC Trust Beneficiary, and no implied covenants, functions, responsibilities, duties, obligations, or liabilities shall be read into the Plan or otherwise exist against the Plan Administrator, the Liquidating Debtors, or any other Person (other than the GUC Trustee).

## (q) Dissolution of the GUC Trust

The GUC Trustee and the GUC Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the GUC Trustee determines that the pursuit of additional GUC Trust Avoidance Actions is not likely to yield sufficient additional proceeds to justify further pursuit of such GUC Trust Avoidance Actions, (b) all objections to Disputed General Unsecured Claims are fully resolved, and (c) all Distributions required to be made by the GUC Trustee to the GUC Trust Beneficiaries under the Plan and the GUC Trust Agreement have been made, but in no event shall the GUC Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such fifth anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed three years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the GUC Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery

on, and liquidation of, the GUC Trust Assets. Upon dissolution of the GUC Trust, any remaining GUC Trust Assets that exceed the amounts required to be paid under the Plan may be transferred by the GUC Trustee to the American Bankruptcy Institute Endowment Fund.

(r) **Control Provisions**

To the extent there is any inconsistency between the Plan as it relates to the GUC Trust and the GUC Trust Agreement, the Plan shall control.

**4. Multistate Settlement Agreement**

The Multistate Settlement Agreement is incorporated as part of the Plan. From and after the Effective Date, the Liquidating Debtors and the Plan Administrator will continue to be bound by, and will comply with, the Multistate Settlement Agreement in all respects.

**5. Product Warranties and Jewelry Warranties**

Until the earlier of (a) the third calendar anniversary of the Petition Date and (b) the termination of the applicable Product Warranty or Jewelry Warranty in accordance with its terms, Liquidating USAD shall continue to service all Product Warranties and Jewelry Warranties that remain in full force and effect on the Effective Date in accordance with and subject to all terms and conditions of such Product Warranties and Jewelry Warranties. No Product Warranties or Jewelry Warranties will be honored after the third calendar anniversary of the Petition Date.

**6. Cancellation of Instruments**

Any agreement, bond, certificate, indenture, note, security, warrant, or other instrument or document evidencing or creating any indebtedness or obligation of the Debtors shall be deemed cancelled on the Effective Date, and all Liens, mortgages, pledges, grants, trusts, and other interests relating thereto shall be automatically cancelled, and all obligations of the Debtors thereunder or in any way related thereto shall be discharged. Notwithstanding the preceding sentence, the Retained Prepetition Lien will not be cancelled or discharged.

**I. Executory Contracts and Unexpired Lease**

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

(a) **Assumption of Agreements**

On the Effective Date, Liquidating USAD shall assume all executory contracts and unexpired leases that are listed on the Schedule of Assumed Agreements.

The Debtors reserve the right to amend the Schedule of Assumed Agreements at any time prior to the Effective Date (i) to delete any executory contract or unexpired lease and provide for its rejection under the Plan or otherwise, or (ii) to add any executory contract or unexpired lease and provide for its assumption under the Plan. The Debtors will provide notice of any amendment to the Schedule of Assumed Agreements to the party or parties to those agreements affected by the amendment.

Unless otherwise specified on the Schedule of Assumed Agreements, each executory contract and unexpired lease listed or to be listed therein shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument, or other document is also listed on the Schedule of Assumed Agreements.

The Confirmation Order will constitute a Bankruptcy Court order approving the assumption, on the Effective Date, of all executory contracts and unexpired leases identified on the Schedule of Assumed Agreements.

(b) Cure Payments

Any amount that must be paid under Bankruptcy Code section 365(b)(1) to cure a default under and compensate the non-debtor party to an executory contract or unexpired lease to be assumed under the Plan is identified as the “Cure Payment” on the Schedule of Assumed Agreements. Unless the parties mutually agree to a different date, such payment shall be made in Cash by the Plan Administrator, within ten (10) Business Days following the later of: (i) the Effective Date and (ii) entry of a Final Order resolving any disputes regarding (A) the amount of any Cure Payment, (B) the ability of Liquidating USAD to provide “adequate assurance of future performance” within the meaning of Bankruptcy Code section 365 with respect to a contract or lease to be assumed, to the extent required, or (C) any other matter pertaining to assumption.

Pending the Bankruptcy Court’s ruling on any such dispute, the executory contract or unexpired lease at issue shall be deemed assumed by Liquidating USAD unless otherwise agreed by the parties or ordered by the Bankruptcy Court.

(c) Objections to Assumption/Cure Payment Amounts

Any Person that is a party to an executory contract or unexpired lease that will be assumed under the Plan and that objects to such assumption (including the proposed Cure Payment) must File with the Bankruptcy Court and serve on parties entitled to notice a written statement and, if applicable, a supporting declaration stating the basis for its objection. This statement and, if applicable, declaration must be Filed and served on or before the deadline established by the Disclosure Statement Order. Any Person that fails to timely File and serve such a statement and, if applicable, a declaration shall be deemed to waive any and all objections to the proposed assumption (including the proposed Cure Payment) of its contract or lease.

In the absence of a timely objection by a Person that is a party to an executory contract or unexpired lease, the Confirmation Order shall constitute a conclusive determination regarding the amount of any cure and compensation due under the applicable executory contract or unexpired lease, as well as a conclusive finding that Liquidating USAD has demonstrated adequate assurance of future performance with respect to such executory contract or unexpired lease, to the extent required.

(d) Resolution of Claims Relating to Assumed Contracts and Leases

Payment of the Cure Payment established under the Plan, by the Confirmation Order, or by any other order of the Bankruptcy Court, with respect to an assumed executory contract or unexpired lease, shall be deemed to satisfy, in full, any prepetition or postpetition arrearage or other Claim (including any Claim asserted in a Filed proof of claim or listed on the Schedules) with respect to such contract or lease (irrespective of whether the Cure Payment is less than the amount set forth in such proof of claim or the Schedules). Upon the tendering of the Cure Payment, any such Filed or Scheduled Claim shall be disallowed with prejudice, without further order of the Bankruptcy Court or action by any Person.

**2. Rejection of Executory Contracts and Unexpired Leases**

(a) Rejected Agreements

On the Effective Date, the applicable Debtors shall reject all executory contracts and unexpired leases that are listed on the Schedule of Rejected Agreements.

The Debtors reserve the right to amend the Schedule of Rejected Agreements at any time prior to the Effective Date (i) to delete any executory contract or unexpired lease and provide for its assumption under the Plan or otherwise, or (ii) to add any executory contract or unexpired lease and provide for its rejection under the Plan. The Debtors will provide notice of any amendment to the Schedule of Rejected Agreements to the party or parties to those agreements affected by the amendment.

Unless otherwise specified on the Schedule of Rejected Agreements, each executory contract and unexpired lease listed or to be listed therein shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument, or other document is also listed on the Schedule of Rejected Agreements.

The Confirmation Order will constitute a Bankruptcy Court order approving the rejection, on the Effective Date, of all executory contracts and unexpired leases identified on the Schedule of Rejected Agreements.

(b) Rejection Claims Bar Date

Any Rejection Claim or other Claim for damages arising from the rejection under the Plan of any prepetition executory contract or unexpired lease must be Filed and served no later than the Rejection Claims Bar Date. Any such Rejection Claims that are not timely Filed and served will be forever disallowed, barred, and unenforceable, and Persons holding such Claims will not receive and be barred from receiving any Distributions on account of such untimely Claims. If one or more Rejection Claims are timely Filed pursuant to the Plan, the GUC Trustee may object to any Rejection Claim on or prior to the Claim Objection Deadline.



## **J. Conditions Precedent to the Occurrence of the Effective Date**

### **1. Conditions to the Effective Date**

The occurrence of the Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived pursuant to Section 9.2 of the Plan:

- (i) the Bankruptcy Court shall have entered the Confirmation Order;
- (ii) the Confirmation Order shall not be subject to any stay;
- (iii) the amount of the Allowed and unpaid Administrative Claims, Other Secured Claims, Priority Claims, Priority Tax Claims, and Professional Fee Claims (or if not Allowed, then as estimated solely by the Prepetition Agent in its absolute discretion) does not in the aggregate exceed the aggregate amount contemplated to be paid in respect of such Claims by the Budget by \$1.0 million or more;
- (iv) the Multistate Settlement Agreement shall remain in full force and effect;
- (v) all actions and all agreements, instruments or other documents necessary to implement the terms and provisions of the Plan are effected or executed and delivered, as applicable;
- (vi) the Professional Fee Reserve is funded pursuant to Section 11.2 of the Plan; and
- (vii) the GUC Settlement Fund is funded to the GUC Trust.

### **2. Waiver of Conditions to the Effective Date**

The condition to the Effective Date set forth in clause (iii) of Section 9.1 of the Plan may be waived in writing by the Debtors and the Prepetition Agent at any time without further order.

### **3. Effect of Non-Occurrence of Conditions to the Effective Date**

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 9.1 and 9.2 of the Plan, upon notification Filed by the Debtors with the Bankruptcy Court, (i) the Confirmation Order shall be vacated; (ii) no Distributions shall be made; (iii) the Debtors, the Estates, and all Creditors shall be restored to the *status quo* as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred; and (iv) all of the Debtors' and the Estates' obligations with respect to Claims shall remain unchanged and nothing contained in the Plan shall constitute a waiver or release of any Causes of Action by or against the Debtors, the Estates, or any other Person or prejudice in any manner the rights, claims, or defenses of the Debtors, the Estates, or any other Person.

### **4. Notice of the Effective Date**

Promptly after the occurrence of the Effective Date, the Plan Administrator or its agents shall mail or cause to be mailed to all Creditors a notice that informs such Creditors of (i) entry of the

Confirmation Order and the resulting confirmation of the Plan; (ii) the occurrence of the Effective Date; (iii) the assumption and rejection of executory contracts and unexpired leases pursuant to the Plan, as well as the deadline for the filing of resulting Rejection Claims; (iv) the deadline established under the Plan for the filing of Administrative Claims; and (v) such other matters as the Plan Administrator finds appropriate.

## **K. Retention of Jurisdiction**

### **1. Scope of Retained Jurisdiction and Power**

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction and power over all matters arising in, arising under, or related to the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including jurisdiction and power to do the following:

(a) except as otherwise Allowed pursuant to the Plan or in the Confirmation Order, Allow, classify, determine, disallow, establish the priority or secured or unsecured status of, estimate, limit, liquidate, or subordinate any Claim, in whole or in part, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Bankruptcy Code sections 327, 328, 330, 331, 363, 503(b), 1103, and 1129(a)(4);

(c) hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan and enforce remedies on any default under the Plan;

(e) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Cases, including the Preserved Claims and the GUC Trust Avoidance Actions, and with respect to the Plan;

(f) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created, executed, or contemplated in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

(i) 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 the implementation, consummation, or enforcement of the Plan or the Confirmation Order;

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

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created, executed, or contemplated in connection with any of the foregoing documents and orders;

(l) enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings associated with the Plan or otherwise entered in connection with the Chapter 11 Cases (whether or not any or all of the Chapter 11 Cases have been closed);

(m) except as otherwise limited in the Plan, recover all Estate Assets, wherever located;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;

(o) hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge;

(p) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(q) resolve any cases, controversies, suits, or disputes related to the Plan Administrator, the GUC Trust, or the GUC Trustee; and

(r) enter a final decree closing the Chapter 11 Cases.

## **2. Non-Exercise of Jurisdiction**

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in Section 10.01 of the Plan, the provisions of Article X of the Plan shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

## **L. Miscellaneous Plan Provisions**

### **1. Administrative Claims**

Subject to the last sentence of Section 11.1 of the Plan, all requests for payment of an Administrative Claim must be Filed with the Bankruptcy Court no later than the applicable Administrative Claims Bar Date. In the event of an objection to allowance of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. **THE FAILURE TO FILE A MOTION REQUESTING ALLOWANCE OF AN ADMINISTRATIVE CLAIM ON OR BEFORE THE APPLICABLE ADMINISTRATIVE CLAIMS BAR DATE, OR THE FAILURE TO SERVE SUCH MOTION TIMELY AND PROPERLY, SHALL RESULT IN THE ADMINISTRATIVE CLAIM BEING FOREVER BARRED AND DISALLOWED WITHOUT FURTHER ORDER OF THE BANKRUPTCY COURT. IF FOR ANY REASON ANY SUCH ADMINISTRATIVE CLAIM IS INCAPABLE OF BEING FOREVER BARRED AND DISALLOWED, THEN THE HOLDER OF SUCH CLAIM SHALL IN NO EVENT HAVE RECOURSE TO ANY PROPERTY TO BE DISTRIBUTED PURSUANT TO THE PLAN.** Postpetition statutory tax claims shall not be subject to any Administrative Claims Bar Date.

### **2. 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. All such fees that arise after the Effective Date shall be paid by the Plan Administrator. The Plan Administrator shall have the obligation to pay quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for each of the Debtors or the dismissal or conversion of the Chapter 11 Cases. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

### **3. Post-Effective-Date Reporting**

Beginning the first quarter-end following the Effective Date and continuing on each quarter-end thereafter until the Closing Date, within thirty (30) calendar days after the end of such period, the Plan Administrator and the GUC Trustee shall File quarterly reports and make disclosures of material events with the Bankruptcy Court. Each quarterly report shall contain a cash flow statement which shall show Distributions by Class during the prior quarter, an unaudited balance sheet, the terms of any settlement of an individual Claim in an amount greater than \$100,000, the terms of any litigation settlement where the Cause of Action or the GUC Trust Avoidance Action was greater than \$100,000 or the settlement is for more than \$100,000, the terms of any sale of Estate Assets where the face amount of such property is \$100,000 or greater, and such other information as the Plan Administrator or the GUC Trustee, as applicable, determines is material.

### **4. Dissolution of Creditors' Committee**

The Creditors' Committee shall be automatically dissolved on the Effective Date and, on the Effective Date, each member of the Creditors' Committee (including each Related Party thereof) and each Professional retained by the Creditors' Committee shall be released and discharged from all

rights, duties, responsibilities, and obligations arising from, or related to, the Debtors, their membership on the Creditors' Committee, the Plan, or the Chapter 11 Cases, except with respect to any matters concerning any Professional Fee Claims held or asserted by any Professional retained by the Creditors' Committee.

## **5. Severability of Plan Provisions**

If, before the Confirmation Date, the Bankruptcy Court holds that any Plan term or provision is invalid, void, or unenforceable, the Bankruptcy Court may alter or interpret that term or provision so that it is valid and enforceable to the maximum extent possible consistent with the original purpose of that term or provision. That term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the Plan's remaining terms and provisions will remain in full force and effect and will in no way be affected, impaired, or invalidated. The Confirmation Order will constitute a judicial determination providing that each Plan term and provision, as it may have been altered or interpreted in accordance with Section 11.7 of the Plan, is valid and enforceable under its terms.

## **6. Compromises and Settlements**

From and after the Effective Date, (i) the Plan Administrator may compromise and settle disputes about any SAP Claims, as well as any Preserved Claims, without any further approval by the Bankruptcy Court; and (ii) the GUC Trustee may compromise and settle disputes about any General Unsecured Claims, as well as any GUC Trust Avoidance Actions, without any further approval by the Bankruptcy Court. Until the Effective Date, the Debtors expressly reserve the right to compromise and settle (subject to the approval of the Bankruptcy Court) Claims against them or Causes of Action belonging to the Estates.

## **7. Binding Effect of Plan**

Upon the Effective Date, Bankruptcy Code section 1141 shall become applicable with respect to the Plan and the Plan shall be binding on all Persons to the fullest extent permitted by Bankruptcy Code section 1141(a). Confirmation of the Plan binds each Holder of a Claim or Equity Interest to all the terms and conditions of the Plan, whether or not such Holder's Claim or Equity Interest is Allowed, whether or not such Holder holds a Claim or Equity Interest that is in a Class that is Impaired under the Plan, and whether or not such Holder has accepted the Plan.

## **8. Non-Discharge of the Debtors; Injunction**

**In accordance with Bankruptcy Code section 1141(d)(3)(A), the Plan does not discharge the Debtors. Bankruptcy Code section 1141(c) nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Equity Interests against the Debtors. As such, no Person holding a Claim or an Equity Interest may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Person under the Plan. As of the Effective Date, all Persons are precluded and barred from asserting against any property to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, Equity Interests, or other action or remedy based on any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.**

## 9. Releases and Related Matters

(a) On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each of the Releasing Parties shall be deemed to have forever released, waived, and discharged each of the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities whatsoever, whether known or unknown, whether foreseen or unforeseen, whether liquidated or unliquidated, whether fixed or contingent, whether matured or unmatured, existing or hereafter arising, at law, in equity, or otherwise, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the conduct of the Debtors' business, the Chapter 11 Cases, or the Plan, except for acts or omissions that are determined in a Final Order to have constituted actual fraud, gross negligence, or willful misconduct; *provided, however*, that nothing in Section 11.11 of the Plan shall release or otherwise affect any Person's rights under the Plan or the Confirmation Order. For the avoidance of doubt, pursuant to the preceding releases, on the Effective Date Parallel will waive and release any and all Claims against each of the Debtors, and therefore Parallel will not receive or participate in any Distribution under the Plan.

(b) Entry of the Confirmation Order shall constitute (i) the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in Section 11.11 of the Plan, and (ii) the Bankruptcy Court's findings that such releases are (1) in exchange for good and valuable consideration provided by the Released Parties (including performance of the terms of the Plan), and a good-faith settlement and compromise of the released claims, (2) in the best interests of the Debtors, the Estates, and all Holders of Claims that are Releasing Parties, (3) fair, equitable, and reasonable, (4) given and made after due notice and opportunity for hearing, and (5) a bar to any of the Releasing Parties asserting any released claim against any of the Released Parties.

(c) Each Holder of a Claim in Class 4 shall be a Releasing Party and, as such, provides the releases set forth in Section 11.11 of the Plan, unless such Holder timely submits a Release Opt-Out indicating such Holder's decision not to participate in the releases set forth in Section 11.11 of the Plan. For the avoidance of doubt, the election to submit a Release Opt-Out will result in the Claims of the electing Creditor being placed in Class 7, where such Claims will then receive the treatment prescribed for that Class.

## 10. Exculpation and Limitation of Liability

On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Person, including to any Holder of a Claim or an Equity Interest, for any prepetition or postpetition act or omission in connection with, relating to, or arising out of the Debtors, the Chapter 11 Cases, the formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, confirmation, or consummation of the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created, executed, or contemplated in connection with the Plan, or the administration of the Plan or the property to be distributed under the Plan; *provided, however*,

that nothing in Section 11.12 of the Plan shall release or otherwise affect any Person's rights under the Plan or the Confirmation Order; and *provided, further*, that the exculpation provisions of Section 11.12 of the Plan shall not apply to acts or omissions constituting actual fraud or willful misconduct by such Exculpated Party as determined by a Final Order. For purposes of the foregoing, it is expressly understood that any act or omission effected with the approval of the Bankruptcy Court conclusively will be deemed not to constitute actual fraud or willful misconduct unless the approval of the Bankruptcy Court was obtained by fraud or misrepresentation, and in all respects, the Exculpated Parties shall be entitled to rely on the written advice of counsel with respect to their duties and responsibilities under, or in connection with, the Chapter 11 Cases, the Plan, and administration thereof. The Confirmation Order shall serve as a permanent injunction against any Person seeking to enforce any Causes of Action against the Exculpated Parties that are encompassed by the exculpation provided by Section 11.12 of the Plan.

#### **11. Covenants Not to Sue**

On the Effective Date, each of the Debtors, any Person seeking to exercise the rights of the Estates, including the Creditors' Committee, the Liquidating Debtors, the Plan Administrator, the GUC Trustee, and any other successor to the Debtors or any other estate representative that is or could be appointed or selected pursuant to Bankruptcy Code section 1123(b)(3) or otherwise, the Prepetition Agent, and the Prepetition Lenders shall be deemed to have covenanted not to sue or otherwise pursue any action against any of the Released Parties on account of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities whatsoever, whether known or unknown, whether foreseen or unforeseen, whether liquidated or unliquidated, whether fixed or contingent, whether matured or unmatured, existing or hereafter arising, at law, in equity, or otherwise, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the conduct of the Debtors' business, the Chapter 11 Cases, or the Plan, except for acts or omissions that are determined in a Final Order to have constituted actual fraud, gross negligence, or willful misconduct; *provided, however*, that nothing in Section 11.13 of the Plan shall bar pursuit of, or otherwise affect, any Person's rights under the Plan or the Confirmation Order.

#### **12. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in the Chapter 11 Cases under Bankruptcy Code sections 105 or 362 or otherwise, and extant on the Confirmation Date (excluding any injunctions or stays contained in or arising from the Plan or the Confirmation Order), shall remain in full force and effect through and inclusive of the Effective Date.

### **V. RISK FACTORS**

Prior to voting on the Plan, each Holder of a Claim entitled to vote should consider carefully the risk factors described below, as well as all other information contained in this Disclosure Statement, including the exhibits hereto. These risk factors should not be regarded as the only risks involved in connection with the Plan and its implementation.

**A. Parties May Object to the Plan's Classification of Claims and Equity Interests**

Bankruptcy Code section 1122 provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of the Claims and Equity Interests under the Plan complies with this requirement. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

**B. The Debtors May Not Be Able to Obtain Confirmation of the Plan**

With regard to any proposed plan, the Debtors may not receive the requisite acceptances to confirm a plan. In the event that votes with respect to Claims in the Classes entitled to vote are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek Confirmation of the Plan by the Bankruptcy Court. If the requisite acceptances are not received, the Debtors may not be able to obtain Confirmation of the Plan. Even if the requisite acceptances of a proposed plan are received, the Bankruptcy Court still might not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements for confirmation under Bankruptcy Code section 1129 have not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan would be on terms as favorable to Holders of Claims as the terms of the Plan. In addition, there can be no assurance that the Debtors will be able to successfully develop, prosecute, confirm, and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtors' creditors.

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

As more fully set forth in the Plan, the Effective Date is subject to several conditions precedent. There can be no assurance that any or all of such conditions will be satisfied (or waived). If such conditions precedent are not met or waived, the Effective Date will not occur. Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Effective Date will occur.

**D. There May be No Remaining Cash Available for Distributions to General Unsecured Creditors**

Under the Plan, residual Distributions might be made in respect of Allowed General Unsecured Claims following any sale of the Receivables by the Plan Administrator, but *only if* there is some Remaining Cash. It is highly unlikely there will be any Remaining Cash. Among other things, the extent of any Remaining Cash is affected by (i) the net amounts ultimately realized by the Plan Administrator through the collection or sale of the Receivables and sale or disposition of other Revested Assets; (ii) whether the Plan Administrator receives any recoveries on account of any Preserved Claims; (iii) the amounts necessary to pay in full all Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Priority Claims; (iv) the amount of the Plan Administration Expenses over the entire liquidation period; and (v) the speed at which Available Cash becomes available to pay down and ultimately fully satisfy the Allowed Class 1 Claims. The ultimate outcome of this process is highly



uncertain, and it is possible – indeed, highly likely – that no Remaining Cash will ever be available. In such an event, the only funds available for Distributions in respect of any Allowed General Unsecured Claims will be the cash and proceeds included in the initial GUC Trust Assets.

#### **E. Claims Estimation and Allowance of Claims**

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

Distributions to Holders of Allowed General Unsecured Claims will be affected by the pool of Allowed General Unsecured Claims and the amount of GUC Trust Expenses, in particular, the costs associated with the pursuit of GUC Trust Avoidance Actions and the reconciliation of Disputed General Unsecured Claims. In addition, the Supplemental Customer Claims Bar Date will occur contemporaneously with the Voting Deadline. It is possible that additional Claims may be filed as part of this process, which could potentially reduce the recoveries that the holders of Allowed General Unsecured Claims will receive under the Plan. Upon completion of further analysis of Filed Claims, which will likely lead to Claims objection litigation and related matters, the total amount of General Unsecured Claims that ultimately become Allowed General Unsecured Claims may differ from the Debtors' estimates, which are reflected in this Disclosure Statement, and such difference could be material. As a result, the amount of Pro Rata Distributions that may be received by a particular Holder of an Allowed General Unsecured Claim may be either adversely or favorably affected by the aggregate amount of Class 4 Claims ultimately Allowed.

#### **F. Potential Pursuit of Preserved Claims or GUC Trust Avoidance Actions Against Creditors**

In accordance with Bankruptcy Code section 1123(b), after the Effective Date, the Plan Administrator and the GUC Trustee shall have and retain and may enforce any Preserved Claims or GUC Trust Avoidance Actions, as applicable. Accordingly, a Holder of a Claim may be subject to one or more such Preserved Claims or GUC Trust Avoidance Actions being asserted against it even if such Holder votes in favor of the Plan.

#### **G. Securities Law Considerations**

Bankruptcy Code section 1145(a)(1) exempts the offer and sale of securities under a plan from registration under the Securities Act and state securities laws if three principal requirements are satisfied: (i) the securities must be offered and sold under a plan and must be securities of the debtor, an affiliate participating in a joint plan with the debtor, or a successor to the debtor under the plan; (ii) the recipients of the securities must hold a prepetition or administrative expense claim against the debtor or an interest in the debtor; and (iii) the securities must be issued entirely in exchange for the recipient's claim against or interest in the debtor, or principally in such exchange and partly for cash or property. To the extent that the GUC Trust Interests are deemed to constitute securities issued in accordance with the Plan, the Debtors believe that the GUC Trust Interests should satisfy the

requirements of section 1145(a)(1) and, therefore, should be exempt from registration under the Securities Act and applicable state securities laws.

Holders of particular Claims or Equity Interests should consult their own advisors regarding any securities law consequences of the treatment of their Claims or Equity Interests under the Plan.

#### **H. Tax Considerations**

There are several material income tax considerations, risks, and uncertainties associated with consummation of the Plan. Holders of Claims, Holders of Equity Interests, and other interested parties should read carefully the discussion set forth in Article VII for a discussion of certain U.S. federal income tax consequences of the transactions contemplated under the Plan.

In particular, it is uncertain whether implementation of the Plan would result in an ownership change under section 382 of the Internal Revenue Code and thus whether the Plan will impact the net operating losses (“NOLs”) that are among the attributes belonging to the Debtors’ consolidated tax group. If the NOLs are not preserved or are reduced as a result of the transactions contemplated by the Plan, it is possible that tax liabilities could arise after confirmation of the Plan. These issues are discussed further in Section VII.A below.

### **VI. CONFIRMATION OF THE PLAN**

#### **A. The Confirmation Hearing**

Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after notice, to hold a hearing regarding Confirmation of the Plan. Bankruptcy Code section 1128(b) provides that any party in interest may object to Confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing to commence on **[Date], 2017, at [Time]** (prevailing Eastern Time), before the Honorable Christopher S. Sontchi, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. The Confirmation Hearing Notice, which sets forth the time and date of the Confirmation Hearing, has been included along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time 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 so that they are actually received by no later than **[February 13], 2017 at 4:00 p.m.** (prevailing Eastern Time). **Unless objections to Confirmation of the Plan are timely served and Filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court.**

## **B. Requirements for Confirmation of the Plan**

Among the requirements for the Confirmation of the Plan is that the Plan (i) is accepted by all Impaired Classes of Claims, or, if rejected by an Impaired Class of Claims, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Impaired Class of Claims; (ii) is feasible; and (iii) is in the “best interests” of Holders of Claims.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of Bankruptcy Code section 1129. The Debtors believe that: (i) the Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtors have complied or will have complied with all of the necessary requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. More specifically, the Debtors believe that the Plan satisfies or will satisfy the following applicable Confirmation requirements of Bankruptcy Code section 1129:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Either each Holder of a Claim in an Impaired Class of Claims has accepted the Plan, or each such Holder will receive or retain under the Plan on account of such Claim 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 the Effective Date of the Plan under chapter 7 of the Bankruptcy Code.
- The Classes of Claims that are entitled to vote on the Plan will have accepted the Plan.
- Except to the extent a different treatment is agreed to, the Plan provides that all Allowed Administrative Claims and Allowed Priority Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable.
- At least one Class of Impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.
- All accrued and unpaid fees of the type described in 28 U.S.C. § 1930, including the fees of the U.S. Trustee, will be paid as of the Effective Date.

### **C. Best Interests of Creditors**

Often called the “best interests of creditors” test, Bankruptcy Code section 1129(a)(7) requires that a bankruptcy court find, as a condition to confirmation of a chapter 11 plan, that the plan provides, with respect to each impaired class, that each holder of a claim or an interest in such class either (i) has accepted the plan or (ii) will receive or retain under the plan property of a value that is not less than the amount that such holder would receive or retain if the debtor liquidated under chapter 7 on the effective date of the plan.

The Plan is a plan of liquidation. The costs of liquidation under chapter 7 of the Bankruptcy Code would include the fees payable to a chapter 7 trustee, and the fees that would be payable to additional attorneys and other professionals that such a trustee may engage.

Conversion to chapter 7 of the Bankruptcy Code would mean the establishment of a new claims bar date, which could result in new General Unsecured Claims being asserted against the Estates, thereby diluting the recoveries of other Holders of Allowed General Unsecured Claims.

In addition, a chapter 7 trustee likely would act to sell or otherwise monetize the Receivables, including because (i) a chapter 7 trustee probably would not have adequate staffing or funding to collect the Receivables over an extended period of time and (ii) a chapter 7 trustee would need to seek authorization to operate USA Discounters’ remaining business, which is relief that should be granted only “for a limited period” in any event, *see* 11 U.S.C. § 721. In light of, among other things, the indicative purchase prices received during the pre-bankruptcy marketing process, such a forced sale by a chapter 7 trustee could ultimately result in significantly lower recoveries from the Receivables than are projected in even the OLA’s “low case” scenario.

Furthermore, certain of the concessions made by the Secured Parties (including agreeing to the funding of the GUC Settlement Fund free of any potential deficiency claims) are available only under the Plan. As such, any chapter 7 trustee would have to confront the potential pursuit of litigation claims against the Secured Parties or would need to try to negotiate an alternative settlement. This process would be extremely time-consuming and costly, and reduce any recoveries available for the Creditors of the Estates. Indeed, it is possible, if not likely, that the Holders of General Unsecured Claims would receive no distributions at all in a chapter 7 scenario, which stands in contrast to the Plan’s provision of the initial GUC Trust Assets and the residual potential for further Distributions from any Remaining Cash.

On balance, the Debtors believe that a chapter 7 trustee would be less likely to maximize the value available from all the Estate Assets and would be unable to obtain the benefits of the compromises and settlements available under the Plan. Therefore, the Debtors believe that confirmation of the Plan will provide each Holder of a General Unsecured Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

### **D. Feasibility**

Bankruptcy Code section 1129(a)(11) requires that confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtors, or any successor to the Debtors (unless such liquidation or reorganization is proposed in the plan). This

requirement is satisfied as the Plan specifically proposes a liquidation and the Debtors believe the Debtors' Cash and any additional proceeds from the Revested Assets will be sufficient to allow the Plan Administrator to make all payments required to be made under the Plan. Accordingly, the Debtors believe that the Plan is feasible.

#### **E. Acceptance by Impaired Classes**

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or interests that is impaired under a plan accept the plan. A class that is not "impaired" under a plan 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 a plan: (a) leaves unaltered the legal, equitable, and contractual rights to which the claim or the interest entitles the holder of such claim or interest; or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Bankruptcy Code section 1126(c) defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of allowed claims in that class, counting only those claims held by creditors that actually voted to accept or reject the plan. Thus, a Class of Impaired Claims will have voted to accept the Plan only if two-thirds in amount and a majority in number actually voting cast their Ballots in favor of acceptance.

#### **F. Confirmation Without Acceptance by All Impaired Classes**

Bankruptcy Code section 1129(b) allows a bankruptcy court to confirm a plan even if all impaired classes have not accepted that plan, *provided* that the plan has been accepted by at least one impaired class of claims, determined without including the acceptance of the plan by any insider. Notwithstanding an impaired class's rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cramdown," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtors will request Confirmation of the Plan under Bankruptcy Code section 1129(b). The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the Plan Supplement, or any schedule or exhibit, including to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

##### **1. No Unfair Discrimination**

The "unfair discrimination" test applies to classes of claims or interests that reject or are deemed to have rejected a plan and that are of equal priority with another class of claims or interests that is receiving different treatment under such plan. The test does not require that the treatment of such classes of claims or interests be the same or equivalent, but that such treatment be "fair" under the circumstances. In general, bankruptcy courts consider whether a plan discriminates unfairly in its

treatment of classes of claims of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will take into account various factors in determining whether a plan discriminates unfairly, and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class. The Debtors submit that if the Debtors are required to “cramdown” the Plan pursuant to Bankruptcy Code section 1129(b), the Plan is structured such that it does not “discriminate unfairly” against any rejecting Class.

## **2. Fair and Equitable Test**

The “fair and equitable” test applies to classes that reject or are deemed to have rejected a plan and are of different priority and status vis-à-vis another class (*e.g.*, secured versus unsecured claims, or unsecured claims versus equity interests), and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class, including interest. As to the rejecting class, the test sets different standards depending on the type of claims or interests in such rejecting class. The Debtors submit that if the Debtors are required to “cramdown” the Plan pursuant to Bankruptcy Code section 1129(b), the Plan is structured such that the applicable “fair and equitable” standards are met.

## **G. Alternatives to Confirmation and Consummation of the Plan**

The Debtors believe that the Plan affords Holders of Claims the potential for a materially better realization on the Estate Assets than a chapter 7 liquidation, and, therefore, is in the best interests of all such Holders. If, however, the requisite acceptances of the voting Classes of Claims are not received, or no Plan is confirmed and consummated, the theoretical alternatives include: (a) formulation of an alternative chapter 11 plan or plans, or (b) liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

If the requisite acceptances are not received or if the Plan is not confirmed, the Debtors or another party in interest could attempt to formulate and propose a different plan or plans. The Debtors believe that the Plan enables Creditors to realize the greatest possible value under the circumstances, and, as compared to any alternative plan, has the greatest chance to be confirmed and consummated.

The Chapter 11 Cases may also be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a statutory trustee would be elected or appointed to complete the liquidation of the Estate Assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. As described above, the Debtors believe that the Plan will provide each Holder of a General Unsecured Claim with a greater recovery than it would receive pursuant to liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

## **VII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS SHOULD CONSULT WITH THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE**

## **APPLICABILITY AND EFFECT OF ANY STATE, LOCAL, OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.**

This discussion is provided for informational purposes only, and is based on provisions of the Internal Revenue Code of 1986, as amended (the “IRC”), Treasury Regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect on the date hereof. Legislative, judicial, or administrative changes or interpretations enacted or promulgated after the date hereof could alter or modify the analyses set forth below with respect to the United States federal income tax consequences of the Plan. Any such changes or interpretations may be retroactive and could significantly, and adversely, affect the United States federal income tax consequences of the Plan.

The following summary does not address the U.S. federal income tax consequences to the Holders of Claims not entitled to vote to accept or reject the Plan. In addition, to the extent that the following discussion relates to the consequences to Holders of Claims entitled to vote to accept or reject the Plan, it is limited to Holders that are United States persons within the meaning of the IRC. For purposes of the following discussion, a “United States person” is any of the following:

- An individual who is a citizen or resident of the United States;
- A corporation created or organized under the laws of the United States or any state or political subdivision thereof;
- An estate, the income of which is subject to federal income taxation regardless of its source; or
- A trust that (a) is subject to the primary supervision of a United States court and which has one or more United States fiduciaries who have the authority to control all substantial decisions of the trust, or (b) has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder in light of its particular facts and circumstances, or to certain types of Holders subject to special treatment under the IRC. Examples of Holders subject to special treatment under the IRC are governmental entities and entities exercising governmental authority, foreign companies, persons who are not citizens or residents of the United States, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, small business investment companies, regulated investment companies, persons that have a functional currency other than the U.S. dollar, and persons holding Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale, or conversion transaction. This discussion does not address the state, local, or foreign tax consequences of the Plan.

The tax treatment of Holders of Claims and the character, amount, and timing of income, gain, or loss recognized as a consequence of the Plan and the Distributions provided for by the Plan may vary, depending upon the following factors, among others: (i) whether the Claim or portion thereof constitutes a Claim for principal or interest; (ii) the type of consideration, if any, received by the Holder in exchange for the Claim, and whether the Holder receives Distributions under the Plan

in more than one taxable year; (iii) whether the Holder is a citizen or resident of the United States for tax purposes, is otherwise subject to U.S. federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction or a worthless securities deduction with respect to the Claim or any portion thereof in the current or prior taxable years; (viii) whether the Holder has previously included in gross income accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment obligation for U.S. federal income tax purposes; and (xi) whether the “market discount” rules apply to the Holder. Therefore, each Holder should consult such Holder’s own tax advisor for tax advice with respect to that Holder’s particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

A significant amount of time may elapse between the date of the Disclosure Statement and the receipt of a final Distribution under the Plan. Events occurring after the date of the Disclosure Statement, such as new or additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. No ruling has been or will be sought from the IRS with respect to any of the tax aspects of the Plan, and no opinion of counsel has been or will be obtained by the Debtors with respect thereto. No representations are being made regarding the particular tax consequences of the confirmation or implementation of the Plan as to any Holder of a Claim. This discussion is not binding upon the IRS or other taxing authorities. No assurance can be given that the IRS or another authority would not assert, or that a court would not sustain, a different position from any discussed herein.

The following discussion generally assumes that the Plan will be treated as a plan of liquidation of the Debtors for U.S. federal income tax purposes, and that all Distributions to Holders of Claims will be taxed accordingly.

**THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOLLOWING DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, EACH HOLDER IS STRONGLY URGED TO CONSULT SUCH HOLDER’S INDEPENDENT TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN INCOME TAX CONSEQUENCES OF THE PLAN.**

*IRS Circular 230 Notice: To ensure compliance with IRS Circular 230, Holders of Claims and Equity Interests are hereby notified that any discussion of U.S. federal tax issues contained or referred to in this Disclosure Statement is not intended or written to be used, and cannot be used, by Holders of Claims and Equity Interests for the purpose of avoiding penalties that may be imposed on them under the IRC.*



## **A. Consequences to the Debtors**

### **1. Tax Filing Status; Tax Attributes**

The Debtors collectively (the “USA Tax Group”) file a U.S. federal income tax return on a consolidated basis. For the tax year ended April 30, 2016, for U.S. federal income tax purposes, the USA Tax Group reported a consolidated NOL carryforward of approximately \$48.4 million. It is expected that the USA Tax Group will incur further NOL carryforwards in the tax year ended April 30, 2017. To the extent any losses may be carried back instead of forward, they will not be available to offset any future income of the Debtors.

It is uncertain whether the USA Tax Group has undergone an ownership change for purposes of the NOL change of ownership rules under section 382 of the IRC (described below) since incurring the NOLs. If it has, the USA Tax Group’s NOL carryforwards may already be subject to significant limitations on their use, under the rules described below in Section VII.A.3(b). There is generally also a limitation on the amount of NOLs that can offset income for alternative minimum tax (“AMT”) purposes. Further, the amount and use of any NOLs, as well as the application of any limitations, remain subject to review and adjustment by the IRS. The tax impact of the Plan on the NOLs and other tax attributes of the USA Tax Group is discussed in Section VII.A.3(b) below.

### **2. General Discussion of the Plan**

The Plan sets forth a plan for resolution of the outstanding Claims against and Equity Interests in the Debtors. The Plan recognizes the corporate existence and integrity of each Debtor and Allowed Claims against a particular Debtor will generally be satisfied from the Estate Assets of such Debtor.

#### **(a) Asset Dispositions**

Pursuant to the Plan, the Plan Administrator will cause the Debtors to dispose of assets in order to satisfy claims. Such dispositions may result in taxable income to the Debtors. The Debtors may have NOLs available to offset such taxable income, subject to the potential application of IRC section 382, as discussed below. *See* Section VII.A.3(b)(ii) “Section 382 Limitations – Possible Application to the USA Tax Group.”

#### **(b) Plan Distributions**

The Plan calls for Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, and Allowed Priority Claims against each Debtor to be paid in full in Cash. The Plan calls for Allowed Other Secured Claims to be satisfied through Cash payment or realization on applicable collateral.

For USA Discounters, the Plan provides that certain assets will be placed in the GUC Trust for ultimate distribution to the holders of Allowed General Unsecured Claims and that the Revested Assets will be liquidated by the Plan Administrator with the proceeds being used to satisfy Holders of Allowed Class 1 Claims over time.

### 3. Tax Impact of the Plan on the Debtors

#### (a) Cancellation of Debt

The IRC provides that a debtor in a bankruptcy case must reduce certain of its tax attributes – such as current year NOLs, NOL carryforwards, tax credits, capital losses, and tax basis in assets – by the amount of any cancellation of debt (“COD”) income that occurs by reason of the discharge of the debtor’s indebtedness pursuant to the bankruptcy case. Under applicable Treasury Regulations, the reduction in certain tax attributes (such as NOL carryforwards) occurs under consolidated return principles, as in the case of the Debtors who are members of the USA Tax Group. COD income is the amount by which the adjusted issue price of indebtedness discharged exceeds the sum of the amount of cash, the issue price of any debt instrument and the fair market value of any other property given in exchange therefor, subject to certain statutory or judicial exceptions that can apply to limit the amount of COD income (such as where the payment of the cancelled debt would have given rise to a tax deduction). Settlement of a guarantee claim should not give rise to COD income. Any reduction in tax attributes under the COD rules does not occur until the end of the tax year after such attributes have been applied to determine the tax in the year of discharge or, in the case of asset basis reduction, the first day of the taxable year following the tax year in which the exclusion of COD income occurs.

Consistent with the intended treatment of the Plan as a plan of liquidation for U.S. federal income tax purposes, the Debtors intend that no COD income should be incurred by a Debtor as a result of the implementation of the Plan prior to the disposition by such Debtor of all or substantially all of its assets (other than to the extent any Holder’s Allowed Claim has been or is separately settled for less than its carrying value). In such case, the reduction of tax attributes resulting from such exclusion of COD income (which, as indicated above, only occurs as of the end of the tax year in which the exclusion of COD income occurs) generally should not have a material impact on the Debtors. There can be no assurance that the IRS will agree with this position and thus there can be no assurance that all or a substantial amount of the COD income will not be incurred earlier, due to, among other things, a lack of direct authoritative guidance as to when COD income occurs in the context of a liquidating chapter 11 plan.

#### (b) Limitation of NOL Carryforwards and Other Tax Attributes

##### (i) Section 382 Limitations – General

Under IRC section 382, if a corporation (or consolidated group) undergoes an “ownership change,” the amount of its pre-ownership change losses (including NOL carryforwards from periods before the ownership change and certain losses or deductions which are “built-in” (*i.e.*, economically accrued but unrecognized) as of the date of the ownership change) that may be utilized to offset future taxable income generally is subject to an annual limitation.

In general, the amount of this annual limitation is equal to the product of (i) the fair market value of the stock of the corporation (or, in the case of a consolidated group, the common parent) immediately before the ownership change (with certain adjustments) multiplied by (ii) the “long-term tax-exempt rate” in effect for the month in which the ownership change occurs (for example, 2.82% for ownership changes occurring in August 2015). For a corporation (or consolidated group)

in bankruptcy that undergoes the ownership change pursuant to a confirmed bankruptcy plan, the stock value generally is determined immediately after (rather than before) the ownership change by taking into account the surrender or cancellation of creditors' claims, also with certain adjustments. The annual limitation can potentially be increased by the amount of certain recognized built-in gains, as discussed below. Notwithstanding the general rule, if the corporation (or the consolidated group) does not continue its historic business or use a significant portion of its historic assets in a new business for two years after the ownership change, the annual limitation resulting from the ownership change is zero, thereby precluding any utilization of the corporation's pre-change losses (absent any increases due to any recognized built-in gains).

As indicated above, IRC section 382 also limits the deduction of certain built-in losses recognized subsequent to the date of the ownership change. If a loss corporation (or consolidated group) has a net unrealized built-in loss at the time of an ownership change (taking into account most assets and items of "built-in" income and deduction), then any built-in losses recognized during the following five years (up to the amount of the original net unrealized built-in loss) generally will be treated as pre-change losses and similarly will be subject to the annual limitation. Conversely, if the loss corporation (or consolidated group) has a net unrealized built-in gain at the time of an ownership change, any built-in gains recognized during the following five years (up to the amount of the original net unrealized built-in gain) generally will increase the annual limitation in the year recognized, such that the loss corporation (or consolidated group) would be permitted to use its pre-change losses against such built-in gain income in addition to its regular annual allowance. In general, a loss corporation's (or consolidated group's) net unrealized built-in gain or loss will be deemed to be zero unless it is greater than the lesser of (i) \$10 million or (ii) 15% of the fair market value of its assets (with certain adjustments) before the ownership change.

(ii) Section 382 Limitations – Possible Application to the USA Tax Group

In light of the foregoing, the USA Tax Group's ability to utilize certain NOLs (and carryforwards thereof) and certain other tax attributes would be potentially subject to limitation if Holdings were to undergo an "ownership change" within the meaning of IRC section 382 by reason of the implementation of the Plan and/or has previously undergone an ownership change. As indicated above, it is uncertain whether an ownership change under section 382 has occurred to date, or will occur prior to the Effective Date, that could significantly limit the availability of the tax attributes of the USA Tax Group to offset such taxable income.

If an ownership change were considered to occur, the Liquidating Debtors could incur a material amount of U.S. federal income tax unless (1) the Estate Assets of the Debtors are distributed pursuant to the Plan on or before the date of such ownership change or (2) the amount of the annual limitation (taking into account any increase therein for certain recognized built-in gains) is large enough to permit the USA Tax Group to utilize an amount of NOL carryforwards and other attributes sufficient to offset such income tax.

**B. Certain U.S. Federal Income Tax Consequences of the GUC Trust**

The GUC Trust will be established for the primary purpose of liquidating the assets transferred to it with no objective to continue or engage in the conduct of a trade of business, except

to the extent reasonably necessary to, and consistent with, the liquidating purpose of the GUC Trust. Thus, the GUC Trust is intended to be classified for U.S. federal income tax purposes as a “grantor trust” within the meaning of Treasury Regulation Section 301.7701-4(d), and Rev. Proc. 94-45, 1944-2 C.B. 684. No request for a ruling from the IRS will be sought on the classification of the GUC Trust. Accordingly, there can be no assurance that the IRS would not take a contrary position to the classification of the GUC Trust. If the IRS were to successfully challenge the classification of the GUC Trust as a grantor trust, the U.S. federal income tax consequences to the GUC Trust and the Holders of GUC Trust Interests could vary from those discussed herein (including the potential for an entity-level tax).

For all U.S. federal income tax purposes, all parties with respect to the GUC Trust (including, without limitation, the Debtors, the Plan Administrator, the GUC Trustee, and the GUC Trust Beneficiaries) must treat the transfer of the GUC Trust Assets (other than those GUC Trust Assets placed in a Disputed Claim reserve) to the GUC Trust as (1) a transfer of such GUC Trust Assets by the Debtors to the GUC Trust Beneficiaries, followed by (2) a transfer of such GUC Trust Assets by such GUC Trust Beneficiaries to the GUC Trust, with the GUC Trust Beneficiaries being treated as the grantors and owners of the GUC Trust. All parties must also use consistent valuations of the transferred GUC Trust Assets.

In general, a liquidating trust is not a separate taxable entity but rather is treated as a grantor trust, pursuant to IRC sections 671 et. seq., owned by the persons who are treated as transferring assets to the trust. Each holder of a beneficial interest in the GUC Trust must report on its U.S. federal income tax return its allocable share of income, gain, loss, deduction, and credit recognized or incurred by the GUC Trust. None of the Debtors’ loss carryforwards will be available to reduce any income or gain of the GUC Trust. Moreover, upon the sale or other disposition (or deemed disposition) of any of the GUC Trust Assets not held in a Disputed Claims reserve, each GUC Trust Beneficiary must report on its U.S. federal income tax return its share of any gain or loss measured by the difference between (1) its share of the amount of Cash and/or fair market value of any property received by the GUC Trust in exchange for the GUC Trust Asset so sold or otherwise disposed of, and (2) its adjusted tax basis in its share of the GUC Trust Asset. The character of any such gain or loss to the holder will be determined as if such holder itself had directly sold or otherwise disposed of the GUC Trust Asset. The character of items of income, gain, loss, deduction, and credit to any holder of a beneficial interest in the GUC Trust, and the ability of the holder to benefit from any deductions or losses, will depend on the particular circumstances or status of the holder.

Given the treatment of the GUC Trust as a grantor trust, each GUC Trust Beneficiary has an obligation to report its share of the GUC Trust’s tax items (including gain on the sale or other disposition of a GUC Trust Asset), which obligation is not dependent on the Distribution of any Cash or other GUC Trust Assets by the GUC Trust. Accordingly, a GUC Trust Beneficiary may incur a tax liability as a result of holding GUC Trust Interests, regardless of whether the GUC Trust distributed Cash or other assets. Due to the requirement that the GUC Trust maintain certain reserves, the GUC Trust’s ability to make current Cash Distributions may be limited or precluded. In addition, due to possible differences in the timing of income on, and the receipt of Cash from, the GUC Trust Assets, a GUC Trust Beneficiary may be required to report and pay tax on a greater amount of income for a taxable year than the amount of Cash received by the holder during such year.

The GUC Trust will file annual information tax returns with the IRS as a grantor trust pursuant to Treasury Regulation section 1.671(4)(a) that will include information concerning certain items relating to the holding or disposition (or deemed disposition) of the GUC Trust Assets (*e.g.*, income, gain, loss, deduction, and credit). Each GUC Trust Beneficiary will receive a copy of the information returns and must report on its U.S. federal income tax return its share of all such items. The information provided by the GUC Trust will pertain to GUC Trust Beneficiaries who hold GUC Trust Interests in connection with the Plan.

### **C. Consequences to Holders of Claims**

The U.S. federal income tax consequences of the implementation of the Plan to a Holder of an Allowed Claim will depend, among other things, upon the origin of the Holder's Claim, when the Holder receives payment in respect of such Claim, whether the Holder reports income using the accrual or cash method of tax accounting, whether the Holder acquired its Claim at a discount, whether the Holder has taken a bad debt deduction or worthless security deduction with respect to such Claim, and whether (as intended and herein assumed) the Plan is treated as a plan of liquidation for U.S. federal income tax purposes.

Generally, a Holder of an Allowed Claim will realize gain or loss on the exchange under the Plan of its Allowed Claim for Cash or other property, in an amount equal to the difference between (i) the sum of the amount of any Cash and the fair market value on the date of the exchange of any other property received by the Holder, and (ii) the adjusted tax basis of the Allowed Claim exchanged therefor (other than basis attributable to accrued but unpaid interest previously included in the Holder's taxable income). It is possible that any loss, or a portion of any gain, realized by a Holder of a Claim may have to be deferred until all of the Distributions to such Holder are received.

When gain or loss is recognized by a Holder, such gain or loss may be long-term capital gain or loss if the Claim disposed of is a capital asset in the hands of the Holder and has been held for more than one year. Each Holder of an Allowed Claim should consult its own tax advisor to determine whether gain or loss recognized by such Holder will be long-term capital gain or loss and the specific tax effect thereof on such Holder.

A Holder of an Allowed Claim who receives, in respect of the Holder's Allowed Claim, an amount that is less than that Holder's tax basis in such Allowed Claim may be entitled to a bad debt deduction under IRC section 166(a). The rules governing the character, timing, and amount of a bad debt deduction place considerable emphasis on the facts and circumstances of the holder, the obligor, and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their own tax advisors with respect to the ability to take a bad debt deduction. A Holder that has previously recognized a loss or deduction in respect of that Holder's Allowed Claim may be required to include in gross income (as ordinary income) any amounts received under the Plan to the extent such amounts exceed the Holder's adjusted basis in such Allowed Claim.

Holders of Allowed Claims who were not previously required to include any accrued but unpaid interest with respect to a Allowed Claim may be treated as receiving taxable interest income to the extent any consideration they receive under the Plan is allocable to such interest. A Holder previously required to include in gross income any accrued but unpaid interest with respect to an

Allowed Claim may be entitled to recognize a deductible loss to the extent such interest is not satisfied under the Plan.

A Holder of an Allowed Claim constituting an installment obligation for tax purposes may be required to currently recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than at face value or distributed, transmitted, sold or otherwise disposed of within the meaning of IRC section 453B.

Holders of Disallowed Claims and Subordinated Claims will not receive any Distribution as part of the Plan. Accordingly, because such a Holder may receive an amount that is less than that Holder's tax basis in such Claim, such Holder may be entitled to a bad debt deduction under IRC section 166(a). The rules governing the character, timing, and amount of a bad debt deduction place considerable emphasis on the facts and circumstances of the holder, the obligor, and the instrument with respect to which a bad debt deduction is claimed. Holders of Disallowed Claims and Subordinated Claims, therefore, are urged to consult their own tax advisors with respect to the ability to take a bad debt deduction.

#### **D. Withholding on Distributions, and Information Reporting**

All Distributions to Holders of Allowed Claims under the Plan are subject to any applicable tax withholding, including employment tax withholding. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to "backup withholding" at the then applicable withholding rate. Backup withholding generally applies if the Holder (i) fails to furnish its social security number or other taxpayer identification number; (ii) furnishes an incorrect taxpayer identification number; (iii) fails properly to report interest or dividends; or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the tax identification number provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain Persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions. These categories are very broad; however, there are numerous exceptions. Holders of Allowed Claims are urged to consult their own tax advisors regarding the Treasury Regulations governing backup withholding and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations.

In addition, a Holder of an Allowed Claim that is not a U.S. entity may be subject to additional withholding, depending on, among other things, the particular type of income and whether the type of income is subject to a lower treaty rate. As to certain Claims, it is possible that withholding may be required with respect to distributions by the Plan Administrator even if no withholding would have been required if payment was made prior to the Chapter 11 Cases. A non-U.S. Holder may also be subject to other adverse consequences in connection with the implementation of the Plan. As discussed above, the foregoing discussion of the U.S. federal income tax consequences of the Plan does not generally address the consequences to non-U.S. Holders. Holders are urged to consult their own tax advisors regarding potential withholding on Distributions under the Plan.

In addition, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their own tax advisors regarding these Treasury Regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the Holder's tax returns.

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**VIII. RECOMMENDATION**

The Debtors believe that confirmation and implementation of the Plan are the best alternative under the circumstances and urge all Impaired Creditors entitled to vote on the Plan to vote in favor of and support Confirmation of the Plan.

Dated: November 21, 2016

Respectfully submitted,

**USA DISCOUNTERS, LTD., ET AL.**

By:

  
Name: JOSEPH J SCIAMETTA  
Title: CHIEF EXECUTIVE OFFICER



**EXHIBIT A**

**Joint Chapter 11 Plan of Liquidation**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re

USA DISCOUNTERS, LTD., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-11755 (CSS)

(Jointly Administered)

**JOINT CHAPTER 11 PLAN OF LIQUIDATION OF USA DISCOUNTERS, LTD. AND  
ITS AFFILIATED DEBTORS**

Dated: Wilmington, Delaware  
November 21, 2016

Laura Davis Jones (DE Bar No. 2436)  
James E. O'Neill (DE Bar No. 4042)  
Colin R. Robinson (DE Bar No. 5524)  
PACHULSKI STANG ZIEHL & JONES LLP  
919 North Market Street, 17th Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705 (Courier 19801)  
Tel: (302) 652-4100  
Fax: (302) 652-4400  
Email: ljones@pszjlaw.com  
jo'neill@pszjlaw.com  
crobinson@pszjlaw.com

-and-

Lee R. Bogdanoff, Esq.  
Michael L. Tuchin, Esq.  
Whitman L. Holt, Esq.  
Sasha M. Gurvitz, Esq.  
KLEE, TUCHIN, BOGDANOFF & STERN LLP  
1999 Avenue of the Stars, 39th Floor  
Los Angeles, CA 90067  
Tel: (310) 407-4023  
Fax: (310) 407-9090  
Email: lbogdanoff@ktbslaw.com  
mtuchin@ktbslaw.com  
wholt@ktbslaw.com  
sgurvitz@ktbslaw.com

*Counsel to the Debtors and Debtors in Possession*

<sup>1</sup> The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: USA Discounters, Ltd. (5123); USA Discounters Holding Company, Inc. (8192); and USA Discounters Credit, LLC (3128). The Debtors' address is 6353 Center Drive, Building 8, Suite 101, Norfolk, Virginia, 23502.

## **INTRODUCTION<sup>1</sup>**

The Debtors hereby propose this Plan, which provides for the resolution of the outstanding Claims and Equity Interests asserted against the Debtors. Reference is made to the Disclosure Statement for (i) a discussion of the Debtors' history, businesses, properties, results of operations, and financial projections; (ii) a summary and analysis of this Plan; and (iii) certain related matters, including risk factors relating to the consummation of this Plan and Distributions to be made under this Plan. The Debtors are the proponents of the Plan within the meaning of Bankruptcy Code section 1129.

All Holders of Claims who are entitled to vote on the Plan are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan. Subject to certain restrictions and requirements set forth in Bankruptcy Code section 1127, Bankruptcy Rule 3019, and Sections 11.6 and 11.15 of the Plan, the Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan prior to its substantial consummation.

No solicitation materials, other than the Disclosure Statement and related materials transmitted therewith, have been approved for use in soliciting acceptances and rejections of this Plan. Nothing in the Plan should be construed as constituting a solicitation of acceptances of the Plan unless and until the Disclosure Statement has been approved and distributed to Holders of Claims to the extent required by Bankruptcy Code section 1125.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ CAREFULLY THE DISCLOSURE STATEMENT (INCLUDING ALL EXHIBITS THERETO) AND THE PLAN, EACH IN ITS ENTIRETY, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I**

### **DEFINED TERMS AND RULES OF INTERPRETATION**

For purposes of the Plan, except as expressly provided or unless the context otherwise requires:

- (a) all Defined Terms shall have the meanings ascribed to them in this Article I of the Plan;
- (b) any term used in the Plan that is not a Defined Term, but that is used in the Bankruptcy Code or Bankruptcy Rules has the meaning assigned to such term in the Bankruptcy Code or Bankruptcy Rules, as applicable, unless the context requires otherwise;
- (c) whenever the context requires, terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine;

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<sup>1</sup> Capitalized terms used in this Introduction have the meanings ascribed to those terms in Article I below.

(d) any reference in the Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(e) any reference in the Plan to an existing document, instrument, or exhibit means such document, instrument, or exhibit as it may be amended, modified, or supplemented from time to time;

(f) any reference to a specific Person includes any successors or assigns of such Person, and all rights, benefits, interests, and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, trustee, liquidator, rehabilitator, conservator, successor, or assign of such Person;

(g) unless otherwise indicated, the phrase “under the Plan” and similar words or phrases refer to the Plan in its entirety rather than to only a particular portion of the Plan;

(h) unless otherwise specified, all references in the Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules, and exhibits of or to the Plan;

(i) the words “herein,” “hereof,” “hereto,” “hereunder,” “herewith,” and other words of similar import refer to the Plan in its entirety rather than to only a particular portion of the Plan;

(j) whenever the Plan uses the word “including,” such reference shall be deemed to mean “including, without limitation,”;

(k) captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan;

(l) whenever the Plan provides that a document or thing must be “acceptable” or “satisfactory” to any Person, such requirement shall in each case be subject to a reasonableness qualifier;

(m) the definition given to any term or provision in the Plan supersedes and controls any different meaning that may be given to that term or provision in the Disclosure Statement, on any Ballot, or in any other document; and

(n) all other rules of construction set forth in Bankruptcy Code section 102 and in the Bankruptcy Rules shall apply.

The following Defined Terms shall have the respective meanings specified below:

**1.1 Administrative Claim:** A Claim (other than a Professional Fee Claim, but, for the avoidance of doubt, including Ordinary Course Professional Fee Claims) arising under Bankruptcy Code sections 503(b), 507(a)(2), 507(b), or 1114(e)(2), to the extent not previously paid, otherwise satisfied, or withdrawn, including (a) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code and (b) all Section 503(b)(9) Claims.

**1.2 Administrative Claims Bar Date:** As applicable, the First Administrative Claims Bar Date or the Second Administrative Claims Bar Date. For the avoidance of doubt, postpetition statutory tax claims shall not be subject to any Administrative Claims Bar Date. For the further avoidance of doubt, the Claims Bar Date for Section 503(b)(9) Claims was the General Claims Bar Date.

**1.3 Allowed, Allowed Claim, or Allowed [ ] Claim:**

- (a) with respect to a Claim arising prior to the Petition Date (including a Section 503(b)(9) Claim):
  - (i) either (A) a proof of claim was timely Filed by the applicable Claims Bar Date, or (B) a proof of claim is deemed timely Filed either as a result of such Claim being Scheduled or by a Final Order; and
  - (ii) either (A) the Claim is not a Contingent Claim, a Disputed Claim, an Unliquidated Claim, or a Disallowed Claim; or (B) the Claim is expressly allowed by a Final Order or under the Plan;
- (b) with respect to a Claim arising on or after the Petition Date (excluding a 503(b)(9) Claim), a Claim that has been allowed by a Final Order or under the Plan.

Unless otherwise specified in the Plan or by a Final Order of the Bankruptcy Court, an “Allowed Administrative Claim” or “Allowed Claim” shall not, for any purpose under the Plan, include interest, penalties, or late charges on such Administrative Claim or Claim from and after the Petition Date. Moreover, any portion of a Claim that is satisfied, released, or waived during the Chapter 11 Cases is not an Allowed Claim. For the avoidance of doubt, any and all Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed Claims” hereunder.

**1.4 Allowed Class 1 Claim Amount:** An aggregate amount, without duplication, equal to the sum of (i) the Unpaid Prepetition Credit Document Claim Amount, and (ii) the amount, if any, of any interest, fees, or other amounts that are required to be paid to the Prepetition Agent or the Prepetition Lenders under the Cash Collateral Order but remain unpaid on the Effective Date.

**1.5 Available Cash:** All Cash held by USA Discounters on the Effective Date *other than* the GUC Settlement Fund, *plus* all Cash realized after the Effective Date from the sale, collection, or other disposition of Revested Assets, but excluding the amount of Cash (i) necessary to pay Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Claims, and Allowed Other Secured Claims in accordance with the Plan; and (ii) estimated and reserved by the Plan Administrator to (A) pay all fees payable under 28 U.S.C. § 1930, (B) fund and maintain the Professional Fee Reserve, (C) provide a reasonable reserve for Plan Administration Expenses that are anticipated to be payable following any date on which the extent of Available Cash is determined, and (D) fund and maintain any other postpetition reserve requirements in connection with any agreements or otherwise

**1.6 Avoidance Actions:** Any and all causes of action, claims, remedies, or rights that may be brought by or on behalf of the Debtors or the Estates under Bankruptcy Code sections 542, 544,

547, 548, 549, 550, 551, or 553, or under related state or federal statutes or common law, regardless whether such action has been commenced prior to the Effective Date.

**1.7 Ballot:** The ballot form distributed to each Holder of a Claim entitled to vote to accept or reject the Plan.

**1.8 Bankruptcy Code:** Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as the same may be amended from time to time to the extent applicable to the Chapter 11 Cases.

**1.9 Bankruptcy Court:** The United States Bankruptcy Court for the District of Delaware, or in the event such court ceases to exercise jurisdiction over any Chapter 11 Case, such other court or adjunct thereof that exercises jurisdiction over such Chapter 11 Case in lieu of the United States Bankruptcy Court for the District of Delaware.

**1.10 Bankruptcy Rules:** The Federal Rules of Bankruptcy Procedure promulgated by the Supreme Court of the United States under 28 U.S.C. § 2075, as the same may be amended from time to time to the extent applicable to the Chapter 11 Cases.

**1.11 Budget:** The “Budget” as defined and contemplated by the Cash Collateral Order, as the same may be updated or revised from time to time in accordance with the Cash Collateral Order.

**1.12 Business Day:** Any day other than a Saturday, a Sunday, a “legal holiday” (as defined in Bankruptcy Rule 9006(a)), or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order.

**1.13 Cash:** Cash and cash equivalents, including bank deposits, wire transfers, checks representing good funds, and legal tender of the United States of America or instrumentalities thereof.

**1.14 Cash Collateral Order:** Collectively, (i) that certain *Interim Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to the Secured Parties, (C) Modifying the Automatic Stay, (D) Scheduling a Final Hearing, and (E) Granting Related Relief* entered by the Bankruptcy Court on August 28, 2015 [Docket No. 64]; (ii) that certain *Final Order (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection to the Secured Parties, (C) Modifying the Automatic Stay, and (D) Granting Related Relief* entered by the Bankruptcy Court on September 17, 2015 [Docket No. 133]; and (iii) any subsequent order entered by the Bankruptcy Court before the Effective Date that modifies or otherwise relates to either of the orders referenced in the preceding clauses (i) and (ii).

**1.15 Causes of Action:** Any and all claims, rights, actions, causes of action, liabilities, obligations, suits, debts, remedies, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, rights of setoff, third-party claims, subordination claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and cross claims, damages, or judgments whatsoever, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, foreseen or unforeseen, asserted or unasserted, existing or hereafter arising, in law, at equity, by statute, whether for tort, fraud, contract, or otherwise.

**1.16 Chapter 11 Cases:** The voluntary chapter 11 bankruptcy cases commenced by the Debtors, which are being jointly administered under the case caption *In re USA Discounters, Ltd., et al.*, Case No. 15-11755 (CSS) (Bankr. D. Del.).

**1.17 Claim:** Any “claim,” as defined in Bankruptcy Code section 101(5), against any of the Debtors or against any property of the Debtors.

**1.18 Claim Objection Deadline:** Subject to extension as set forth in Section 8.2 of the Plan, the date that is the first Business Day that is at least 180 calendar days after the Effective Date. For the avoidance of doubt, the Claim Objection Deadline may be extended one or more times by the Bankruptcy Court.

**1.19 Claims Agent:** Kurtzman Carson Consultants LLC, the Debtors’ court-appointed claims, noticing, and balloting agent.

**1.20 Claims Bar Date:** As applicable, the Administrative Claims Bar Date, the General Claims Bar Date, the Governmental Claims Bar Date, the Rejection Claims Bar Date, or the Supplemental Customer Claims Bar Date.

**1.21 Class:** A category of Claims or Equity Interests designated pursuant to the Plan, or any subclass thereof.

**1.22 Closing Date:** The date on which all of the Chapter 11 Cases have been closed in accordance with Section 11.21 of the Plan.

**1.23 Collateral:** Any property or interest in property of a Debtor’s Estate that is subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable non-bankruptcy law.

**1.24 Committee Adversary:** That certain adversary proceeding styled as *Official Committee of Unsecured Creditors of USA Discounters, Ltd. v. Wells Fargo Bank, N.A., as Agent (In re USA Discounters, Ltd.)*, Adv. Proc. No. 16-51011-CSS (Bankr. D. Del.), including all claims and causes of action that have been asserted, or that the Creditors’ Committee may have sought standing to assert, in such or any other adversary proceeding.

**1.25 Committee Fee Overage:** The amount, if any, by which the ultimately Allowed aggregate fees and expenses of all the Professionals retained by the Creditors’ Committee for the period on and after October 1, 2016, exceeds \$300,000.00.

**1.26 Committee Fee Underage:** The amount, if any, by which the ultimately Allowed aggregate fees and expenses of all the Professionals retained by the Creditors’ Committee for the period on and after October 1, 2016, is less than \$300,000.00.

**1.27 Confirmation:** Entry by the Bankruptcy Court of the Confirmation Order.

**1.28 Confirmation Date:** The date on which the Confirmation Order is entered by the Bankruptcy Court.

**1.29 Confirmation Hearing:** The hearing or hearings held by the Bankruptcy Court to consider confirmation of the Plan as required by Bankruptcy Code section 1128(a), as such hearing may be continued from time to time.

**1.30 Confirmation Order:** The order of the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code section 1129.

**1.31 Contingent Claim:** Any Claim that is Scheduled or Filed as contingent.

**1.32 Credit LLC:** USA Discounters Credit, LLC, a Delaware limited liability company.

**1.33 Creditor:** Any Holder of a Claim.

**1.34 Creditors' Committee:** The Official Committee of Unsecured Creditors appointed by the U.S. Trustee in the Chapter 11 Cases, as it may be reconstituted from time to time.

**1.35 Cure Payment:** The payment of Cash or the distribution of other property (as the parties may agree or the Bankruptcy Court may order) that is necessary to cure any and all defaults under an executory contract or unexpired lease so that such contract or lease may be assumed, or assumed and assigned, pursuant to Bankruptcy Code section 1123(b)(2).

**1.36 Debtor or Debtors:** Individually and collectively, Credit LLC, Holdings, and USA Discounters.

**1.37 Defined Term:** Any capitalized term that is defined in this Article I of the Plan.

**1.38 Disallowed Claim:** Any Claim that (a) is not Scheduled, or is listed thereon as contingent, unliquidated, disputed, or in an amount equal to zero, and whose Holder failed to timely File a proof of claim by the applicable Claims Bar Date; or (b) has been disallowed pursuant to an order of the Bankruptcy Court.

**1.39 Disclosure Statement:** That certain disclosure statement relating to the Plan, including all exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to Bankruptcy Code section 1125, as it subsequently may be amended, modified, or supplemented by the Debtors.

**1.40 Disclosure Statement Order:** The order approving the Disclosure Statement, authorizing the Debtors to solicit acceptances of the Plan, and establishing certain related procedures and deadlines.

**1.41 Disputed Claim:** Any Claim:

(a) as to which a proof of claim is Filed or is deemed Filed as a result of such Claim being Scheduled; and

(b) as to which:

(i) an objection or request for estimation (A) has been timely Filed within the applicable period of limitations fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or a Final Order under which the applicable period



of limitation has expired, and (B) has not been denied by a Final Order or withdrawn; or

- (ii) the Claim is Scheduled as disputed; or
- (iii) the Claim is disputed in whole or in part under the Plan.

**1.42 Distribution:** Any initial or subsequent issuance, payment, or transfer of consideration made under the Plan.

**1.43 Distribution Date:** Any date on which a Distribution is made.

**1.44 Distribution Record Date:** The record date for determining entitlement to receive Distributions under the Plan on account of Allowed General Unsecured Claims, which date shall be (i) with respect to General Unsecured Claims other than Rejection Claims, the third (3rd) Business Day after the Effective Date at 5:00 p.m. prevailing Eastern time, and (ii) with respect to Rejection Claims, the third (3rd) Business Day after the date for Filing Rejection Claims set forth in Section 6.2.2 of the Plan at 5:00 p.m. prevailing Eastern time.

**1.45 Effective Date:** The date that is the first Business Day on which each condition set forth in Article IX of the Plan has been satisfied or waived as set forth therein.

**1.46 Equity Interests:** All previously issued and outstanding common stock, preferred stock, or other ownership interests in any of the Debtors outstanding immediately prior to the Effective Date, including restricted stock, treasury stock, and all options, warrants, calls, rights, puts, awards, commitments, appreciation rights, or any other agreements of any character to convert, exchange, exercise for, or otherwise receive any such common stock, preferred stock, or other ownership interests.

**1.47 Estate Assets:** Any and all right, title, and interest of the Debtors and their Estates in and to property of whatever type or nature, including their books and records and all Preserved Claims.

**1.48 Estates:** The chapter 11 estates of the Debtors created by Bankruptcy Code section 541(a).

**1.49 Exculpated Parties:** Collectively, (a) the Debtors, (b) the Creditors' Committee, (c) the Prepetition Agent, (d) the Prepetition Lenders, and (e) each of the preceding's respective Related Parties.

**1.50 Face Amount:** When used in reference to an Allowed Claim, the amount of such Claim that is Allowed, and, when used in reference to a Disputed Claim, (i) the liquidated amount set forth in the proof of claim or request for payment relating to the Disputed Claim (if any); (ii) an amount agreed to by the Plan Administrator or the GUC Trustee, as applicable, and the Holder of the Disputed Claim; or (iii) the amount at which such Disputed Claim is estimated by the Bankruptcy Court.

**1.51 File, Filed, or Filing:** Duly and properly filed with the Bankruptcy Court and reflected on the docket of the Chapter 11 Cases, except with respect to proofs of claim that must be filed with

the Claims Agent, in which case “File” or “Filed” means duly and properly filed with the Claims Agent and reflected on the official claims register maintained by the Claims Agent.

**1.52 Final Decree:** The order entered pursuant to Bankruptcy Code section 350, Bankruptcy Rule 3022, and Local Rule 5009-1 closing the Chapter 11 Cases.

**1.53 Final Order:** An order or judgment of the Bankruptcy Court entered on the docket of the Chapter 11 Cases:

- (a) that has not been reversed, rescinded, stayed, modified, or amended;
- (b) that is in full force and effect; and
- (c) with respect to which (i) the time to appeal or to seek review, rehearing, remand, or a writ of certiorari has expired and as to which no timely filed appeal or petition for review, rehearing, remand, or writ of certiorari is pending; or (ii) any such appeal or petition has been dismissed or resolved by the highest court to which the order or judgment was appealed or from which review, rehearing, remand, or a writ of certiorari was sought.

For the avoidance of doubt, no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Bankruptcy Code section 502(j), Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rules 9023 or 9024 may be filed with respect to such order.

**1.54 First Administrative Claims Bar Date:** December 23, 2016, which was established by the Bankruptcy Court as the deadline by which requests for payment of Administrative Claims arising during the period from the Petition Date through and including October 31, 2016, had to be Filed (subject to certain exceptions specified in the applicable order [Docket No. 948]).

**1.55 General Claims Bar Date:** December 29, 2015.

**1.56 General Unsecured Claim:** Any unsecured, non-priority Claim against any of the Debtors or the Estates that is not a Subordinated Claim, including, for the avoidance of doubt, all Rejection Claims and all Opt-Out Claims.

**1.57 Governmental Claims Bar Date:** February 22, 2016, as subsequently extended to May 23, 2016 for state attorneys general [Docket No. 448].

**1.58 GUC Settlement Fund:** Cash in the amount of \$1,100,000.00, *less* the amount of any Committee Fee Overage, *plus* the amount of any Committee Fee Underage.

**1.59 GUC Trust:** The trust established for the benefit of the GUC Trust Beneficiaries on the Effective Date in accordance with the terms of this Plan and the GUC Trust Agreement.

**1.60 GUC Trust Agreement:** The agreement substantially in the form Filed in the Plan Supplement establishing and delineating the terms and conditions of the GUC Trust.

**1.61 GUC Trust Assets:** Collectively, (a) the GUC Settlement Fund, (b) the GUC Trust Avoidance Actions and all proceeds thereof, and (c) all rights of setoff and recoupment and other

defenses that the Debtors and the Estates may have with respect to any General Unsecured Claims.

**1.62 GUC Trust Avoidance Actions:** All Avoidance Actions against any Person that is not a Released Party. The failure to specifically identify in the Disclosure Statement or the Plan any potential or existing Avoidance Actions as a GUC Trust Avoidance Action is not intended to and shall not limit the rights of the GUC Trustee to pursue any such Avoidance Actions. The Debtors expressly reserve all Avoidance Actions, other than those Avoidance Actions that are expressly waived, relinquished, released, compromised, or settled in the Plan, pursuant to the Confirmation Order, or pursuant to any other order of the Bankruptcy Court, as GUC Trust Avoidance Actions for later adjudication, and no preclusion doctrine (including the doctrines of *res judicata*, collateral estoppel, judicial estoppel, equitable estoppel, issue preclusion, claim preclusion, and laches) shall apply to such Avoidance Actions as GUC Trust Avoidance Actions on or after the Effective Date. The GUC Trustee shall have the exclusive right, power, and interest to pursue, settle, waive, abandon, or dismiss the GUC Trust Avoidance Actions.

**1.63 GUC Trust Beneficiaries:** The Holders of Allowed General Unsecured Claims that are entitled to receive Distributions under the Plan.

**1.64 GUC Trust Expenses:** All reasonable and documented fees, expenses, and costs incurred by the GUC Trustee in connection with carrying out the obligations of the GUC Trust, including the maintenance or disposition of the GUC Trust Assets (including GUC Trustee fees, indemnity reserves, attorneys' fees, the fees of professionals, and other Persons retained by the GUC Trustee, personnel-related expenses, and any taxes imposed on the GUC Trust or in respect of the GUC Trust Assets), and any other expenses incurred in accordance with the GUC Trust Agreement.

**1.65 GUC Trust Indemnified Parties:** The GUC Trustee and its consultants, agents, attorneys, accountants, financial advisors, beneficiaries, estates, employees, officers, directors, principals, professionals, and other representatives, each in their respective capacity as such.

**1.66 GUC Trust Interests:** Collectively, the GUC Trust Interests—Class A and the GUC Trust Interests—Class B.

**1.67 GUC Trust Interests—Class A:** Non-transferable interests in the GUC Trust that will entitle the holder thereof to share in distributions of all GUC Trust Assets, Distributions of which will be made pursuant to the Plan and the GUC Trust Agreement.

**1.68 GUC Trust Interests—Class B:** Non-transferable interests in the GUC Trust that will entitle the holder thereof to share in distributions of all GUC Trust Assets *other than* the GUC Settlement Fund, Distributions of which will be made pursuant to the Plan and the GUC Trust Agreement.

**1.69 GUC Trustee:** The Person designated for such position in the Plan Supplement or such other Person appointed as trustee for the GUC Trust in accordance with the GUC Trust Agreement.

**1.70 Holder:** The Person that is the owner of record of a Claim or Equity Interest, as applicable.

**1.71 Holdings:** USA Discounters Holding Company, Inc., a Delaware corporation.

**1.72 Impaired:** Any Class of Claims or Equity Interests that is impaired within the meaning of Bankruptcy Code section 1124.

**1.73 Insured Claim:** Any Claim or portion of a Claim (other than a Claim held by an employee of the Debtors for workers' compensation coverage under the workers' compensation program applicable in the particular state in which the employee is employed by the Debtors) that is insured under the Debtors' insurance policies, but only to the extent of such coverage.

**1.74 Jewelry Warranties:** Those certain jewelry warranties sold or otherwise offered by USA Discounters, including as an "Extended Jewelry Protection Plan" and as a "Lifetime Diamond Promise," to provide an extended warranty against future costs of repairing or replacing jewelry products or diamonds purchased from USA Discounters.

**1.75 Lien:** Any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage, or hypothecation to secure payment of a debt or performance of an obligation, other than, in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.

**1.76 Liquidating Debtors:** The Debtors on and after the Effective Date.

**1.77 Liquidating USAD:** USA Discounters on and after the Effective Date.

**1.78 Local Rules:** The Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, as amended from time to time.

**1.79 Multistate Penalty Claim:** The \$40,000,000 aggregate penalty claim that is Allowed under the Multistate Settlement Agreement.

**1.80 Multistate Settlement Agreement:** That certain *Settlement Agreement* among the Debtors and the attorneys general or similar representatives of 49 states and the District of Columbia, which agreement was approved by the Bankruptcy Court on September 29, 2016 [Docket No. 887] and became effective on October 14, 2016 [Docket No. 908].

**1.81 Non-Compensatory Penalty Claims:** Any Claim, secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, to the extent such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the Holder of such Claim. For the avoidance of doubt, the \$1,000,000 Claim that was Allowed pursuant to the settlement memorialized in a final consent judgment entered into by and between USA Discounters and Julie Ann Meade, as Administrator of the Colorado Uniform Consumer Credit Code [*see* Docket Nos. 729 & 771], is a General Unsecured Claim and not a Non-Compensatory Penalty Claim.

**1.82 OLA:** The *Orderly Liquidation Analysis: Company Administered, Three Year Plan* attached as Exhibit B to the Disclosure Statement, as the same may be revised by the Debtors prior to the Confirmation Hearing (any such revision will be included in the Plan Supplement) and as the same may be revised by the Plan Administrator after the Effective Date.

**1.83 Opt-Out Claims:** Any Claims held by a Person that has elected to make a Release Opt-Out.

**1.84 Ordinary Course Professional:** Any Ordinary Course Professional, as that term is defined in the *Interim Order Authorizing the Debtors to Retain, Employ, and Compensate Certain Professionals Utilized by the Debtors in the Ordinary Course of Business on an Interim Basis* [Docket No. 128].

**1.85 Ordinary Course Professional Fee Claim:** A Claim of an Ordinary Course Professional for compensation or reimbursement of costs and expenses relating to services incurred during the period from the Petition Date through the Effective Date.

**1.86 Other Secured Claims:** Any Secured Claims that are not Prepetition Credit Document Claims.

**1.87 Parallel:** Together, Parallel Big Wheel Investco, LLC and Parallel Investment Partners, LP.

**1.88 Person:** Any person or organization created or recognized by law, including any association, company, cooperative, corporation, entity, estate, fund, individual, joint stock company, joint venture, limited liability company, partnership, trust, trustee, unincorporated organization, or government or any political subdivision thereof.

**1.89 Petition Date:** August 24, 2015, the date on which the Debtors Filed their voluntary chapter 11 petitions for relief in the Bankruptcy Court.

**1.90 Plan:** This *Joint Chapter 11 Plan of Liquidation of USA Discounters, Ltd. and Its Affiliated Debtors*, dated as of November 21, 2016, and all exhibits thereto, including the Plan Supplement, as the same may be amended, modified, or supplemented.

**1.91 Plan Administration Expenses:** Any and all reasonable fees, costs, and expenses incurred by the Plan Administrator (or any Person engaged by the Plan Administrator to effect Distributions or otherwise assist the Plan Administrator with its duties under the Plan) in connection with any of its duties under the Plan, including (i) any administrative fees; (ii) attorneys' or other professionals' fees and expenses of the Plan Administrator; (iii) insurance fees; (iv) taxes; (v) escrow expenses; (vi) fees payable under 28 U.S.C. § 1930; (vii) costs associated with any maintenance, liquidation, and administration of any going concern as part of the wind down of the Debtors' business operations (including all costs associated with administering and collecting the Receivables); (viii) costs to maintain any Revested Assets while they are held for sale or otherwise liquidated; and (ix) fees incurred in connection with the making of Distributions.

**1.92 Plan Administrator:** The Person designated for such position in the Plan Supplement or such other Person appointed in accordance with Section 5.3.8 of the Plan, acting pursuant to the authority granted under Section 5.3 of the Plan.

**1.93 Plan Supplement:** The ancillary documents necessary to the implementation and effectuation of the Plan, which shall be Filed on or before the date that is seven (7) calendar days prior to the Voting Deadline, as amended and supplemented prior to the Confirmation Hearing.

**1.94 Prepetition Agent:** Wells Fargo Bank, N.A., as agent under the Prepetition Loan Agreement.

**1.95 Prepetition Credit Document Claims:** Any and all Claims arising from or in connection with the Prepetition Credit Documents, including all Claims of the Prepetition Agent and the Prepetition Lenders.

**1.96 Prepetition Credit Documents:** Collectively, the Prepetition Loan Agreement and all “Credit Documents” as defined in the Prepetition Loan Agreement.

**1.97 Prepetition Lenders:** Those financial institutions from time to time party to the Prepetition Loan Agreement as lenders.

**1.98 Prepetition Loan Agreement:** That certain *Loan and Security Agreement*, dated as of October 3, 2012, and as amended, supplemented, or modified prior to the date hereof, including on July 24, 2013, September 30, 2014, and June 24, 2015.

**1.99 Preserved Claims:** All Causes of Action of the Debtors or the Estates, but excluding (i) all Causes of Action that are expressly waived, relinquished, released, compromised, or settled in the Plan, pursuant to the Confirmation Order, or pursuant to any other order of the Bankruptcy Court; and (ii) all GUC Trust Avoidance Actions. The failure to specifically identify in the Disclosure Statement or the Plan any potential or existing Causes of Action as a Preserved Claim is not intended to and shall not limit the rights of the Plan Administrator to pursue any such Causes of Action. The Debtors expressly reserve all Causes of Action, other than those Causes of Action that are expressly waived, relinquished, released, compromised, or settled in the Plan, pursuant to the Confirmation Order, or pursuant to any other order of the Bankruptcy Court, as Preserved Claims for later adjudication, and no preclusion doctrine (including the doctrines of *res judicata*, collateral estoppel, judicial estoppel, equitable estoppel, issue preclusion, claim preclusion, and laches) shall apply to such Causes of Action as Preserved Claims on or after the Effective Date.

**1.100 Priority Claim:** A Claim that is entitled to priority under Bankruptcy Code section 507(a), other than an Administrative Claim and a Priority Tax Claim.

**1.101 Priority Tax Claim:** A Claim that is entitled to priority under Bankruptcy Code section 507(a)(8).

**1.102 Product Warranties:** Those certain product warranties sold or otherwise offered by USA Discounters, including as an “USA Discounters Warranty Plan,” to provide an extended warranty against defects for the original owner of products purchased from USA Discounters, the terms of which warranties typically run through the term of the applicable customer’s credit contract with USA Discounters or until the customer defaults.

**1.103 Professional:** Any professional (other than an Ordinary Course Professional) employed in the Chapter 11 Cases pursuant to Bankruptcy Code sections 327, 328, 1103, or 1104 or any professional or other Person (in each case, other than an Ordinary Course Professional) seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to Bankruptcy Code section 503(b)(3) or 503(b)(4).

**1.104 Professional Fee Claim:** A Claim of a Professional (or of members of the Creditors' Committee for reimbursement of expenses) for compensation or reimbursement of costs and expenses relating to services incurred during the period from the Petition Date through and including the Effective Date.

**1.105 Professional Fee Reserve:** The reserve established and funded by the Plan Administrator pursuant to Section 11.2 of the Plan to provide sufficient funds to satisfy in full all unpaid Allowed Professional Fee Claims.

**1.106 Pro Rata:** Proportionately so that the ratio of (a) the amount of consideration distributed on account of a particular Allowed Claim to (b) the amount of that Allowed Claim, is the same as the ratio of (x) the amount of consideration available for Distribution on account of all Allowed Claims in the Class in which the particular Allowed Claim is included to (y) the amount of all Allowed Claims of that Class.

**1.107 Receivables:** All of USA Discounters' rights to payment on account of customer finance contracts, including in respect of any warranties, debt cancellation rights, or other add-on products, and including interest or other finance charges, late charges and other fees, and any other amounts that are or become payable to USA Discounters pursuant to such contracts.

**1.108 Rejection Claim:** Any Claim for monetary damages as a result of the rejection of any prepetition executory contract or unexpired lease pursuant to the Confirmation Order.

**1.109 Rejection Claims Bar Date:** The first Business Day that is at least thirty (30) calendar days after the Effective Date.

**1.110 Related Parties:** Collectively, (a) with respect to the Debtors and Parallel, each of their respective advisors, directors, employees, officers, and professional persons, in each case solely in their capacity as such; *provided, however*, that the Debtors' Related Parties shall include those individuals who were serving as officers or directors of any of the Debtors on the Petition Date, but, except for individuals made available by Alvarez & Marsal North America, LLC or its affiliates to serve as officers, shall not include any former officers or directors of any of the Debtors; (b) with respect to the Creditors' Committee, its advisors, members, and professional persons, in each case solely in their capacity as such; and (c) with respect to the Prepetition Agent and the Prepetition Lenders, their respective advisors, directors, employees, officers, and professional persons, in each case solely in their capacity as such.

**1.111 Release Opt-Out:** The item set forth in the Ballots, due by the Voting Deadline, pursuant to which Holders of Claims in Class 4 may opt out of the releases set forth in Section 11.11 of the Plan.

**1.112 Released Parties:** Collectively, (a) the Prepetition Agent, (b) the Prepetition Lenders, (c) the Debtors, (d) the Creditors' Committee, (e) Parallel, and (f) each of the preceding's respective Related Parties.

**1.113 Releasing Parties:** Collectively, (a) the Debtors, (b) the Estates, (c) any Person seeking to exercise the rights of the Estates, including the Creditors' Committee, the Liquidating Debtors, the Plan Administrator, the GUC Trustee, and any other successor to the Debtors or any other estate representative that is or could be appointed or selected pursuant to Bankruptcy Code

section 1123(b)(3) or otherwise, (d) the Prepetition Agent, (e) the Prepetition Lenders, (f) Parallel, and (g) all Holders of Claims in Class 4 that do not timely submit a Release Opt-Out.

**1.114 Remaining Cash:** The amount of Available Cash, if any, remaining after the full and indefeasible satisfaction of all Allowed Class 1 Claims (including post-Effective-Date interest thereon), Allowed Class 2 Claims, and Allowed Class 3 Claims in accordance with the Plan.

**1.115 Retained Prepetition Lien:** The liens and security interests held by the Prepetition Agent, on behalf of the Prepetition Lenders, on and in substantially all assets and property of the Liquidating Debtors, excluding the GUC Settlement Fund and GUC Trust Avoidance Actions.

**1.116 Revested Assets:** All Estate Assets other than the GUC Trust Assets.

**1.117 SAP Claims:** All Secured Claims, Administrative Claims, Priority Claims, and Priority Tax Claims.

**1.118 Schedule of Assumed Agreements:** The schedule of executory contracts and unexpired leases that Liquidating USAD will assume on the Effective Date. The initial Schedule of Assumed Agreements will be included as part of the initial Plan Supplement, but remains subject to any modifications that may be made prior to the Effective Date pursuant to Section 6.1.1 of the Plan.

**1.119 Schedule of Rejected Agreements:** The schedule of executory contracts and unexpired leases that the applicable Debtors will reject on the Effective Date. The initial Schedule of Rejected Agreements will be included as part of the initial Plan Supplement, but remains subject to any modifications that may be made prior to the Effective Date pursuant to Section 6.2.1 of the Plan.

**1.120 Scheduled:** Any Claim set forth on the Schedules.

**1.121 Schedules:** The Schedules of Assets and Liabilities Filed by the Debtors, as such Schedules may be amended from time to time in accordance with Bankruptcy Rule 1009.

**1.122 Second Administrative Claims Bar Date:** The last date by which any Person must File a request for payment of an Administrative Claim arising during the period from November 1, 2016 through and including the Effective Date, which shall be the first Business Day that is at least forty-five (45) calendar days after the Effective Date, or, alternatively, such earlier date as is set by the Bankruptcy Court with the consent of the Plan Administrator.

**1.123 Section 503(b)(9) Claim:** A Claim arising under Bankruptcy Code section 503(b)(9) for the value of any goods received by the Debtors within twenty (20) calendar days before the Petition Date and that were sold to the Debtors in the ordinary course of their business.

**1.124 Secured Claim:** A Claim that is secured by a valid, perfected, and enforceable Lien on property in which the Debtors or the Estates have an interest, which Lien is valid, perfected, and enforceable under applicable law and not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law. A Claim is a Secured Claim only to the extent of the value of the Holder's interest in the Debtors' interest in the collateral or to the extent of the amount subject to setoff against a Cause of Action held by the Debtors, whichever is applicable, and as determined



under Bankruptcy Code section 506(a); to the extent that the value of such interest is less than the amount of the Claim which has the benefit of such security, the unsecured portion of such Claim shall be treated as a General Unsecured Claim unless, in any such case, the Class of which the Secured Claim is a part makes a valid and timely election in accordance with Bankruptcy Code section 1111(b) to have such Claim treated as a Secured Claim to the extent Allowed.

**1.125 Subordinated Claim:** Collectively, (a) the Multistate Penalty Claim; (b) any other Non-Compensatory Penalty Claims; and (c) any other Claim that is subordinated to General Unsecured Claims pursuant to Bankruptcy Code section 510 or a Final Order of the Bankruptcy Court.

**1.126 Supplemental Customer Claims Bar Date:** The deadline established by the Disclosure Statement Order by which customers of USA Discounters who did not previously receive mailed notice of the General Bar Date must File any Claims.

**1.127 Unimpaired:** Any Class of Claims that is unimpaired within the meaning of Bankruptcy Code section 1124.

**1.128 Uninsured Portion:** The portion of any Insured Claim, if any, that is not insured under the Debtors' insurance policies or that is beyond the extent of such coverage.

**1.129 Unliquidated Claim:** Any Claim that is Scheduled as unliquidated or that was Filed in an unliquidated amount.

**1.130 Unpaid Prepetition Credit Document Claim Amount:** An amount equal to the difference between (a) \$59,983,291, *less* (b) the aggregate amount of all payments made under Paragraph 10(b) of the Cash Collateral Order during the Chapter 11 Cases.

**1.131 U.S. Trustee:** The Office of the United States Trustee for the District of Delaware.

**1.132 USA Discounters:** USA Discounters, Ltd., a Virginia corporation.

**1.133 Voting Deadline:** The date and time by which all Ballots to accept or reject the Plan must be received in order to be counted under the Disclosure Statement Order.

**1.134 Wind Down End Date:** The date on which (a) the Plan Administrator determines that the pursuit of additional Preserved Claims is not likely to yield sufficient additional proceeds to justify further pursuit of such Preserved Claims or determines to abandon any remaining Revested Assets, (b) all objections to Disputed SAP Claims are fully resolved, (c) all Distributions required to be made by the Plan Administrator have been made, (d) the Revested Assets have been liquidated, abandoned, or otherwise administered under Section 5.3.3(g) of the Plan, and (e) the Plan Administrator either has obtained authority from the Bankruptcy Court for the entry of the Final Decree or has been relieved of further duties pursuant to Section 11.21 of the Plan.

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

**2.1 Summary and Classification of Claims.** This Section classifies Claims – except for Administrative Claims, Professional Fee Claims, and Priority Tax Claims, which are not classified – for all purposes, including confirmation, Distributions, and voting. A Claim is classified in a particular Class only to the extent that the Claim falls within the Class description. To the extent that part of a Claim falls within a different Class description, that part of the Claim is classified in that different Class. The following table summarizes the Classes of Claims under the Plan:

<b>CLASS</b>	<b>DESCRIPTION</b>	<b>IMPAIRED/ UNIMPAIRED</b>	<b>VOTING STATUS</b>
None	Administrative Claims	Unimpaired	Not Entitled to Vote
None	Professional Fee Claims	Unimpaired	Not Entitled to Vote
None	Priority Tax Claims	Unimpaired	Not Entitled to Vote
Class 1	Prepetition Credit Document Claims	Impaired	Entitled to Vote
Class 2	Other Secured Claims	Unimpaired	Not Entitled to Vote (deemed to accept)
Class 3	Priority Claims	Unimpaired	Not Entitled to Vote (deemed to accept)
Class 4	General Unsecured Claims Against USA Discounters	Impaired	Entitled to Vote
Class 5	General Unsecured Claims Against Holdings	Impaired	Entitled to Vote
Class 6	General Unsecured Claims Against Credit LLC	Impaired	Entitled to Vote
Class 7	Opt-Out Claims	Impaired	Entitled to Vote
Class 8	Subordinated Claims	Impaired	Not Entitled to Vote (deemed to reject)
Class 9	Equity Interests in Holdings	Impaired	Not Entitled to Vote (deemed to reject)

**NOTWITHSTANDING ANY OTHER TERM OR PROVISION OF THE PLAN,**

**NO DISTRIBUTIONS WILL BE MADE AND NO RIGHTS WILL BE RETAINED  
ON ACCOUNT OF ANY CLAIM THAT IS NOT AN ALLOWED CLAIM**

**2.2 Classification Controversies.**

(a) If a controversy arises regarding whether any Claim is properly classified under the Plan, then the Bankruptcy Court shall, upon proper motion and notice, determine such controversy at the Confirmation Hearing.

(b) If the Bankruptcy Court finds that the classification of any Claim is improper, then such Claim shall be reclassified and the Ballot previously cast by the Holder of such Claim shall be counted in, and the Claim shall receive the treatment prescribed in, the Class in which the Bankruptcy Court determines such Claim should have been classified, without the necessity of resoliciting any votes on the Plan.

**ARTICLE III**

**TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**3.1 Unclassified Claims.**

**3.1.1 Administrative Claims.** Except as otherwise provided for herein, and subject to the requirements of the Plan, on or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) thirty (30) calendar days following the date on which an Administrative Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim shall receive from the Plan Administrator, in full satisfaction, settlement, and release of and in exchange for such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other less favorable treatment as to which such Holder and the Plan Administrator shall have agreed upon in writing; *provided, however*, that Allowed Administrative Claims representing liabilities incurred in the ordinary course of business by a Debtor or other obligations so incurred by such Debtor shall be paid in full and performed by such Debtor in the ordinary course of business in accordance with the terms and subject to the conditions of any agreements governing, instruments evidencing, or other documents relating to such transactions.

**3.1.2 Professional Fee Claims.** Professional Fee Claims shall be paid as set forth in Section 11.2 of the Plan.

**3.1.3 Priority Tax Claims.** In full satisfaction, settlement, and release of and in exchange for such Claims, Allowed Priority Tax Claims shall be paid by the Plan Administrator, at the Plan Administrator's option, as follows: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim on the later of the Effective Date or thirty (30) calendar days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim; (b) in regular installment payments in Cash over a period not exceeding three (3) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs (*provided* that such election shall be without prejudice to the right to prepay any such Allowed Priority Tax Claim in full or in part without penalty); or (c) such other treatment as to

which the Holder of an Allowed Priority Tax Claim and the Plan Administrative shall have agreed upon in writing.

### **3.2 Class 1: Prepetition Credit Document Claims.**

Class 1 consists of all Prepetition Credit Document Claims. Class 1 is Impaired under the Plan.

Class 1 Claims shall be finally Allowed against all three of the Debtors on the Effective Date in the Allowed Class 1 Claim Amount, which Allowed Claims shall not be subject to any Causes of Action, defense, counterclaim, subordination, offset, or challenge of any kind. Without limiting the generality of the preceding sentence, on the Effective Date, the “Challenge Period” under the Cash Collateral Order shall have been deemed to have expired for all purposes and the Debtors’ representations and the releases set forth in the Cash Collateral Order shall be fully binding on the Estates and all Persons.

Interest shall accrue on the Allowed Class 1 Claim Amount from and after the Effective Date at the non-default rate of interest that would otherwise be applicable under Section 2.6(a) of the Prepetition Loan Agreement (i.e., in the absence of any default, acceleration, or maturity).

Commencing on the month-end of the first full calendar month following the Effective Date and continuing on each calendar month-end thereafter, in full satisfaction, settlement, and release of and in exchange for such Claims, Holders of Allowed Class 1 Claims will receive periodic Distributions of any Available Cash as of such month-end, but only until (x) the Allowed Class 1 Claim Amount (including post-Effective-Date interest thereon) has been paid in full or (y) there is not and will not be any further Available Cash, as determined by the Plan Administrator in its sole discretion.

In order to secure the payment of all amounts required to be paid to Holders of Allowed Class 1 Claims under the Plan, the Prepetition Agent is granted and will retain on and after the Effective Date the Retained Prepetition Lien on all property and assets of the Liquidating Debtors, including all Revested Assets and any other assets or properties that are or would constitute “Collateral” under the Cash Collateral Order (other than the GUC Trust Assets and the Professional Fee Reserve (except for any excess funds in the Professional Fee Reserve that are released to the Plan Administrator pursuant to Section 11.2 of the Plan), both of which will not be subject to the Retained Prepetition Lien). The Retained Prepetition Lien will be valid, binding, enforceable, non-avoidable, and automatically perfected on the Effective Date, without the necessity of the execution by any of the Liquidating Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents. The Retained Prepetition Lien will be subordinate to the payment of Allowed SAP Claims pursuant to the Plan.

Notwithstanding anything else in the Plan, (i) all Distributions to which Holders of Allowed Class 1 Claims are entitled shall be paid in bulk by the Plan Administrator to the Prepetition Agent for distribution to the Prepetition Lenders in accordance with the Prepetition Loan Agreement; and (ii) the Holders of Allowed Class 1 Claims will have no right to receive any Distribution from, or otherwise share in, any of the GUC Trust Assets.

### **3.3 Class 2: Other Secured Claims.**

Class 2 consists of all Other Secured Claims. Each Class 2 Claim shall constitute its own subclass. Class 2 is Unimpaired under the Plan.

All Claims in Class 2 will be Allowed on the Effective Date. The legal, equitable, and contractual rights of Holders of Allowed Class 2 Claims are unaltered by the Plan, provided that all such Claims shall remain subject to any and all defenses, counterclaims, and setoff or recoupment rights with respect thereto. Unless the Holder of an Allowed Class 2 Claim in a particular Class 2 subclass agrees to other treatment, on or as soon as is reasonably practicable after the Effective Date, such Holder shall receive, at the Plan Administrator's option: (i) Cash in the Allowed amount of such Holder's Allowed Class 2 Claim; (ii) the return of the Collateral securing such Allowed Class 2 Claim, without representation or warranty by or recourse against the Plan Administrator; or (iii) (A) the cure of any default, other than a default of the kind specified in Bankruptcy Code section 365(b)(2), that Bankruptcy Code section 1124(2) requires to be cured, with respect to such Holder's Allowed Class 2 Claim, without recognition of any default rate of interest or similar penalty or charge, and upon such cure, no default shall exist; (B) the reinstatement of the maturity of such Allowed Class 2 Claim as the maturity existed before any default, without recognition of any default rate of interest or similar penalty or charge; and (C) its unaltered legal, equitable, and contractual rights with respect to such Allowed Class 2 Claim.

The Bankruptcy Court shall retain jurisdiction and power to determine the amount necessary to satisfy any Allowed Class 2 Claim for which treatment is elected under clause (i) or clause (iii) of the immediately foregoing paragraph. With respect to any Allowed Class 2 Claim for which treatment is elected under clause (i), any Holder of such Allowed Class 2 Claim shall release (and by the Confirmation Order shall be deemed to release) all Liens against any Estate Assets. Notwithstanding anything else in the Plan, the Holders of Allowed Class 2 Claims will have no right to receive any Distribution from, or otherwise share in, any of the GUC Trust Assets.

### **3.4 Class 3: Priority Claims.**

Class 3 consists of all Priority Claims. Class 3 is Unimpaired under the Plan.

On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) the date on which a Priority Claim becomes payable pursuant to and as specified by an order of the Bankruptcy Court, the Holder of such Allowed Priority Claim shall receive from the Plan Administrator, in full satisfaction, settlement, and release of and in exchange for such Allowed Priority Claim, either (i) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Claim or (ii) such other less favorable treatment to which such Holder and the Plan Administrator shall have agreed upon in writing. Notwithstanding anything else in the Plan, the Holders of Allowed Class 3 Claims will have no right to receive any Distribution from, or otherwise share in, any of the GUC Trust Assets.

### **3.5 Class 4: General Unsecured Claims Against USA Discounters.**

Class 4 consists of all General Unsecured Claims against USA Discounters that are not Opt-Out Claims. Class 4 is Impaired under the Plan.

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed Class 4 Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Claim, (i) its Pro Rata share of the GUC Trust Interests—Class A, or (ii) such other less favorable treatment as to which such Holder and the GUC Trustee shall have agreed upon in writing.

### **3.6 Class 5: General Unsecured Claims Against Holdings.**

Class 5 consists of all General Unsecured Claims against Holdings. Class 5 is Impaired under the Plan.

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed Class 5 Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Claim, its Pro Rata share of any Cash owned by Holding. In the event that there are no Allowed Class 5 Claims, any Cash owned by Holdings shall be utilized to pay Plan Administration Expenses.

### **3.7 Class 6: General Unsecured Claims Against Credit LLC.**

Class 6 consists of all General Unsecured Claims against Credit LLC. Class 6 is Impaired under the Plan.

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed Class 6 Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Claim, its Pro Rata share of any Cash owned by Credit LLC. In the event that there are no Allowed Class 6 Claims, any Cash owned by Credit LLC shall be utilized to pay Plan Administration Expenses.

### **3.8 Class 7: Opt-Out Claims.**

Class 7 consists of all Opt-Out Claims. Class 7 is Impaired under the Plan.

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed Class 7 Claim shall receive, in full satisfaction, settlement, and release of and in exchange for such Claim, (i) its Pro Rata share of the GUC Trust Interests—Class B, or (ii) such other less favorable treatment as to which such Holder and the GUC Trustee shall have agreed upon in writing.

At any time prior to the commencement of the Confirmation Hearing, the Prepetition Agent, with the Debtors' consent, may elect to allow all holders of Class 7 Claims to instead receive a Pro Rata share of the GUC Trust Interests—Class A as if such Claims were included in Class 4 (without altering the effect of such Release Opt-Out vis-à-vis the releases set forth in Section 11.11 of the Plan). If the Prepetition Agent makes such election, then such Claims shall be reclassified and the Ballots previously cast by the Holders of such Claims shall be counted in,

and the Claims shall receive the treatment prescribed in, Class 4 without the necessity of resoliciting any votes on the Plan.

**3.9 Class 8: Subordinated Claims.**

Class 8 consists of all Subordinated Claims. Class 8 is Impaired under the Plan.

On and after the Effective Date, Holders of Subordinated Claims shall not be entitled to, and shall not receive or retain any property or interest in property under the Plan on account of such Subordinated Claims. Class 8 is deemed to have rejected the Plan and therefore Holders of Subordinated Claims are not entitled to vote on the Plan.

**3.10 Class 9: Equity Interests in Holdings.**

Class 9 consists of all Equity Interests in Holdings. Class 9 is Impaired under the Plan.

As of the Effective Date, all Equity Interests in Holdings shall be deemed void, cancelled, and of no further force and effect. On and after the Effective Date, Holders of Equity Interests in Holdings shall not be entitled to, and shall not receive or retain any property or interest in property under the Plan on account of such Equity Interests. Class 9 is deemed to have rejected the Plan and therefore Holders of Equity Interests in Holdings are not entitled to vote on the Plan.

**3.11 Special Provisions Regarding Insured Claims.**

(a) Any Allowed General Unsecured Claim with respect to an Insured Claim shall be limited to the Uninsured Portion of such Claim, provided such Claims have been timely Filed by the applicable Claims Bar Date.

(b) If there is insurance, any Person with rights against or under the applicable insurance policy, including the Plan Administrator, the GUC Trustee, and Holders of Insured Claims, may pursue such rights; *provided, however*, that the Plan Administrator shall have no obligation to pay or fund any self-insured portion or retention out of the Revested Assets.

(c) Nothing in this Section 3.11 shall constitute a waiver of any Causes of Action the Debtors, the Estates, the Plan Administrator, or the GUC Trustee may hold against any Person, including the Debtors' insurance carriers; and nothing in this Section 3.11 is intended to, shall, or shall be deemed to preclude any Holder of an Insured Claim from seeking or obtaining a distribution or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; *provided, however*, that the Debtors, the Plan Administrator, and the GUC Trustee do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

(d) The Plan shall not expand the scope of, or alter in any other way, the rights and obligations of the Debtors' insurers under their policies, and the Debtors' insurers shall retain any and all defenses to coverage that such insurers may have, including the right to contest or litigate with any Person the existence, primacy, or scope of available coverage under any allegedly applicable policy. The Plan shall not operate as a waiver of any other Claims the



Debtors' insurers have asserted or may assert in any proof of claim or of any objections or defenses to any such Claims.

**3.12 Non-Consolidation of Debtors.** This Plan is a joint plan for three separate Debtors. Additionally, Holders of Claims against multiple Debtors based on the same debt (as such term is defined in Bankruptcy Code section 101(12)), to the extent such Claims are Allowed in more than one Debtor's Chapter 11 Case, shall be treated as holding a separate Claim against each applicable Debtor; *provided, however*, that no Creditor shall receive Distributions under the Plan if and to the extent such Distributions, when combined with any recoveries received by such Creditor on its underlying Claim from all other Debtor and non-debtor sources, would result in more than a full recovery on the applicable Claim.

**3.13 Comprehensive Settlement of Claims and Controversies; Dismissal of the Committee Adversary.**

(a) Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan will constitute a good faith compromise and settlement of all claims and controversies relating to the rights that a Holder of a Claim or an Equity Interest may have with respect to any Allowed Claim, Allowed Equity Interest, or any Distribution on account thereof. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that all such compromises or settlements are (i) in the best interest of the Debtors, the Estates, and their respective property and stakeholders; and (ii) fair, equitable, and reasonable.

(b) In order to give effect to the Plan's comprehensive compromise and settlement, the Committee Adversary shall be dismissed with prejudice as against all of the Released Parties effective as of the Effective Date.

## **ARTICLE IV**

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

**4.1 Impaired Class of Claims Entitled to Vote.** Only the votes of Holders of Allowed Claims in Class 1, Class 4, Class 5, Class 6, and Class 7 shall be solicited with respect to the Plan.

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

**4.3 Presumed Acceptances by Unimpaired Classes.** Class 2 and Class 3 are Unimpaired under the Plan. Under Bankruptcy Code section 1126(f), the Holders of Claims in such Unimpaired Classes are conclusively presumed to have accepted the Plan, and, therefore, the votes of such Holders shall not be solicited.

**4.4 Impaired Classes Deemed to Reject Plan.** Holders of Claims and Equity Interests in Class 8 and Class 9 are not entitled to receive or retain any property or interests in property under



the Plan. Under Bankruptcy Code section 1126(g), such Holders are deemed to have rejected the Plan, and, therefore, the votes of such Holders shall not be solicited.

**4.5 Confirmation Pursuant to Bankruptcy Code Section 1129(b).** Because at least one Impaired Class is deemed to have rejected the Plan, the Debtors will request Confirmation of the Plan under Bankruptcy Code section 1129(b). The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the Plan Supplement, or any schedule or exhibit, including to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

**4.6 Elimination of Vacant Classes.** Any Class of Claims or Equity Interests that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of an Allowed Claim or Equity Interest, or a Holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Plan for purposes of determining acceptance of the Plan by such Class under Bankruptcy Code section 1129(a)(8).

**4.7 Severability of Joint Plan.** This Plan represents a joint plan comprised of three individual plans for each of the three Debtors. As further discussed in Section 11.6 of the Plan, the Debtors may alter, amend, or modify this Plan before the Confirmation Date, including to remove one or more Debtors from this Plan.

## **ARTICLE V**

### **IMPLEMENTATION OF THE PLAN**

**5.1 Implementation of the Plan.** The Plan will be implemented by, among other things, the establishment of the Plan Administrator, the establishment of the GUC Trust, and the making of Distributions by the Plan Administrator and the GUC Trust in accordance with the Plan.

**5.2 The Liquidating Debtors' Post-Effective-Date Corporate Affairs.**

**5.2.1 Debtors' Existing Directors, Officers, and Managers.** On the Effective Date, each of the Debtors' existing directors, officers, and managers shall be terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtors or the Estates following the occurrence of the Effective Date.

**5.2.2 Wind Down and Dissolution of the Liquidating Debtors.**

(a) On the Effective Date, one new share of Holdings common stock will be issued to the Plan Administrator to hold in its capacity as Plan Administrator and as the sole shareholder of Holdings. No intercompany Equity Interests shall be cancelled pursuant to the Plan, and all intercompany Equity Interests shall be unaffected by the Plan and continue in place following the Effective Date, solely for the administrative convenience of maintaining the Debtors' existing corporate structure.

(b) On the Effective Date, each of the Liquidating Debtors shall maintain the applicable Debtor's current corporate form. After the Effective Date, the Plan Administrator may decide to (i) maintain each Liquidating Debtor as a corporation or limited liability company, as

applicable, in good standing until such time as all aspects of the Plan pertaining to such Liquidating Debtor have been completed, or (ii) at such time as the Plan Administrator considers appropriate and consistent with the implementation of the Plan pertaining to such Liquidating Debtor, merge, dissolve, or otherwise terminate the existence of such Liquidating Debtor and complete the winding down of such Liquidating Debtor without the necessity for any other or further actions to be taken by or on behalf of such dissolving Liquidating Debtor or any other Person or any payments to be made in connection therewith. On and as of the Closing Date, each of the Liquidating Debtors that was not previously dissolved by the Plan Administrator shall be dissolved automatically without the need for any corporate action or approval and without the need for any corporate filings.

(c) On and after the Effective Date, pursuant to the Plan, the Plan Administrator shall have the right, but not the obligation, to wind down, sell, and otherwise liquidate all Revested Assets in accordance with the OLA.

### **5.2.3 Corporate Documents and Corporate Authority.**

(a) As of the Effective Date, the certificate of incorporation, bylaws, or articles of organization, as applicable, of each Debtor shall be deemed amended to the extent necessary to carry out the provisions of the Plan.

(b) The entry of the Confirmation Order shall constitute authorization for the Debtors, the Liquidating Debtors, the Plan Administrator, and the GUC Trustee, as applicable, to take or cause to be taken all actions (including, if applicable, corporate actions) necessary or appropriate to implement all provisions of, and to consummate, the Plan prior to, on, and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act, or action under any applicable law, order, rule, or regulation.

## **5.3 Plan Administrator.**

**5.3.1 Appointment.** On and after the Effective Date, the initial Plan Administrator identified in the Plan Supplement shall become and serve as Plan Administrator.

**5.3.2 Vesting of Revested Assets.** On the Effective Date, the Debtors and each of their Estates shall irrevocably vest in the applicable Liquidating Debtor for purposes of administration, by the Plan Administrator, of all of their respective rights, title, and interest in and to all Revested Assets (including all of the Receivables and the customer contracts underlying the Receivables), and in accordance with Bankruptcy Code section 1141. Except as specifically provided in the Plan or the Confirmation Order, the Revested Assets shall automatically vest in the applicable Liquidating Debtor free and clear of all Claims, Liens, encumbrances, or interests, and such vesting shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The Plan Administrator shall be the exclusive representative of the Estates appointed pursuant to Bankruptcy Code section 1123(b)(3)(B) regarding all Revested Assets.

**5.3.3 Authority.** The Plan Administrator shall have the sole authority and right on behalf of each of the Debtors, the Liquidating Debtors, and their respective Estates, without the

need for Bankruptcy Court approval (unless otherwise indicated), to carry out and implement all provisions of the Plan, including to:

- (a) review, reconcile, compromise, settle, or object to SAP Claims and resolve such objections as set forth in the Plan, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules;
- (b) calculate the amount of Distributions to be made to Holders of Allowed SAP Claims in accordance with the Plan, and use Cash to make Distributions in accordance with the Plan;
- (c) review, reconcile, enforce, collect, compromise, settle, or elect not to pursue any or all Preserved Claims or similar actions, free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules;
- (d) retain, compensate, and employ professionals and other Persons to represent the Plan Administrator with respect to and in connection with its rights and responsibilities;
- (e) establish, maintain, and administer all documents and accounts of the Liquidating Debtors as appropriate, which shall be segregated to the extent appropriate in accordance with the Plan;
- (f) maintain, conserve, supervise, prosecute, collect, settle, and protect the Revested Assets (subject to the limitations described herein);
- (g) sell, liquidate, transfer, assign, distribute, abandon, or otherwise dispose of the Revested Assets or any part thereof (including, for the avoidance of doubt, any or all of the Receivables) or any interest therein upon such terms as the Plan Administrator determines to be necessary, appropriate, or desirable in its sole discretion;
- (h) invest Cash of the Liquidating Debtors and the Estates, including any Cash realized from the liquidation of the Revested Assets;
- (i) pay the Plan Administration Expenses;
- (j) prepare and file any and all informational returns, reports, statements, returns, and other documents or disclosures relating to the Debtors or the Liquidating Debtors that are required under the Plan, by any governmental unit, or by applicable law;
- (k) take such actions as are necessary or appropriate to close or dismiss any or all of the Chapter 11 Cases;
- (l) comply with the Plan, exercise the Plan Administrator's rights, and perform the Plan Administrator's obligations; and
- (m) exercise such other powers as deemed by the Plan Administrator to be necessary and proper to implement the provisions of the Plan.

To the extent necessary to give full effect to its exclusive administrative rights and duties under the Plan, the Plan Administrator shall be deemed to be vested with all rights, powers, privileges,

and authorities of (i) a board of directors or an appropriate corporate officer of each of the Liquidating Debtors under any applicable non-bankruptcy law and (ii) a “trustee” of each of the Liquidating Debtors under Bankruptcy Code sections 704 and 1106.

**5.3.4 Tax Reporting.**

(a) The Plan Administrator shall file any and all tax returns for the Liquidating Debtors and the Estates, as applicable.

(b) The Plan Administrator shall be responsible for payment, out of the Revested Assets, of any taxes imposed on the Liquidating Debtors or the Revested Assets.

(c) The Plan Administrator shall distribute such tax-related notices to the applicable Holders of Allowed Claims as the Plan Administrator determines are necessary or desirable.

**5.3.5 Preservation of All Preserved Claims.** The Plan Administrator shall have the exclusive right, on behalf of the Estates, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all Preserved Claims without any further order of the Bankruptcy Court, except as otherwise provided herein. From and after the Effective Date, the Plan Administrator, in accordance with Bankruptcy Code section 1123(b)(3), shall serve as a representative of the Estates with respect to any and all Preserved Claims and shall retain and possess the right to commence, pursue, settle, compromise, or abandon, as appropriate, any and all Preserved Claims in any court or other tribunal.

**5.3.6 Removal of the Plan Administrator.** The Plan Administrator may be removed for cause, as determined by an order of the Bankruptcy Court pursuant to a regularly-noticed motion by a party in interest in the Chapter 11 Cases.

**5.3.7 Resignation of the Plan Administrator.** The Plan Administrator may resign by giving not less than thirty (30) calendar days’ prior notice thereof in a notice Filed in the Chapter 11 Cases.

**5.3.8 Successor Plan Administrator.** In the event the Plan Administrator is removed or resigns, or if the Plan Administrator otherwise vacates the position, a successor Plan Administrator shall be nominated by the Prepetition Agent, with the appointment of such nominee as successor Plan Administrator effective upon filing a notice with the Bankruptcy Court. Any successor Plan Administrator appointed hereunder shall execute an instrument accepting such appointment and shall deliver such acceptance to the Bankruptcy Court. Thereupon, such successor Plan Administrator shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of the predecessor Plan Administrator with like effect as if originally named herein; *provided, however*, that a removed or resigning Plan Administrator shall, nevertheless, when requested in writing by the successor Plan Administrator, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Plan Administrator all the estates, properties, rights, powers, trusts, and duties of such removed or resigning Plan Administrator.

**5.3.9 Termination of the Plan Administrator.** The Plan Administrator’s role as Plan Administrator shall be terminated on the Wind Down End Date.

## 5.4 GUC Trust.

**5.4.1 Creation and Governance of the GUC Trust.** On the Effective Date, the Debtors and the GUC Trustee shall execute the GUC Trust Agreement and shall take all steps necessary to establish the GUC Trust in accordance with the Plan and the beneficial interests therein, which shall be for the benefit of the GUC Trust Beneficiaries. Additionally, on the Effective Date the Debtors shall irrevocably transfer and shall be deemed to have irrevocably transferred to the GUC Trust all rights, title, and interest in and to all of the GUC Trust Assets, and in accordance with Bankruptcy Code section 1141, the GUC Trust Assets shall automatically vest in the GUC Trust free and clear of all Claims, Liens, encumbrances, or interests subject only to the GUC Trust Interests and the GUC Trust Expenses, as provided for in the GUC Trust Agreement, and such transfer shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The GUC Trustee shall be the exclusive trustee of the GUC Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3), as well as the representative of the Estates appointed pursuant to Bankruptcy Code section 1123(b)(3) regarding all GUC Trust Assets. The GUC Trust shall be governed by the GUC Trust Agreement and administered by the GUC Trustee. The powers, rights, and responsibilities of the GUC Trustee shall be specified in the GUC Trust Agreement. The GUC Trust shall hold and distribute the GUC Trust Assets in accordance with the provisions of the Plan and the GUC Trust Agreement. Other rights and duties of the GUC Trustee and the GUC Trust Beneficiaries shall be as set forth in the GUC Trust Agreement. After the Effective Date, the Liquidating Debtors shall have no interest in the GUC Trust Assets.

**5.4.2 Purpose of the GUC Trust.** The GUC Trust shall be established for the purpose of pursuing or liquidating the GUC Trust Assets, reconciling and objecting to General Unsecured Claims, and making Distributions to the GUC Trust Beneficiaries 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.

### **5.4.3 GUC Trustee and GUC Trust Agreement.**

(a) The GUC Trust Agreement generally will provide for, among other things:

- (i) the payment of the GUC Trust Expenses;
- (ii) the payment of other reasonable expenses of the GUC Trust;
- (iii) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation without Bankruptcy Court approval;
- (iv) the investment of Cash by the GUC Trustee within certain limitations, including those specified in the Plan;
- (v) the orderly liquidation of the GUC Trust Assets;
- (vi) litigation of any GUC Trust Avoidance Actions, which may include the prosecution, settlement, release, waiver, abandonment, or dismissal of any such GUC Trust Avoidance Actions;

(vii) the prosecution and resolution of objections to General Unsecured Claims;  
and

(viii) the abandonment, in any commercially reasonable manner, of any assets that, in the GUC Trustee's reasonable judgment, cannot be sold in a commercially reasonable manner or that the GUC Trustee believes in good faith have inconsequential value to the GUC Trust.

(b) The GUC Trust Expenses shall be payable solely from the GUC Trust Assets in accordance with the Plan and GUC Trust Agreement. The GUC Trustee may, but shall not be obligated to, physically segregate and maintain separate accounts or sub-accounts for GUC Trust Expenses. Reserves may be merely bookkeeping entries or accounting methodologies, which may be revised from time to time, to enable the GUC Trustee to determine reserves and amounts to be paid to Holders of Allowed General Unsecured Claims.

(c) The GUC Trustee, on behalf of the GUC Trust, may employ, without further order of the Bankruptcy Court, professionals (including those previously retained by the Creditors' Committee) to assist in carrying out its duties hereunder and under the GUC Trust Agreement and may compensate and reimburse the reasonable expenses of these professionals without further order of the Bankruptcy Court from the GUC Trust Assets in accordance with the Plan and the GUC Trust Agreement.

(d) The GUC Trust Agreement may include reasonable and customary provisions that allow for indemnification by the GUC Trust in favor of the GUC Trustee. Any such indemnification shall be the sole responsibility of the GUC Trust and payable solely from the GUC Trust Assets.

(e) In furtherance of and consistent with the purpose of the GUC Trust and the Plan, the GUC Trustee, for the benefit of the GUC Trust, shall: (i) hold the GUC Trust Assets for the benefit of the GUC Trust Beneficiaries; (ii) make Distributions to the GUC Trust Beneficiaries as provided herein and in the GUC Trust Agreement; and (iii) have the sole power and authority to prosecute and resolve any GUC Trust Avoidance Actions and objections to General Unsecured Claims, without approval of the Bankruptcy Court. The GUC Trustee shall be responsible for all decisions and duties with respect to the GUC Trust and the GUC Trust Assets, except as otherwise provided in the GUC Trust Agreement. In all circumstances, the GUC Trustee shall act in the best interests of the GUC Trust Beneficiaries.

**5.4.4 Preservation of Privileges and Defenses.** The actions taken by the Debtors, Liquidating Debtors, or Plan Administrator in connection with the Plan shall not be (or be deemed to be) a waiver of any privilege of the Debtors, the Liquidating Debtors, or the Plan Administrator, as applicable, including any attorney-client privilege or work-product privilege attaching to any document or communications (whether written or oral). Notwithstanding any Debtors or Liquidating Debtors providing any privileged information to the GUC Trustee, the GUC Trust, or any party or person associated with the GUC Trust, such privileged information shall be without waiver in recognition of the joint and/or successor interest in prosecuting the GUC Trust Avoidance Actions or objections to Claims, as applicable, and shall remain privileged. Except as provided in Section 11.21.2 of the Plan, the GUC Trustee shall have no right to waive the attorney-client privilege, work-product privilege, or other protection of information received from the Debtors, the Liquidating Debtors, or Plan Administrator, as



applicable. The Debtors, Liquidating Debtors, or Plan Administrator, as applicable, shall retain the right to waive their own privilege.

**5.4.5 Cooperation and Access to Books and Records.** The Liquidating Debtors and Plan Administrator, as applicable, shall use commercially reasonable efforts to cooperate with the GUC Trustee in connection with investigating and prosecuting GUC Trust Avoidance Actions and/or objections to Disputed Claims, including with respect to promptly providing evidence and information as requested by the GUC Trustee (including reasonable access to the Debtors' books and records).

**5.4.6 Compensation and Duties of GUC Trustee.** The salient terms of the GUC Trustee's employment, including the GUC Trustee's duties and compensation shall be set forth in the GUC Trust Agreement. The GUC Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar types of bankruptcy cases.

**5.4.7 Limitation of Liability.** Neither the GUC Trustee, nor its members, designee, agents, advisors, representatives, or professionals shall be liable for the act or omission of any other member, designee, agent, advisor, representative, or professional, nor shall the GUC Trustee be liable for any act or omission taken, or omitted to be taken, in its capacity as GUC Trustee, respectively, other than for specific actions or omissions resulting from its willful misconduct, gross negligence, or fraud. The GUC Trustee shall enjoy all of the rights, powers, immunities, and privileges applicable to a chapter 7 trustee. The GUC Trustee may, in connection with the performance of its functions, in its sole and absolute discretion, consult with its attorneys, accountants, advisors, and agents, and shall not be liable for any act taken, or omitted to be taken, or suggested to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions were in writing. Notwithstanding such authority, the GUC Trustee shall be under no obligation to consult with any such attorneys, accountants, advisors, or agents, and its determination not to do so shall not result in the imposition of liability on the GUC Trustee or its members unless such determination is based on willful misconduct, gross negligence, or fraud. Persons dealing with the GUC Trustee shall look only to the GUC Trust Assets to satisfy any liability incurred by the GUC Trustee to such person in carrying out the terms of the Plan or the GUC Trust Agreement, and the GUC Trustee shall have no personal obligation to satisfy such liability.

**5.4.8 Indemnification.** Subject to Section 5.4.10 of this Plan, the GUC Trust shall indemnify the GUC Trust Indemnified Parties for, and shall hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) incurred without gross negligence or willful misconduct on the part of the GUC Trust Indemnified Parties (which gross negligence or willful misconduct, if any, must be determined by a Final Order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the GUC Trust Indemnified Parties in connection with the acceptance, administration, exercise, and performance of their duties under the Plan or the GUC Trust Agreement, as applicable. An act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute gross negligence or willful misconduct. In addition, the GUC Trust shall, to the fullest extent permitted by law, indemnify and hold harmless the GUC Trust Indemnified Parties, from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including attorneys' fees arising out of or due to their

actions or omissions, or consequences of such actions or omissions, with respect to the GUC Trust or the implementation or administration of the Plan if the GUC Trust Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the GUC Trust. To the extent the GUC Trust indemnifies and holds harmless any GUC Trust Indemnified Parties as provided above, the legal fees and related costs incurred by counsel to the GUC Trustee in monitoring or participating in the defense of such claims giving rise to the right of indemnification shall be paid as GUC Trust Expenses. The costs and expenses incurred in enforcing the right of indemnification in this Section shall be paid by the GUC Trust. This provision shall survive the termination of the GUC Trust Agreement and the resignation, replacement, or removal of the GUC Trustee.

**5.4.9 Insurance.** The GUC Trustee shall be authorized, but not required, to obtain any reasonably necessary insurance coverage, at the GUC Trust's sole expense, for itself and its respective agents, including coverage with respect to the liabilities, duties, and obligations of the GUC Trustee, which insurance coverage may, at the sole option of the GUC Trustee, be extended for a reasonable period after the termination of the GUC Trust Agreement.

**5.4.10 United States Federal Income Tax Treatment of the GUC Trust.** For all United States federal income tax purposes, the parties shall treat the transfer of the GUC Trust Assets to the GUC Trust as: (a) a transfer of the GUC Trust Assets directly to the applicable Holders of Allowed General Unsecured Claims, followed by (b) the transfer by the Holders of such Allowed General Unsecured Claims to the GUC Trust of such GUC Trust Assets in exchange for the GUC Trust Interests; *provided, however*, that the GUC Trust Assets will be subject to any post-Effective-Date obligations incurred by the GUC Trust relating to the pursuit of GUC Trust Assets. Accordingly, the applicable GUC Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the GUC Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

**5.4.11 Tax Reporting.**

(a) The GUC Trustee shall file tax returns for the GUC Trust treating the GUC Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a).

(b) The GUC Trustee shall be responsible for payment, solely from the GUC Trust Assets, of all taxes (if any) imposed on the GUC Trust or its assets.

(c) The GUC Trustee shall distribute such notices to the applicable GUC Trust Beneficiaries as the GUC Trustee determines are necessary or desirable.

**5.4.12 GUC Trust Assets.** The GUC Trustee shall have the exclusive right, on behalf of the GUC Trust, to institute, file, prosecute, enforce, abandon, settle, compromise, release, or withdraw any and all GUC Trust Avoidance Actions without any further order of the Bankruptcy Court, except as otherwise provided in the GUC Trust Agreement. From and after the Effective Date, the GUC Trustee, in accordance with Bankruptcy Code section 1123(b)(3), and on behalf of the GUC Trust, shall serve as a representative of the Estates with respect to any and all GUC Trust Avoidance Actions and shall retain and possess the right to commence, pursue, settle, compromise, release, waive, or abandon, as appropriate, any and all GUC Trust Avoidance Actions in any court or other tribunal.



**5.4.13 GUC Trust Expenses.** From and after the Effective Date, the GUC Trust shall, in the ordinary course of business and without the necessity of any approval by the Bankruptcy Court, pay the reasonable professional fees and expenses incurred by the GUC Trust and any professionals retained by the GUC Trust solely from the GUC Trust Assets.

**5.4.14 Distributions to GUC Trust Beneficiaries.** The GUC Trustee, in its discretion, may make Distributions to the GUC Trust Beneficiaries at any time following the Effective Date or use the GUC Trust Assets or proceeds thereof, provided that such Distributions or use is otherwise permitted under, and not inconsistent with, the terms of the Plan, the GUC Trust Agreement, and applicable law.

**5.4.15 Cash Investments.** The GUC Trustee may invest Cash (including any earnings thereon or proceeds therefrom); *provided, however*, that such investments must be investments that are permitted to be made by a “liquidating trust” within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings or other controlling authorities.

**5.4.16 Pour-Over of Remaining Cash.** Solely in the event that a sale of the Receivables is consummated that results in there being Remaining Cash, such Remaining Cash will be transferred to the GUC Trust for the benefit of the GUC Trust Beneficiaries. Notwithstanding the possibility of there being Remaining Cash, neither the Plan Administrator, nor the Liquidating Debtors, nor any other Person (other than the GUC Trustee) will have any post-Effective-Date duties or responsibilities to, or any fiduciary or similar relationship with, the GUC Trust, the GUC Trustee, or any GUC Trust Beneficiary, and no implied covenants, functions, responsibilities, duties, obligations, or liabilities shall be read into the Plan or otherwise exist against the Plan Administrator, the Liquidating Debtors, or any other Person (other than the GUC Trustee).

**5.4.17 Dissolution of the GUC Trust.** The GUC Trustee and the GUC Trust shall be discharged or dissolved, as the case may be, at such time as: (a) the GUC Trustee determines that the pursuit of additional GUC Trust Avoidance Actions is not likely to yield sufficient additional proceeds to justify further pursuit of such GUC Trust Avoidance Actions, (b) all objections to Disputed General Unsecured Claims are fully resolved, and (c) all Distributions required to be made by the GUC Trustee to the GUC Trust Beneficiaries under the Plan and the GUC Trust Agreement have been made, but in no event shall the GUC Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion made within the six-month period before such fifth anniversary (and, in the event of further extension, by order of the Bankruptcy Court, upon motion made at least six months before the end of the preceding extension), determines that a fixed period extension (not to exceed three years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the GUC Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery on, and liquidation of, the GUC Trust Assets. Upon dissolution of the GUC Trust, any remaining GUC Trust Assets that exceed the amounts required to be paid under the Plan may be transferred by the GUC Trustee to the American Bankruptcy Institute Endowment Fund.

**5.4.18 Control Provisions.** To the extent there is any inconsistency between the Plan as it relates to the GUC Trust and the GUC Trust Agreement, the Plan shall control.

**5.5 Multistate Settlement Agreement.** The Multistate Settlement Agreement is incorporated as part of the Plan. From and after the Effective Date, the Liquidating Debtors and the Plan Administrator will continue to be bound by, and will comply with, the Multistate Settlement Agreement in all respects.

**5.6 Product Warranties and Jewelry Warranties.** Until the earlier of (a) the third calendar anniversary of the Petition Date and (b) the termination of the applicable Product Warranty or Jewelry Warranty in accordance with its terms, Liquidating USAD shall continue to service all Product Warranties and Jewelry Warranties that remain in full force and effect on the Effective Date in accordance with and subject to all terms and conditions of such Product Warranties and Jewelry Warranties. No Product Warranties or Jewelry Warranties will be honored after the third calendar anniversary of the Petition Date.

**5.7 Cancellation of Instruments.** Any agreement, bond, certificate, indenture, note, security, warrant, or other instrument or document evidencing or creating any indebtedness or obligation of the Debtors shall be deemed cancelled on the Effective Date, and all Liens, mortgages, pledges, grants, trusts, and other interests relating thereto shall be automatically cancelled, and all obligations of the Debtors thereunder or in any way related thereto shall be discharged. Notwithstanding the preceding sentence, the Retained Prepetition Lien will not be cancelled or discharged.

## **ARTICLE VI**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **6.1 Assumption of Certain Executory Contracts and Unexpired Leases.**

##### **6.1.1 Assumption of Agreements.**

On the Effective Date, Liquidating USAD shall assume all executory contracts and unexpired leases that are listed on the Schedule of Assumed Agreements.

The Debtors reserve the right to amend the Schedule of Assumed Agreements at any time prior to the Effective Date (i) to delete any executory contract or unexpired lease and provide for its rejection under the Plan or otherwise, or (ii) to add any executory contract or unexpired lease and provide for its assumption under the Plan. The Debtors will provide notice of any amendment to the Schedule of Assumed Agreements to the party or parties to those agreements affected by the amendment.

Unless otherwise specified on the Schedule of Assumed Agreements, each executory contract and unexpired lease listed or to be listed therein shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument, or other document is also listed on the Schedule of Assumed Agreements.

The Confirmation Order will constitute a Bankruptcy Court order approving the assumption, on the Effective Date, of all executory contracts and unexpired leases identified on the Schedule of Assumed Agreements.

**6.1.2 Cure Payments.**

Any amount that must be paid under Bankruptcy Code section 365(b)(1) to cure a default under and compensate the non-debtor party to an executory contract or unexpired lease to be assumed under the Plan is identified as the “Cure Payment” on the Schedule of Assumed Agreements. Unless the parties mutually agree to a different date, such payment shall be made in Cash by the Plan Administrator, within ten (10) Business Days following the later of: (i) the Effective Date and (ii) entry of a Final Order resolving any disputes regarding (A) the amount of any Cure Payment, (B) the ability of Liquidating USAD to provide “adequate assurance of future performance” within the meaning of Bankruptcy Code section 365 with respect to a contract or lease to be assumed, to the extent required, or (C) any other matter pertaining to assumption.

Pending the Bankruptcy Court’s ruling on any such dispute, the executory contract or unexpired lease at issue shall be deemed assumed by Liquidating USAD unless otherwise agreed by the parties or ordered by the Bankruptcy Court.

**6.1.3 Objections to Assumption/Cure Payment Amounts.**

Any Person that is a party to an executory contract or unexpired lease that will be assumed under the Plan and that objects to such assumption (including the proposed Cure Payment) must File with the Bankruptcy Court and serve on parties entitled to notice a written statement and, if applicable, a supporting declaration stating the basis for its objection. This statement and, if applicable, declaration must be Filed and served on or before the deadline established by the Disclosure Statement Order. Any Person that fails to timely File and serve such a statement and, if applicable, a declaration shall be deemed to waive any and all objections to the proposed assumption (including the proposed Cure Payment) of its contract or lease.

In the absence of a timely objection by a Person that is a party to an executory contract or unexpired lease, the Confirmation Order shall constitute a conclusive determination regarding the amount of any cure and compensation due under the applicable executory contract or unexpired lease, as well as a conclusive finding that Liquidating USAD has demonstrated adequate assurance of future performance with respect to such executory contract or unexpired lease, to the extent required.

**6.1.4 Resolution of Claims Relating to Assumed Contracts and Leases.** Payment of the Cure Payment established under the Plan, by the Confirmation Order, or by any other order of the Bankruptcy Court, with respect to an assumed executory contract or unexpired lease, shall be deemed to satisfy, in full, any prepetition or postpetition arrearage or other Claim (including any Claim asserted in a Filed proof of claim or listed on the Schedules) with respect to such contract or lease (irrespective of whether the Cure Payment is less than the amount set forth in such proof of claim or the Schedules). Upon the tendering of the Cure Payment, any such Filed or Scheduled Claim shall be disallowed with prejudice, without further order of the Bankruptcy Court or action by any Person.

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

### **6.2.1 Rejected Agreements.**

On the Effective Date, the applicable Debtors shall reject all executory contracts and unexpired leases that are listed on the Schedule of Rejected Agreements.

The Debtors reserve the right to amend the Schedule of Rejected Agreements at any time prior to the Effective Date (i) to delete any executory contract or unexpired lease and provide for its assumption under the Plan or otherwise, or (ii) to add any executory contract or unexpired lease and provide for its rejection under the Plan. The Debtors will provide notice of any amendment to the Schedule of Rejected Agreements to the party or parties to those agreements affected by the amendment.

Unless otherwise specified on the Schedule of Rejected Agreements, each executory contract and unexpired lease listed or to be listed therein shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument, or other document is also listed on the Schedule of Rejected Agreements.

The Confirmation Order will constitute a Bankruptcy Court order approving the rejection, on the Effective Date, of all executory contracts and unexpired leases identified on the Schedule of Rejected Agreements.

**6.2.2 Rejection Claims Bar Date.** Any Rejection Claim or other Claim for damages arising from the rejection under the Plan of an executory contract or unexpired lease must be Filed and served no later than the Rejection Claims Bar Date. Any such Rejection Claims that are not timely Filed and served will be forever disallowed, barred, and unenforceable, and Persons holding such Claims will not receive and be barred from receiving any Distributions on account of such untimely Claims. If one or more Rejection Claims are timely Filed pursuant to the Plan, the GUC Trustee may object to any Rejection Claim on or prior to the Claim Objection Deadline.

## **ARTICLE VII**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

#### **7.1 Distributions for Allowed Claims.**

(a) Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to Holders of Allowed Claims as of the applicable Distribution Date shall be made on or as soon as practicable after the applicable Distribution Date. Distributions on account of Claims that first become Allowed Claims after the applicable Distribution Date shall be made pursuant to Section 8.4 of the Plan and on the day selected by the Plan Administrator or the GUC Trustee, as applicable.

(b) Upon the selection of a Distribution Date by the Plan Administrator or the GUC Trustee, as applicable, the Plan Administrator or the GUC Trustee, as applicable, shall File a

notice of such Distribution Date with the Bankruptcy Court that provides information regarding the Distribution to be made.

(c) Distributions made as soon as reasonably practicable after the Effective Date or such other date set forth herein shall be deemed to have been made on such date.

**7.2 Interest on Claims.** Except to the extent provided in Bankruptcy Code section 506(b), the Plan, or the Confirmation Order, postpetition interest shall not accrue or be paid on any Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Claim from and after the Petition Date.

**7.3 Distributions by Plan Administrator and GUC Trustee as Disbursing Agents.** The Plan Administrator or GUC Trustee, as applicable, shall serve as the disbursing agent under the Plan with respect to Distributions required to be paid pursuant to the Plan. The Plan Administrator and GUC Trustee shall not be required to give any bond or surety or other security for the performance of their respective duties as disbursing agent.

**7.4 Means of Cash Payment.**

(a) Cash payments under the Plan shall be made, at the option and in the sole discretion of the Plan Administrator or the GUC Trustee, as applicable, by (i) checks drawn on or (ii) wire transfer, electronic funds transfer, or ACH from a domestic bank. Cash payments to foreign creditors may be made, at the option and in the sole discretion of the Plan Administrator or the GUC Trustee, as applicable, by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to the Plan in the form of checks shall be null and void if not cashed within sixty (60) calendar days of the date of the issuance thereof. Requests for reissuance of any check within sixty (60) calendar days of the date of the issuance thereof shall be made directly to the Plan Administrator or the GUC Trustee, as applicable.

(b) All Distributions under the Plan shall be made in U.S. Dollars. For purposes of effectuating Distributions under the Plan, any Claim denominated in a foreign currency shall be converted to U.S. Dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

**7.5 Fractional Distributions.** Notwithstanding anything in the Plan to the contrary, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

**7.6 De Minimis Distributions.** Notwithstanding anything in the Plan to the contrary, the Plan Administrator or the GUC Trustee, as applicable, shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim on any given Distribution Date is less than \$10.00, and such amount shall be distributed to other Creditors on such Distribution Date in accordance with the terms of the Plan. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed on any given Distribution Date is less than \$10.00 shall be forever barred from asserting any Claim with respect to such eliminated Distribution against any Estate Assets.

**7.7 No Distributions With Respect to Certain Claims.** Notwithstanding anything in the Plan to the contrary, no Distributions or other consideration of any kind shall be made on account of any Contingent Claim, Disputed Claim, or Unliquidated Claim unless and until such Claim becomes an Allowed Claim, and then only to the extent that such Claim becomes an Allowed Claim.

**7.8 Delivery of Distributions.** Distributions to Holders of Allowed General Unsecured Claims shall be made (a) at the addresses set forth on the proofs of claim Filed by such Holders, (b) at the addresses reflected in the Schedules if no proof of claim has been Filed, or (c) at the addresses set forth in any written notices of address changes delivered to the Plan Administrator or the GUC Trustee, as applicable. If any Holder's Distribution is returned as undeliverable, no further Distributions to such Holder shall be made unless and until the Plan Administrator or the GUC Trustee, as applicable, is notified of such Holder's then-current address. The responsibility to provide the Plan Administrator or the GUC Trustee, as applicable, with a current address of a Holder of Claims shall always be the responsibility of such Holder. Amounts in respect of undeliverable Distributions made by the Plan Administrator or the GUC Trustee, as applicable, shall be held in trust on behalf of the Holder of the Claim to which they are payable by the Plan Administrator or the GUC Trustee, as applicable, until the earlier of the date that such undeliverable Distributions are claimed by such Holder and sixty (60) calendar days after the date the undeliverable Distributions were made.

**7.9 Application of Distribution Record Date.** At the close of business on the Distribution Record Date, the claims registers for all General Unsecured Claims shall be closed, and there shall be no further changes in the record holders of any General Unsecured Claims. Except as provided herein, the GUC Trustee and each of its Related Parties shall have no obligation to recognize any putative transfer of General Unsecured Claims occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the claims registers as of the close of business on the Distribution Record Date irrespective of the number of Distributions to be made under the Plan to such Persons or the date of such Distributions.

**7.10 Withholding, Payment, and Reporting Requirements Regarding Distributions.** All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment, and reporting requirements. The Plan Administrator and the GUC Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements, including requiring each Holder of a Claim to provide an executed current Form W-9, Form W-8, or similar tax form as a prerequisite to receiving a Distribution. 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 including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed on the Plan Administrator or the GUC Trustee, as applicable, in connection with such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Plan Administrator or the GUC Trustee, as



applicable, for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed in connection with such Distribution.

**7.11 Defenses and Setoffs.** On and after the Effective Date, (i) the Plan Administrator shall have all of the Debtors' and the Estates' rights under Bankruptcy Code section 558 with respect to all SAP Claims and (ii) the GUC Trustee shall have all of the Debtors' and the Estates' rights under Bankruptcy Code section 558 with respect to all General Unsecured Claims. Nothing under the Plan shall affect the rights and defenses of the Debtors, the Estates, the Plan Administrator, or the GUC Trustee in respect of any Claim, including all rights in respect of legal and equitable objections, defenses, setoffs, or recoupment against such Claims. Accordingly, the Plan Administrator or the GUC Trustee, as applicable, may, but shall not be required to, set off against any Claim or any Allowed Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors, the Estates, or the Plan Administrator or the GUC Trustee, as applicable, may have against the Holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Plan Administrator or the GUC Trustee, as applicable, of any such claim or rights that it may have against such Holder.

**7.12 No Distribution in Excess of Allowed Amounts.** Notwithstanding anything in the Plan to the contrary, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim, after giving effect to any recoveries received by such Creditor on its underlying Claim from all other Debtor- and non-debtor sources, but excluding payments on account of interest due and payable from and after the Effective Date pursuant to the Plan, if any.

**7.13 Allocation of Distributions.** All Distributions received under the Plan by Holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States federal income tax purposes and then to accrued interest, if any, with respect to such Claim.

**7.14 Joint Distributions.** The Plan Administrator or the GUC Trustee, as applicable, may, in its sole discretion, make Distributions jointly to any Holder of a Claim and any other Person who has asserted, or whom the Plan Administrator or the GUC Trustee, as applicable, has determined to have, an interest in such Claim.

**7.15 Forfeiture of Distributions.** If the Holder of a Claim fails to cash a check payable to it within the time period set forth in Section 7.4(a), fails to claim an undeliverable Distribution within the time limit set forth in Section 7.8, or fails to complete and return to the Plan Administrator or the GUC Trustee, as applicable, the appropriate Form W-8 or Form W-9 within sixty (60) calendar days after a request for the completion and return of the appropriate form pursuant to Section 7.10, then such Holder shall be deemed to have forfeited its right to any reserved and future Distributions, and the Claims of such Holder shall be waived, discharged, and forever barred without further order of the Bankruptcy Court. Any such forfeited Distributions that would have been paid to the Holder of a Claim that is not a General Unsecured Claim shall be deemed Available Cash for all purposes, notwithstanding any federal or state escheat laws to the contrary. Any such forfeited Distributions that would have been paid to the Holder of a General Unsecured Claim shall be deemed to have reverted back to the GUC Trust

for all purposes, including for Distribution to Holders of other Allowed Claims, notwithstanding any federal or state escheat laws to the contrary.

## **ARTICLE VIII**

### **PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS AND DISTRIBUTIONS WITH RESPECT THERETO**

#### **8.1 Objections to and Resolution of Disputed Claims.**

(a) From and after the Effective Date, the Plan Administrator shall have the exclusive authority to compromise, resolve, and Allow any Disputed SAP Claim without the need to obtain approval from the Bankruptcy Court, and any agreement entered into by the Plan Administrator with respect to the Allowance of any SAP Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

(b) From and after the Effective Date, the GUC Trustee shall have the exclusive authority to compromise, resolve, and Allow any Disputed General Unsecured Claim without the need to obtain approval from the Bankruptcy Court, and any agreement entered into by the GUC Trustee with respect to the Allowance of any General Unsecured Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

**8.2 Claim Objections.** All objections to Claims (other than Professional Fee Claims, which shall be governed by Section 11.2 of the Plan) shall be Filed by the Plan Administrator or the GUC Trustee, as applicable, on or before the Claim Objection Deadline, which date may be extended on presentment of an order to the Bankruptcy Court by the Plan Administrator or the GUC Trustee prior to the expiration of such period and without need for notice or hearing. The Claim Objection Deadline shall be automatically extended as provided by Local Rule 9006-2 upon the Filing of a proposed form of order by the Plan Administrator or the GUC Trustee requesting an extension of the Claim Objection Deadline. If a timely objection has not been Filed to a proof of claim or the Schedules have not been amended with respect to a Claim that was Scheduled by the Debtors but was not Scheduled as contingent, unliquidated, or disputed, then the Claim to which the proof of claim or Scheduled Claim relates will be treated as an Allowed Claim.

**8.3 Estimation of Certain Claims.** The Plan Administrator or the GUC Trustee may, at any time, move for a Bankruptcy Court order estimating any Contingent Claim, Disputed Claim, or Unliquidated Claim pursuant to Bankruptcy Code section 502(c), regardless of whether the Debtors have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction and power to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. The estimated amount of any Claim so determined by the Bankruptcy Court shall constitute the maximum recovery that the Holder thereof may recover after the ultimate liquidation of its Claim, irrespective of the actual amount that is ultimately Allowed. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and are not necessarily exclusive of one another.

**8.4 Distributions Following Allowance.** Once a Contingent Claim, a Disputed Claim, or an Unliquidated Claim becomes an Allowed Claim, in whole or in part, including pursuant to the



Plan, the Plan Administrator or the GUC Trustee, as applicable, shall distribute to the Holder thereof the Distributions, if any, to which such Holder is then entitled under the Plan. Such Distributions, if any, shall be made on the next Distribution Date after the date on which the order or judgment allowing any such Claim becomes a Final Order (or such other date on which the Claim becomes an Allowed Claim, including pursuant to the Plan). Unless otherwise specifically provided in the Plan or allowed by a Final Order of the Bankruptcy Court, no interest shall be paid on Contingent Claims, Disputed Claims, or Unliquidated Claims that later become Allowed Claims.

## **ARTICLE IX**

### **CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

**9.1 Conditions to the Effective Date.** The occurrence of the Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived pursuant to Section 9.2 of the Plan:

- (i) the Bankruptcy Court shall have entered the Confirmation Order;
- (ii) the Confirmation Order shall not be subject to any stay;
- (iii) the amount of the Allowed and unpaid Administrative Claims, Other Secured Claims, Priority Claims, Priority Tax Claims, and Professional Fee Claims (or if not Allowed, then as estimated solely by the Prepetition Agent in its absolute discretion) does not in the aggregate exceed the aggregate amount contemplated to be paid in respect of such Claims by the Budget by \$1.0 million or more;
- (iv) the Multistate Settlement Agreement shall remain in full force and effect;
- (v) all actions and all agreements, instruments or other documents necessary to implement the terms and provisions of the Plan are effected or executed and delivered, as applicable;
- (vi) the Professional Fee Reserve is funded pursuant to Section 11.2 of the Plan; and
- (vii) the GUC Settlement Fund is funded to the GUC Trust.

**9.2 Waiver of Conditions to the Effective Date.** The condition to the Effective Date set forth in clause (iii) of Section 9.1 of the Plan may be waived in writing by the Debtors and the Prepetition Agent at any time without further order.

**9.3 Effect of Non-Occurrence of Conditions to the Effective Date.** If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 9.1 and 9.2 of the Plan, upon notification Filed by the Debtors with the Bankruptcy Court, (i) the Confirmation Order shall be vacated; (ii) no Distributions shall be made; (iii) the Debtors, the Estates, and all Creditors shall be restored to the *status quo* as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred; and (iv) all of the Debtors' and the Estates' obligations with respect to Claims shall remain unchanged and nothing contained in the Plan shall constitute a waiver or release of any Causes of Action by or against

the Debtors, the Estates, or any other Person or prejudice in any manner the rights, claims, or defenses of the Debtors, the Estates, or any other Person.

**9.4 Notice of the Effective Date.** Promptly after the occurrence of the Effective Date, the Plan Administrator or its agents shall mail or cause to be mailed to all Creditors a notice that informs such Creditors of (i) entry of the Confirmation Order and the resulting confirmation of the Plan; (ii) the occurrence of the Effective Date; (iii) the assumption and rejection of executory contracts and unexpired leases pursuant to the Plan, as well as the deadline for the filing of resulting Rejection Claims; (iv) the deadline established under the Plan for the filing of Administrative Claims; and (v) such other matters as the Plan Administrator finds appropriate.

## **ARTICLE X**

### **RETENTION OF JURISDICTION AND POWER**

**10.1 Scope of Retained Jurisdiction and Power.** Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain exclusive jurisdiction and power over all matters arising in, arising under, or related to the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including jurisdiction and power to do the following:

(a) except as otherwise Allowed pursuant to the Plan or in the Confirmation Order, Allow, classify, determine, disallow, establish the priority or secured or unsecured status of, estimate, limit, liquidate, or subordinate any Claim, in whole or in part, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under Bankruptcy Code sections 327, 328, 330, 331, 363, 503(b), 1103, and 1129(a)(4);

(c) hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan and enforce remedies on any default under the Plan;

(e) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Cases, including the Preserved Claims and the GUC Trust Avoidance Actions, and with respect to the Plan;

(f) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created, executed, or contemplated in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;

(i) 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 the implementation, consummation, or enforcement of the Plan or the Confirmation Order;

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

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created, executed, or contemplated in connection with any of the foregoing documents and orders;

(l) enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings associated with the Plan or otherwise entered in connection with the Chapter 11 Cases (whether or not any or all of the Chapter 11 Cases have been closed);

(m) except as otherwise limited herein, recover all Estate Assets, wherever located;

(n) hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;

(o) hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge;

(p) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(q) resolve any cases, controversies, suits, or disputes related to the Plan Administrator, the GUC Trust, or the GUC Trustee; and

(r) enter a final decree closing the Chapter 11 Cases.

**10.2 Non-Exercise of Jurisdiction.** If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in Section 10.1 of the Plan, the provisions of this Article X shall have no effect on and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

**11.1 Administrative Claims.** Subject to the last sentence of this Section 11.1, all requests for payment of an Administrative Claim must be Filed with the Bankruptcy Court no later than the applicable Administrative Claims Bar Date. In the event of an objection to allowance of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. **THE FAILURE TO FILE A MOTION REQUESTING ALLOWANCE OF AN ADMINISTRATIVE CLAIM ON OR BEFORE THE APPLICABLE ADMINISTRATIVE CLAIMS BAR DATE, OR THE FAILURE TO SERVE SUCH MOTION TIMELY AND PROPERLY, SHALL RESULT IN THE ADMINISTRATIVE CLAIM BEING FOREVER BARRED AND DISALLOWED WITHOUT FURTHER ORDER OF THE BANKRUPTCY COURT. IF FOR ANY REASON ANY SUCH ADMINISTRATIVE CLAIM IS INCAPABLE OF BEING FOREVER BARRED AND DISALLOWED, THEN THE HOLDER OF SUCH CLAIM SHALL IN NO EVENT HAVE RECOURSE TO ANY PROPERTY TO BE DISTRIBUTED PURSUANT TO THE PLAN.** Postpetition statutory tax claims shall not be subject to any Administrative Claims Bar Date.

**11.2 Professional Fee Claims.** All final requests for payment of Professional Fee Claims pursuant to Bankruptcy Code sections 327, 328, 330, 331, 363, 503(b), or 1103 must be made by application Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Prepetition Agent, and counsel to the U.S. Trustee no later than forty-five (45) calendar days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Plan Administrator, counsel to the Prepetition Agent, counsel to the Creditors' Committee, counsel to the U.S. Trustee, and the requesting Professional on or before the date that is fifteen (15) calendar days after the date on which the applicable application was served (or such longer period as may be allowed by order of the Bankruptcy Court or by agreement with the requesting Professional). All Professional Fee Claims shall be paid by the Plan Administrator to the extent approved by order of the Bankruptcy Court within five (5) Business Days after entry of such order. On the Effective Date, the Plan Administrator shall establish the Professional Fee Reserve. The Professional Fee Reserve shall vest in the Plan Administrator and shall be maintained by the Plan Administrator in accordance with the Plan. The Plan Administrator shall fully fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtors, the Prepetition Agent, and the Creditors' Committee prior to the Confirmation Date and that approximates the total projected amount of unpaid Professional Fee Claims on the Effective Date. If the Debtors, the Prepetition Agent, and the Creditors' Committee are unable to agree on an amount by which the Professional Fee Reserve is to be funded, then any of those parties may submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required funding. All Professional Fee Claims that have not previously been paid, otherwise satisfied, or withdrawn shall be paid from the Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released to the Plan Administrator to be used for other purposes consistent with the Plan.

**11.3 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. All such fees that arise after the Effective Date shall be paid by the Plan Administrator. The Plan Administrator shall have the obligation to pay quarterly fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 through the entry of the Final Decree for each of the Debtors or the dismissal or conversion of the Chapter 11 Cases. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to 28 U.S.C. § 1930.

**11.4 Post-Effective-Date Reporting.** Beginning the first quarter-end following the Effective Date and continuing on each quarter-end thereafter until the Closing Date, within thirty (30) calendar days after the end of such period, the Plan Administrator and the GUC Trustee shall File quarterly reports and make disclosures of material events with the Bankruptcy Court. Each quarterly report shall contain a cash flow statement which shall show Distributions by Class during the prior quarter, an unaudited balance sheet, the terms of any settlement of an individual Claim in an amount greater than \$100,000, the terms of any litigation settlement where the Cause of Action or the GUC Trust Avoidance Action was greater than \$100,000 or the settlement is for more than \$100,000, the terms of any sale of Estate Assets where the face amount of such property is \$100,000 or greater, and such other information as the Plan Administrator or the GUC Trustee, as applicable, determines is material.

**11.5 Dissolution of Creditors' Committee.** The Creditors' Committee shall be automatically dissolved on the Effective Date and, on the Effective Date, each member of the Creditors' Committee (including each Related Party thereof) and each Professional retained by the Creditors' Committee shall be released and discharged from all rights, duties, responsibilities, and obligations arising from, or related to, the Debtors, their membership on the Creditors' Committee, the Plan, or the Chapter 11 Cases, except with respect to any matters concerning any Professional Fee Claims held or asserted by any Professional retained by the Creditors' Committee.

**11.6 Modifications and Amendments.**

(a) The Debtors may alter, amend, or modify the Plan under Bankruptcy Code section 1127(a) at any time prior to the Confirmation Date. All alterations, amendments, or modifications to the Plan must comply with Bankruptcy Code section 1127. The Debtors shall provide parties in interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or order of the Bankruptcy Court. A Creditor that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified, or clarified, if the proposed alteration, amendment, modification, or clarification does not materially and adversely change the treatment of the Claim of such Creditor.

(b) After the Confirmation Date and prior to substantial consummation (as defined in Bankruptcy Code section 1101(2)) of the Plan, the Debtors, the Liquidating Debtors, or the Plan Administrator, as applicable, may, under Bankruptcy Code section 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement approved with respect to the Plan, or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan. Such proceedings must comply with Bankruptcy Code section 1127. To the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or an order

of the Bankruptcy Court. A Creditor that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified, or clarified, if the proposed alteration, amendment, modification, or clarification does not materially and adversely change the treatment of the Claim of such Creditor.

**11.7 Severability of Plan Provisions.** If, before the Confirmation Date, the Bankruptcy Court holds that any Plan term or provision is invalid, void, or unenforceable, the Bankruptcy Court may alter or interpret that term or provision so that it is valid and enforceable to the maximum extent possible consistent with the original purpose of that term or provision. That term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the Plan's remaining terms and provisions will remain in full force and effect and will in no way be affected, impaired, or invalidated. The Confirmation Order will constitute a judicial determination providing that each Plan term and provision, as it may have been altered or interpreted in accordance with this Section 11.7, is valid and enforceable under its terms.

**11.8 Compromises and Settlements.** From and after the Effective Date, (i) the Plan Administrator may compromise and settle disputes about any SAP Claims, as well as any Preserved Claims, without any further approval by the Bankruptcy Court; and (ii) the GUC Trustee may compromise and settle disputes about any General Unsecured Claims, as well as any GUC Trust Avoidance Actions, without any further approval by the Bankruptcy Court. Until the Effective Date, the Debtors expressly reserve the right to compromise and settle (subject to the approval of the Bankruptcy Court) Claims against them or Causes of Action belonging to the Estates.

**11.9 Binding Effect of Plan.** Upon the Effective Date, Bankruptcy Code section 1141 shall become applicable with respect to the Plan and the Plan shall be binding on all Persons to the fullest extent permitted by Bankruptcy Code section 1141(a). Confirmation of the Plan binds each Holder of a Claim or Equity Interest to all the terms and conditions of the Plan, whether or not such Holder's Claim or Equity Interest is Allowed, whether or not such Holder holds a Claim or Equity Interest that is in a Class that is Impaired under the Plan, and whether or not such Holder has accepted the Plan.

**11.10 Non-Discharge of the Debtors; Injunction.** In accordance with Bankruptcy Code section 1141(d)(3)(A), the Plan does not discharge the Debtors. Bankruptcy Code section 1141(c) nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Equity Interests against the Debtors. As such, no Person holding a Claim or an Equity Interest may receive any payment from, or seek recourse against, any assets that are to be distributed under the Plan other than assets required to be distributed to that Person under the Plan. As of the Effective Date, all Persons are precluded and barred from asserting against any property to be distributed under the Plan any Claims, rights, Causes of Action, liabilities, Equity Interests, or other action or remedy based on any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

**11.11 Releases and Related Matters.**

(a) On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each of the Releasing Parties shall be deemed to have forever



released, waived, and discharged each of the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities whatsoever, whether known or unknown, whether foreseen or unforeseen, whether liquidated or unliquidated, whether fixed or contingent, whether matured or unmatured, existing or hereafter arising, at law, in equity, or otherwise, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the conduct of the Debtors' business, the Chapter 11 Cases, or the Plan, except for acts or omissions that are determined in a Final Order to have constituted actual fraud, gross negligence, or willful misconduct; *provided, however*, that nothing in this Section 11.11 shall release or otherwise affect any Person's rights under the Plan or the Confirmation Order. For the avoidance of doubt, pursuant to the preceding releases, on the Effective Date Parallel will waive and release any and all Claims against each of the Debtors, and therefore Parallel will not receive or participate in any Distribution under the Plan.

(b) Entry of the Confirmation Order shall constitute (i) the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases set forth in this Section 11.11, and (ii) the Bankruptcy Court's findings that such releases are (1) in exchange for good and valuable consideration provided by the Released Parties (including performance of the terms of the Plan), and a good-faith settlement and compromise of the released claims, (2) in the best interests of the Debtors, the Estates, and all Holders of Claims that are Releasing Parties, (3) fair, equitable, and reasonable, (4) given and made after due notice and opportunity for hearing, and (5) a bar to any of the Releasing Parties asserting any released claim against any of the Released Parties.

(c) Each Holder of a Claim in Class 4 shall be a Releasing Party and, as such, provides the releases set forth in this Section 11.11, unless such Holder timely submits a Release Opt-Out indicating such Holder's decision not to participate in the releases set forth in this Section 11.11. For the avoidance of doubt, the election to submit a Release Opt-Out will result in the Claims of the electing Creditor being placed in Class 7, where such Claims will then receive the treatment prescribed for that Class.

**11.12 Exculpation and Limitation of Liability.** On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Person, including to any Holder of a Claim or an Equity Interest, for any prepetition or postpetition act or omission in connection with, relating to, or arising out of the Debtors, the Chapter 11 Cases, the formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, confirmation, or consummation of the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created, executed, or contemplated in connection with the Plan, or the administration of the Plan or the property to be distributed under the Plan; *provided, however*, that nothing in this Section 11.12 shall release or otherwise affect any Person's rights under the Plan or the Confirmation Order; and *provided, further*, that the exculpation provisions of this Section 11.12 shall not apply to acts or omissions constituting actual fraud or willful misconduct by such Exculpated Party as determined by a Final Order. For purposes of the foregoing, it is expressly understood that any act or omission effected with the approval of the Bankruptcy Court conclusively will be deemed not to constitute actual fraud or willful misconduct

unless the approval of the Bankruptcy Court was obtained by fraud or misrepresentation, and in all respects, the Exculpated Parties shall be entitled to rely on the written advice of counsel with respect to their duties and responsibilities under, or in connection with, the Chapter 11 Cases, the Plan, and administration thereof. The Confirmation Order shall serve as a permanent injunction against any Person seeking to enforce any Causes of Action against the Exculpated Parties that are encompassed by the exculpation provided by this Section 11.12 of the Plan.

**11.13 Covenants Not to Sue.** On the Effective Date, each of the Debtors, any Person seeking to exercise the rights of the Estates, including the Creditors' Committee, the Liquidating Debtors, the Plan Administrator, the GUC Trustee, and any other successor to the Debtors or any other estate representative that is or could be appointed or selected pursuant to Bankruptcy Code section 1123(b)(3) or otherwise, the Prepetition Agent, and the Prepetition Lenders shall be deemed to have covenanted not to sue or otherwise pursue any action against any of the Released Parties on account of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities whatsoever, whether known or unknown, whether foreseen or unforeseen, whether liquidated or unliquidated, whether fixed or contingent, whether matured or unmatured, existing or hereafter arising, at law, in equity, or otherwise, that are based in whole or in part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the conduct of the Debtors' business, the Chapter 11 Cases, or the Plan, except for acts or omissions that are determined in a Final Order to have constituted actual fraud, gross negligence, or willful misconduct; *provided, however*, that nothing in this Section 11.13 shall bar pursuit of, or otherwise affect, any Person's rights under the Plan or the Confirmation Order.

**11.14 Term of Injunctions or Stays.** Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays in the Chapter 11 Cases under Bankruptcy Code sections 105 or 362 or otherwise, and extant on the Confirmation Date (excluding any injunctions or stays contained in or arising from the Plan or the Confirmation Order), shall remain in full force and effect through and inclusive of the Effective Date.

**11.15 Revocation, Withdrawal, or Non-Consummation.** The Debtors reserve the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent plans. If the Debtors revoke or withdraw the Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims) and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Equity Interests in, any Debtor, or any Causes of Action by or against any Debtor or any other Person, (ii) prejudice in any manner the rights of any Debtor or any other Person in any further proceedings involving a Debtor, or (iii) constitute an admission of any sort by any Debtor or any other Person.

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



**11.17 Transactions on Business Days.** If the Effective Date or any other date on which a transaction may occur under the Plan shall occur on a day that is not a Business Day, any transactions or other actions contemplated by the Plan to occur on such day shall instead occur on the next succeeding Business Day.

**11.18 Good Faith.** Confirmation of the Plan shall constitute a conclusive determination that: (a) the Plan, and all the transactions and settlements contemplated thereby, have been proposed in good faith and in compliance with all applicable provisions of the Bankruptcy Code and the Bankruptcy Rules; and (b) the solicitation of acceptances or rejections of the Plan has been in good faith and in compliance with all applicable provisions of the Bankruptcy Code, and the Bankruptcy Rules, and, in each case, that the Debtors and all Related Parties have acted in good faith in connection therewith.

**11.19 Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), (a) the laws of the State of Delaware shall govern the construction and implementation of the Plan and (except as may be provided otherwise in any such agreements, documents, or instruments) any agreements, documents, and instruments executed in connection with the Plan and (b) the laws of the state of incorporation of each Debtor shall govern corporate governance matters with respect to such Debtor; in each case without giving effect to the principles of conflicts of law thereof. Any applicable nonbankruptcy law that would prohibit, limit, or otherwise restrict implementation of the Plan (including any laws regarding Liquidating USAD's ability to obtain or renew any license or permit that may be necessary to continue to service Product Warranties or Jewelry Warranties) based on (i) the commencement of the Chapter 11 Cases, (ii) the appointment of the Plan Administrator, (iii) the wind down of USA Discounters or Liquidating USAD, (iv) the liquidation of the Revested Assets, or (v) any other act or action to be done pursuant to or contemplated by the Plan is superseded and rendered inoperative by the Plan and federal bankruptcy law.

**11.20 Notices.** Following the Effective Date, all pleadings and notices Filed in the Chapter 11 Cases shall be served solely on (a) the Plan Administrator and its counsel, (b) the Prepetition Agent and its counsel, (c) the GUC Trustee and its counsel, (d) the U.S. Trustee, (e) any Person whose rights are affected by the applicable pleading or notice, and (f) any Person Filing a specific request for notices and papers on and after the Effective Date.

**11.21 Final Decree.**

**11.21.1 Plan Administrator Generally Controls.** Upon the Plan Administrator's determination that all SAP Claims have been Allowed, disallowed, expunged, or withdrawn, that all Preserved Claims have been either finally resolved or abandoned, and that all Revested Assets have been liquidated, abandoned, or otherwise administered, the Plan Administrator shall move for the entry of the Final Decree.

**11.21.2 Option for GUC Trustee to Extend the Chapter 11 Cases.** If the GUC Trustee is not prepared for the Final Decree to be entered at the date for which the Plan Administrator moves for entry of the Final Decree, then the GUC Trustee may request that the Plan Administrator's motion be denied without prejudice so that the GUC Trustee may complete the administration of the GUC Trust Assets. From and after such request by the GUC Trustee, the GUC Trust shall be solely responsible for payment of any further costs associated with the Chapter 11 Cases (including payment of all fees required by Section 11.3 of the Plan).

Notwithstanding the GUC Trustee's request, the Plan Administrator may move for the Bankruptcy Court to enter an order confirming the occurrence of the Wind Down End Date, relieving the Plan Administrator and the Plan Administrator's professionals and agents of any further duties, discharging and releasing those Persons from all liability related to the Chapter 11 Cases or the Plan, and releasing the Plan Administrator's bond, if any. Upon the occurrence of the Wind-Down End Date, to the extent that the GUC Trustee makes a request under this Section 11.21.2, (a) all of the Debtors' books and records relating to any unresolved GUC Trust Avoidance Action and/or any Disputed Claim shall be transferred to and shall be deemed to be solely the property of the GUC Trust; and (b) the Debtors, Liquidating Debtors, or the Plan Administrator's evidentiary privileges (including the attorney-client privilege) solely in respect of any unresolved GUC Trust Avoidance Action and/or any Disputed Claim shall be transferred to the GUC Trust and shall be deemed to have vested in the GUC Trust on the Effective Date of the Plan. From and after the transfer of such evidentiary privileges to the GUC Trust, the GUC Trustee shall have the right to retain or waive such privileges in its sole discretion.

**11.21.3 Effects of Final Decree.** On entry of the Final Decree, the Plan Administrator, the GUC Trustee, and their respective professionals and agents, in each case to the extent not previously discharged by the Bankruptcy Court, shall be deemed discharged and have no further duties or obligations to any Person.

**11.22 Conflicts with the Plan.** In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, any other order entered in the Chapter 11 Cases, or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence; *provided, however*, that the Confirmation Order shall control and take precedence in the event of any inconsistency between the Confirmation Order, any provision of the Plan, and any of the foregoing documents.

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**ARTICLE XII**

**REQUEST FOR CONFIRMATION AND RECOMMENDATION**


**12.1 Request for Confirmation.** The Debtors request Confirmation of the Plan in accordance with Bankruptcy Code section 1129.

**12.2 Recommendation.** The Debtors believe that confirmation and implementation of the Plan are the best alternative under the circumstances and urge all Impaired Creditors entitled to vote on the Plan to vote in favor of and support Confirmation of the Plan.

Respectfully submitted,

**USA DISCOUNTERS, LTD., ET AL.**

By:

  
Name: JOSEPH J. SCIAMETIA  
Title: CHIEF EXECUTIVE OFFICER

**EXHIBIT B**

**Orderly Liquidation Analysis**