

THIS COMBINED PLAN AND DISCLOSURE STATEMENT HAS NOT BEEN APPROVED FOR SOLICITATION PURPOSES OR OTHERWISE.

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

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	:	
In re:	:	Chapter 11
	:	
OUTER HARBOR TERMINAL, LLC, ¹	:	Case No. 16-10283 (LSS)
	:	
Debtor.	:	
-----	X	

**DEBTOR’S COMBINED CHAPTER 11
PLAN OF LIQUIDATION AND DISCLOSURE STATEMENT**

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Dated: February 13, 2017
Wilmington, Delaware

¹ The last four digits of the Debtor’s federal tax identification number are 2070. The Debtor’s principal place of business is located at 1599 Maritime Street, Oakland, CA 94607.

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NOTICE

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE COMBINED PLAN AND DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTOR'S KNOWLEDGE, INFORMATION AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT ON THE DEBTOR OR HOLDERS OF CLAIMS OR EQUITY INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THE COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF.

HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE COMBINED PLAN AND DISCLOSURE STATEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE COMBINED PLAN AND DISCLOSURE STATEMENT, EACH HOLDER OF A CLAIM OR EQUITY INTEREST THAT IS ENTITLED TO VOTE SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THE COMBINED PLAN AND DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN.

I. INTRODUCTION

The Debtor hereby proposes the Debtor's Combined Plan and Disclosure Statement pursuant to sections 1125 and 1129 of the Bankruptcy Code. The Combined Plan and Disclosure Statement constitutes a liquidating chapter 11 plan for the Debtor and provides for the Distribution of the Debtor's assets already liquidated or to be liquidated over time to the Holders of Allowed Claims in accordance with the terms of the Combined Plan and Disclosure Statement and the priority of claims provisions of the Bankruptcy Code. Except as otherwise provided by Order of the Bankruptcy Court, Distributions will occur on the Effective Date or as soon thereafter as is practicable and at various intervals thereafter.

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Section XVI. D of the Combined Plan and Disclosure Statement, the Debtor expressly reserves the right to alter, amend or modify the Combined Plan and Disclosure Statement, including the Plan Supplement, one or more times, before substantial consummation thereof, including as disclosed more fully in Section XVI. D of the Combined Plan and Disclosure Statement.

II. DEFINITIONS AND CONSTRUCTION OF TERMS

A. Definitions

As used herein, the following terms have the respective meanings specified below, unless the context otherwise requires:

1. **"Administrative Expense Bar Date"** means the Business Day that is thirty (30) days after the Effective Date.
2. **"Administrative Expense Claim"** means any right to payment constituting a cost or expense of administration of the Chapter 11 Case under sections 503(b) and 507(a)(2) of the Bankruptcy Code, including, without limitation, (a) any actual and necessary costs and expenses

of preserving the Estate, (b) all compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code, (c) any fees or charges assessed against the Estate under section 1930 of Title 28 of the United States Code, and (d) all Claims arising under section 503(b)(9) of the Bankruptcy Code.

3. **“Affiliate”** has the meaning set forth in section 101(2) of the Bankruptcy Code.

4. **“Affiliate Claim”** means a Claim against the Debtor held by an Affiliate of a Debtor, whether arising out of the Shared Services Arrangements or otherwise.

5. **“Allowed”** means, with respect to Claims: (a) any Claim, proof of which was timely Filed (or for which Claim, under the Combined Plan and Disclosure Statement, the Bankruptcy Code, or a Final Order of the Bankruptcy Court, a proof of claim is not or shall not be required to be Filed); (b) any Claim which has been or hereafter is listed by the Debtor in the Schedules as liquidated in amount and not disputed or contingent and for which no proof of claim has been Filed; or (c) any Claim Allowed pursuant to the Combined Plan and Disclosure Statement or a Final Order of the Bankruptcy Court; provided that any Claim described in clauses (a) and (b) shall be considered Allowed only if and to the extent that with respect to such Claim, no objection to the allowance thereof has been interposed within the applicable period fixed by the Combined Plan and Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or such objection is interposed and the Claim is subsequently Allowed by a Final Order; provided, further, that Claims allowed solely for purposes of voting on the Combined Plan and Disclosure Statement pursuant to an Order of the Bankruptcy Court shall not be considered “Allowed” Claims hereunder.

6. **“Assumption and Assignment Procedures”** means the process for the assumption and assignment of Executory Contracts and unexpired leases set forth in the Assumption and Assignment Procedures Order.

7. **“Assumption and Assignment Procedures Order”** means the *Order Approving Debtor’s Motion for an Order (I) Authorizing (A) Sale and Public Auctions of Certain Equipment and Miscellaneous Property Free and Clear of All Liens, Claims, Encumbrances and Interests, and (B) Entry into Auction Contract with Ritchie Brothers Auctioneers (America) Inc., (II) Approving Procedures for the Assumption and Assignment of Unexpired Leases of Personal Property and Executory Contracts, and (III) Granting Certain Related Relief* [Docket No. 172].

8. **“Avoidance Actions”** means any and all rights, suits, actions, and/or Causes of Action to recover or avoid transfers or Liens under chapter 5 of the Bankruptcy Code or otherwise, including, but not limited to, Bankruptcy Code sections 506(d), 522, 541, 542, 543, 544, 545, 547, 548, 549, 550, or 553, or otherwise under the Bankruptcy Code or under similar or related state or federal statutes and common law, including, without limitation, all preference, fraudulent conveyance, fraudulent transfer, and/or other similar avoidance claims, rights, and Causes of Action, whether or not litigation has been commenced as of the Effective Date to prosecute such Avoidance Actions.

9. **“Ballot”** means the ballot on which each Holder of a Claim or Equity Interest entitled to vote on the acceptance or rejection of the Combined Plan and Disclosure Statement casts such vote.

10. **“Balloting Agent”** means Prime Clerk, in its capacity as the Bankruptcy Court-approved solicitation, claims and noticing agent.

11. “**Bankruptcy Code**” means title 11 of the United States Code, as amended from time to time.

12. “**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware.

13. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, as amended from time to time.

14. “**Bar Date Order**” means the *Order (I) Establishing Bar Dates for Filing Claims and (II) Approving Form and Manner of Notice Thereof* [Docket No. 134], entered by the Bankruptcy Court on March 1, 2016.

15. “**Bar Dates**” means those dates and times defined as the Bar Dates in Section III. B.9 of the Combined Plan and Disclosure Statement.

16. “**Books and Records**” shall mean the Debtor’s books and records.

17. “**Business Day**” means any day other than a Saturday, Sunday or any other day on which commercial banks in New York, New York are required or authorized to close by law or executive order.

18. “**Cash**” means legal tender of the United States of America and equivalents thereof.

19. “**Causes of Action**” means the Avoidance Actions and all other claims, actions, causes of action, choses in action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, third-party claims, counterclaims, and crossclaims of the Debtor and/or the Estate against any Entity, based in law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or

unasserted, and any and all commercial tort claims against any party, including the Debtor's current and former directors and officers; and subject, however, to any releases provided in the Combined Plan and Disclosure Statement, the Confirmation Order or any other Final Order of the Bankruptcy Court.

20. **"Chapter 11 Case"** means the case under chapter 11 of the Bankruptcy Code commenced by the Debtor, styled as Outer Harbor Terminal, LLC, under Case No. 16-10283 (LSS), currently pending in the Bankruptcy Court.

21. **"Citibank Letter of Credit"** means that certain Letter of Credit, Reference No. 63653182 issued by Citibank, N.A. in favor of the Port.

22. **"City Tax Claim"** means proof of Claim number 80 on the claims register in this Chapter 11 Case.

23. **"Claim"** has the meaning set forth in section 101(5) of the Bankruptcy Code.

24. **"Claims Objection Deadline"** means the first Business Day that is one hundred and eighty (180) days after the Effective Date or such later date as may be approved by Order of the Bankruptcy Court upon motion of the Post-Effective Date Debtor.

25. **"Class"** means any group of substantially similar Claims or Equity Interests classified by the Combined Plan and Disclosure Statement pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

26. **"Clerk"** means the clerk of the Bankruptcy Court.

27. **"Combined Plan and Disclosure Statement"** means this combined chapter 11 plan of liquidation and disclosure statement, including, without limitation, all exhibits, supplements, addenda, appendices and schedules hereto, either in their present form or as the same may be altered, amended or modified from time to time through the Confirmation Date.

28. “**Committee**” means the official committee of unsecured creditors formed by the UST to serve in the Chapter 11 Case.

29. “**Concession Agreement**” means that certain Port of Oakland Concession and Lease Agreement Berths 20-24, dated as of November 30, 2009, by and between the Port and the Debtor.

30. “**Confirmation Date**” means the date on which the Confirmation Order is entered on the Docket.

31. “**Confirmation Hearing**” means the hearing held by the Bankruptcy Court to consider confirmation of the Combined Plan and Disclosure Statement pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

32. “**Confirmation Notice**” means the notice of the Confirmation Hearing on the Combined Plan and Disclosure Statement, which shall contain instructions for obtaining a copy of the Combined Plan and Disclosure Statement free of charge.

33. “**Confirmation Objection Deadline**” means the date established by the Bankruptcy Court for the filing of any objections or responses to confirmation of the Combined Plan and Disclosure Statement.

34. “**Confirmation Order**” means the Order of the Bankruptcy Court confirming the Combined Plan and Disclosure Statement pursuant to section 1129 of the Bankruptcy Code.

35. “**County**” means the Alameda County Tax Collector.

36. “**County Settlement Motion**” means the *Debtor’s Motion for an Order Approving Settlement Agreement with Alameda County Tax Collector* [Docket No. 525].

37. “**County Tax Claims**” means Proofs of Claim Nos. 72, 73, 74, 75 & 76 filed by Alameda County.

38. “**Crane Lease**” means the Crane Lease, dated as of December 31, 2009, between the Port and the Debtor.

39. “**Creditor**” means any Person that is the Holder of a Claim against the Debtor.

40. “**Debtor**” means Outer Harbor Terminal, LLC.

41. “**DIP Claim**” means any claim existing under the DIP Facility.

42. “**DIP Facility**” means the postpetition debtor in possession credit facility provided to the Debtor by the Lenders.

43. “**DIP Motion**” means the *Debtor’s Motion for Entry of Interim and Final Orders: (I) Authorizing Debtor to (A) Obtain Post-Petition Financing on a Super-Priority and Senior Secured Basis, (B) Permitting Use of Cash Collateral, (C) Providing Adequate Protection, and (D) Granting Related Relief; (II) Modifying the Automatic Stay; and (III) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* [Docket No. 12].

44. “**Disbursing Agent**” means Prime Clerk or the Post-Effective Date Debtor.

45. “**Disclosure Statement Order**” means the Order [Docket No •] entered by the Bankruptcy Court on [March •, 2017] that approved, on an interim basis, the Combined Plan and Disclosure Statement as containing “adequate information” within the meaning of section 1125(a) of the Bankruptcy Code and authorized the Debtor to solicit acceptances of the Combined Plan and Disclosure Statement.

46. “**Disputed**” means any Claim that is listed on the Schedules as disputed, contingent or unliquidated, or which is objected to in whole or in part prior to the Claim Objection Deadline and that has not been resolved by settlement or Final Order.

47. “**Dissolution Date**” means the date upon which the Bankruptcy Court enters a final decree in the Chapter 11 Case.

48. “**Distribution**” means any distribution to the Holders of Allowed Claims.
49. “**Distribution Record Date**” means the date on which the Disclosure Statement Order is entered.
50. “**Docket**” means the docket in the Chapter 11 Case maintained by the Clerk.
51. “**Effective Date**” means the date on which the conditions specified in Section XIV. B of the Combined Plan and Disclosure Statement have been satisfied or waived.
52. “**Entity**” means an entity as defined in section 101(15) of the Bankruptcy Code.
53. “**Equity Interests**” means all equity interests in the Debtor including, but not limited to, all issued, unissued, certificated or uncertificated, authorized or outstanding membership interests or limited liability interests in the Debtor, together with any warrants, options or contract rights to purchase or acquire such interests at any time.
54. “**Estate**” means the estate of the Debtor created upon the commencement of the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.
55. “**Executive Committee**” means the executive committee consisting of designees appointed by each of the Members pursuant to the Operating Agreement of Ports America Outer Harbor Terminal, LLC, dated as of February 27, 2009, made by and between HHH Oakland and Terminal Investment, as such committee is constituted from time to time.
56. “**Executory Contract**” means any executory contract or unexpired lease as of the Petition Date between the Debtor and any other Person or Persons, specifically excluding contracts and agreements entered into pursuant to the Combined Plan and Disclosure Statement.
57. “**Fee Claim**” means a Claim under sections 330(a), 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional or other Entity for services rendered or expenses incurred in the Chapter 11 Case.

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

59. **“Final Order”** means an Order of the Bankruptcy Court or a court of competent jurisdiction to hear appeals from the Bankruptcy Court, that has not been reversed, stayed, modified or amended and as to which the time to appeal, to petition for certiorari, or to move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending; provided, however, that the possibility that a motion under Rule 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be Filed with respect to such Order shall not cause such Order not to be a Final Order.

60. **“First Day Declaration”** means the *Declaration of Heather Stack, Chief Financial Officer, in Support of Chapter 11 Petition and First Day Pleadings of Outer Harbor Terminal, LLC, Debtor and Debtor in Possession* [Docket No. 13].

61. **“First Day Motions”** means those motions and applications seeking certain “first day” relief Filed on the Petition Date or the following date and considered by the Bankruptcy Court on February 3, 2016.

62. **“General Bar Date”** means April 7, 2016 at 5:00 p.m. (ET), as stated in the *Notice of Deadlines for Filing Proofs of Claim, Including Claims Under Section 503(B)(9) of the Bankruptcy Code, Against the Debtor* [Docket No. 149], Filed March 7, 2016.

63. **“General Unsecured Claim”** means any Claim against the Debtor that arose or is deemed by the Bankruptcy Code or Bankruptcy Court, as the case may be, to have arisen before the Petition Date and that is not: (i) an Administrative Expense Claim, (ii) a Priority Tax Claim,

(iii) any other Secured Claim, (iv) a Priority Non-Tax Claim, (v) the Port Claim; (vi) an Affiliate Claim.

64. **“Governmental Unit Bar Date”** means August 1, 2016 at 5:00 p.m. (ET), which is the deadline for Governmental Units to File proofs of claim on account of pre-petition Claims against the Debtor, as set forth in the Bar Date Order.

65. **“Governmental Unit”** has the meaning set forth in section 101(27) of the Bankruptcy Code.

66. **“HHH Oakland”** means HHH Oakland, Inc., an indirect subsidiary of Ports America Group, Inc.

67. **“Holder”** means the beneficial holder of any Claim or Equity Interest.

68. **“HYG”** means HYG Financial Services, Inc. f/k/a NMHG Financial Services, Inc.

69. **“IAM”** means, collectively, the International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 190 and Local Lodge 1546.

70. **“Impaired”** means “impaired” as the term is used in sections 1123(a)(4) and 1124 of the Bankruptcy Code.

71. **“Insurance Policies”** means all insurance policies of the Debtor.

72. **“Interconnection Agreement”** means the Generating Facility Interconnection Agreement, dated on or about January 27, 2014, by and between the Port and the Debtor.

73. **“ITS”** means International Transportation Services, Inc.

74. **“K-Line”** means Kawasaki Kisen Kaisha, Ltd.

75. **“Lender”** means HHH Oakland and Terminal Investment, in their capacities as lenders in the DIP Facility.

76. **“Lien”** means any mortgage, pledge, deed of trust, assessment, security interest, lease, lien, hypothecation, adverse claim, levy, charge or other encumbrance of any kind, including any “lien” as defined in section 101(37) of the Bankruptcy Code, or a conditional sale contract, title retention contract or other contract to give any of the foregoing.

77. **“Member”** means each of HHH Oakland and Terminal Investment, in their capacities as members of the Debtor. The Members will continue to govern the Post-Effective Date Debtor through the date on which the Post-Effective Date Debtor is dissolved in accordance with Delaware state law and their equity interests in the Post-Effective Date Debtor are cancelled.

78. **“NLRB”** means the National Labor Relations Board.

79. **“Order”** means an order or judgment of the Bankruptcy Court as entered on the Docket.

80. **“Ordinary Course Professionals Order”** means the *Order Authorizing the Employment and Compensation of Professionals Utilized in the Ordinary Course of Business, Effective Nunc Pro Tunc to the Petition Date* [Docket No. 124], entered by the Bankruptcy Court on February 29, 2016.

81. **“Other Secured Claims”** means Secured Claims excluding the DIP Claims.

82. **“Pasha”** means Pasha Hawaii Holdings LLC.

83. **“Pasha Marine Terminal Services Agreement”** means the Marine Terminal Services Agreement, dated as of December 23, 2009, between the Debtor and Pasha Hawaii Holdings LLC (as assignee of Horizon Lines, LLC).

84. **“Person”** means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, an estate, a trust, an unincorporated association or organization, a Governmental Unit or any agency or subdivision thereof or any other Entity.

85. **“Petition Date”** means February 1, 2016.

86. **“Plan Administrator”** means the Person appointed pursuant to Article IX. of the Combined Plan and Disclosure Statement to be the sole officer and/or responsible Person for the Post-Effective Date Debtor and to carry out the duties and responsibilities set forth herein on behalf of the Estate and the Post-Effective Date Debtor. The Plan Administrator will report to the Members, who will continue to govern the Post-Effective Date Debtor with respect to dissolution.

87. **“Plan Administrator Expenses”** has the meaning ascribed to it in Section IX. C of the Combined Plan and Disclosure Statement.

88. **“Plan Documents”** means the Combined Plan and Disclosure Statement, the Plan Supplement and all of the exhibits and schedules attached to the foregoing.

89. **“Plan Supplement”** means the appendix of schedules and exhibits to be Filed with the Bankruptcy Court at least five (5) Business Days prior to the Voting Deadline, as may be modified and/or supplemented.

90. **“Port”** means the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners.

91. **“Port Agreements”** means, collectively, the Concession Agreement, the TBCT Lease, the Crane Lease, and the Interconnection Agreement.

92. **“Port Claim”** means the Claim held by the Port pursuant to the Port Settlement Agreement.

93. “**Port Settlement**” means the settlement between the Debtor and the Port, as memorialized pursuant to the Port Settlement Agreement and approved by the Bankruptcy Court pursuant to the Port Settlement Order.

94. “**Port Settlement Agreement**” means the Settlement Agreement, dated as of February 20, 2016, made by and among the Port, the Debtor, HHH Oakland and Terminal Investment.

95. “**Port Settlement Order**” means the *Order Approving (I) Settlement Agreement with the Port of Oakland, (II) Rejection of Agreements with the Port of Oakland and (III) Abandonment of Surplus Assets* [Docket No. 173], entered by the Bankruptcy Court on March 16, 2016.

96. “**Post-Effective Date Debtor**” means the Debtor from and after the Effective Date.

97. “**Prime Clerk**” means Prime Clerk LLC.

98. “**Priority Non-Tax Claim**” means a Claim that is accorded priority in right of payment under section 507 of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Expense Claim.

99. “**Priority Tax Claim**” means a Claim that is entitled to priority under section 507(a)(8) of the Bankruptcy Code.

100. “**Pro Rata**” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class.

101. “**Professional**” means any professional Person employed in the Chapter 11 Case pursuant to section 327, 363 or 1103 of the Bankruptcy Code or otherwise pursuant to an Order of the Bankruptcy Court, whether by the Debtor or the Committee.

102. “**Rejection Bar Date**” means the date by which the counterparty to any Executory Contract rejected by the Debtor must File or must have Filed a Claim for damages arising out of such rejection, as such date is determined pursuant to the Rejection Procedures.

103. “**Rejection Procedures**” means the process for the rejection of Executory Contracts and unexpired leases set forth in the Rejection Procedures Order.

104. “**Rejection Procedures Order**” means the *Order Establishing Procedures for the Rejection of Executory Contracts and Unexpired Leases of Personal Property* [Docket No. 113], entered by the Bankruptcy Court on February 29, 2016.

105. “**Related Persons**” means, with respect to any Person, such Person’s subsidiaries and Affiliates (including, but not limited to, direct or indirect parent entities), directors, officers, employees, managers, shareholders, Members, managing members, executive committee members, advisers, partners, representatives, agents, attorneys, insurers, accountants, heirs, executors, administrators, conservators, predecessors and successors and assigns.

106. “**Released Parties**” means the following Entities: (a) the Debtor; (b) the Estate; (c) the Lenders; (d) the members of the Executive Committee; (e) the Members; (f) each Holder of an Affiliate Claim; (g) the Committee and its members; and (h) each of their respective Related Persons.

107. “**Releasing Parties**” means the following Entities: (a) the Debtor; [(b) the Lenders]; (c) those Holders of General Unsecured Claims that do not affirmatively opt out of the Third Party Release as provided on their respective Ballots; (d) the Committee and its members, and (e) each of the respective Related Persons.

108. **“Schedules”** means the schedules of assets and liabilities and the statement of financial affairs Filed by the Debtor on March 4, 2016 [Docket Nos. 146 and 147] and any and all amendments and modifications thereto.

109. **“Secured Claim”** means a Claim (i) that is secured by a Lien on property in which the Estate has an interest, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law, or a Claim that is subject to a valid right of the Creditor of setoff against amounts owed to the Debtor; (ii) to the extent of the value of the Holder’s interest in the Estate’s interest in such property or to the extent of the amount subject to a valid right of setoff, as applicable; and (iii) the amount of which (A) is undisputed by the Debtor or (B) if disputed by the Debtor, such dispute is settled by written agreement between the Debtor or the Plan Administrator and the Holder of such Claim or determined, resolved, or adjudicated by Final Order.

110. **“Shared Services Arrangements”** means the following services provided to the Debtor by certain Affiliates: (i) vessel planning services, including managing the scheduling of vessels entering and leaving the Port and working with shippers to determine the complex sequencing of container loading and unloading to maximize efficiency and minimize cost, (ii) information technology services, including internet services, security services, infrastructure, financial applications, and terminal operating system services; (iii) financial and accounting services, including transaction processing including billing and collections, procurements, and audit functions, and (iv) general administrative services, including various support systems and initiatives.

111. **“Statutory Fees”** means any and all fees payable to the UST pursuant to section 1930 of title 28 of the United States Code and any interest thereupon.

112. “**STS**” means ship-to-shore.
113. “**Taylor Leasing**” means Taylor Leasing Corporation.
114. “**TBCT Lease**” means the Non-Exclusive Preferential Assignment Agreement, dated as of March 2, 2004, by and between the Port and ITS, as assigned to the Debtor pursuant to that certain Assignment and Assignment Agreement, dated as of August 2, 2010, by and between ITS and the Debtor.
115. “**Terex**” means, together, Terex Corporation and Terex Financial.
116. “**Terex Claims**” means Proofs of Claim Nos. 57 and 62.
117. “**Terex Entities**” means Terex Financial, Terex Corporation, Terex Global GmbH, and Noell Crane Systems.
118. “**Terex Financial**” means Terex Financial Services, Inc.
119. “**Terminal**” means the Debtor’s terminal at the Port of Oakland.
120. “**Terminal Investment**” means Terminal Investment Ltd.
121. “**Third Party Release**” has the meaning ascribed to it in Section XII. C of the Combined Plan and Disclosure Statement.
122. “**Unclaimed Distribution Deadline**” means [sixty (60)] days from the date the Disbursing Agent makes a Distribution of Cash or other property under the Combined Plan and Disclosure Statement to a Holder of an Allowed Claim.
123. “**Unclaimed Distribution**” means a Distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.
124. “**Unimpaired**” means not Impaired.
125. “**UST**” means the Office of the United States Trustee for the District of Delaware.

126. **“Voting Deadline”** means that date and time defined as the voting deadline in Section VI. A.9 of the Combined Plan and Disclosure Statement.

B. Interpretation; Application of Definitions and Rules of Construction

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter. Unless otherwise specified, all section, article, schedule or exhibit references in the Combined Plan and Disclosure Statement are to the respective section in, Article of, Schedule to, or Exhibit to the Combined Plan and Disclosure Statement. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the Combined Plan and Disclosure Statement as a whole and not to any particular section, subsection or clause contained in the Combined Plan and Disclosure Statement. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Combined Plan and Disclosure Statement. A term used herein that is not defined herein, but that is used in the Bankruptcy Code, shall have the meaning ascribed to that term in the Bankruptcy Code. The headings in the Combined Plan and Disclosure Statement are for convenience of reference only and shall not limit or otherwise affect the provisions of the Combined Plan and Disclosure Statement.

III. BACKGROUND AND DISCLOSURES

On the Petition Date, the Debtor Filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code initiating this Chapter 11 Case. After the Petition Date, the Debtor has remained in possession of its assets and management of its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

A. Company Background and Events Precipitating the Chapter 11 Filing

The Debtor was founded in 2009 as a single-entity joint venture between HHH Oakland and Terminal Investment, each of which owns fifty percent of the membership interests in the Debtor. The Debtor's only senior level officer is its Chief Financial Officer. The Debtor is governed by the Executive Committee.

1. The Debtor's Operations

The Debtor began operations on January 1, 2010 under a fifty-year concession agreement with the Port that provided the Debtor with access to 166 acres of terminal space (located at berths 20 to 24 of the Port) and included four STS cranes. In October 2010, the Debtor expanded its operations by taking assignment of an adjacent property lease of berths 25 and 26 at the Port pursuant to the TBCT Lease from ITS. The TBCT Lease provided the Debtor with access to an additional 44 acres of terminal space and three additional STS cranes.

From its Terminal at the Port of Oakland, the Debtor provided stevedoring services to 23 shipping lines serving Asia, Europe, Central and South America, and Australia. The Debtor's operations consisted primarily of loading and offloading containers to and from berthed cargo ships, loading containers onto trucks for delivery to their ultimate destination, and providing logistical services to its customers with respect to the foregoing.

The Debtor handled approximately 55 vessel calls each month, discharging and loading primarily containerized cargo. It also handled oversized and heavy lift cargo, including non-containerized cargo such as construction materials and yachts.

2. The Debtor's Losses and Decision to Wind Down Operations

Since its inception, the Debtor operated at a loss and experienced material negative cash flows. The Debtor also became aware of the need to fund certain long-term capital investments that would be necessary for it to remain competitive in its industry and, in particular, at the Port

of Oakland. Accordingly, in 2015, the Debtor began to explore potential financing alternatives that would allow it to fund such capital investments. Those efforts, however, did not prove successful. Moreover, on several occasions prior to 2015, the Debtor approached the Port about a consensual restructuring of or amendments to its existing lease and concession arrangements with the Port in order to help make the Debtor a viable enterprise. While discussions with the Port continued over a period of approximately six months, they did not result in any resolution of the long-term issues facing the Debtor.

Given the absence of any funding source for the necessary capital expenditures and any comprehensive restructuring of the lease agreements with the Port, the Members, after consultation with the Debtor's advisors, voted to terminate the Debtor's operations and pursue a formal wind down of its business.

On January 19, 2016, the Debtor issued a press release publicly announcing that it intended to cease business operations. Thereafter, the Debtor commenced the wind down of its business. The wind down began before the commencement of the Chapter 11 Case, but continued after the Petition Date. It proceeded in three stages. First, the Debtor began the orderly cessation of its loading and offloading operations. Second, the Debtor began moving customers' containers out of its Terminal and liquidating its assets. Third, on April 29, 2016, the Debtor ceased all marine terminal operations and surrendered its leased premises to the Port.

B. Significant Events in the Chapter 11 Case

The Debtor Filed its voluntary petition for relief on February 1, 2016. Since then, a number of key events have occurred in this Chapter 11 Case, including (i) the Bankruptcy Court's entry of orders providing the Debtor with certain "first day" relief; including the provision of postpetition financing to the Debtor; (ii) the Debtor's retention of Professionals and advisors; (iii) the Debtor's entry into a settlement agreement with the Port; (iv) [the approval of a

stipulation resolving the Debtor's dispute with Terex]; (iv) the Debtor's treatment of Executory Contracts and unexpired leases, and the settling of certain contested matters with respect thereto; (v) the settling of the Debtor's disputes with the IAM and certain pension funds; (vi) the auction of the Debtor's equipment; (vii) the settlement of certain large tax claims filed by the City of Oakland and Alameda County; and (viii) the completion of the claims reconciliation process.

1. First Day Relief

In addition to the voluntary petition for relief Filed by the Debtor, on the Petition Date, the Debtor Filed the First Day Motions. A summary of the relief obtained pursuant to the First Day Motions is set forth below:

- **Cash Management Motion.** Pursuant to the *Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to (A) Continue Operating Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Continue Making Electronic Payments and Transfers, (D) Maintain Existing Business Forms, (E) Continue to Use Company Charge Cards and Pay Claims Related Thereto, and (F) Continue Performing Under Existing Shared Services Arrangement with the Debtor's Affiliates and Continue Other Intercompany Transactions, (II) Granting Administrative Expense Priority to Post-Petition Intercompany Obligations to Debtor's Affiliates, (III) Waiving the Requirements of Section 345(b); and (IV) Scheduling a Final Hearing* [Docket No. 5], the Debtor obtained the entry of interim and Final Orders [Docket Nos. 24 and 120] authorizing it to maintain and use its existing cash management system, and granting a waiver of certain bank account and related requirements of the UST.
- **Employee Wages Motion.** Pursuant to the *Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Pay Prepetition Wages, Salaries, and other Compensation, and Employee Benefits, and (B) Continue Existing Employee Benefit Plans and Programs, (II) Authorizing Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Relating to the Foregoing, and (III) Scheduling a Final Hearing* [Docket No. 6], the Debtor obtained the entry of interim and Final Orders [Docket Nos. 23 and 121] authorizing it to pay prepetition wages and other compensation, and granting related relief.
- **Insurance Motion.** Pursuant to the *Debtor's Motion for Entry of Order (I) Authorizing Debtor to (A) Continue Debtor's Insurance Policies and (B) Pay Certain Obligations in Respect Thereof Post Petition; and (II) Authorizing and Requiring Banks and Financial Institutions to Pay All Checks and Electronic Payment Requests Relating to the Foregoing* [Docket No. 7], the Debtor obtained

the entry interim and Final orders [Docket Nos. 22 and 128] authorizing it to continue its Insurance Policies and granting related relief.

- ***Utilities Motion.*** Pursuant to the *Debtor's Motion for Entry of Interim and Final Orders (I) Determining Adequate Assurance of Payment for Future Utility Services; (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services; (III) Establishing Procedures for Determining Adequate Assurance of Payment; and (IV) Scheduling a Final Hearing* [Docket No. 8], the Bankruptcy Court entered interim and Final Orders [Docket Nos. 26 and 125] authorizing and approving the provision of adequate assurance of payment to the Debtor's utility service providers while allowing the Debtor to avoid the threat of imminent termination of its utility services from those utility companies.
- ***Postpetition Financing Motion.*** Pursuant to the DIP Financing Motion, the Bankruptcy Court entered Orders providing the Debtor with access to the DIP Facility, approximately \$3.4 million in postpetition financing on an interim basis [Docket No. 52], and approximately \$6.8 million in postpetition financing on a final basis [Docket No. 135]. As of the date of the Combined Plan and Disclosure Statement, the Debtor has not drawn down any amounts on the DIP Facility.

2. Retention of Professionals and Advisors

The Debtor also Filed motions and applications to retain Professionals and advisors during the Chapter 11 Case, and to establish procedures for making payments to such Professionals and advisors. A description of the relief granted with respect to these motions and applications is provided below.

- ***Applications to Retain Claims and Noticing Agent and Administrative Advisor.*** Pursuant to the *Application of Debtor for Appointment of Prime Clerk LLC as Claims and Noticing Agent* [Docket No. 45] and the *Debtor's Application for an Order Authorizing Employment and Retention of Prime Clerk LLC as Administrative Advisor Nunc Pro Tunc to the Engagement Date* [Docket No. 54], the Bankruptcy Court entered orders [Docket Nos. 61 and 118] authorizing the Debtor to retain Prime Clerk as its claims and noticing agent, and as its administrative advisor.
- ***Applications to Retain Counsel and Co-Counsel to the Debtor.*** Pursuant to the *Application to Employ and Retain Richards, Layton & Finger, P.A. as Co-Counsel to the Debtor Nunc Pro Tunc to the Petition Date* [Docket No. 46] and the *Debtor's Application for Entry of Order Authorizing Retention and Employment of Milbank, Tweed, Hadley & McCloy, LLP as Attorneys for the Debtor Nunc Pro Tunc to Petition Date* [Docket No. 58], the Bankruptcy Court entered orders authorizing the retention of Richards, Layton & Finger, P.A. as co-

counsel to the Debtor [Docket No. 116], and Milbank, Tweed, Hadley & McCloy, LLP as counsel to the Debtor [Docket No. 119].

- ***Special Counsel Application.*** Pursuant to the *Debtor's Application for Entry of an Order Authorizing Employment and Compensation of Gibson, Dunn & Crutcher LLP as Special Counsel Pursuant to 11 U.S.C. §§ 327(e) and 328 Effective as of March 1, 2016* [Docket No. 183], the Bankruptcy Court entered an order [Docket No. 245] authorizing the Debtor to employ Gibson, Dunn & Crutcher LLP as special counsel.
- ***Motion to Establish Interim Compensation Procedures.*** Pursuant to the *Debtor's Motion for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 49], the Bankruptcy Court entered an order [Docket No. 123] establishing the procedures for the compensation and reimbursement of Estate Professionals.
- ***Ordinary Course Professionals Motion.*** Pursuant to the *Debtor's Motion for Entry of an Order Authorizing the Employment and Compensation of Professionals Utilized in the Ordinary Course of Business, Effective Nunc Pro Tunc to the Petition Date* [Docket No. 51], the Bankruptcy Court entered an order [Docket No. 124] establishing procedures for the retention of and payment to certain Professionals utilized by the Debtor in the ordinary course of business.

3. The Port Settlement Agreement

As described above, pursuant to the Concession Agreement and the TBCT Lease, the Debtor leased six berths from the Port in order to operate its business of loading, unloading, and processing cargo. In addition, the Debtor and the Port were parties to the Crane Lease, which provided for the lease of cranes from the Port to the Debtor, and the Interconnection Agreement, which related to the provision of electrical power to ships docking at the Debtor's Terminal and the interconnection of the on-board power generators of such ships to the Port's electricity distribution system. In order to secure certain of the Debtor's obligations under these Port Agreements, affiliates of HHH Oakland caused to be issued the Citibank Letter of Credit in favor of the Port.

The Debtor Filed the DIP Financing Motion on the Petition Date. On February 3, 2016, the Port opposed the DIP Financing Motion, arguing that it did not provide sufficient funding for

the Debtor to make postpetition rent and utility payments to the Port. On February 8, 2016, the Port drew down the full amount of the Citibank Letter of Credit in the amount of \$6,797,962.50. The next day, the Port Filed a motion [Docket No. 55] seeking to compel the payment of rent for February 2016 and March 2016, or in the alternative, to compel the Debtor to immediately assume or reject certain of the Port Agreements. The Port also asserted that it would be entitled to a significant prepetition damages claim arising from the rejection of any of the Port Agreements. In response, the Debtor asserted that it may have certain claims against the Port and certain defenses to the Port's claims, including, but not limited to, application of the damages cap set forth in section 502(b)(6) of the Bankruptcy Code and the right to setoff the Debtor's payment of a \$60 million upfront fee against the Port's asserted prepetition and postpetition claims.

Following months of extensive arms' length negotiations (which had commenced prepetition), the Debtor and the Port entered into the Port Settlement Agreement. The Port Settlement Agreement provided for, among other things, the consensual rejection of certain of the Port Agreements and the payment of various amounts thereunder, the exchange of mutual releases, and the efficient and orderly return of the leased premises to the Port.

The Port Settlement Agreement also specified certain treatment of the Port's prepetition damages claim under the Combined Plan and Disclosure Statement. Specifically, it provided that the Combined Plan and Disclosure Statement may separately classify the Port's prepetition damages claim (or the Port Claim) and provide that, in full and final satisfaction of the Port Claim, the Port shall receive the aggregate amount of one dollar (\$1.00). Moreover, upon the satisfaction of certain conditions precedent, the Port Settlement Agreement provided that the Port shall be deemed to vote to accept the Combined Plan and Disclosure Statement and be deemed to

vote to accept the treatment of its prepetition damages claim as full and final satisfaction of the Port claim. On March 16, 2016, the Bankruptcy Court entered an Order [Docket No. 173] approving the Port Settlement Agreement. On April 29, 2016, the Debtor returned possession of substantially all of the leased premises to the Port. The Debtor submits that each of the Port Settlement Agreement's conditions precedent have been satisfied.

4. The Terex Stipulation

In 2013, the Debtor and Terex entered into a Master Note and Security Agreement providing the Debtor with financing for the purchase of six cranes. In exchange, the Debtor granted Terex a Lien and purchase money security interest in the cranes. On February 17, 2016, Terex Filed a motion [Docket No. 73] seeking adequate protection of its secured interest in the cranes. Shortly thereafter, Terex Filed an objection [Docket No. 91] to the DIP Financing Motion, arguing that the DIP Financing Motion failed to provide for adequate protection of its interest in the cranes, and failed to provide for the payment of taxes and insurance with respect thereto.

On March 1, 2016, the Debtor and Terex entered into a stipulation pursuant to which the Debtor agreed to provide Terex with adequate protection payments and make insurance and property tax payments on the cranes, and pursuant to which Terex agreed to withdraw its objection to the DIP Financing Motion. On May 13, 2016, the Debtor and Terex agreed to a second stipulation allowing Terex to, among other things, repossess the cranes. The Bankruptcy Court entered Orders [Docket Nos. 133 and 278] approving both stipulations.

5. Executory Contracts and Unexpired Leases

On February 29, 2016, the Bankruptcy Court entered the Rejection Procedures Order, establishing the Rejection Procedures and laying out the process for the rejection of Executory Contracts and unexpired leases. On March 16, 2016, the Court entered the Assumption and

Assignment Procedures Order, establishing, among other things, procedures for the assumption and assignment of Executory Contracts and unexpired leases.

In accordance with the Rejection Procedures, the Debtor Filed notices rejecting: (i) a lease of two transtainers and spreaders from Marine Terminals Corporation [Docket No. 145]; (ii) the Pasha Marine Terminal Services Agreement [Docket No. 189]; and (iii) thirteen other Executory Contracts and leases [Docket No. 246]. In accordance with the Assumption and Assignment Procedures, the Debtor Filed a notice assuming and assigning three unexpired leases [Docket No. 223]. Upon receiving these notices, a number of the Debtor's contract counterparties opposed their treatment under the Assumption and Assignment Procedures and the Rejection Procedures. Through months of arms'-length negotiations, the Debtor consensually resolved its disputes with each of these contract counterparties. A description of each such resolution is provided below.

a. The Pasha Settlement

Prior to the Petition Date, the Debtor and Pasha entered into the Pasha Marine Terminal Services Agreement, pursuant to which Pasha agreed to pay the Debtor for certain loading, offloading, transportation and logistical services for its shipping vessels, and also certain "demurrage" charges for the storage of Pasha's containers at the Debtor's premises. As described above, on March 25, 2016, the Debtor served Pasha with a notice rejecting this agreement. Nonetheless, as of May 20, 2016, the Debtor's records indicated that it was owed approximately \$1.98 million from Pasha for services and charges rendered prior to rejection of the Pasha Marine Terminal Services Agreement. The Debtor took efforts to collect these sums, but Pasha disputed the demurrage charges, creating uncertainty as to how much it owed. Rather than expose the Estate to the uncertainty and expense of litigation, the Debtor negotiated a consensual resolution of its claims against Pasha. After several rounds of good faith

negotiations, the Debtor and Pasha entered into a settlement agreement pursuant to which Pasha agreed to pay the Debtor approximately \$1.29 million. On July 21, 2016, the Bankruptcy Court entered an Order [Docket No. 328] approving this settlement. The Debtor received the settlement payment from PASHA on July 28, 2016.

b. The NMHG Stipulation

In 2013, the Debtor and HYG entered into a lease pursuant to which HYG leased the Debtor certain equipment for use in its business operations. Pursuant to the lease agreement, the Debtor granted HYG a security interest in the equipment. On February 19, 2016, HYG Filed a motion [Docket No. 85] seeking adequate protection of its interests under this lease, or in the alternative, relief from the automatic stay. With the Bankruptcy Court's approval [Docket No. 168], the Debtor and HYG entered into a stipulation protecting HYG's interest in the equipment and resolving its motion for adequate protection.

In April 2016, the Debtor served HYG with a notice of assumption and assignment with respect to certain equipment under the lease with HYG [Docket No. 223] and a notice of rejection with respect to certain other equipment under the lease with HYG [Docket No. 246]. Rather than litigate any claim HYG may have against the Estate relating to the rejection of the lease, on May 6, 2016, the Debtor and HYG entered into a stipulation pursuant to which HYG agreed to pick up, remove, and transport certain of its equipment from the Debtor's premises. In exchange, HYG waived any claim it may have against the Estate in connection with its equipment under the rejected portion of the lease. On May 12, 2016, the Bankruptcy Court entered an Order [Docket No. 265] approving this stipulation in its entirety.

c. The Taylor Leasing Stipulation

In 2014, the Debtor and Taylor Leasing entered into two lease agreements pursuant to which Taylor Leasing leased the Debtor certain equipment for use in its business operations.

Pursuant to the Rejection Procedures and the Assumption and Assignment Procedures, the Debtor served Taylor Leasing with notices assuming and assigning its interests under one of the leases [Docket No. 223], and rejecting the other lease [Docket No. 246]. On May 4, 2016, the Debtor and Taylor Leasing entered into a stipulation pursuant to which the Debtor agreed to store certain of the rejected lease equipment for pickup by Taylor Leasing. In exchange, Taylor Leasing agreed to waive any claim against the Debtor or the Estate arising in connection with the rejected lease. The Bankruptcy Court entered an Order [D.I. 264] approving this stipulation in its entirety. Taylor took possession of its equipment from the Debtor.

6. The Union Settlements

In 2013, the IAM Filed unfair labor practice charges with the NLRB alleging that the Debtor violated the National Labor Relations Act. Thereafter, the NLRB Filed a complaint against the Debtor alleging that it violated the Nation Labor Relations Act by failing and refusing to recognize the IAM as the exclusive bargaining representative of certain employees and that the Debtor had engaged in various unfair labor practices, including conferring unlawful assistance and recognition to another union, the International Longshore and Warehouse Union.

In the proceedings before the NLRB, IAM asserted that the Debtor was a successor to another entity, and therefore liable to the IAM for that entity's debts, including \$15 million in unpaid wages and benefits and \$20-40 million in withdrawal liability for the Debtor's withdrawals from the IAM's pension funds. The IAM and certain pension funds Filed proofs of claim against the Estate, including an administrative expense claim totaling approximately \$1.31 million.

Against this backdrop, the Debtor and the IAM engaged in several rounds of extensive, good faith and arms' length negotiations regarding a potential settlement. The parties ultimately reached an agreement in principal and executed a settlement agreement. The Debtor, and certain

other involved companies, also executed a second settlement agreement with the IAM and its pension funds. Together, these settlements provided for the comprehensive resolution of the IAM's and pension funds' claims against the Debtor, including the significant claims asserted against the Estate, and also provided for comprehensive mutual releases among the various parties to the settlement agreements. On September 7, 2016, the Bankruptcy Court entered an Order [Docket No. 372] approving these settlement agreements in all respects. The Debtor paid its share of the settlement payment on December 7, 2016.

7. Resolution of City Tax Claim

As described above, the Debtor was a party to a long-term lease with the Port pursuant to the Concession Agreement. In connection with the Concession Agreement, the Debtor recorded a Memorandum of Lease with the City of Oakland and paid a documentary transfer tax of approximately \$1.7 million, based on a real property value of \$118 million. Three years later, the City of Oakland re-determined the tax for a total assessment of \$14.8 million based on a real property value estimate of \$700 million. In the years preceding the bankruptcy filing, the Debtor and the City of Oakland engaged in vigorous negotiations regarding the correct property value estimate.

After filing its voluntary bankruptcy petition, the Debtor listed the City of Oakland in its Schedules. In April 2016, a tax officer determined that the City of Oakland was entitled to \$7,986,000 of tax, penalties and interest. In June 2016, the City of Oakland filed the City Tax Claim in the amount of \$4,212,426.10.

Rather than bear the expense of further litigating the City Tax Claim, in October 2016, the Debtor and the City of Oakland entered into a settlement agreement pursuant to which: (i) the Debtor agreed to pay the City of Oakland \$850,000 in full satisfaction of the City Tax Claim; and (ii) the parties exchanged comprehensive mutual releases and waivers. On November 7,

2016, the Bankruptcy Court entered an order [Docket No. 430] approving the settlement in its entirety. On November 23, 2016, the Debtor paid the settlement amount to the City of Oakland and consummated the settlement.

8. The Auctions of the Debtor's Major and Miscellaneous Equipment

As described above, the Debtor entered chapter 11 to facilitate the orderly wind down of its business and the cessation of its operations. The Debtor's principal owned assets consisted of larger equipment, such as forklifts, trucks, and trailers; and miscellaneous equipment such as shop tools, spare parts, cargo containers, and information technology equipment. Given the decision to cease operations and the nature of its owned equipment, the Debtor determined that the most cost-effective means of selling the equipment and generating value for the Estate would be through public auctions conducted by Ritchie Bros. Auctioneers (America) Inc., a nationally recognized leader in the auction of industrial equipment.

Accordingly, on March 2, 2016, the Debtor Filed a motion [Docket No. 136] seeking Bankruptcy Court approval to hold two auctions for its equipment, and also seeking to establish the Assumption and Assignment Procedures. Following a hearing, the Bankruptcy Court entered an Order [Docket No. 172] granting this relief. Thereafter, in April and June of 2016, the Debtor conducted auctions for its major and miscellaneous equipment. The net sale proceeds received for the Debtor's major equipment and miscellaneous equipment was \$3,128,607.40.

9. The Claims Process and Bar Date

a. Section 341(a) Meeting of Creditors

On March 9, 2016, the UST held the meeting of Creditors in the Chapter 11 Case pursuant to section 341(a) of the Bankruptcy Code.

b. Schedules and Statements

The Debtor Filed its Schedules with the Bankruptcy Court on March 4, 2016.

c. Bar Dates

Pursuant to the Bar Date Order, the Bankruptcy Court established (i) April 7, 2016 at 5:00 p.m. (ET) as the deadline for Creditors (other than Governmental Units) to File proofs of claim in the Chapter 11 Case, and (ii) August 1, 2016 at 5:00 p.m. (ET) as the deadline for Governmental Units to File proofs of claim in the Chapter 11 Case (collectively, the “**Bar Dates**”). Notice of the Bar Dates was served on all potential Creditors of the Debtor’s Estate on or before March 7, 2016.

d. Claims Reconciliation

In November 2016, the Debtor Filed objections to certain proofs of claim Filed against the Estate, including: (i) certain duplicate, amended and superseded, and late-filed claims [Docket No. 428]; (ii) Terex [Docket No. 427]; (iii) K-Line [Docket No. 429]; (iv) Pacific Crane Maintenance Company, L.P. [Docket Nos. 433 & 435]; (v) Pacific Maritime Association [Docket No. 436]; (vi) the International Longshore and Warehouse Union [Docket No. 437]; and (vii) Alameda County [Docket No. 439]. Thereafter, each of these proofs of claim (other than the objection to the K-Line Claim), and certain others not involving formal objections, were either disallowed by the Bankruptcy Court or settled and withdrawn. The Court has taken the Debtor’s objection to the K-Line proof of claim under advisement.

(i) Alameda County Tax Claim Settlement

On July 20, 2016, the County filed the County Tax Claims in the aggregate amount of \$3,781,966.76, based on its assessed values for the Debtor’s personal and real property for the 2016–17 tax years. In November 2016, the Debtor objected to the County Tax Claims [Docket No. 439], arguing that the County’s assessments were unsubstantiated, predicated on incorrect assumptions, and included property no longer belonging to the Debtor. Accordingly, the Debtor asked the Bankruptcy Court to dramatically reduce the County Tax Claims. The County filed a

response to the Debtor's objection [Docket No. 458], to which the Debtor filed a reply [Docket No. 482].

The Debtor also filed an appeal of these assessments (and certain other issues) with the Alameda County Assessment Appeals Board, which was scheduled to be heard in February 2017.

In early 2017, the Debtor began exploring a settlement with the County in order to spare the Estate the costs and uncertainty of prolonged litigation. These efforts culminated in the Debtor and the County reaching an agreement on the terms of a settlement pursuant to which: (i) the Debtor will pay the County \$656,300.26 in the aggregate to resolve the County Tax Claims and all pending appeals, (ii) the Debtor and the County will exchange mutual releases; and (iii) the County Claims, and associated bankruptcy filings, will be withdrawn. On January 30, 2017, the Debtor filed the County Settlement Motion seeking approval of its settlement with the County. A hearing to consider the County Settlement Motion is scheduled for February 27, 2017, and the deadline to object to the County Settlement Motion is the date hereof. As of the filing of this Combined Plan and Disclosure Statement, the Debtor has not received any responses or objections to the County Settlement Motion.

(ii) The Terex Stipulation

On April 7, 2016, Terex Financial filed the Terex Claims for \$7,292,012.70, the amount allegedly owing from the financing. Certain other Terex Entities also filed proofs of claim totaling \$21,529,63. The Debtor objected to the Terex Claims [Docket No. 427], arguing that they were duplicative and not properly limited to the deficiency amount (the difference between the remaining amounts due under the master note and the value of the cranes).

Rather than incur the expense of litigating the Terex Claims, the Debtor and the Terex Entities have reached an informal agreement resolving Proofs of Claim Nos. 52, 54, 56, 57, and

58, and providing for treatment of certain of those claims under this Combined Plan and Disclosure Statement. The Debtor and the Terex Entities are working to formalize this agreement.

C. Certain Federal Income Tax Consequences

The confirmation and execution of the Combined Plan and Disclosure Statement may have tax consequences to Holders of Claims and Equity Interests. The Debtor does not offer an opinion as to any federal, state, local or other tax consequences to Holders of Claims and Equity Interests as a result of the confirmation of the Combined Plan and Disclosure Statement. All Holders of Claims and Equity Interests are urged to consult their own tax advisors with respect to the federal, state, local and foreign tax consequences of the Combined Plan and Disclosure Statement. The Combined Plan and Disclosure Statement is not intended, and should not be construed, as legal or tax advice to any Creditor, Equity Interest Holder or other party in interest.

D. Alternate Plan

If the Combined Plan and Disclosure Statement is not confirmed, the Debtor or any other party in interest could attempt to formulate a different plan. The additional costs, including, among other amounts, additional Professional fees or asserted substantial contribution claims, all of which would constitute Administrative Expense Claims (subject to allowance), however, may be so significant that one or more parties in interest could request that the Chapter 11 Case be converted to chapter 7. Accordingly, the Debtor believes that the Combined Plan and Disclosure Statement enables Creditors to realize the best return under the circumstances.

E. Best Interests Test and Liquidation Analysis

Section 1129(a)(7) of the Bankruptcy Code requires that each Holder of an Impaired Claim or Equity Interest either (a) accept the Combined Plan and Disclosure Statement or (b) receive or retain under the Combined Plan and Disclosure Statement property of a value, as

of the Effective Date, that is not less than the value such Holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. Because the majority of the Debtor's assets have already been liquidated to Cash, the value of any Distributions if the Debtor's Chapter 11 Case was converted to a case under chapter 7 of the Bankruptcy Code would be less than the value of Distributions under the Combined Plan and Disclosure Statement. This is because conversion of the Chapter 11 Case to a chapter 7 case would require the appointment of a chapter 7 trustee, and in turn, such chapter 7 trustee's likely retention of new Professionals. The "learning curve" that the trustee and new Professionals would be faced with comes with potential additional costs to the Estate and with a delay compared to the time of Distributions under the Combined Plan and Disclosure Statement. Furthermore, a chapter 7 trustee would be entitled to Statutory Fees relating to the Distributions of the already monetized assets. Accordingly, a portion of the Cash currently available for Distribution to Holders of Claims, including unsecured Creditors, would instead be paid to the chapter 7 trustee.

As a result, the Debtor believes that the Estate would have fewer funds to be distributed in a hypothetical chapter 7 liquidation than it would if the Combined Plan and Disclosure Statement is confirmed, and therefore Holders of Claims in all Impaired Classes will recover less than in the hypothetical chapter 7 cases. Accordingly, the Debtor believes that the "best interest" test of Bankruptcy Code section 1129 is satisfied.

A liquidation analysis is attached hereto as Exhibit A.

F. Releases by the Debtor and Third Parties

The release provisions set forth in Sections XII. B and XII. C of the Combined Plan and Disclosure Statement are an integral part of the Combined Plan and Disclosure Statement. Notably, in exchange for the Releases, the Holders of Affiliate Claims, which are Released Parties, have agreed to waive claims (asserted in the amount of \$8,187,100) against the Estate.

G. Certain Risk Factors to be Considered

Holders of Claims and Equity Interests should read and consider carefully the risk factors below, as well as the other information set forth in the Combined Plan and Disclosure Statement, the documents delivered together with the Combined Plan and Disclosure Statement, and the documents referred to or incorporated by reference in the Combined Plan and Disclosure Statement, before voting to accept or reject the Combined Plan and Disclosure Statement. These factors should not be regarded as constituting the only risks present in connection with the Combined Plan and Disclosure Statement and its implementation.

1. Risk Factors that May Affect the Debtor's Ability to Consummate the Combined Plan and Disclosure Statement

a. Debtor May Not Be Able to Secure Confirmation of the Combined Plan and Disclosure Statement

As is described in greater detail in Section VI. A.4 below, section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan. While, as set forth below, the Debtor believes that the Combined Plan and Disclosure Statement complies with or will comply with all such requirements, there can be no guarantee that the Bankruptcy Court will agree.

b. Delays or Non-Occurrence of Confirmation or of the Effective Date

Although the Debtor believes that the Effective Date will occur and may occur quickly after the Confirmation Date, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur. Any delay in confirmation and effectiveness of the Combined Plan and Disclosure Statement could result in, among other things, increased Administrative Expense Claims and Professional Fee Claims

In addition, in order for the Effective Date to occur, the Debtor is required to have sufficient Cash on hand to fully fund the Distributions. While the Debtor believes, based on its

estimates of Claims that must be paid or reserved for, that the Debtor will have sufficient Cash on hand to fully fund the Distributions, there can no guarantee that the Debtor's estimates are correct.

c. **Parties May Object to the Classification of Claims and Equity Interests**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. As is described in greater detail in Section VI. A.5 below, the Debtor believes that the classification of Claims and Equity Interests under the Combined Plan and Disclosure Statement complies with the requirements set forth in the Bankruptcy Code. Nevertheless, there can be no assurance the Bankruptcy Court will reach the same conclusion.

2. **Risk Factors that May Affect Distributions under the Combined Plan and Disclosure Statement**

The estimates of Allowed Claims and recoveries for Holders of Allowed Claims set forth in the Combined Plan and Disclosure Statement are based on various assumptions. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual Allowed amounts of Claims may vary significantly from the estimated Claims contained in the Combined Plan and Disclosure Statement. Moreover, the Debtor cannot determine with any certainty at this time the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the recoveries to Holders of Allowed Claims under the Combined Plan and Disclosure Statement.

In addition, the outcome of the Debtor's pending objection to the Claim filed by K-Line may impact the estimated recoveries to Holders of Allowed Claims. Because of the size of K-Line's asserted claim, if the Court sustains this objection, the recoveries for Holders of Allowed

Claims will be larger than if the Court overrules the Debtor's objection. The Debtor estimates that the difference in the Distribution to Holders of General Unsecured Claims will vary by approximately seven (7) cents on the dollar depending on whether the K-Line Claim is allowed or disallowed.

IV. TREATMENT OF UNCLASSIFIED CLAIMS

A. Administrative Expense Claims

Requests for Administrative Expense Claims must be Filed by no later than the Administrative Expense Bar Date. On the Effective Date or as soon thereafter as is practical, each Holder of an Allowed Administrative Expense Claim shall receive payment in full in Cash of the Allowed amount of such Claim (as determined by settlement or Final Order of the Bankruptcy Court) or such other treatment as may be agreed upon by such Holder of an Allowed Administrative Expense Claim. Notwithstanding anything to the contrary herein, all Administrative Expense Claims based on the fees and expenses of Professionals shall only be paid after Court authorization.

B. Priority Tax Claims

On the Effective Date or as soon thereafter as is practical, each Holder of an Allowed Priority Tax Claim, if any, shall receive payment in full in Cash of the Allowed amount of such Claim (as determined by settlement or Final Order of the Bankruptcy Court), or such other treatment as may be agreed upon by such Holder of an Allowed Priority Tax Claim. Unpaid Allowed Priority Tax Claims as of the Effective Date are projected to be approximately [\$0.00].²

C. Payment of Statutory Fees

All Statutory Fees prior to the Effective Date shall be paid by the Debtor on the Effective Date. After the Effective Date, the Plan Administrator shall pay any and all such fees when due

² This assumes the County Tax Claim settlement has been approved and consummated.

and payable, and shall File with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the UST. The Debtor shall remain obligated to pay quarterly fees to the UST until the earliest of the Debtor's case being closed, dismissed or converted to a case under chapter 7 of the Bankruptcy Code.

V. SUMMARY OF TREATMENT OF CLAIMS AND ESTIMATED RECOVERIES

The following chart provides a summary of treatment of each Class of Claims and Equity Interests (other than Administrative Expense Claims and Priority Tax Claims) and an estimate of the recoveries of each Class.³ The treatment provided in this chart is for informational purposes only and is qualified in its entirety by Article VII. of the Combined Plan and Disclosure Statement.

³ The amounts represent estimated Allowed Claims and do not represent amounts actually asserted by the Creditors in proofs of claim or otherwise. The Debtor has not completed its analysis of Claims in the Chapter 11 Case and objections to such Claims have not been fully litigated. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be more or less than estimated.

Class	Estimated Allowed Claims and Equity Interests	Treatment / Voting Status	Estimated Recovery to Holders of Allowed Claims and Equity Interests⁴
Class 1 - DIP Claims	\$0.00	Unimpaired/ Deemed to Accept	100%
Class 2 - Other Secured Claims	\$0	Unimpaired/ Deemed to Accept	100%
Class 3 - Priority Non-Tax Claims	\$0	Unimpaired/ Deemed to Accept	100%
Class 4 - Port Claim	Unliquidated	Impaired/ Entitled to Vote	\$1.00
Class 5 - General Unsecured Claims	\$7,019,669 - \$12,402,535	Impaired/ Entitled to Vote	9% - 16%
Class 6 - Affiliate Claims	\$8,187,100	Impaired/ Deemed to Reject	0%
Class 7 - Equity Interests	N/A	Impaired/ Deemed to Reject	0%

VI. CONFIRMATION AND VOTING PROCEDURES

A. Confirmation Procedure

1. Disclosure Statement Hearing

On [March •], 2017, the Bankruptcy Court entered the Disclosure Statement Order. The Disclosure Statement Order approved the Combined Plan and Disclosure Statement as providing adequate information pursuant to section 1125 of the Bankruptcy Code and authorized the Debtor to solicit acceptances of the Combined Plan and Disclosure Statement.

⁴ The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims in the Chapter 11 Case. As set forth above in footnote 3, the actual amount of the Allowed Claims may be more or less than estimated. Thus the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are actually Allowed by the Bankruptcy Court.

2. Confirmation Hearing

Pursuant to the Disclosure Statement Order, a hearing before the Honorable Laurie Selber Silverstein has been scheduled for **[April •], 2017 at [•] (ET)**, at the Bankruptcy Court, 824 North Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware 19081 to consider confirmation of the Combined Plan and Disclosure Statement pursuant to section 1129 of the Bankruptcy Code. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by Filing a notice with the Bankruptcy Court.

3. Procedure for Objections

Any objection to confirmation of the Combined Plan and Disclosure Statement must: (i) be in writing, (ii) conform to the Bankruptcy Rules and Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, and (iii) be Filed with the Bankruptcy Court and served so as to be actually received on or before **[April •], 2017 at [•] (ET)**, by (i) counsel for the Debtor, (a) Milbank, Tweed, Hadley, McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, California 90067 (Attention: Gregory A. Bray and Haig M. Maghakian) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn.: Mark D. Collins, Esq.); and (ii) the UST, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn.: Jane M. Leamy, Esq. and Benjamin A. Hackman, Esq.). **Unless an objection is timely Filed and served by the Confirmation Objection Deadline, such objection may not be considered by the Bankruptcy Court at the Confirmation Hearing.**

4. Requirements for Confirmation

The Bankruptcy Court will confirm the Combined Plan and Disclosure Statement only if it meets all the applicable requirements of section 1129 of the Bankruptcy Code. Among the

requirements for confirmation in this Chapter 11 Case is that the Combined Plan and Disclosure Statement be: (i) accepted by all Impaired Classes of Claims and Equity Interests or, if rejected by an Impaired Class, that the Combined Plan and Disclosure Statement “does not discriminate unfairly” against and is “fair and equitable” with respect to such Class; and (ii) feasible. The Bankruptcy Court must also find that:

- a. The Combined Plan and Disclosure Statement has classified Claims and Interests in a permissible manner;
- b. The Combined Plan and Disclosure Statement complies with the technical requirements of chapter 11 of the Bankruptcy Code; and
- c. The Combined Plan and Disclosure Statement has been proposed in good faith.

The Debtor believes that the Combined Plan and Disclosure Statement complies, or will comply, with all such requirements.

5. Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code requires the Combined Plan and Disclosure Statement to place a Claim or Equity Interest in a particular Class only if such Claim or Equity Interest is substantially similar to the other Claims or Equity Interests in such Class. The Combined Plan and Disclosure Statement creates separate Classes to deal respectively with DIP Claims, Other Secured Claims, Priority Non-Tax Claims, the Port Claim, General Unsecured Claims, Affiliate Claims and Equity Interests. The Debtor believes that the Combined Plan and Disclosure Statement’s classifications place substantially similar Claims or Equity Interests in the same Class and thus meet the requirements of section 1122 of the Bankruptcy Code.

Specifically, the Combined Plan and Disclosure Statement provides for the separate classification of the Port Claim. This separate classification is appropriate. As set forth above in

Section III. B.3, the Port Settlement Agreement provided that the Combined Plan and Disclosure Statement may separately classify the Port Claim, and provided that, in full and final satisfaction of such Claim, the Port shall receive the aggregate amount of one dollar (\$1.00). The treatment of the Port Claim is in an amount significantly less than the Port's prepetition rejection damages claim would have been absent the Port Settlement.⁵ The Distribution to the Port on account of the Port Claim will be less than the Port would have recovered pursuant to the Combined Plan and Disclosure Statement if the Port's pre-settlement rejection damages claim were classified as a General Unsecured Claim. Further, separately classifying, and limiting the Port's recovery on such Claim, the Port's potential unsecured claim will not dilute the recovery of the Holders of the General Unsecured Claims pursuant to the Combined Plan and Disclosure Statement. Accordingly, the Combined Plan and Disclosure Statement appropriately provides for the Port Claim to be separately classified.

In addition, the Combined Plan and Disclosure Statement provides for the separate classification of Affiliate Claims. This separate classification is appropriate because the Holders of the Affiliate Claims have agreed to waive their Claims and receive no Distribution on account of their Claims in exchange for releases pursuant to the Combined Plan and Disclosure Statement. Because such Holders have agreed to a treatment that is more Impaired than the treatment they would have received had their Claims been classified with the General Unsecured Claims, this separate classification is appropriate.

⁵ While the Port did not assert its prepetition damages claim in a specific amount, the Port indicated that such claim would be Filed upon the rejection of the Port Agreements. Based on the Debtor's monetary obligations under the Port Agreements, the potential allowable rejection damages claim would have been significantly in excess of the settled treatment of the Port Claim.

6. Impaired Claims or Equity Interests

Pursuant to section 1126 of the Bankruptcy Code, only the Holders of Claims in Classes Impaired by the Combined Plan and Disclosure Statement and receiving a payment or Distribution under the Combined Plan and Disclosure Statement may vote on the Combined Plan and Disclosure Statement. Pursuant to section 1124 of the Bankruptcy Code, a Class of Claims may be Impaired if the Combined Plan and Disclosure Statement alters the legal, equitable or contractual rights of the Holders of such Claims or Interests treated in such Class. The Holders of Claims not Impaired by the Combined Plan and Disclosure Statement are deemed to accept the Combined Plan and Disclosure Statement and do not have the right to vote on the Combined Plan and Disclosure Statement. The Holders of Claims or Interests in any Class which will not receive any payment or Distribution or retain any property pursuant to the Combined Plan and Disclosure Statement are deemed to reject the Combined Plan and Disclosure Statement and do not have the right to vote. Finally, the Holders of Claims or Equity Interests whose Claims or Equity Interests are not classified under the Combined Plan and Disclosure Statement are not entitled to vote on the Combined Plan and Disclosure Statement.

7. Eligibility to Vote on the Combined Plan and Disclosure Statement

Unless otherwise Ordered by the Bankruptcy Court, only Holders of Allowed Claims in Class 4 - Port Claim and Class 5 - General Unsecured Claims may vote on the Combined Plan and Disclosure Statement. Further, subject to the tabulation procedures that were approved by the Disclosure Statement Order, in order to vote on the Combined Plan and Disclosure Statement, you must hold an Allowed Claim in Class 4 - Port Claim and Class 5 - General Unsecured Claims, or be the Holder of a General Unsecured Claim that has been temporarily Allowed for voting purposes only pursuant to the approved tabulation procedures or under Bankruptcy Rule 3018(a).

8. Solicitation Notice

All Holders of Allowed Claims in Class 4 - Port Claim and Class 5 - General Unsecured Claims will receive (i) the Confirmation Notice, (ii) a form of Ballot, and (iii) a copy of the Combined Plan and Disclosure Statement. All other Creditors and parties in interest not entitled to vote on the Combined Plan and Disclosure Statement will only receive a copy of the Confirmation Notice.

9. Procedure/Voting Deadlines

In order for your Ballot to count, you must (1) complete, date, and properly execute the Ballot and (2) properly deliver the Ballot to the Balloting Agent by either (a) mailing the Ballot to the Balloting Agent at the following address: Prime Clerk LLC, 830 Third Ave., 9th Floor, New York, NY 10022; or (b) uploading the Ballot on the Balloting Agent's website at <https://cases.primeclerk.com/outerHarborTerminal/>.

Ballots must be submitted electronically, or the Balloting Agent must RECEIVE physically original ballots by mail or overnight delivery, on or before [March •], 2017, at 4:00 p.m. (ET) (the "Voting Deadline"). Subject to the tabulation procedures approved by the Disclosure Statement Order, you may not change your vote once a Ballot is submitted electronically or the Balloting Agent receives your original paper ballot.

Subject to the tabulation procedures approved by the Disclosure Statement Order, any Ballot that is timely and properly submitted electronically or received physically will be counted and will be deemed to be cast as an acceptance, rejection or abstention, as the case may be, of the Combined Plan and Disclosure Statement.

10. Acceptance of the Combined Plan and Disclosure Statement

As a Creditor, your acceptance of the Combined Plan and Disclosure Statement is important. In order for the Combined Plan and Disclosure Statement to be accepted by an

Impaired Class of Claims, a majority in number (*i.e.*, more than half) and two-thirds in dollar amount of the Claims voting (of each Impaired Class of Claims) must vote to accept the Combined Plan and Disclosure Statement. At least one Impaired Class of Creditors, excluding the votes of insiders, must actually vote to accept the Combined Plan and Disclosure Statement. The Debtor urges that you vote to accept the Combined Plan and Disclosure Statement. **YOU ARE URGED TO COMPLETE, DATE, SIGN AND PROMPTLY RETURN THE BALLOT. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND, IF NECESSARY, LEGIBLY IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR.**

11. Elimination of Vacant Classes

Any Class of Claims or Equity Interests that does not contain, as of the date of 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 Combined Plan and Disclosure Statement for all purposes, including for purposes of determining acceptance of the Combined Plan and Disclosure Statement by such Class under section 1129(a)(8) of the Bankruptcy Code.

B. Bar Dates for Fee Claims

All requests for compensation or reimbursement of Professionals retained in these Chapter 11 Cases for services performed and expenses incurred prior to the Effective Date shall be Filed and served on: (i) counsel for the Debtor, (a) (a) Milbank, Tweed, Hadley, McCloy LLP, 2029 Century Park East, 33rd Floor, Los Angeles, California 90067 (Attention: Gregory A. Bray and Haig M. Maghakian) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn.: Mark D. Collins, Esq.); (ii) the UST, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington,

Delaware 19801 (Attn.: Jane M. Leamy, Esq. and Benjamin A. Hackman, Esq.), and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order or other Order of the Bankruptcy Court, by no later than thirty (30) days after the Effective Date, unless otherwise agreed by the Debtor. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and Professionals may be employed and paid in the ordinary course of business without any further notice to, or action, Order, or approval of, the Bankruptcy Court.

**VII. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS;
ESTIMATED RECOVERIES**

Equity Interests and Claims, other than Administrative Expense Claims and Priority Tax Claims, are classified for all purposes, including voting, confirmation and Distribution pursuant to the Combined Plan and Disclosure Statement, as follows:

Class	Type	Status under Plan	Voting Status
1	DIP Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Priority Non-Tax Claims	Unimpaired	Deemed to Accept
4	Port Claim	Impaired	Entitled to Vote
5	General Unsecured Claims	Impaired	Entitled to Vote
6	Affiliate Claims	Impaired	Deemed to Reject
7	Equity Interests	Impaired	Deemed to Reject

VIII. TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Treatment of Claims

1. Class 1 – DIP Claims

a. Classification

Class 1 consists of DIP Claims.

b. Impairment and Voting

Class 1 is Unimpaired by the Combined Plan and Disclosure Statement. Holders of DIP Claims are deemed to have accepted the Combined Plan and Disclosure Statement and therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

c. Treatment

On the Effective Date or as soon thereafter as is reasonably practical, or on the date such Claim becomes an Allowed DIP Claim or as soon thereafter as is reasonably practical, each Holder of an Allowed DIP Claim shall receive either (a) such treatment as such Holder agrees, or (b) at the Debtor's option (i) payment in full in Cash of the Allowed Amount of such DIP Claim (as determined by settlement or Final Order of the Bankruptcy Court), or (ii) treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

2. Class 2 – Other Secured Claims

a. Classification

Class 2 consists of Other Secured Claims.

b. Impairment and Voting

Class 2 is Unimpaired by the Combined Plan and Disclosure Statement. Holders of Other Secured Claims are deemed to have accepted the Combined Plan and Disclosure Statement and therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

c. Treatment

On the Effective Date or as soon thereafter as is reasonably practical, or on the date such Claim becomes an Allowed Other Secured Claim or as soon thereafter as is reasonably practical, each Holder of an Allowed Other Secured Claim shall receive either (a) such treatment as such Holder agrees, or (b) at the Debtor's option (i) payment in full in Cash of the Allowed Amount of such Other Secured Claim (as determined by settlement or Final Order of the Bankruptcy Court), or (ii) treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

3. Class 3 – Priority Non-Tax Claims

a. Classification

Class 3 consists of Priority Non-Tax Claims.

b. Impairment and Voting

Class 3 is Unimpaired by the Combined Plan and Disclosure Statement. Holders of Allowed Priority Non-Tax Claims are deemed to have accepted the Combined Plan and Disclosure Statement and therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

c. Treatment

On the Effective Date or as soon thereafter as is reasonably practical, or on the date such Claim becomes an Allowed Priority Non-Tax Claim or as soon thereafter as is reasonably practical, each Holder of an Allowed Priority Non-Tax Claim shall receive payment in full in Cash of the Allowed amount of such Claim (as determined by settlement or Final Order of the Bankruptcy Court) or such other treatment as may be agreed upon by such Holder and the Debtor.

4. Class 4 – Port Claim

a. Classification

Class 4 consists of the Port Claim.

b. Impairment and Voting

Class 4 is Impaired by the Combined Plan and Disclosure Statement. The Port is entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

c. Treatment

On the Effective Date or as soon thereafter as is reasonably practical, the Port shall receive payment in Cash of \$1.00 in full satisfaction, settlement, release, and discharge of the Port Claim.

5. Class 5 – General Unsecured Claims

a. Classification

Class 5 consists of General Unsecured Claims.

b. Impairment and Voting

Class 5 is Impaired. Holders of General Unsecured Claims are entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

c. Treatment

Each Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of such General Unsecured Claim its Pro Rata share of the remaining Cash of the Estate after all Distributions to the Holders of Administrative Expense Claims, Priority Tax Claims, Claims in Classes 1, 2, 3 and 4 have been made or for which funds have been fully reserved and following satisfaction of or reservation for all incurred and/or anticipated Plan Administrator Expenses.

6. Class 6 – Affiliate Claims

a. Classification

Class 6 consists of Affiliate Claims.

b. Impairment and Voting

Class 6 is Impaired. Because Holders of Affiliate Claims will not receive any Distribution under the Combined Plan and Disclosure Statement, Class 6 shall be deemed to have voted to reject the Combined Plan and Disclosure Statement. Notwithstanding that Holders of Claims in Class 6 are deemed to reject the Combined Plan and Disclosure Statement, such Holders have consented to their treatment under the Plan.

c. Treatment

On the Effective Date, the Holders of the Affiliate Claims have agreed to waive such Claims and that any and all Affiliate Claims shall be cancelled and no Holder of an Affiliate Claim will receive any recovery on account of any Affiliate Claim.

7. Class 7 – Equity Interest

a. Classification

Class 7 consists of Equity Interests.

b. Impairment and Voting

Class 7 is Impaired. Holders of Equity Interests in Class 7 will not receive any Distribution under the Combined Plan and Disclosure Statement, Class 7 shall be deemed to have voted to reject the Combined Plan and Disclosure Statement.

c. Treatment

Holders of an Equity Interest will not receive any Distribution on account of such Equity Interests under the Combined Plan and Disclosure Statement. On the date on which the Post-Effective Date Debtor is dissolved in accordance with Delaware state law, all Equity Interests

shall automatically be deemed cancelled, deemed terminated, and of no further force and effect. Between the Effective Date and the date on which the Post-Effective Date Debtor is dissolved in accordance with Delaware state law, the Members will continue to govern the Debtor. The Members will not receive any compensation for providing such governance.

B. Modification of Treatment of Claims and Equity Interests

The Debtor and Post-Effective Date Debtor reserve the right to modify the treatment of any Allowed Claim or Equity Interest in any manner adverse only to the Holder of such Claim or Equity Interest at any time after the Effective Date upon the consent of the Holder of the Claim or Equity Interest whose Allowed Claim or Equity Interest, as the case may be, is being adversely affected.

C. Cramdown and No Unfair Discrimination.

In the event that any Impaired Class of Claims or Equity Interests rejects the Plan or is deemed to have rejected the Combined Plan and Disclosure Statement, the Debtor hereby requests, without any delay in the occurrence of the Confirmation Hearing or Effective Date, that the Bankruptcy Court confirm the Combined Plan and Disclosure Statement in accordance with section 1129(b) of the Bankruptcy Code with respect to such non-accepting Class, in which case the Combined Plan and Disclosure Statement shall constitute a motion for such relief.

Confirming the Combined Plan and Disclosure Statement under such a circumstance is what is known as a “cramdown.” Among other things, a “cramdown” is appropriate where the Bankruptcy Court finds that such plan does not unfairly discriminate against the objecting classes and is fair and equitable with respect to those objecting classes. A plan unfairly discriminates against a class if another class of equal rank in priority will receive greater value under the plan than the non-accepting class without reasonable justification. A plan is fair and

equitable if no claim or interest junior to the objecting class shall receive or retain any claim or interest under the plan.

IX. PROVISIONS REGARDING THE PLAN ADMINISTRATOR

A. Appointment of the Plan Administrator

On the Effective Date, a Plan Administrator, who shall be (a) Heather Stack, or (b) another Person jointly selected by the Debtor no later than five (5) Business Days prior to the Voting Deadline, shall be appointed and thereafter serve in accordance with the Combined Plan and Disclosure Statement. The Plan Administrator shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise Ordered by the Bankruptcy Court. In the Plan Supplement, the Debtor will identify the material terms of the Plan Administrator's compensation.

B. Rights and Powers of the Plan Administrator

The Plan Administrator shall, in addition to any powers and authority specifically set forth in other provisions of the Combined Plan and Disclosure Statement, be empowered to act on behalf of the Estate and the Post-Effective Date Debtor to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Combined Plan and Disclosure Statement, (ii) establish, as necessary, disbursement accounts for the deposit and distribution of all amounts distributed under the Combined Plan and Disclosure Statement, (iii) make, or cause the Disbursing Agent to make, Distributions in accordance with the Combined Plan and Disclosure Statement, (iv) object to Claims, as appropriate, (v) employ and compensate Professionals to represent it with respect to its responsibilities, (vi) assert any of the Debtor's claims, Causes of Action, rights of setoff, or other legal or equitable defenses, and (vii) exercise such other powers as may be vested in the Post-Effective Date Debtor and/or the Plan Administrator by Order of the Bankruptcy Court, pursuant to the Combined Plan and

Disclosure Statement, or as deemed by the Plan Administrator to be necessary and proper to implement the provisions hereof. The Plan Administrator may take any and all actions which she deems reasonably necessary or appropriate to defend against any Claim, including, without limitation, the right to: (a) exercise any and all judgment and discretion with respect to the manner in which to defend against or settle any Claim, including, without limitation, the retention of Professionals, experts and consultants; and (b) enter into a settlement agreement or agreements without approval of the Bankruptcy Court. To the extent required in the sole discretion of the Plan Administrator, the Plan Administrator may report to and/or seek approval from the Members for any action that she takes with respect to the Debtor.

C. Post Confirmation Date Expenses of the Plan Administrator

The Plan Administrator shall receive reasonable compensation for services rendered to the Estate and the Post-Effective Date Debtor pursuant to the Combined Plan and Disclosure Statement without further Order; provided, however, that the material terms of such compensation shall be disclosed pursuant to Section IX. .A of the Combined Plan and Disclosure Statement. In addition, the amount of reasonable fees and expenses incurred by the Plan Administrator on or after the Effective Date (including, without limitation, reasonable attorney and Professional fees and expenses) may be paid without further Order. For the avoidance of doubt, such fees and expenses shall include all fees and expenses incurred by the Plan Administrator in connection with performing her duties pursuant to the Combined Plan and Disclosure Statement as well as the wind down of the Debtor following the Confirmation Date (collectively, the “Plan Administrator Expenses”).

X. PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT

A. Method of Payment

Unless otherwise expressly agreed, in writing, all Cash payments to be made pursuant to the Combined Plan and Disclosure Statement shall be made by check drawn on a domestic bank or an electronic wire.

B. Objections to and Resolution of Claims

The Plan Administrator shall have the right to File objections and/or motions to estimate any and all Claims after the Effective Date. The Plan Administrator shall have the authority to compromise, settle, otherwise resolve or withdraw any objections, without approval of the Bankruptcy Court. The Plan Administrator shall further have the authority to resolve and settle any and all Claims without approval of the Bankruptcy Court.

C. Claims Objection Deadline

The Plan Administrator, and any other party in interest to the extent permitted pursuant to section 502(a) of the Bankruptcy Code, shall File and serve any objection to any Claims, including Administrative Expense Claims, no later than the Claims Objection Deadline; provided, however, the Claims Objection Deadline may be extended by the Bankruptcy Court from time to time upon motion and notice by the Plan Administrator.

D. No Distribution Pending Allowance

Notwithstanding any other provision of the Combined Plan and Disclosure Statement, no payment or Distribution of Cash or other property shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by the Combined Plan and Disclosure Statement.

E. Claims Reserve

On any date that Distributions are to be made under the terms of the Combined Plan and Disclosure Statement, the Plan Administrator shall reserve Cash or property equal to one-hundred percent (100%) of the Cash or property that would be Distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto, unless otherwise Ordered by the Bankruptcy Court following notice to the affected Claim Holder. Such Cash or property, as the case may be, shall be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

F. Distribution After Allowance

Except as provided herein, within the later of (i) seven (7) Business Days after such Claim becomes an Allowed Claim and (ii) thirty (30) days after the expiration of the Claims Objection Deadline, the Plan Administrator shall distribute all Cash or other property to which a Holder of an Allowed Claim is then entitled.

G. Adjustments to Claims Without Objection

After the Effective Date, any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be marked as satisfied, adjusted or expunged on the register of Claims in the Chapter 11 Case by the Balloting Agent at the direction of the Plan Administrator without a Claims objection having to be Filed and without any further notice to or action, Order or approval of the Bankruptcy Court.

H. Late Claims and Amendments to Claims

Except as provided herein or otherwise agreed, any and all Holders of proofs of claim Filed after the applicable Bar Date shall not be treated as Creditors for purposes of voting and Distribution pursuant to Bankruptcy Rule 3003(c)(2) and the Bar Date Order unless on or before

the Confirmation Date such late Claim has been deemed timely Filed by a Final Order. After the Confirmation Date, a Claim may not be Filed or amended without the authorization of the Bankruptcy Court.

I. Distribution Record Date

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date will be treated as the Holders of those Claims for all purposes. The Plan Administrator shall have no obligation to recognize any transfer of any Claim occurring after the Distribution Record Date. In making any Distribution with respect to any Claim, the Plan Administrator shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the proof of claim Filed with respect thereto or on the Schedules as the Holder thereof as of the close of business on the Distribution Record Date and upon such other evidence or record of transfer or assignment that are actually known to the Plan Administrator as of the Distribution Record Date.

J. Delivery of Distributions

Except as provided herein, Distributions to Holders of Allowed Claims shall be made: (1) at the addresses set forth on the respective proofs of claim Filed by such Holders; (2) at the addresses set forth in any written notices of address changes delivered to the Plan Administrator after the date of any related proof of claim; or (3) at the address reflected in the Schedules if no proof of claim is Filed and the Plan Administrator has not received a written notice of a change of address.

If the Distribution to the Holder of any Claim is returned to the Plan Administrator as undeliverable, no further Distribution shall be made to such Holder unless and until the Plan Administrator is notified in writing of such Holder's then current address. Undeliverable

Distributions shall remain in the possession of the Plan Administrator until the earlier of (i) such time as a Distribution becomes deliverable or (ii) such undeliverable Distribution becomes an Unclaimed Distribution.

Until such time as an undeliverable Distribution becomes an Unclaimed Distribution, within 30 days after the end of each calendar quarter following the Effective Date, or upon such other interval as the Bankruptcy Court may Order, but in no event less frequently than annually, the Plan Administrator shall make Distributions of all Cash and property that has become deliverable during the preceding quarter.

The Plan Administrator shall make reasonable efforts to update or correct contact information for recipients of undeliverable Distributions; provided, however, nothing contained in the Combined Plan and Disclosure Statement shall require the Plan Administrator to locate any Holder or an Allowed Claim.

K. Unclaimed Distributions

Any Cash or other property to be Distributed under the Combined Plan and Disclosure Statement shall revert to the Plan Administrator or the Debtor, as applicable, if it is not claimed by the Entity on or before the Unclaimed Distribution Deadline. If such Cash or other property is not claimed on or before the Unclaimed Distribution Deadline, the Distribution made to such Entity shall be deemed to be reduced to zero.

L. De Minimis Distributions

The Plan Administrator shall not distribute Cash to the Holder of an Allowed Claim in an Impaired Class if the amount of Cash to be distributed on account of such Claim is less than \$50.00 in the aggregate. Any Holder of an Allowed Claim on account of which the amount of Cash to be distributed is less than \$50.00 in the aggregate will be forever barred from asserting its Claim for such Distribution against the Plan Administrator or its property. Any Cash not

distributed pursuant to this Article X. of the Combined Plan and Disclosure Statement will be the property of the Estate.

M. Setoff

The Debtor or the Plan Administrator, as the case may be, retains the right to reduce any Claim by way of setoff in accordance with their books and records.

N. Postpetition Interest

Interest shall not accrue on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date. No prepetition Claim shall be Allowed to the extent it is for postpetition interest or other similar charges, except to the extent permitted for Holders of Secured Claims under section 506(b) of the Bankruptcy Code.

O. Allocation of Distributions Between Principal and Interest

For Distributions in respect of Allowed Claims, to the extent that any such Allowed Claim entitled to a Distribution under the Combined Plan and Disclosure Statement is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall be allocated to the principal amount (as determined for federal income tax purposes) of the Claim first, and then to accrued but unpaid interest.

XI. IMPLEMENTATION AND EFFECT OF CONFIRMATION OF COMBINED PLAN AND DISCLOSURE STATEMENT

A. Means for Implementation of the Combined Plan and Disclosure Statement

In addition to the provisions set forth elsewhere in the Combined Plan and Disclosure Statement, the following shall constitute the means for implementation of the Combined Plan and Disclosure Statement:

1. Funding of Liabilities and Distributions. Allowed Claims and any amounts necessary to wind down the Debtor's Estate shall be paid from: (a) Cash held by the Debtor as

of the Effective Date, and (b) Cash proceeds obtained after the Effective Date, if any, from all sources, including the liquidation and collection of the Debtor's remaining assets.

2. Corporate Action; Effectuating Documents; Further Transactions. On the Effective Date, all matters and actions provided for under the Combined Plan and Disclosure Statement that would otherwise require approval of the Executive Committee and officers of the Debtor shall be deemed to have been authorized and effective in all respects as provided herein and shall be taken without any requirement for further action by the directors and officers of the Debtor. The Debtor, the Post-Effective Date Debtor or the Plan Administrator, as applicable, are authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement.

3. Committee. Upon the Effective Date, the Committee shall dissolve automatically, whereupon its members, Professionals and agents shall be released from any further duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code, except with respect to (a) applications for Professional Fee Claims filed by or on behalf of the Committee or (b) any motions or other actions seeking enforcement or implementation of the provisions of the Combined Plan and Disclosure Statement or the Confirmation Order. Professionals retained by the Committee shall be entitled to reasonable compensation for services rendered in connection with the matters identified in clause (b) after the Effective Date, subject to a budget to be agreed between the Committee and the Plan Administrator.

XII. EXCULPATION, RELEASES AND INJUNCTIONS

A. Exculpation. The Debtor, the Committee and any of the Debtor's or the Committee's current and/or post-Petition Date and pre-Effective Date Related Persons,

shall not have or incur any liability for any act or omission taken or not taken in connection with, relating to, or arising out of the Chapter 11 Case, the negotiation and Filing of the Combined Plan and Disclosure Statement, the Filing of the Chapter 11 Case, the settlement or payment of Claims or renegotiation, assumption, assumption and assignment, or rejection of Executory Contracts and leases, the wind down of the Debtor's business and financial affairs, the pursuit of confirmation of the Combined Plan and Disclosure Statement, the consummation of the Combined Plan and Disclosure Statement, or the administration of the Combined Plan and Disclosure Statement or the property to be Distributed under the Combined Plan and Disclosure Statement, except for their willful misconduct or gross negligence or any obligations that they have under or in connection with the Combined Plan and Disclosure Statement or the transactions contemplated in the Combined Plan and Disclosure Statement, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Combined Plan and Disclosure Statement.

B. Releases By the Debtor. Effective as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor and each of the Debtor's successors and assigns, shall be deemed to, completely, conclusively, absolutely, unconditionally, irrevocably and forever release, waive, void, extinguish and discharge the Released Parties and each of the Debtor's Related Persons from any Claim, Cause of Action, obligation, suit, judgment, damages, debt, right, remedy or liability, for any act or omission (i) that took place prior to the Petition Date relating to and/or in connection with the Debtor, its assets or its business, and (ii) in connection with, relating to, or arising out of the Chapter 11 Case, the negotiation and Filing of the Combined Plan and Disclosure

Statement, the Filing of the Chapter 11 Case, settlement or payment of Claims or renegotiation, assumption, assumption and assignment, or rejection of Executory Contracts and leases, the wind down of the Debtor's business and financial affairs, the pursuit of confirmation of the Combined Plan and Disclosure Statement, the consummation of the Combined Plan and Disclosure Statement, or the administration of the Combined Plan and Disclosure Statement or the property to be distributed under the Combined Plan and Disclosure Statement.

C. Third Party Releases. Effective as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Releasing Parties, each Holder of an Allowed Claim that is deemed to vote in favor of the Combined Plan and Disclosure Statement, and each Holder of an Allowed Claim that is entitled to vote on the Combined Plan and Disclosure Statement (other than those Holders of Allowed Claims who abstained from voting on or voted against the Combined Plan and Disclosure Statement and, in both such circumstances, checked the "opt out" box on the Ballot, and returned it in accordance with the instructions set forth thereon), shall be, in each case, deemed to, completely, conclusively, absolutely, unconditionally, irrevocably and forever release, waive, void, extinguish and discharge the Released Parties, the Debtor and the Debtor's Related Persons, from any claim, Claim, Cause of Action, obligation, suit, judgment, damages, debt, right, remedy or liability, for any act or omission (i) that took place prior to the Petition Date relating to and/or in connection with the Debtor, its assets or its business, and (ii) in connection with, relating to, or arising out of the Chapter 11 Case, the negotiation and Filing of the Combined Plan and Disclosure Statement, the Filing of the Chapter 11 Case, settlement or payment of Claims or renegotiation, assumption,

assumption and assignment, or rejection of Executory Contracts and leases, the wind down of the Debtor's business and financial affairs, the pursuit of confirmation of the Combined Plan and Disclosure Statement, the consummation of the Combined Plan and Disclosure Statement, or the administration of the Combined Plan and Disclosure Statement or the property to be Distributed under the Combined Plan and Disclosure Statement.

D. Injunctions Relating to Releases. Effective as of the Effective Date, all Persons that hold, have held or may hold a claim, Claim, Cause of Action, obligation, suit, judgment, damages, debt, right, remedy or liability of any nature whatsoever, that is released pursuant to the Combined Plan and Disclosure Statement, shall be permanently, forever and completely stayed, restrained, prohibited, barred and enjoined from taking any of the following actions, whether directly or indirectly, derivatively or otherwise, on account of or based on the subject matter of such released claims, Claims, Causes of Action, obligations, suits, judgments, damages, debts, rights, remedies or liabilities, (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including, without limitation, any judicial, arbitral, administrative or other proceeding) in any forum, (ii) enforcing, attaching (including, without limitation, any prejudgment attachment), collecting, or in any way seeking to recover any judgment, award, decree, or other order, (iii) creating, perfecting or in any way enforcing in any matter, directly or indirectly, any Lien, (iv) setting off, seeking reimbursement or contributions from, or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability or obligation owed to any Person released under the Combined Plan and Disclosure Statement, and (v) commencing or continuing in any manner, in any place of any judicial, arbitration or administrative proceeding in any

forum, that does not comply with or is inconsistent with the provisions of the Combined Plan and Disclosure Statement or the Confirmation Order.

E. Injunctions to Protect Estate Assets. Except as expressly otherwise provided in the Combined Plan and Disclosure Statement or to the extent necessary to enforce the terms and conditions of the Combined Plan and Disclosure Statement, the Confirmation Order or a separate Order of the Bankruptcy Court, all Entities who have held, hold or may hold Claims against or Equity Interests in the Debtor shall be permanently enjoined from taking any of the following actions against the Debtor, the Debtor's Estate, the Post-Effective Date Debtor and/or the Debtor's successors or any of their property on account of any such Claims or Equity Interests: (i) commencing or continuing, in any manner or in any place, any action, Cause of Action or other proceeding; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or Order; (iii) creating, perfecting, or enforcing any Lien; (iv) asserting a setoff (except to the extent such setoff was exercised prior to the Petition Date), right of subrogation, or recoupment of any kind against any debt, liability, or obligation due to the Debtor; and (v) commencing or continuing, in any manner or in any place, any action, Cause of Action or other proceeding that does not comply with or is inconsistent with the provisions of the Combined Plan and Disclosure Statement.

XIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Rejection of Executory Contracts and Unexpired Leases

Subject to Sections XIII. C and XIII. D below, on the Effective Date, all Executory Contracts not assumed before the Effective Date, terminated by their own terms prior to the Effective Date, or subject to a pending motion to assume as of the Effective Date, will be

deemed rejected. The Confirmation Order shall constitute an Order approving such rejection as of the Effective Date.

B. Deadline for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Combined Plan and Disclosure Statement

If the rejection by the Debtor of an Executory Contract pursuant to the Combined Plan and Disclosure Statement gives rise to a Claim, a proof of claim must be submitted to the Balloting Agent at Prime Clerk LLC, 830 Third Ave., 9th Floor, New York, NY 10022, by no later than twenty (21) days after service of the notice of the Effective Date. Any proofs of claim not Filed and served within such time period will be forever barred from assertion against the Debtor and its Estate. Unless otherwise Ordered by the Bankruptcy Court, all Claims arising from the rejection of Executory Contracts shall be treated as Class 5 Claims under the Combined Plan and Disclosure Statement. For the avoidance of doubt, any Claims arising from the rejection of an Executory Contract pursuant to a separate motion or the Rejection Procedures are subject to the Rejection Bar Date.

C. Debtor's Obligations Pursuant to its Organizational Documents

By the Combined Plan and Disclosure Statement, the Debtor hereby assumes all obligations pursuant to its certificate of formation, operating agreement or other organization documents to indemnify current officers, directors, agents and/or employees with respect to all present and future actions, suits and proceedings against the Debtor or such directors, officers, agents and/or employees, based upon any act or omission for or on behalf of the Debtor. All such obligations shall not be discharged or impaired by confirmation of the Combined Plan and Disclosure Statement. Notwithstanding the foregoing, any and all such related pre-Petition Date obligations (including prepetition indemnification obligations and prepetition cure obligations) shall constitute Class 5 Claims, without further recourse to the assets of or Distributions from the

Debtor's Estate. Notwithstanding the foregoing, any and all post-Petition Date indemnity obligations arising from post-Petition Date activities shall constitute Administrative Expense Claims, subject to section 503(b)(1)(A) of the Bankruptcy Code.

D. Debtor's Insurance Policies

Nothing in the Combined Plan and Disclosure Statement and/or the Confirmation Order alters the rights and obligations of the Debtor (and its Estate) and the Debtor's insurers (and third-party claims administrators) under the Insurance Policies or modifies the coverage or benefits provided thereunder or the terms or conditions thereof or diminishes or impairs the enforceability of the Insurance Policies. The Plan Administrator is authorized to terminate and/or cancel the Debtor's Insurance Policies in connection with the final dissolution of the Debtor.

XIV. CONDITIONS PRECEDENT TO AND OCCURRENCE OF CONFIRMATION AND THE EFFECTIVE DATE

A. Conditions Precedent to Confirmation

The following are conditions precedent to Confirmation that must be satisfied or waived:

1. The Bankruptcy Court shall have approved the Combined Plan and Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.

B. Conditions Precedent to the Effective Date

The Combined Plan and Disclosure Statement shall not become effective unless and until the following conditions shall have been satisfied or waived:

1. Entry of the Confirmation Order;
2. The Confirmation Order becomes a Final Order;

3. All material governmental and third-party approvals and consents, including Bankruptcy Court approval, necessary in connection with the transactions contemplated by the Plan, shall have been obtained and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose materially adverse conditions on such transactions; and

4. All other actions, documents, and agreements necessary to implement the Plan as of the Effective Date will have been delivered and all conditions precedent thereto will have been satisfied.

C. Establishing the Effective Date

The calendar date to serve as the Effective Date shall be a Business Day of, on or promptly following the satisfaction or waiver of all conditions to the Effective Date, which date will be selected by the Debtor. On or within five (5) Business Days of the Effective Date, the Debtor shall File and serve a notice of occurrence of the Effective Date. Such notice shall contain, among other things, the Administrative Expense Bar Date, the deadline by which Professionals must File and serve any Fee Claims and the deadline to File a proof of claim relating to damages from the rejection of any Executory Contract pursuant to the terms of the Combined Plan and Disclosure Statement.

D. Effect of Failure of Conditions

If each condition to the Effective Date has not been satisfied or duly waived within ninety (90) days after the Confirmation Date, then upon motion by any party in interest, made before the time that each of the conditions has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order may be vacated by the Bankruptcy Court; provided, however, that notwithstanding the filing of such motion, the

Confirmation Order shall not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived by the Debtor before any Order granting such relief becomes a Final Order. If the Confirmation Order is vacated pursuant to this section, the Combined Plan and Disclosure Statement shall be deemed null and void in all respects and nothing contained herein shall (A) constitute a waiver or release of any Claims by or against the Debtor, or (B) prejudice in any manner the rights of the Debtor.

E. Waiver of Conditions to Confirmation and Effective Date

Each of the conditions to the Effective Date may be waived, in whole or in part, by the Debtor without notice or an Order of the Bankruptcy Court.

XV. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, following the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Case as is legally permissible, including, without limitation, such jurisdiction as is necessary to ensure that the interests and purposes of the Combined Plan and Disclosure Statement are carried out. The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Combined Plan and Disclosure Statement pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

1. To hear and determine any objections to Claims and to address any issues relating to Disputed Claims;
2. To enter and implement such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
3. To issue such Orders in aid of execution and consummation of the Combined Plan and Disclosure Statement, to the extent authorized by section 1142 of the Bankruptcy Code;

4. To consider any amendments to or modifications of the Combined Plan and Disclosure Statement, to cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

5. To hear and determine all requests for compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under section 330 or 503 of the Bankruptcy Code;

6. To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Combined Plan and Disclosure Statement;

7. To hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including, without limitation, any request by the Debtor or the Plan Administrator for an expedited determination of tax under section 505(b) of the Bankruptcy Code);

8. To hear any other matter not inconsistent with the Bankruptcy Code;

9. To enter a final decree closing the Chapter 11 Case;

10. To ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Combined Plan and Disclosure Statement;

11. To decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date;

12. To issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Combined Plan and Disclosure Statement, except as otherwise provided herein;

13. To determine any other matters that may arise in connection with or related to the Combined Plan and Disclosure Statement, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created or implemented in connection with the Combined Plan and Disclosure Statement or the Disclosure Statement;

14. To enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

15. To resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof;

16. To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the Bar Dates, the Rejection Bar Date, the Administrative Expense Bar Date, and/or the hearing on the approval of the Combined Plan and Disclosure Statement for the purpose of determining whether a Claim, or Equity Interest is discharged and/or enjoined hereunder or for any other purpose; and

17. To resolve any other matter or for any purpose specified in the Combined Plan and Disclosure Statement, the Confirmation Order, or any other document entered into in connection with any of the foregoing.

XVI. MISCELLANEOUS PROVISIONS

A. Books and Records

On the Effective Date, the Books and Records shall be transferred to the Post-Effective Date Debtor. The Plan Administrator shall be free, in her discretion to abandon, destroy or otherwise dispose of the Books and Records in compliance with applicable non-bankruptcy law at any time on and after the Effective Date, without the need for any other or further Order.

B. Revesting of Debtor's Assets

Except as otherwise provided herein, any assets that are property of the Debtor's Estate on the Effective Date including, without limitation, any Causes of Action, shall revest in the Post-Effective Date Debtor on the Effective Date. Thereafter, the Post-Effective Date Debtor (at the direction of the Plan Administrator) may operate its business and may use, acquire and dispose of such property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules or Bankruptcy Court approval. Except as specifically provided in the Combined Plan and Disclosure Statement or the Confirmation Order, as of the Effective Date, all property of the Debtor shall be free and clear of any Liens, Claims, encumbrances and interests of any kind.

C. Termination of Injunctions or Stays

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under Bankruptcy Code sections 105 or 362 or otherwise, and extant on the Confirmation Date shall terminate on the Effective Date, at which time the injunctions and stays set forth in the Combined Plan and Disclosure Statement shall take effect.

D. Amendment or Modification of the Combined Plan and Disclosure Statement

Alterations, amendments or modifications of the Combined Plan and Disclosure Statement may be proposed in writing by the Debtor, at any time before the Confirmation Date, provided that the Combined Plan and Disclosure Statement, as altered, amended or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code, and the Debtor shall have complied with section 1125 of the Bankruptcy Code.

E. Severability

In the event the Bankruptcy Court determines, before the Confirmation Date, that any provision in the Combined Plan and Disclosure Statement is invalid, void or unenforceable, such provision shall be invalid, void or unenforceable with respect to the Holder or Holders of such

Claims or Equity Interest as to which the provision is determined to be invalid, void or unenforceable. The invalidity, voidability or unenforceability of any such provision shall in no way limit or affect the enforceability and operative effect of any other provision of the Combined Plan and Disclosure Statement.

F. Revocation or Withdrawal of the Combined Plan and Disclosure Statement

The Debtor reserves the right to revoke or withdraw the Combined Plan and Disclosure Statement before the Confirmation Date. If the Debtor revokes or withdraws the Combined Plan and Disclosure Statement before the Confirmation Date, then the Combined Plan and Disclosure Statement shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against the Debtor.

G. Binding Effect

The Combined Plan and Disclosure Statement shall be binding upon and inure to the benefit of the Debtor, the Holders of Claims and the Holders of Equity Interests, and their respective successors and assigns.

H. Notices

All notices, requests and demands to or upon the Plan Administrator or the Debtor, as applicable, to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as shall be set forth in the Confirmation Order.

I. Governing Law

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit to the Combined Plan and Disclosure Statement provides otherwise, the rights and obligations arising under the Combined Plan and Disclosure Statement

shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

J. Withholding and Reporting Requirements

In connection with the consummation of the Combined Plan and Disclosure Statement, the Debtor and Plan Administrator shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority and all Distributions hereunder shall be subject to any such withholding and reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a Distribution under the Combined Plan and Disclosure Statement shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding and other tax obligations, on account of such Distribution. The Debtor and the Plan Administrator have the right, but not the obligation, to not make a Distribution until such Holder has made arrangements satisfactory to any disbursing party for payment of any such tax obligations. The Debtor or Plan Administrator may require, as a condition to receipt of a Distribution, that the Holder of an Allowed Claim complete and return a Form W-8 or W-9, as applicable to each such Holder. If the Debtor or Plan Administrator makes such a request and the Holder fails to comply before the date that is sixty (60) days after the request is made, the amount of such Distribution shall irrevocably revert to the Debtor and any Claim in respect of such Distribution shall be disallowed and forever barred from assertion against the Debtor or its property.

K. Headings

Headings are used in the Combined Plan and Disclosure Statement for convenience and reference only, and shall not constitute a part of the Combined Plan and Disclosure Statement for any other purpose.

L. Filing of Additional Documents

On or before substantial consummation of the Combined Plan and Disclosure Statement, the Debtor shall File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement; provided that the Plan Supplement shall be Filed at least five (5) Business Days prior to the Voting Deadline.

M. No Admissions

Notwithstanding anything herein to the contrary, nothing contained in the Combined Plan and Disclosure Statement shall be deemed as an admission by any Entity with respect to any matter set forth herein.

N. Successors and Assigns

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

O. Reservation of Rights

Except as expressly set forth herein, the Combined Plan and Disclosure Statement shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Combined Plan and Disclosure Statement, any statement or provision contained herein, or the taking of any action by the Debtor with respect to the Combined Plan and Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor, Holders of Claims or Equity Interest before the Effective Date.

P. Implementation

The Debtor shall take all steps, and execute all documents, including appropriate releases, necessary to effectuate the provisions contained in the Combined Plan and Disclosure Statement.

Q. Inconsistency

In the event of any inconsistency among the Combined Plan and Disclosure Statement and any other instrument or document created or executed pursuant to the Combined Plan and Disclosure Statement, the provisions of the Combined Plan and Disclosure Statement shall govern.

R. Dissolution of the Debtor

As soon as practicable after the closing of a Post-Effective Date Debtor's Chapter 11 Case, the Plan Administrator, on behalf of the Post-Effective Date Debtor, may: (i) file a certificate of dissolution or such similar document, together with all other necessary corporate documents, to effect such Post-Effective Date Debtor's dissolution or termination under the applicable laws of its state of incorporation or domicile; and (ii) complete and file such Post-Effective Date Debtor's final federal, state and local tax returns. Following such actions, such Post-Effective Date Debtor shall be dissolved or terminated for all purposes without the necessity for any other or further actions, including, without limitation, the payment of any franchise or similar taxes to the state or commonwealth of incorporation or organization of such Entity. The filing by the Post-Effective Date Debtor of its certificate of dissolution or similar document shall be authorized and approved in all respects without further action under applicable law, regulation, order or rule, including, without limitation, any action by the stockholders, Members or the board of directors of each such Post-Effective Date Debtor.

S. Termination of the Plan Administrator

After the Chapter 11 Case is closed and the Plan Administrator has completed all of the tasks necessary in order to fully and completely wind down, dissolve and/or terminate the Debtor and to otherwise comply with its obligations under the terms of the Combined Plan and Disclosure Statement, the Plan Administrator shall have fully completed its duties under the

Combined Plan and Disclosure Statement and thereby shall be fully released and discharged of its duties and obligations to carry out the terms of the Combined Plan and Disclosure Statement.

T. Compromise of Controversies

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, Distribution and other benefits provided under the Combined Plan and Disclosure Statement, the provisions of the Combined Plan and Disclosure Statement, (including, but not limited to, the Releases and Injunctions, set forth in sections XII.B, C &D) shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Combined Plan and Disclosure Statement and in this Chapter 11 Case. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Combined Plan and Disclosure Statement and the Chapter 11 Case, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the Estate and all Holders of Claims and Equity Interests against the Debtor.

U. Request for Expedited Determination of Taxes

The Debtor and the Plan Administrator shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

Dated: February 13, 2017
Wilmington, Delaware

Outer Harbor Terminal, LLC

By: /s/ Heather Stack
Name: Heather Stack
Title: Chief Financial Officer

Exhibit A

Liquidation Analysis

Outer Harbor Terminal, LLC**Liquidation Analysis***(Amounts in US Dollars)*

		Chapter 11 Liquidation Plan	Chapter 7 Liquidation
Projected Cash & Cash Equivalents as of 4/30/2017	¹	\$1,636,511	\$1,636,511
Professional Fee Carve-Out	²	\$330,000	\$330,000
Chapter 11 Administrative Expenses Through Closing			
Professional Fees		129,750	0
Management Fees & Insurance		80,550	0
Total Chapter 11 Administrative Expenses		210,300	0
Chapter 7 Liquidation Costs	³	0	224,195
Amount Available for Distribution		\$1,096,211	\$1,082,315

Range of Projected Distributions by Class:

	<u>Estimated Allowed Claims</u>	<u>Low</u>	<u>High</u>	<u>Low</u>	<u>High</u>
Class 1 - Dip Claims	\$0	\$0	\$0	\$0	\$0
Class 2 - Other Secured Claims	\$0	\$0	\$0	\$0	\$0
Class 3 - Priority Non-Tax Claims	\$0	\$0	\$0	\$0	\$0
Class 4 - Port Claim	Unliquidated	\$1	\$1	\$1	\$1
Class 5 - General Unsecured Claims	^{4, 6, 7} \$7,019,669 - \$12,402,535	\$1,096,210	\$1,096,210	\$499,612	\$651,951
Class 6 - Insider & Affiliate Claims	^{5, 6, 7} \$8,187,100	\$0	\$0	\$582,702	\$430,363
Class 7 - Equity Interests	N/A	\$0	\$0	\$0	\$0

Footnotes:¹ Includes bank balances and all escrows (including port deposit and professional fee retainers)² Chapter 11 professional fees incurred but not paid prior to confirmation³ Includes Chapter 7 fees, administrative expenses, and recoveries⁴ General Unsecured Claim pool ranges from \$7.0M - \$12.4M depending on K Line claim⁵ Affiliates waive claims in Chapter 11 Liquidation Plan but are part of General Unsecured Class in Chapter 7 Liquidation Plan⁶ Low side Chapter 7 recovery assumes total claims pool of \$15.2M including insider/affiliate claims and K Line claim disallowed⁷ High side Chapter 7 recover assumes total unsecured claims pool of \$20.6M including insider/affiliate claims and K Line claim allowed at \$5.4M