

THIS COMBINED DISCLOSURE STATEMENT AND JOINT PLAN OF LIQUIDATION HAS BEEN NOT BEEN APPROVED FOR SOLICITATION PURPOSES.

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

In re:	:	Chapter 11
	:	
AF-SOUTHEAST, LLC, <i>et al.</i> ¹	:	Case No. 16-11008 (KG)
	:	
Debtors.	:	(Jointly Administered)
	:	

DEBTORS' FIRST AMENDED COMBINED DISCLOSURE STATEMENT AND PLAN OF LIQUIDATION

Dated: Wilmington, Delaware
October 11 ~~11~~ November 7, 2016

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¹ The Debtors in these cases, along with the last four digits of their federal tax identification numbers, are: (i) AF-Southeast, LLC (8002); (ii) Allied Fiber – Florida, LLC (8111); and (iii) Allied Fiber – Georgia, LLC (2935).

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NOTICE

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT EXCEPT AS EXPRESSLY INDICATED HEREIN. THIS COMBINED PLAN AND DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' 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 DEBTORS 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 DEBTORS 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 THIS 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 THIS 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 DISCLOSURE STATEMENT AND COMBINED PLAN AND DISCLOSURE STATEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

I. INTRODUCTION

AF Southeast, LLC, and its affiliated debtors and debtors in possession Allied Fiber – Florida, LLC and Allied Fiber – Georgia, LLC (collectively, the “**Debtors**”) filed voluntary petitions under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § § 101, *et seq.* on April 20, 2016. Debtors Allied Fiber – Florida, LLC and Allied Fiber – Georgia, LLC (collectively, the “**Plan Debtors**”) hereby propose the Plan Debtors’ Combined Plan and Disclosure Statement² pursuant to sections 1125 and 1129 of the Bankruptcy Code. The Plan Debtors are the proponents of the Combined Plan and Disclosure Statement within the meaning of section 1129 of the Bankruptcy Code. For the avoidance of doubt, Debtor AF-Southeast, LLC (“**Southeast**”) is not a proponent of the Combined Plan and Disclosure Statement, is not a part of this Plan and Disclosure Statement, the bankruptcy estate of Southeast shall be administered separately from the Plan Debtors.

The Combined Plan and Disclosure Statement constitutes a liquidating chapter 11 plan for the Plan Debtors. The Combined Plan and Disclosure Statement provides for the Plan Debtors’ assets not already liquidated to be liquidated and for the proceeds to be distributed to holders of Allowed Claims in accordance with the terms of the Combined Plan and Disclosure Statement and the priority of claims provisions included in 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. The Combined Plan and Disclosure Statement provides for the transfer of the Plan Debtors’ assets to the Liquidating Debtors, which shall, as provided for in this Combined Plan and Disclosure Statement, be the means to effect such liquidation and Distributions. The Plan Debtors will be

² All capitalized terms not defined in this introduction shall have the same meanings set forth in Section II of the Combined Plan and Disclosure Statement.

dissolved as soon as practicable after all of the provisions of the Combined Plan and Disclosure Statement have been satisfied.

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.A. of the Combined Plan and Disclosure Statement, the Plan Debtors expressly reserve the right to alter, amend or modify the Combined Plan and Disclosure Statement, one or more times, before its substantial consummation, including as disclosed more fully in Section III.G. of this 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. **"341 Meeting"** shall have the meaning ascribed to the term in Section III.E.7.a. of the Combined Plan and Disclosure Statement.
2. **"Administrative Expense Bar Date"** means the Business Day that is **thirty (30)** days after the Effective Date.
3. **"Administrative Expense Claim"** means any right to payment constituting a cost or expense of administration of the Chapter 11 Cases 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 Pre-Confirmation Estates, (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 Estates under section 1930 of chapter 123 of Title 28 of the United States Code, and (d) all Claims arising under section 503(b)(9) of the Bankruptcy Code.

4. **“AF Florida”** means Debtor Allied Fiber – Florida, LLC.
5. **“AF Georgia”** means Debtor Allied Fiber – Georgia, LLC.
6. **“Allowance Date”** means the date on which a Claim becomes an Allowed Claim or an Equity Interest becomes an Allowed Equity Interest.
7. **“Allied Fiber”** means Allied Fiber, LLC, the non-debtor ultimate parent of the Debtors.
8. **“Allowed”** means, with reference to any Claim, proof of which was timely and properly filed or, if no proof of Claim was filed, which has been or hereafter is listed by the Plan Debtors in the Schedules, as liquidated in amount and not disputed or contingent and, in each case, as to which: (A) no objection to allowance 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 (B) an objection has been interposed and such Claim has been allowed, in whole or in part, by a Final Order.
9. **“Asset Purchase Agreement”** shall have the meaning ascribed to the term in in Section III.C. of the Combined Plan and Disclosure Statement.
10. **“Avoidance Actions”** means any and all rights to recover or avoid transfers or liens under Chapter 5 of the Bankruptcy Code or otherwise, including, but not limited to, sections 506(d), 522, 541, 542, 543, 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code, 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; *subject, however*, to any releases thereof provided in the Combined Plan and Disclosure

Statement, the Confirmation Order, Asset Purchase Agreement, the Sale Order, or any other Final Order of the Bankruptcy Court.

11. **“Balloting Tabulator”** means Joseph D. Distanislao, Paralegal at Fox Rothschild LLP.

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

13. **“Bankruptcy Court” or “Court”** means the United States Bankruptcy Court for the District of Delaware, having jurisdiction over the Chapter 11 Cases, or if such Court ceases to exercise jurisdiction over the Chapter 11 Cases, such court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases in lieu of the United States Bankruptcy Court for the District of Delaware.

14. **“Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, and any Local Rules of the Bankruptcy Court, as amended from time to time.

15. **“Bar Dates”** shall have the meaning ascribed to the term in Section III.D.7. of this Combined Plan and Disclosure Statement.

16. **“BID Procedures Motion”** shall have the meaning ascribed to the term in Section III.D.5. of the Combined Plan and Disclosure Statement.

17. **“Bid Procedures Order”** shall have the meaning ascribed to the term in Section III.D.5. of the Combined Plan and Disclosure Statement.

18. **“Books and Records”** shall have the meaning ascribed to the term in Section X.L. of the Combined Plan and Disclosure Statement

19. “**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.

20. “**Buyer**” shall have the meaning ascribed to the term in Section III.D.4.c. of the Combined Plan and Disclosure Statement.

21. “**Buyer Cash Funding**” shall have the meaning ascribed to the term in Section IX.B. of the Combined Plan and Disclosure Statement.

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

23. “**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 any Plan Debtor and/or any of the Pre-Confirmation Estates 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 Plan Debtors’ current and former directors and officers; *subject, however*, to any releases provided in the Combined Plan and Disclosure Statement, the Confirmation Order, the Senior Prepetition Loan Documents, the DIP Orders, the Asset Purchase Agreement, Sale Order, or any other Final Order of the Bankruptcy Court.

24. “**Chapter 11 Cases**” means the jointly administered cases under chapter 11 of the Bankruptcy Code commenced by the Debtors, styled as AF-Southeast, LLC, *et al.*, under Case No. 16-11008, currently pending in the Bankruptcy Court.

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

26. **“Claims Objection Deadline”** means ninety (90) days after the Effective Date or such later date as may be approved by the Bankruptcy Court.

27. **“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.

28. **“Clerk”** means the clerk of the Bankruptcy Court.

29. **“COD”** means cancellation of indebtedness.

30. **“Collateral”** means any property or interest in property of (a) a Pre-Confirmation Estate or, (b) after the Effective Date, of a Plan Debtor, that is subject to a Lien to secure the payment or performance of a Claim, which Lien is valid, perfected and enforceable under applicable law and is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable non-bankruptcy law.

31. **“Combined Plan and Disclosure Statement”** means this combined disclosure statement and joint chapter 11 plan of liquidation including, without limitation, all exhibits, supplements, 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.

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

33. **“Confirmation Hearing”** means the hearing held by the Bankruptcy Court to consider (i) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to section 1125 of the Bankruptcy Code and (ii) 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.

34. **“Confirmation Notice”** shall have the meaning ascribed to the term in Section V.A.7. of the Combined Plan and Disclosure Statement.

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

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

37. **“Debtors”** means, collectively, AF-Southeast, LLC and the Plan Debtors.

38. **“Debtors-in-Possession”** means the Debtors in their capacity as debtors-in-possession in the Chapter 11 Cases pursuant to sections 1101, 1107(a) and 1108 of the Bankruptcy Code.

39. **“DIP Facility”** shall have the meaning ascribed to the term in Section III.D.2. of the Combined Plan and Disclosure Statement.

40. **“DIP Facility Claim”** means any Claim arising under or relating to the DIP Facility.

41. **“DIP Lender”** means the Senior Pre-Petition Lender.

42. **“DIP Modification Motion”** shall have the meaning ascribed to the term in Section III.D.5.d. of the Combined Plan and Disclosure Statement.

43. **“DIP Orders”** shall have the meaning ascribed to the term in Section III.D.2. of the Combined Plan and Disclosure Statement.

44. **“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 that has not been resolved by settlement or Final Order.

45. **“Distribution”** means any distribution to the Holders of Allowed Claims.

46. **“Distribution Record Date”** means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the General Bar Date for all non-governmental Entities and Persons.

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

48. **“Docket”** means the docket in the Chapter 11 Cases maintained by the Clerk.

49. **“Effective Date”** means the date on which the conditions specified in Section XIV of the Combined Plan and Disclosure Statement have been satisfied or waived.

50. **“Entity”** means an entity as defined in section 101(15) of the Bankruptcy Code.

51. **“Equity Interests”** means all equity interests in the Plan Debtors including, but not limited to, all issued, unissued, authorized or outstanding shares or membership interests together with any warrants, options or contract rights to purchase or acquire such interests at any time.

52. **“Estate”** or **“Estates”** means the estates of the Debtors created upon the commencement of the Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code.

53. **“Executory Contract”** means any executory contract or unexpired lease as of the Petition Date between the Plan Debtors and any other Person or Persons, specifically excluding contracts and agreements entered into pursuant to this Combined Plan and Disclosure Statement.

54. **“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 Cases.

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

56. **“Final Fee Application”** means an application for final allowance of any Professional’s aggregate Fee Claim.

57. **“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.

58. **“First Day Motions”** shall have the meaning ascribed to the term in Section III.D.1. of the Combined Plan and Disclosure Statement.

59. **“General Bar Date”** means August 10, 2016.

60. **“General Unsecured Claim”** means any Claim against the Plan Debtors 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) Professional Fee Claim, (iii) a Priority Tax Claim, (iv) any other Claim entitled to priority under the Bankruptcy Code or any Order of the Bankruptcy Court, (iv) the DIP Facility Claim, (v) the Senior Pre-Petition Indebtedness Claim, or (vi) an Equity Interest.

61. **“Governmental Bar Date”** means October 17, 2016.

62. **“Governmental Unit”** shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

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

64. **“Intercompany Claims”** means (a) any account reflecting intercompany book entries by one Debtor with respect to any other Debtor, or (b) any Claim that is not reflected in such book entries and is held by a Debtor against any other Debtor, in each case accruing before or after the Petition Date, including, but not limited to, any claim for reimbursement, payment as guarantor or surety, or any claim for contribution or expenses that were allocable between multiple Debtors.

65. **“IRS”** means the Internal Revenue Service.

66. **“Lien”** means any mortgage, pledge, deed of trust, assessment, security interest, lease, lien, 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.

67. **“Liquidating Debtors”** means the Plan Debtors after the Effective Date.

68. **“Liquidating Debtors Account”** means one or more segregated interest bearing accounts established by the Liquidating Debtors into which shall be deposited (a) the Plan Estates’ assets, and (b) the proceeds of the liquidation of all other Liquidating Debtors Assets.

69. **“Liquidating Debtors Assets”** means all interests of any and every kind owned or otherwise held by the Plan Debtors and their Plan Estates in any and all property of any kind, including, but not limited to the, the Pre-Confirmation Estates’ Cash, the Liquidating Debtors Available Cash and the Buyer Cash Funding, as set forth in Section IX.A. The Liquidating

Debtors Assets shall, on the Effective Date, be transferred by the Plan Debtors to the Liquidating Debtors.

70. **“Liquidating Debtors Available Cash”** means the Cash on deposit in the Liquidating Debtors Account at any time.

71. **“Liquidating Debtors Operating Expenses”** means the reasonable costs and expenses, including professional fees, of the Liquidating Debtors in administering the Liquidating Debtors Estates.

72. **“Make Whole”** shall have the meaning ascribed to the term in Section III.A.3. of the Combined Plan and Disclosure Statement.

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

74. **“Non-Tax Priority 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.

75. **“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.

76. **“Petition Date”** means April 20, 2016.

77. **“Pre-Confirmation Estates”** means, collectively, or individually, the Estates of the Plan Debtors.

78. **“Plan Supplement”** means, collectively, any such documents as are referenced as such in this Combined Plan and Disclosure Statement to be Filed hereafter to supplement or clarify aspects of the Combined Plan and Disclosure Statement.

79. “**PMCM**” shall have the meaning ascribed to the term in Section III.D.5. of the Combined Plan and Disclosure Statement.

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

81. “**Privilege**” means the attorney client privilege, work product protections or other immunities (including those related to common interests or joint defenses with other parties), or protections from disclosure of any kind held by the Plan Debtors or their Pre-Confirmation Estates.

82. “**Professional**” means any professional person employed in the Chapter 11 Cases pursuant to section 327, 363 or 1103 of the Bankruptcy Code or otherwise pursuant to an Order of the Bankruptcy Court.

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

84. “**Sale Motion**” shall have the meaning ascribed to the term in Section III.D.5.c. of the Combined Plan and Disclosure Statement.

85. “**Sale Hearing**” shall have the meaning ascribed to the term in Section III.D.5.a. of the Combined Plan and Disclosure Statement.

86. “**Sale Order**” shall have the meaning ascribed to the term in Section III.D.5.e. of the Combined Plan and Disclosure Statement.

87. “**Schedules**” means the schedules of assets and liabilities, the list of Holders of Equity Interests and the statement of financial affairs filed by each of the Plan Debtors under section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments and modifications thereto through the Confirmation Date.

88. **“Secured Claim”** means a Claim (i) that is secured by a Lien on property in which the Pre-Confirmation Estates have 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 Plan Debtors; (ii) to the extent of the value of the Holder’s interest in the Pre-Confirmation Estates’ 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 Debtors or (B) if disputed by the Debtors, such dispute is settled by written agreement between the Plan Debtors or the Liquidating Debtors and the holder of such Claim or determined, resolved, or adjudicated by Final Order.

89. **“Senior Pre-Petition Indebtedness”** shall have the meaning ascribed to the term in Section III.A.3. of the Combined Plan and Disclosure Statement.

90. **“Senior Pre-Petition Lender”** shall have the meaning ascribed to the term in Section III.A.3. of the Combined Plan and Disclosure Statement.

91. **“Senior Pre-Petition Loan”** shall have the meaning ascribed to the term in Section III.A.3. of the Combined Plan and Disclosure Statement.

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

93. **“Unclaimed Distribution”** means a Distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

94. **“Unclaimed Distribution Deadline”** means ninety (90) days from the date the Liquidating Debtors make a Distribution of Cash or other property under the Combined Plan and Disclosure Statement to a holder of an Allowed Claim.

95. **“Voting Deadline”** means _____, 2016.

96. “UST” means the Office of the United States Trustee for the District of Delaware.

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 Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code initiating these Chapter 11 Cases. After the Petition Date, the Debtors have remained in possession of their assets and management of their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

A. The Debtors’ Business and Corporate Structure

1. Overview of the Debtors’ Business

The Debtors were engaged in the business of designing, constructing and operating an open access, physical layer, network-neutral colocation and dark fiber network. The Debtors' dark fiber network provided long-haul, multi-access points, and short-haul dark fiber network systems, coupled with owned colocation facilities to provide control of the underlying physical assets to all network operators who subscribed to the Debtors services. The network was designed to link critical access points (international subsea cables) in the United States while also providing intermediate access points along the route for inclusion of local networks into the Debtors' network. The combination of long-haul service with the capability to distribute traffic locally were intended to yield high customer demand and volume.

The Debtors' completed network consisted of eleven built and owned, network-neutral colocation facilities in Florida and Georgia (the "Colocation Facilities"). The Colocation Facilities are located on land which was either owned by the Debtors or leased by the Debtors from various third parties. Generally speaking, the Colocation Facilities are spaced approximately every 60 miles along the Debtors' dark fiber network. The Colocation Facilities are modular buildings, approximately 1200 square feet in size, with fully redundant power, 24/7 security, fire suppression and direct access to the Debtors' dark fiber network. The network itself consists of approximately 708 route miles (362 miles in Georgia and 346 miles in Florida); and 270,672 fiber miles (81,648 miles in Georgia and 189,024 miles in Florida).

Southeast owns the operating entities (the Plan Debtors) which operated the fiber-optic network and Colocation Facilities. The fiber optic route extended from Miami, Florida to Atlanta, Georgia. The Plan Debtors each owned and maintained the physical assets which generated the Debtors' revenue. Operating contracts and leases in each of these entities corresponded to the geographical location of the asset and related revenue sources. Various

taxes, including without limitation sales and use and real estate taxes, and all other operating and regulatory expenses were incurred by these operating entities (the Plan Debtors).

2. The Debtors' Corporate Structure

Southeast is 100% owned by its parent, Allied Fiber, LLC ("**Allied Fiber**"). Allied Fiber is not a debtor in these bankruptcy proceedings but played a significant role in the Debtors' formation and operation until approximately February, 29, 2016. Southeast is the 100% owner of the Plan Debtors.

3. The Debtors' Prepetition Debt and Capital Structure

From inception to the Petition Date, there was approximately \$93 million of invested capital at the Allied Fiber and Debtor entities, all as more fully set forth in the following paragraphs.

In June 2011 and October 2011, Allied Fiber raised approximately \$15 million of equity in both common and preferred shares from various individuals and entities. The preferred shares were solely owned by Phoenix Fund, LLC ("**Phoenix**"). In need of additional capital, Phoenix loaned Allied Fiber \$5 million secured against Allied Fiber's assets. Subsequently, from March 2013 to August 2014, Allied Fiber raised an additional \$44 million of secured debt in two tranches (some with convertible features and others with warrants) from certain individuals, many of who had also participated in the initial equity offering. The debt provided by certain individuals and evidenced by promissory notes was secured against Allied Fiber's assets and took priority over the prior Phoenix debt. Hereinafter, Phoenix and those certain individuals set forth in the previous sentence shall be referred to as the "**Junior Lien Holders**".

By September 2014, Allied Fiber had exhausted its capital to complete construction of the Southeast Segment (defined below), including the Colocation Facilities. In dire need of

additional capital, Allied Fiber turned to Strome Mezzanine Fund IV, LP, (“Strome” or “Senior Pre-Petition Lender”) for funding to finish the Southeast Segment and otherwise provide operating capital. As part of this funding, the Debtors were incorporated, Allied Fiber’s assets pertaining to the Southeast Segment were transferred to the Debtors, and the Senior Pre-Petition Lender lent the Debtors approximately \$23 million (the “Senior Pre-Petition Indebtedness”) in exchange for a first priority lien in all of the Debtors’ and Allied Fiber’s assets (the “Senior Pre-Petition Lien”). The Senior Pre-Petition Indebtedness is evidenced by that certain Loan Agreement, dated September 24, 2014 (together with the other documents and agreements executed in connection therewith, including without limitation, various Security Agreements, Promissory Notes, Guarantee and Pledge Agreements, and amendments, the “Senior Pre-Petition Loan Documents”), among Southeast, AF Florida, and AF Georgia, as borrowers, Allied Fiber, as guarantor, and the Senior Pre-Petition Lender (the “Senior Pre-Petition Loan”). The Senior Pre-Petition Lender and the Junior Lien Holders entered into that certain Intercreditor Agreement in which the Junior Lien Holders subordinated their rights to the Senior Pre-Petition Lender, all as more fully set forth below.

By mid-2015, the Debtors defaulted under the Senior Pre-Petition Loan Documents. Thereafter, the Senior Pre-Petition Lender agreed to forebear from taking remedial action against the Debtors and provided additional advances to both the Debtors and Allied Fiber. Under the terms of a forbearance arrangement, the Senior Pre-Petition Lender provided additional funding through the Senior Pre-Petition Loan Documents, bringing the cumulative principal balance of the note to \$26.8 million (comprised of \$23 million initial advance, \$2.8 million in PIK interest and \$1 million in additional advances), exclusive of fees and a make-whole amount (the “Make Whole”) due under the Senior Pre-Petition Loan Documents.

Shortly thereafter, from September 2015 through February of 2016, Phoenix provided Allied Fiber with certain “forbearance funding” on a subordinated basis in the amount of \$2.6 million. The funding from Phoenix abruptly ceased without notice on February 29, 2016. Without additional funding, the Debtors were unable to continue as a going concern. In order to preserve the Debtors’ value as a going concern, the Senior Pre-Petition Lender funded an additional \$2.2 million on an emergency basis along with an additional \$2 million of PIK interest that, originally, was contractually obligated to be paid in cash.

Thus, as of the Petition Date, the Debtors had first priority secured indebtedness due and owing to the Senior Pre-Petition Lender in the approximate principal amount of approximately \$51 million (including the Make Whole but excluding fees owed under the Senior Pre-Petition Loan Documents), all of which is secured by a first priority lien in substantially all of the Debtors’ assets.

The Senior Pre-Petition Lender and the Junior Lien Holders are parties to that certain Intercreditor Lien Subordination Agreement (the “Intercreditor Agreement”), dated as of September 24, 2014, by and among the Debtors, the Senior Pre-Petition Lender, Phoenix, and William Hitchcock as Agent for certain individuals and entities. Pursuant to the Intercreditor Agreement, while any portion of the Obligations (as defined therein) remain outstanding, the Subordinating Lenders (as defined in the Intercreditor Agreement to mean the Junior Lien Holders) agreed to, among other things, subordinate their rights to repayment - to the extent there is even an obligation to repay - for any portion of the obligations due and owing to them, to the Senior Pre-Petition Lender.

B. Events Precipitating the Chapter 11 Filing

Allied Fiber was formed June 18, 2008, with the goal of constructing the first national, open access, integrated, network-neutral colocation and dark fiber network in the United States. The initial business plan reflected a capital need of approximately \$100 million to complete the intended first segment of the network, which was to extend from Ashburn, Virginia to Harrisburg, Pennsylvania and then bi-directionally from Harrisburg, Pennsylvania to New York and Chicago, Illinois (the "**Northeast Segment**").

In order to eventually build-out a completed network, in June 2009, Allied Fiber purchased an option on two already existing fiber-optic ducts extending along the Norfolk and Southern Railroad right-of-way for an annual cost of \$4.9 million (the "**Northeast Options**"). Allied Fiber's marketing efforts to fund its construction plans for the Northeast Segment continued unsuccessfully from June 2009 until late 2012.

In late 2012, after spending approximately \$20.5 million on the Northeast Options - without ever putting a shovel in the ground - Allied Fiber redirected its attention and deployment of capital from its original plans to construct the Northeast Segment to a lower capital cost route extending along railroad right-of-ways from Miami, Florida to Atlanta, Georgia (the "**Southeast Segment**"). Allied Fiber began planning construction of the Southeast Segment network deployment in the first quarter of 2013. Nevertheless, Allied Fiber also made a strategic decision to renegotiate and continue the Northeast Options.

Allied Fiber continued construction activities on the Southeast Segment in 2013 and 2014. Operating losses and capital needs were again funded by the issuance of an additional tranche of high-interest rate notes with warrants and the amendment and extension of prior notes (both convertible and with warrants) to mostly equity holders and existing debt holders. By mid-

2014, Allied Fiber had constructed a portion of the Southeast Segment in Florida but had exhausted its financial resources.

As set forth above, given Allied Fiber's need for additional capital, in September 2014, Southeast, AF Florida and AF Georgia were incorporated and obtained a \$23 million senior secured facility – the Senior Pre-Petition Loan - to own and complete the Southeast Segment. Allied Fiber's assets were transferred to the Debtors pursuant to this round of funding.

Southeast began marketing efforts to sell dark fiber Indefeasible Rights of Use (“IRUs”) and colocation services on the Miami to Jacksonville portion of the Southeast Segment while construction activities continued on the Georgia route extension to Atlanta. Essentially, Allied Fiber – although by this time all operations were conducted at the Southeast level and below - and its subsidiaries, including the Debtors, were still considered to be a “pre-revenue” company. In its 2014 consolidated US GAAP financial statements, Allied Fiber reported approximately \$23,000 in operating revenues – all of it derived from AF Florida, and consolidated operating expenses of \$11.1 million. A portion of the operating expenses can be directly attributed to the Northeast Options – which expenses totaled approximately \$27 million from their initial purchase until March 1, 2016, when Allied Fiber no longer funded the Northeast Options and they lapsed.

The Southeast Segment was completed in June 2015 with approximately \$21 million invested in the dark fiber and \$10.5 million for eleven owned colocation facilities constructed along the route. Thus, after approximately \$93 million in invested capital at Allied Fiber and Debtor entities, the Plan Debtors' (who owned all the assets) only operating asset was finally operational.

Despite having a fully completed and functional network, the Debtors failed to develop sufficient revenues from IRUs sales to operate as a going-concern without substantial and continuing financial support. This meant that the Debtors' revenues were not strong enough to support the Debtors' expenses due to lower than expected demand for their products from the presumed pool of customers (*i.e.*, IRU sales). As of the Petition Date, Southeast had annual recurring revenues of approximately \$500,000 with approximately \$8.5 million of annual operating costs. Over the most recent eighteen (18) months prior to the Petition Date, Allied Fiber unsuccessfully pursued numerous alternatives to maintain the business as a going-concern, including reviewing possible sale, mergers, increased debt and equity infusions, and sale/leaseback transactions all in an effort to provide needed growth capital and sufficient working capital to continue its existing business plan.

At the end of February 2016, despite heavy marketing and extensive efforts to obtain funding (including by Allied' Fiber's Board of Managers and a third party financial advisor, Source Capital), no party was willing to continue to fund capital expenses and operating losses for a business model that seemed dubious to succeed. As such, Allied Fiber fired all of Debtors' employees and the Debtors ceased operations. In order to preserve their value as a going concern, the Plan Debtors – where all operations were centered – secured emergency interim financing from the Senior Pre-Petition Lender. This funding permitted the Debtors to re-hire a core group of the recently terminated employees, resume operations, and attempt to negotiate an exit strategy for the businesses with the Senior Pre-Petition Lender.

Despite months of efforts by the Senior Pre-Petition Lender to negotiate a consensual reorganization of the Debtors' operations with Allied Fiber and Phoenix, the parties could not reach an agreement. Once Phoenix ceased funding the Debtors' operations and Allied Fiber

terminated all of its employees, the Debtors were unable to continue as a going concern without additional funding. In order to ensure the Debtors' continued viability and preserve the value of its collateral, the Senior Pre-Petition Lender was left with no choice but to exercise its rights under the Senior Pre-Petition Loan Documents to appoint Scott Drake as the sole managing member of each of the Debtors.

After spending months seeking alternatives in an effort to make the business profitable, it was apparent that the Debtors simply could not operate without substantial and drastic changes. After changing management and resuming operations, the Debtors reduced their operating costs by approximately 50%. The Debtors initiated the Chapter 11 Cases in order to conduct an orderly marketing and sale process that would maximize the value of the Debtors' estates.

C. Prepetition Marketing Activities

As set forth above, the Debtors conducted an extensive prepetition marketing process to pursue a refinancing or going concern sale of the Debtors' assets and entered into discussions with several parties regarding a sale. Despite the Debtors' marketing process, as of the Petition Date, none of the interested potential bidders had come forward to serve as a stalking horse bidder for a sale process.

D. The Chapter 11 Cases

The following is a brief description of certain material events that have occurred during the Chapter 11 Cases.

1. First Day Orders

On or shortly after the Petition Date, in addition to the voluntary petitions for relief filed by the Debtors, the Debtors filed a number of motions and applications (collectively, the "**First**

Day Motions”) seeking certain “first day” relief. A summary of the relief obtained pursuant to the First Day Motions is set forth below:

- ***Joint Administration Motion.*** Pursuant to the *Debtors’ Motion for Entry of an Order Directing Joint Administration of Chapter 11 Cases* [Docket No. 3], the Court entered an Order [Docket No. 24] authorizing the joint administration of the Chapter 11 Cases for procedural purposes only.
- ***Utilities Motion.*** Pursuant to the *Debtors’ Motion for Entry of Interim and Final Orders (I) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service; (II) Approving the Debtors’ Proposed Form of Adequate Assurance of Payment for Utilities; and (III) Establishing Procedures for Resolving Objections to the Debtors’ Proposed Form of Adequate Assurance* [Docket No. 5], the Court entered interim and final Orders [Docket Nos. 28 and 97] authorizing and approving the provision of adequate assurance of payment to the Debtors’ utility service providers under section 366 of the Bankruptcy Code, while allowing the Debtors to avoid the threat of imminent termination of their utility services from those utility companies.
- ***Employee Wages/Benefits Motion.*** Pursuant to the *Debtors’ Motion for Authority to Pay Prepetition Employee Wages, Compensation, and Employee Benefits* [Docket No. 6], the Court entered a final Order [Docket No. 27] authorizing the Debtors to pay certain reimbursable expenses, prepetition payroll obligations, payroll-related benefits, and healthcare premiums.

2. **DIP Financing Orders**

As of the Petition Date, the Debtors did not have sufficient cash to continue operating without additional financing. Accordingly, the Debtors required postpetition financing in order to continue operating long enough to effectuate the orderly sale of their assets on a going-concern basis. On April 20, 2016, the Debtors filed the motion requesting, among other things, the entry of interim and final Orders (i) authorizing the Debtors to obtain postpetition financing from the Senior Pre-Petition Lender as DIP Lender under the terms of that certain Senior Secured, Superpriority Debtor-in-Possession Credit Facility (the “**DIP Facility**”) (ii) authorizing the Debtors’ use of cash collateral (as defined in section 363(a) Bankruptcy Code), subject to an approved budget, (iii) authorizing the Debtors to provide adequate protection in the form of, among other things, replacement liens, superpriority claims, and the payment of postpetition

professional fees, costs and expenses of the DIP Lender to protect against any diminution in value arising from the Debtors' use of cash collateral or the imposition of the automatic stay under section 362 of the Bankruptcy Code, and (iv) granting certain related relief. Further, on June 23, 2016, the Debtors filed a motion seeking to modify the DIP Facility (the "**DIP Modification Motion**"). The Court entered interim and final Orders on April 25 and May 13, 2016, respectively [Docket Nos. 39 and 99] granting the requested relief and approving the DIP Facility, and approved the modification of the DIP Facility on July 13, 2016 [Docket No. 207] (collectively, the "**DIP Orders**").

The DIP Facility, as approved in the DIP Orders, provided the Debtors with sufficient additional financing to continue operating through mid-July 2016, as well as fund all Administrative Claims, including Professional Fee Claims, and other costs of administering the Chapter 11 Cases. **Importantly, the DIP Lender provided funding under the DIP Facility and the DIP Orders in an amount in excess of \$6,201,464.00.** Absent the postpetition financing provided by the DIP Lender under the DIP Facility and DIP Orders, the Debtors' business would have been forced to cease operating and their estates would have suffered immediate and irreparable harm. Thus, entry of the DIP Orders was necessary to preserve, maintain and enhance the value of the Debtors' remaining assets for the benefit of the Debtors' stakeholders.

3. **Employment of Professionals and Advisors**

a. **Debtors' Professionals**

On May 13, 2016, the Court entered an Order [Docket No. 95] authorizing the Debtors to retain Fox Rothschild LLP as the Debtors' general bankruptcy counsel. On May 13, 2016, the Court entered an Order [Docket No. 94] approving the Debtors' retention and employment of

PMCM as Chief Restructuring Officer of the Debtors and designating Michael E. Jacoby as the Chief Restructuring Officer (“CRO”) of the Debtors.

4. Sale of Assets

a. Bidding Procedures and Bid Deadlines

On April 27, 2016, the Debtors filed the *Motion of the Debtors for (I) An Order (a) Approving Bidding Procedures; (b) Scheduling Bid Deadline, Auction Date, and Sale Hearing and Approving Notice Thereof; and (c) Approving Procedures to Fix Cure Amounts Related to Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Approving Notice Thereof; and (II) An Order Approving (a) the Sale of Substantially All of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Liabilities and (b) the Assumption, Sale and Assignment to Buyer of Certain Contracts of Debtors* (the “Bid & Sale Motion”) [Docket No. 48], which requested relief in two (2) parts. First, the Bid & Sale Motion requested that the Court approve certain bidding procedures (the “Bidding Procedures”) for the conduct of a going concern sale process for the sale of the Debtors’ assets, approve certain notice procedures with respect to the bidding and sale process, schedule an auction for the sale of the purchased assets, and schedule a hearing to consider the sale of the purchased assets to the highest bidder. Because the Debtors did not have sufficient funding to operate beyond July 18, 2016, the proposed Bidding Procedures were designed to ensure that the Debtors could consummate a sale of their assets on or prior to that date. The second part of the Bid & Sale Motion requested ultimate approval of the sale of the Debtors’ assets to the highest bidder under the Bidding Procedures, as well as approval of the assumption and assignment of various contracts of the Debtors.

By Order dated May 13, 2016 [Docket No. 100] (the “Bidding Procedures Order”), the Court approved the Bidding Procedures and related portion of the Bid & Sale Motion, which established certain bidding procedures for the conduct of the sale, scheduling a bid deadline of July 7, 2016, scheduling an auction for July 14, 2016, and scheduling a sale hearing (the “Sale Hearing”) for July 16, 2016. Upon entry of the Bid Procedures Order, the Debtors provided notice of the bid procedures, auction date, deadline to object to the proposed sale, and the Sale Hearing to all interested parties as set forth in the Bidding Procedures Order.

b. Post-Petition Marketing Efforts

After the Petition Date, the Debtors, with the assistance of PMCM, continued marketing the Debtors’ assets for sale. PMCM established and populated a virtual data room containing 9,163 due diligence materials for prospective bidders. PMCM issued a press release announcing the auction and sale of the Plan Debtors’ assets, which was viewed by 1,892 Persons and posted on 112 websites. Additionally, PMCM emailed teaser information packages containing information and financial data with respect to the Assets to 320 Persons and mailed hard copy teaser information packages to fifty-six (56) Persons. PMCM also posted the deal information on Axiel.net, which is an all-in-one networking site for business development, connecting companies to capital funding, sourcing deals, marketing and analytics. The post on Axiel.net received 355 views, which resulted in them providing teaser information packages to thirty-seven (37) entities that requested them.

As a result of the marketing efforts, fifty-two (52) parties executed Non-Disclosure Agreements (“NDAs”) and were provided confidential diligence information. Of the fifty-two (52) parties that executed NDAs, fifty (50) of those parties accessed the virtual data room. The fifty (50) entities that accessed the virtual data room accessed 26,328 documents in total.

Further, PMCM had direct and email conversations with each one of the fifty-two (52) entities that executed an NDA. In addition, PMCM and the Debtors caused a Notice of Bid Deadline, Auction and Sale which was published in *The Wall Street Journal* on May 25, 2016.

Thus, both the CRO and the Debtors' management had in-depth discussions with potential bidders in various stages of due diligence. The Debtors, the CRO and PMCM continued vigorously marketing the Purchased Assets, soliciting bids, and cooperating with potential bidders until the July 7, 2016 bid deadline. The Debtors believe that this robust marketing process resulted in a fair and open bidding process and generated the highest possible price for the Purchased Assets.

c. Receipt of Bids, Auction, and Sale Hearing

Prior to the expiration of the July 7, 2016 bidding deadline, the Debtors only received one bid. The bid was submitted by Strome Mezzanine Fund IV, LP (as purchaser, the "**Buyer**"), which is the Senior Pre-Petition Lender and DIP Lender. In accordance with the Bid Procedures Order, on July 12, 2016, the Debtors canceled the scheduled auction due to the fact that only one bid was received by the Debtors and designated the Buyer as the successful bidder under the terms of the Bidding Procedures.

The Court conducted the Sale Hearing on July 16, 2016. At the Sale Hearing, the Court considered, *inter alia*, the sale portion of the Bid & Sale Motion. The Court granted the Bid & Sale Motion and approved the sale of the Debtors' assets ("**Sale**") to the Buyer on the terms set forth in the Asset Purchase Agreement dated July 12, 2016, under section 363 of the Bankruptcy Code (the "**Sale Order**") [Docket No. 228]. With all the conditions precedent to the sale satisfied, the sale to the Buyer closed on August 1, 2016.

5. Claims Process and Bar Date

a. Section 341(a) Meeting of Creditors

On June 10, 2016, the UST presided over the 341 Meeting in these Chapter 11 Cases. The meeting was concluded on June 10, 2016.

b. Schedules and Statements

Each of the Debtors filed its Schedules with the Court on June 8, 2016. The Debtors filed amended Schedules on June 22, 2016.

c. Bar Dates

Pursuant to an Order [Docket No. 213] of the Court, dated July 14, 2016, the Debtors have established (i) August 10, 2016 (the "**General Bar Date**"), as the deadline for Creditors (other than governmental units (as defined under section 101(27) of the Bankruptcy Code)) to file proofs of Claim in these Chapter 11 Cases; and (ii) October 17, 2016 (the "**Governmental Bar Date**"), and together with the General Bar Date, the "**Bar Dates**") as the deadline for Governmental Units to file proofs of Claim in these Chapter 11 Cases. Notice of the Bar Dates was served on all potential creditors of the Debtors' Estates on or before July 19, 2016.

E. Certain Federal Income Tax Consequences

The confirmation and consummation of the Combined Plan and Disclosure Statement may have tax consequences to Holders of Claims and Equity Interests. The Plan Debtors do 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 with their own tax advisors to ascertain the federal, state, local and foreign tax consequences of the Combined Plan and Disclosure Statement. This 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 any other party in interest.

F. Alternate Plan

If the Combined Plan and Disclosure Statement is not confirmed, the Plan Debtors or any other party in interest could attempt to formulate a different plan. However, the additional costs, all of which would constitute Administrative Expense Claims, may be so significant that one or more parties in interest could request that the Chapter 11 Cases be converted to chapter 7 of the Bankruptcy Code. As discussed below, the Plan Debtors believe Holders of Claims and Equity Interests will receive more under the Combined Plan and Disclosure Statement than they would under chapter 7. Accordingly, the Plan Debtors believe that the Combined Plan and Disclosure Statement enables creditors to realize the best return under the circumstances.

G. 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 Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Plan Debtors were liquidated under chapter 7 of the Bankruptcy Code. Because the majority of the Plan Debtors' assets have already been liquidated and converted to Cash, the value of any Distributions if the Plan Debtors' Chapter 11 Cases were converted to a case under chapter 7 of the Bankruptcy Code would be less than the value of Distributions under the Plan. This is because conversion of the Chapter 11 Cases to chapter 7 cases 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 at a significant cost to the Estates and with a significant delay compared to the time of Distributions

under the Plan (and prosecution of Causes of Action, if any). Worse still, a chapter 7 trustee would be entitled to significant professional fees and commissions relating to the Distributions of the already monetized assets made to creditors. Accordingly, a portion of the Cash currently available for Distribution to holders of Claims would instead be paid to the chapter 7 trustee and his/her professionals.

As a result, the Plan Debtors believe that the Pre-Confirmation Estates would have fewer funds to be distributed in a hypothetical chapter 7 liquidation than they would if this Combined Plan and Disclosure Statement is confirmed, and therefore holders of Claims in all impaired Classes will recover at least as much, and likely more, than they would in a hypothetical chapter 7 case. Accordingly, the Plan Debtors believe that the “best interests” test of Bankruptcy Code section 1129 is easily satisfied.

1. Liquidation Analysis

As provided in Paragraph 8(a) of the DIP Orders, certain of the Plan Debtors’ Cash on hand has been allocated under the Sale to be set aside for the benefit of Allowed General Unsecured Claims. The Holders of the DIP Facility Claim and the Prepetition Indebtedness Claim are agreeing to waive any right to a Distribution under the Combined Disclosure Statement and Plan. Thus, under the Combined Disclosure Statement and Plan, Allowed General Unsecured Claims are being paid in full and the Holders of the DIP Facility Claim and the Prepetition Indebtedness Claim are waiving their rights to a Distribution. Both of those items may not be available in any scenario other than the Combined Disclosure Statement and Plan (including Chapter 7). Therefore, without even getting to the additional layers of administrative expenses that will arise if the Cases are converted to Chapter 7 (discussed above), in Chapter 7 there will be no possibility for distributions to any creditors other than the Holders of the DIP

Facility Claim and Prepetition Indebtedness Claim (to whom any distribution would be de minimis at best).

IV. SUMMARY OF PLAN DEBTORS' ASSETS; SUMMARY OF TREATMENT OF CLAIMS AND ESTIMATED RECOVERIES

A. Summary of Assets

AF-Southeast's sole assets are the Equity Interests in AF-Florida and AF-Georgia. The Plan Debtors' assets consisted of several broad categories concerning the Debtors' operating assets: the real estate related assets of the Southeast Segment, machinery and equipment, and office equipment. The real estate related assets of the Southeast Segment are the fiber cable from Miami to Jacksonville and Jacksonville to Atlanta, as well as the numerous Colocation Facilities throughout the Southeast Segment. Substantially all of the Debtors' assets (excluding the Equity Interests in AF-Florida and AF-Georgia) were sold to Buyer under the Sale Order and the Asset Purchase Agreement. Accordingly, the sole substantial asset of the Pre-Confirmation Estates is the Cash proceeds of that Sale. At the time of filing the Combined Plan and Disclosure Statement, the Debtors were holding approximately \$165,000, which is to be distributed to Holders of Allowed Claims in accordance with the terms of this Combined Plan and Disclosure Statement and the Bankruptcy Code's priority scheme.

Although the Plan Debtors may hold Causes of Action against various third-parties, the viability and value of those Causes of Action is de minimis, if anything at all. Accordingly, and due to the fact that all creditors of the Plan Debtors are being paid 100% of their claims (or otherwise waiving any rights to Distributions), the Plan Debtors are waiving and releasing all Causes of Action. Similarly, all potential Causes of Action against the Senior Prepetition Lender and DIP Lender were released under the terms of the Senior Prepetition Loan Documents and

DIP Order. Accordingly, the Plan Debtors do not believe Causes of Action are assets of the Plan Estates nor will they be assets of the Liquidating Debtors.

1. Liquidation Analysis

As provided in the Paragraph 8(a) of the DIP Orders, certain of the Plan Debtors' Cash on hand has been allocated under the DIP Facility for the benefit of Allowed General Unsecured Claims. The Holders of the DIP Facility Claim and the Prepetition Indebtedness Claim are agreeing to waive any right to a Distribution under the Combined Disclosure Statement and Plan. Thus, under the Combined Disclosure Statement and Plan, Allowed General Unsecured Claims are being paid in full, the Holders of the Holders of the DIP Facility Claim and the Prepetition Indebtedness Claim are waiving their rights to a Distribution. Both of those items (Cash available under DIP Facility and waiver of distribution by the DIP Lender) will not be available in any scenario other than the Combined Disclosure Statement and Plan (including Chapter 7). Therefore, without even getting to the additional layers of administrative expenses that will arise if the Cases are converted to Chapter 7 (discussed above), in Chapter 7 there will be no possibility for distributions to any creditors other than the Holders of the DIP Facility Claim and Prepetition Indebtedness Claim (to whom any distribution would be de minimis at best).

B. Summary of Treatment of Claims and Equity Interests and Estimated Recoveries

The following chart provides a summary of treatment of each Class of Claims (other than Administrative Claims and Priority Tax Claims)³ and an estimate of the recoveries of each class.⁴

³ The amounts listed below represent estimated Allowed Claims, and do not represent amounts actually asserted by creditors in proofs of claim or otherwise. The Debtors have not completed their analysis of Claims in the Chapter 11 Cases 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 greater or lower than estimated.

⁴ The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims in the Chapter 11 Cases. The actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the

The treatment provided in this chart is for information purposes only and is qualified in its entirety by Section VII of the Combined Plan and Disclosure Statement.⁵

Class	Treatment
<p>Class 1 – DIP Facility Claim</p> <p>Estimated Amount: \$\$7,643,564.00⁶ Estimated Recovery: 0%</p>	<p>Impaired</p> <p>The Holder of the DIP Facility Claim will subordinate its Claim to Holders of Claims in Class 4 and will waive any right to a Distribution on account of the DIP Facility Claim unless and until all Allowed Class 4 General Unsecured Claims are paid in full.</p>
<p>Class 2 – Senior Prepetition Indebtedness Claim</p> <p>Estimated Amount: \$\$25,777,257.00⁷ Estimated Recovery: 0%</p>	<p>Impaired</p> <p>A portion of the Senior Prepetition Indebtedness Claim has been paid as a result of the credit bid Sale to the Senior Pre-Petition Lender (as Buyer) under the Sale Order, but a portion of the Senior Prepetition Indebtedness Claim remains. The Holder of the Senior Prepetition Indebtedness Claim will waive any right to a Distribution on account of the Senior Pre-Petition Indebtedness Claim.</p>
<p>Class 3 – Non-Tax Priority Claims</p> <p>Estimated Amount: \$0.00⁸ Estimated Recovery: 100%</p>	<p>Unimpaired</p> <p>On or as soon as practicable after the later of (a) the Effective Date or (b) the Allowance Date with respect to a Non-Tax Priority Claim, each Holder of a Non-Tax Priority Claim shall receive from the Liquidating Debtors, in full satisfaction, settlement, release and discharge of and in exchange for such Claim, either (i) Cash in the Allowed Amount of such Claim, or (ii) such other, less favorable treatment to which such Holder and the Debtors or the Liquidating Debtors, as appropriate, agree in writing.</p>

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.

⁵ Nothing in this summary shall be construed as a limitation on, or waiver of, the right of any party to object to the Allowance of a Claim under section 502(a) of the Bankruptcy Code or otherwise.

⁶ This reflects the approximate amount of the DIP Facility Claim as of September 15, 2016 excluding fees, costs, and expenses.

⁷ This reflects the approximate amount of the Senior Prepetition Indebtedness Claim as of September 15, 2016 excluding fees, costs, and expenses.

⁸ This reflects the Plan Debtors' best estimate of the maximum amount of Non-Tax Priority Claims. However, the Plan Debtors' books and records reflect that the actual allowed amount of such Claims could be substantially lower. The Plan Debtors reserve all rights with respect to such Claims.

Class	Treatment
Class 4 – General Unsecured Claims Estimated Amount: \$97,190.27 ⁹ Estimated Recovery: 100% ¹⁰	Unimpaired On or as soon as practicable after the later of (a) the Effective Date or (b) the Allowance Date with respect to a General Unsecured Claim, Each Holder of an Allowed General Unsecured Claim shall receive from the Debtors, in full satisfaction, settlement, release and discharge of and in exchange for such Claim, Cash in an amount equal to 100% of such Claim.
Class 5 – Intercompany Claims Estimated Amount: n/a Estimated Recovery: n/a	Impaired Intercompany Claims shall retain no value under the Combined Plan and Disclosure Statement and such Claims shall be deemed extinguished on the Effective Date.
Class 6 – Equity Interests Estimated Amount: n/a Estimated Recovery: n/a	Impaired Equity Interests will be deemed canceled and extinguished as of the Dissolution Date. Holders of an Equity Interest will not receive or retain any property on account of such Equity Interests.

V. CONFIRMATION AND VOTING PROCEDURES

A. Confirmation Procedure

1. Confirmation Hearing

A hearing before the Honorable Kevin Gross has been scheduled for _____, 2016 at ____m. (EST), at the Bankruptcy Court, 824 North Market Street, 6th Floor, 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

⁹ This reflects the Plan Debtors' best estimate of the approximate amount of General Unsecured Claims based on the Plan Debtors' books and records. The actual amount of Allowed General Unsecured Claims may vary.

¹⁰ The expected recovery to Holders of Allowed General Unsecured Claims provided in this Combined Plan and Disclosure Statement reflects the Plan Debtors' best estimate based on the expected amount of Allowed General Unsecured Claims and the remaining costs of administration of the Debtors' Estates. This information is provided as an estimate only and is subject to change. The Plan Debtors reserve all rights with respect to reconciliation of Claims and amount of ultimate Distributions under the Combined Plan and Disclosure Statement.

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.

2. Procedure for Objections

Any objection to approval or confirmation of the Combined Plan and Disclosure Statement must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim held by the objector. Responses and objections, if any, to 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 Court and served so as to be actually received on or before **4:00 p.m. (EST) on January __, 2016** by (i) the U.S. Trustee, J. Caleb Boggs Federal Building, 844 King Street, Room 2207, Wilmington, DE 19801, Attention: Linda J. Casey, Esq.; (ii) counsel for the Debtors, Fox Rothschild LLP, 2000 Market Street, 20th Floor, Philadelphia, Pennsylvania 19103, Attention: Michael Menkowitz, Esq., Joshua T. Klein, Esq., and Jason C. Manfrey, Esq.; (iii) co-counsel for the DIP Lender and Buyer, Neligan Foley LLP, 325 N. St. Paul, Suite 3600, Dallas, TX 75201, Attention: Patrick J. Neligan, Jr., Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attention: Mark D. Collins, Esq. and Jason M. Madron, Esq. Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court.

3. Requirements for Confirmation

The Bankruptcy Court will confirm the Combined Plan and Disclosure Statement only if it meets all of the applicable requirements of section 1129 of the Bankruptcy Code. Among the requirements for confirmation in these Chapter 11 Cases 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 rejecting Class; and (ii) feasible. The Bankruptcy Court must also find that:

- a. the Combined Plan and Disclosure Statement has classified Claims and Equity 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. *See* 11 U.S.C. §§ 1123, 1129.

4. 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 Secured Claims, General Unsecured Claims and Equity Interests. The Debtors believe 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.

5. 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 Equity Interests 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 Equity 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.

6. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the Plan Debtors or any successor to the Plan Debtors (unless such liquidation or reorganization is proposed in the Combined Disclosure Statement and Plan). Because the Combined Plan and Disclosure Statement proposes a liquidation of all of the Plan Debtors’ assets, for purposes of this test, the Plan Debtors have analyzed the ability of the Liquidating Debtors to meet its obligations under the Combined Plan and Disclosure Statement. Based on the Plan Debtors’ analysis, the Plan Assets will have sufficient assets to accomplish its tasks under the Combined Plan and Disclosure Statement. Therefore, the Plan Debtors believe that the liquidation pursuant to the Combined Plan and Disclosure Statement will meet the feasibility requirements of the Bankruptcy Code.

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

Unless otherwise ordered by the Bankruptcy Court, only Holders of Allowed Claims in Classes 1 and 2 may vote on the Combined Plan and Disclosure Statement. In order to vote on the Combined Plan and Disclosure Statement, you must hold a Claim in Class 1 or Class 2 and have timely filed a proof of Claim or have a Claim that is identified on the Schedules that is not listed as disputed, unliquidated or contingent, or be the holder of a Claim that has been temporarily Allowed for voting purposes only under Bankruptcy Rule 3018(a).

8. Solicitation and Confirmation Notice

All Holders of Claims in Classes 1 and 2 will receive (i) notice of the confirmation hearing on the Combined Plan and Disclosure Statement (the "**Confirmation Notice**") (ii) a form of ballot, and (iii) access to 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 properly deliver the ballot to the Balloting Tabulator by either mail or overnight courier or e-mail to the Balloting Tabulator at the following address: Fox Rothschild LLP, 2000 Market Street, 20th Floor, Philadelphia, PA 19013, Attn: Joseph D. Distanislaio, Paralegal, jdistanislaio@foxrothschild.com. The Balloting Tabulator must **RECEIVE** ballots on or before **4:00 p.m. (EST) _____, 2016** (the "**Voting Deadline**"). Except as otherwise ordered by the Bankruptcy Court, you may not change your vote once a ballot is submitted to the Tabulator. **BALLOTS SENT BY FACSIMILE TRANSMISSION ARE NOT ALLOWED AND WILL NOT BE COUNTED.**

Any ballot that is timely received, that contains sufficient information to permit the identification of the claimant and that is cast as an acceptance or rejection of the Combined Plan and Disclosure Statement will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Combined Plan and Disclosure Statement.

The following ballots will not be counted or considered for any purpose in determining whether the Combined Plan and Disclosure Statement has been accepted or rejected:

- a. any ballot received after the Voting Deadline, unless the Court grants an extension of the Voting Deadline with respect to such ballot;
- b. any ballot that is illegible or contains insufficient information to permit the identification of the claimant;
- c. any ballot cast by a person or entity that does not hold a Claim in a Class that is entitled to vote to accept or reject the Combined Plan and Disclosure Statement;
- d. any ballot cast for a Claim designated as unliquidated, contingent or disputed or as zero or unknown in amount and for which no Bankruptcy Rule 3018(a) motion has been filed by the Bankruptcy Rule 3018(a) motion deadline;
- e. any ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of the Combined Plan and Disclosure Statement or that indicates both acceptance and rejection of the Combined Plan and Disclosure Statement;
- f. any unsigned ballot; or
- g. any ballot that is submitted by fax or email.

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 Debtors urge that you vote to accept the Combined Plan and Disclosure Statement. **YOU ARE URGED TO COMPLETE, DATE, SIGN AND PROMPTLY RETURN THE BALLOT TO THE CLAIMS AND BALLOTING AGENT. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND 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.

VI. TREATMENT OF UNCLASSIFIED CLAIMS

A. Administrative Expense Bar Date

Requests for payment of Administrative Expense Claims (other than Fee Claims) must be filed no later than the Administrative Expense Bar Date. Holders of Administrative Expense Claims (other than Fee Claims) that do not file requests for the allowance and payment thereof

on or before the Administrative Expense Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Debtors or their Estates.

B. Treatment of Administrative Expense Claims

Except to the extent that any Entity entitled to payment of an Allowed Administrative Expense Claim agrees to a different treatment, each Holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Administrative Expense Claim on the Effective Date or within ten (10) Business Days after the entry of a Final Order Allowing such Administrative Expense Claim, whichever is later, or as soon thereafter as is practicable. Such payments to Holders of Allowed Administrative Expense Claims shall be paid in Cash by the Liquidating Debtors from the Liquidating Debtors' Assets.

C. Treatment of Priority Tax Claims

Each Holder of an Allowed Priority Tax Claim, if any, shall receive in full satisfaction of such Allowed Priority Tax Claim (a) payment in Cash equal to the unpaid portion of such Allowed Priority Tax Claim on the Effective Date or within ten (10) Business Days after such Allowed Priority Tax Claim becomes an Allowed Claim, whichever is later, or as soon thereafter as is practicable; or (b) Cash in an amount agreed to by the Plan Debtors (if prior to the Effective Date) or the Liquidating Debtors (if after the Effective Date) and such Holder; provided, however, that any Claim or demand for payment of a penalty (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be treated as a General Unsecured Claim. Such payments to Holders of Allowed Priority Tax Claims shall be paid by the Liquidating Debtors from the Liquidating Debtors' Cash.

D. Payment of Statutory Fees

All fees payable pursuant to section 1930 of title 28 of the United States Code, to the extent unpaid through the Confirmation Date, shall be paid by the Plan Debtors in Cash within ten (10) Business Days after the Confirmation Date, or as soon thereafter as is practicable. From and after the Confirmation Date through the closing of the Chapter 11 Cases, all fees payable pursuant to section 1930 of title 28 of the United States Code, plus any interest under 37 U.S.C. § 3717, shall be paid by the Plan Debtors (if prior to the Effective Date) or the Liquidating Debtors (if after the Effective Date).

E. Bar Dates for Professional Fee Claims

Professionals or other Entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the Liquidating Debtors and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other Order of the Bankruptcy Court a Final Fee Application no later than **thirty (30) days** after the Effective Date. A Professional may include any outstanding, non-Filed monthly or interim requests for payment of a Fee Claim pursuant to the Fee Order in its Final Fee Application. Objections to any Final Fee Application must be Filed and served on the Liquidating Debtors and the requesting party no later than twenty-one (21) days after the Filing of the applicable Final Fee Application. To the extent necessary, the Confirmation Order shall amend and supersede any previously entered Order of the Bankruptcy Court, including the Fee Order, regarding the payment of Fee Claims. Any pending, Filed interim requests for a Fee Claim pursuant to the Fee Order shall be resolved in the ordinary course in accordance with the Fee Order or, if sooner, in connection with the particular Professional's Final Fee Application.

F. Intercompany Claims

All Intercompany Claims shall be disallowed pursuant to this Combined Plan and Disclosure Statement and shall be cancelled as of the Effective Date.

VII. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

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 Facility Claim	Impaired	Entitled to Vote
2	Senior Pre-Petition Indebtedness Claim	Impaired	Entitled to Vote
3	Non-Tax Priority Claims	Unimpaired	Deemed to Accept
4	General Unsecured Claims	Unimpaired	Deemed to Accept
5	Intercompany Claims	Impaired	Deemed to Reject
6	Equity Interests	Impaired	Deemed to Reject

VIII. TREATMENT OF CLAIMS AND EQUITY INTERESTS**A. Treatment of Claims and Equity Interests****1. Class 1 – DIP Facility Claim****a. Classification**

Class 1 consists of the DIP Facility Claim.

b. Impairment and Voting

Class 1 is impaired by the Combined Plan and Disclosure Statement. The Holder of the DIP Facility Claim is entitled to vote to accept or to reject the Combined Plan and Disclosure Statement.

c. Allowance

The Allowed amount of the DIP Facility Claim shall be agreed to by the Plan Debtors or the Liquidating Debtors, as appropriate, and the Holder thereof, or determined by the Bankruptcy Court.

d. Treatment

The Holder of the DIP Facility Claim will receive the following treatment: the Holder of the DIP Facility Claim will subordinate its Claim to Class 4 and will waive any right to a Distribution on account of the DIP Facility Claim unless and until all Class 4 General Unsecured Claims are paid in full.

2. Class 2 – Senior Pre-Petition Indebtedness Claim

a. Classification

Class 2 consists of the Senior Pre-Petition Indebtedness Claim.

b. Impairment and Voting

Class 2 is Impaired by the Combined Plan and Disclosure Statement. The Holder of the Senior Prepetition Indebtedness Claim is entitled to vote to accept or to reject the Combined Plan and Disclosure Statement.

c. Allowance

The Allowed amount of the Senior Pre-Petition Indebtedness Claim shall be agreed to by the Plan Debtors or the Liquidating Debtors, as appropriate, and the Holder thereof, or determined by the Bankruptcy Court.

d. Treatment

A portion of the Senior Pre-Petition Indebtedness Claim was paid in accordance with the DIP Facility Order and the Sale Order, however, a portion of such Claim remains. The Holder of

the Senior Pre-Petition Indebtedness Claim will receive the following treatment: the Senior Pre-Petition Lender shall waive any right to a Distribution under the Combined Plan and Disclosure Statement and shall release the Senior Pre-Petition Indebtedness Claim against the Plan Debtors and the Liquidating Debtors.

3. Class 3 – Non-Tax Priority Claims

a. Classification

Class 3 consists of all Non-Tax Priority Claims.

b. Impairment and Voting

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

a. Allowance

The Allowed amount of each Non-Tax Priority Claim shall be agreed to by the Plan Debtors or the Liquidating Debtors, as appropriate, and the Holder thereof, or determined by the Bankruptcy Court.

b. Treatment

On or as soon as practicable after the later of (a) the Effective Date or (b) the Allowance Date with respect to a Non-Tax Priority Claim, each Holder of a Non-Tax Priority Claim shall receive from the Liquidating Debtors, in full satisfaction, settlement, release and discharge of and in exchange for such Claim, either (i) Cash in the Allowed Amount of such Claim, or (ii) such other, less favorable treatment to which such Holder and the Plan Debtors or the Liquidating Debtors, as appropriate, agree in writing.

4. Class 4 – General Unsecured Claims

a. Classification

Class 4 consists of all General Unsecured Claims.

b. Impairment and Voting

Class 4 is Unimpaired by the Combined Plan and Disclosure Statement. Holders of General Unsecured Claims shall be deemed to have accepted the Combined Plan and Disclosure Statement, and thus are not entitled to vote to accept or to reject the Combined Plan and Disclosure Statement.

c. Allowance

The Allowed amount of each General Unsecured Claim shall be agreed to by the Plan Debtors or the Liquidating Debtors, as appropriate, and the Holder thereof, or determined by the Bankruptcy Court.

d. Treatment

On or as soon as practicable after the later of (a) the Effective Date or (b) the Allowance Date with respect to a General Unsecured Claim, each Holder of a General Unsecured Claim shall receive from the Liquidating Debtors, in full satisfaction, settlement, and release of and in exchange for such Claim, Cash in an amount equal to either one hundred percent (100%) of their Allowed General Unsecured Claim(s).

5. Class 5 – Intercompany Claims

a. Classification

Class 5 consists of the Intercompany Claims.

b. Impairment and Voting

Class 5 is impaired by the Combined Plan and Disclosure Statement. Holders of Intercompany Claims shall be deemed to have rejected the Combined Plan and Disclosure Statement, and thus are not entitled to vote to accept or to reject the Combined Plan and Disclosure Statement.

c. Allowance

Intercompany Claims shall be deemed disallowed, expunged and extinguished as of the Effective Date of the Combined Plan and Disclosure Statement.

d. Treatment

Holders of Intercompany Claims shall not retain any value under the Combined Plan and Disclosure Statement and such Claim shall be deemed disallowed, expunged and extinguished as of the Effective Date of the Combined Plan and Disclosure Statement.

6. Class 6 – Equity Interests in the Debtors

a. Classification

Class 6 consists of the Equity Interests in the Debtors.

b. Impairment and Voting

Class 6 is impaired by the Combined Plan and Disclosure Statement. Holders of Equity Interests shall be deemed to have rejected the Combined Plan and Disclosure Statement, and thus are not entitled to vote to accept or to reject the Combined Plan and Disclosure Statement.

c. Allowance

The Equity Interests in the Plan Debtors shall be cancelled, deemed terminated, and of no further force and effect under the Combined Plan and Disclosure Statement.

d. Treatment

Holders of an Equity Interest will not retain such Equity Interests under the Combined Plan and Disclosure Statement. On the Dissolution Date, all Equity Interests in the Plan Debtors (including any and all options or rights to exercise warrants or options or to otherwise acquire any Equity Interests) shall be cancelled, deemed terminated, and of no further force and effect.

B. Modification of Treatment of Claims and Equity Interests

The Plan Debtors 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 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 Combined Plan and Disclosure Statement or is deemed to have rejected the Combined Plan and Disclosure Statement, the Plan Debtors hereby request, 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 a 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 nonaccepting 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 LIQUIDATING DEBTORS

A. Arrangements Regarding the Liquidating Debtors

On and after the Effective Date, the Plan Debtors shall continue in existence as the Liquidating Debtors for purposes of (a) winding down the Plan Debtors' business and affairs as expeditiously as reasonably possible, (b) serving as the Liquidating Debtors, (c) paying Allowed Claims authorized to be paid under the Combined Plan and Disclosure Statement, (c) reviewing, analyzing and objecting to Claims, (d) filing appropriate tax returns, and (e) otherwise administering the Combined Plan and Disclosure Statement in an efficacious manner. On the Effective Date, all assets of the Plan Debtors, including but not limited to Cash, shall vest in the Liquidating Debtors, and title to all property acquired after the Effective Date that otherwise would become property of the Liquidating Debtors' Estates under Bankruptcy Code section 541 and the proceeds therefrom shall be held by the Liquidating Debtors, free and clear of all Claims, liens, encumbrances, and other interests, except as otherwise provided in the Plan. The Liquidating Debtors shall hold such assets in trust for the holders of Allowed Claims that are entitled under the Plan to receive Distribution thereof. The Liquidating Debtors shall be fully liquidated and the Liquidating Debtors Cash shall be distributed to holders of Allowed Claims in accordance with this Plan.

B. Funding of the Liquidating Debtors

In accordance with Section XI.A.1. of the Combined Plan and Disclosure Statement and Sections 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code, on the Effective Date the Plan Debtors shall be deemed to have irrevocably transferred to the Liquidating Debtors the Pre-

Confirmation Estates Assets. In addition, the Liquidating Debtors Assets shall also include an infusion of funds in the amount of \$_____ from the Buyer ("**Buyer Cash Funding**"), which was funded and paid by the Buyer at closing of the Sale. The Liquidating Debtors Assets shall be used by the Liquidating Debtors in a manner provided for in the Combined Plan and Disclosure Statement. Any and all Causes of Action are being released and waived by the Plan Debtors and the Liquidating Debtors under the Combined Plan and Disclosure Statement and shall not be considered part of the Liquidating Debtors Assets.

C. Distributions by the Liquidating Debtors

Distributions by the Liquidating Debtors shall be made in accordance with this Combined Plan and Disclosure Statement. The net proceeds of the Liquidating Debtors Assets shall be utilized by the Liquidating Debtors as follows: (i) first, to make payments to the Holders of Allowed Administrative Expense Claims and Allowed Fee Claims, until such Claims are paid in full; (ii) second, to make payments to Holders of Allowed Priority Tax Claims, until such Claims are paid in full; (iii) third, to Holders of Allowed General Unsecured Claims, in full or on a *Pro Rata* basis; and (iv) fourth, to the Holder of the DIP Facility Claim.

D. Withholding and Reporting Requirements

In connection with the Combined Plan and Disclosure Statement and all Distributions thereunder, the Liquidating Debtors shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Liquidating Debtors shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements including, without limitation, requiring that, as a condition to the receipt of a

Distribution, the Holder of an Allowed Claim complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each Holder. Notwithstanding any other provision of the Combined Plan and Disclosure Statement (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Combined Plan and Disclosure Statement shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any governmental unit, including income and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Combined Plan and Disclosure Statement unless and until such Holder has made arrangements satisfactory to the Liquidating Debtors to allow it to comply with its tax withholding and reporting requirements. Any property to be distributed pursuant to the Combined Plan and Disclosure Statement shall, pending the implementation of such arrangements, be treated as an undeliverable Distribution to be held by the Liquidating Debtors, as the case may be, until such time as the Liquidating Debtors are satisfied with the Holder's arrangements for any withholding tax obligations.

E. Powers and Authority of the Liquidating Debtors

The Liquidating Debtors shall, in addition to any powers and authority specifically set forth in other provisions of the Combined Plan and Disclosure Statement, be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform their 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 Liquidating Debtors, (iii) 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, including but not limited to the

Debtors' Professionals, (vi) assert any of the Plan Debtors' claims, Causes of Action, rights of setoff, or other legal or equitable defenses, except to the extent Causes of Action have been released, and (vii) exercise such other powers as may be vested in the Liquidating Debtors by order of the Bankruptcy Court, pursuant to the Combined Plan and Disclosure Statement. The Liquidating Debtors, subject to the terms and conditions of the Combined Plan and Disclosure Statement, may take any and all actions which it 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, provided that such settlement is entered into by the Liquidating Debtors in good faith.

F. Post-Confirmation Date Expenses of the Liquidating Debtors

The Liquidating Debtors shall receive no compensation for services rendered pursuant to the Combined Plan and Disclosure Statement without further Court order. In addition, except as otherwise ordered by the Bankruptcy Court, the amount of reasonable fees and expenses incurred by the Liquidating Debtors on or after the Effective Date (including, without limitation, reasonable attorney and professional fees and expenses) shall be paid without further Court order.

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

Subject to the terms and conditions of the Combined Plan and Disclosure Statement, the Liquidating Debtors shall have the right to file objections to Claims after the Effective Date. All objections shall be litigated to entry of a Final Order. Only the Liquidating Debtors shall have the authority to compromise, settle, otherwise resolve or withdraw any objections, without approval of the Bankruptcy Court. Notwithstanding the foregoing, the Liquidating Debtors shall not have the authority to settle or compromise objections to any Fee Claim arising before the Effective Date, which shall be considered by the Bankruptcy Court upon notice as required by the applicable Bankruptcy Rules, Local Rules, and any previous orders of the Court

C. Claims Objection Deadline

The Liquidating Debtors, 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 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 by the Liquidating Debtors for cause.

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 this Combined Plan and Disclosure Statement.

E. Escrow of Cash Distributions Pending Allowance

It is anticipated by the Debtors that any and all Claims Objections will be filed and pursued prior to the Confirmation Hearing, so the universe of Claims will be known at the time

of the Effective Date. However, out of an abundance of caution, on any date that Distributions are to be made under the terms of the Combined Plan and Disclosure Statement, the Liquidating Debtors shall reserve Cash or property equal to 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. The Liquidating Debtors shall also reserve any interest, dividends or proceeds of such Cash. Such Cash, together with any interest, dividends or proceeds thereof, 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

Within the later of (i) ten (10) Business Days after such Claim becomes an Allowed Claim and (ii) thirty (30) days after the expiration of the Claims Objection Deadline, the Liquidating Debtors shall distribute all Cash or other property, including any interest, dividends or proceeds thereof, to which a Holder of an Allowed Claim is then entitled.

G. Satisfaction of Claims Against Co-Debtors and Guarantors

To the extent a Claim against a Plan Debtor is based upon the Plan Debtor's guaranty or co-signing of a debt that serves as the basis for a Claim against another Plan Debtor, the Claim arising from the guaranty or co-signing will be deemed satisfied upon the satisfaction of the underlying Claim in accordance with the Combined Plan and Disclosure Statement. If the Claim against one Plan Debtor (i.e., the underlying debt) is paid in part, the related Claim against the guarantor(s) or co-debtor(s) shall be reduced by the amount paid on the Claim against the other Plan Debtor(s). In no event shall a party holding a Claim based on a guaranty or co-signing by one Plan Debtor of a debt owed by another Plan Debtor collect more than the underlying debt that was guaranteed or co-signed.

H. 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 Liquidating Debtors 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 Liquidating Debtors have not received a written notice of a change of address.

If the Distribution to the Holder of any Claim is returned to the Liquidating Debtors as undeliverable, no further Distribution shall be made to such Holder unless and until the Liquidating Debtors are notified in writing of such Holder's then current address. Undeliverable Distributions shall remain in the possession of the Liquidating Debtors until the earlier of (i) such time as a Distribution becomes deliverable or (ii) such undeliverable Distribution becomes an unclaimed Distribution pursuant to Section X.J. of the Combined Plan and Disclosure Statement.

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 Liquidating Debtors shall make Distributions of all Cash and property that has become deliverable during the preceding quarter. Each such Distribution shall include the net return yielded from the investment of any undeliverable Cash, from the date such Distribution would have been due had it then been deliverable to the date that such Distribution becomes deliverable.

The Liquidating Debtors 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 Liquidating Debtors to locate any Holder of an Allowed Claim.

I. Unclaimed Distributions

Any Cash or other property to be distributed under the Combined Plan and Disclosure Statement shall revert to the Liquidating Debtors if it is not claimed by the Entity within three (3) months after the date of such Distribution. If such Cash or other property is not claimed on or before such date, the Distribution made to such Entity shall be deemed to be reduced to zero.

J. De Minimis Distributions

The Liquidating Debtors 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 Cash not distributed pursuant to this Article X of the Combined Plan and Disclosure Statement will be the property of the Liquidating Estates and be distributed pursuant to the terms of this Combined Plan and Disclosure Statement.

K. Set-Off

The Plan Debtors retain the right to reduce any Claim by way of setoff or recoupment in accordance with their books and records. Rights of a setoff or recoupment of any Entity or Person are preserved for the purpose of asserting such rights as a defense to any Claims or Causes of Action of the Plan Debtors, their Pre-Confirmation Estates, or the Liquidating Debtors, as applicable; provided, however, that the Plan Debtors shall have no such rights against the Senior Pre-Petition Lender, DIP Lender, or Buyer, such rights having been released under the Combined Plan and Disclosure Statement, the Confirmation Order, the Senior Prepetition Loan Documents, the DIP Orders, the Asset Purchase Agreement, Sale Order, and/or any other Final Order of the Bankruptcy Court, as applicable.

L. Books and Records

On the Effective Date, the Plan Debtors' books and records (excluding any electronic mail or other correspondence among the Debtors and their counsel subject to a Privilege other than those referred to in Section X.N. of the Combined Plan and Disclosure Statement) (the "**Books and Records**") shall be transferred to the Liquidating Debtors. With respect to all other Books and Records retained by the Plan Debtors after the Confirmation Date, the Liquidating Debtors shall be free, in their discretion, to abandon, destroy, or otherwise dispose of any such 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 court order; provided, however, that nothing herein shall alter or limit the Debtors' obligations with respect to the Books and Records under the Sale Order.

M. Privileges as to Certain Causes of Action

Privileges of the Plan Debtors relating solely to any existing Causes of Action pursued, investigated, or considered by the Plan Debtors prior to the Confirmation Date (not otherwise resolved) shall be transferred, assigned, and delivered to the Liquidating Debtors, without waiver or release, and shall vest with the Liquidating Debtors. The Liquidating Debtors shall hold and be the beneficiary of all such Privileges and shall be entitled to assert such Privileges. No such Privilege shall be waived by disclosures to the Liquidating Debtors of the Plan Debtors' documents, information, or communications subject to the attorney-client privilege, work product protection or other immunities (including those related to common interest or joint defense with third parties), or protections from disclosure held by the Plan Debtors. The Liquidating Debtors shall reserve the right to request other materials that may be subject to Privilege for appropriate reasons, but representatives of the Plan Debtors and the Debtors'

Professionals shall maintain the ability to oppose any such request on any grounds or to seek compensation in connection with such production, with any disputes to be decided by the Bankruptcy Court. The Plan Debtors' Privileges, whether transferred to the Liquidating Debtors or retained by the Plan Debtors, will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement.

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

On the Effective Date, the Plan Debtors and the Debtors' Pre-Confirmation Estates shall transfer to the Liquidating Debtors the Estate Cash and the Liquidating Debtors Assets, to be utilized, administered and distributed by the Liquidating Debtors in accordance with the terms and conditions of this Combined Plan and Disclosure Statement, the Confirmation Order.

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 directors and officers, or members or managers of the Plan Debtors 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, or members and managers of the Plan Debtors. The Plan Debtors 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.

B. Administrative Consolidation

The classification and manner of satisfying all Claims and Equity Interests under the Combined Plan and Disclosure Statement takes into consideration the rights that Holders of Claims and Equity Interests may have against each of the Plan Debtors, whether arising under contract, law or equity. Holders of Claims or Equity Interests are classified in consolidated classes of Claims against and Equity Interests in all Plan Debtors in Section VII above for administrative convenience with respect to voting and the making of Distributions on account of Claims and Equity Interests. The Confirmation Order shall approve this administrative consolidation.

Such administrative consolidation shall not affect: (a) the legal and corporate structures of the Debtors; (b) Equity Interests between and among the Debtors; or (c) the vesting of assets in the Liquidating Debtors. In addition, such administrative consolidation shall not constitute a waiver of the mutuality requirement for setoff under section 553 of the Bankruptcy Code.

This Combined Plan and Disclosure Statement serves as a motion seeking entry of an order consolidating the Estates for administrative purposes only, as set forth above and the closing of the Chapter 11 Cases for all of the Plan Debtors. Unless an objection to such consolidation or case closing is made in writing by any creditor affected by the Combined Plan and Disclosure Statement, filed with the Bankruptcy Court and served on the Plan Debtors on or before the Combined Plan and Disclosure Statement objection deadline as established by the Bankruptcy Court, the consolidation and case closing order (which may be the Confirmation

Order) may be entered by the Bankruptcy Court. In the event any such objections are timely filed, a hearing with respect thereto shall occur at or before the hearing on confirmation of the Combined Plan and Disclosure Statement.

XII. INJUNCTION, EXCULPATION AND RELEASES

A. Injunction

All injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. **Except as 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 Plan Debtors shall be permanently enjoined from taking any of the following actions against the Plan Debtors, their Pre-Confirmation Estates, or any of their property on account of any such Claims or Equity Interests: (A) commencing or continuing, in any manner or in any place, any action or other proceeding; (B) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order; (C) creating, perfecting, or enforcing any lien or encumbrance; (D) asserting a right of subrogation of any kind against any debt, liability, or obligation due to the Plan Debtors; and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Combined Plan and Disclosure Statement; provided, however, that such Entities shall not be precluded from exercising their rights pursuant to and consistent with the terms of the Combined Plan and Disclosure Statement, the Confirmation Order.**

B. Exculpation

Except as otherwise specifically provided in the Combined Plan and Disclosure Statement, neither the Plan Debtors, the Buyer, the DIP Lender, the Senior Pre-Petition Lender, PMCM, LLC, Michael Jacoby, Scott Drake, Terrence Kannengieser, nor any of their respective members, partners, officers, directors, employees, advisors, professionals, attorneys, representatives, financial advisors, investment bankers, agents, independent contractors or other professionals and any of such parties' successors and assigns, solely in their capacities as such, shall have or incur any liability for any claim, action, proceeding, Cause of Action, Avoidance Action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment, or claim (as defined in Bankruptcy Code section 101(5)), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively, in law, equity, or otherwise to one another or to any claimholder or interest holder, or any other party in interest, or any of their respective agents, employees, representatives, advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission originating or occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Plan Debtors, the Chapter 11 Cases, the negotiation and filing of the Combined Plan and Disclosure Statement, the filing of the Chapter 11 Cases, the pursuit of confirmation of the Combined Plan and Disclosure Statement, the consummation of the Combined Plan and Disclosure Statement, the administration of the Combined Plan and Disclosure Statement, or the property to be liquidated and/or distributed under the Combined Plan and

Disclosure Statement, except for their willful misconduct or gross negligence as determined by a Final Order of a Court of competent jurisdiction, and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Combined Plan and Disclosure Statement.

C. Releases

1. Terms of Releases

As of the Effective Date, for good and valuable consideration, the Plan Debtors (in their individual capacities and as debtors and debtors in possession) shall waive, release, and discharge each of the Buyer, the DIP Lender, the Senior Pre-Petition Lender, PMCM, LLC, Michael Jacoby, Scott Drake, Terrence Kannengieser, and their respective members, partners, officers, directors, employees, advisors, professionals, attorneys, representatives, financial advisors, investment bankers, agents, independent contractors or other professionals and any of such parties' successors and assigns, from all Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities (other than the rights of the Plan Debtors to enforce this Combined Plan and Disclosure Statement, and the contracts, instruments, releases, indentures, and other agreements or documents delivered hereunder, and liabilities arising after the Effective Date in the ordinary course of business) whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that are based in whole or part on any act omission, transaction, event, or other occurrences, whether direct or derivative, taking place on or prior to the Effective Date in connection with, or related to the Plan Debtors, the Chapter 11 Cases, and the Combined Plan and Disclosure Statement.

2. Causes of Action

As of the Effective Date, the Plan Debtors and the Liquidating Debtors shall, and the Combined Plan and Disclosure Statement or in the Confirmation Order shall serve as a, release and waiver of any and all Causes of Action, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise that are based in whole or part on any act omission, transaction, event, or other occurrences, whether direct or derivative.

XIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, all Executory Contracts and unexpired leases not assumed before the Confirmation 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 Plan Debtors, pursuant to the Combined Plan and Disclosure Statement or otherwise, of an Executory Contract or unexpired leases gives rise to a Claim, a proof of Claim must be filed with the Bankruptcy Court by **no later than thirty (30) days** after the later of (i) notice of entry of the Confirmation Order, and (ii) other notice that the Executory Contract or unexpired lease has been rejected. Any proofs of Claim not filed and served within such time periods will be forever barred from assertion against the Plan Debtors and their Pre-Confirmation Estates and/or the Liquidating Debtors and the Liquidating Estates. Unless otherwise Ordered by the Bankruptcy Court, all Claims arising from the rejection of Executory

Contracts and unexpired leases shall be treated as General Unsecured Claims under the Combined Plan and Disclosure Statement.

XIV. CONDITIONS TO THE EFFECTIVE DATE

A. 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. The Confirmation Order shall have become a Final Order in full force and effect with no stay thereof then in effect.
2. The Buyer Cash Funding shall have been received by the Plan Debtors.
3. All actions, documents and agreements necessary or appropriate to implement the Combined Plan and Disclosure Statement shall have been effected or executed.

B. Effect of Failure of Conditions

If each condition to the Effective Date has not been satisfied or duly waived within forty-five (45) 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 Plan Debtors before the 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 (i) constitute a waiver or release of any Claims by or against the Plan Debtors, or (ii) prejudice in any manner the rights of the Plan Debtors.

C. **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 Debtors 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 Cases 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 Cases, 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;
8. To hear any other matter not inconsistent with the Bankruptcy Code;
9. To enter a final decree closing the Chapter 11 Cases;
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 resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof.
12. To decide or resolve any motions, adversary proceedings, contested or litigated matters arising out of, under, or related to, the Chapter 11 Cases;
13. 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;
14. To determine any other matters that may arise in connection with or related to the Combined Plan and 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;
15. 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 Cases (whether or not the Chapter 11 Cases have been closed);

16. To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Cases, the Bar Dates, the Administrative Expense Bar Date, the Governmental 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. 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 Plan Debtors in consultation with Senior Pre-Petition Lender, 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 Debtors shall have complied with section 1125 of the Bankruptcy Code.

B. 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.

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

The Plan Debtors, in consultation with the Senior Pre-Petition Lender, reserve the right to revoke or withdraw the Combined Plan and Disclosure Statement before the Confirmation Date. If the Plan Debtors revoke or withdraw 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 Plan Debtors or the Liquidating Debtors or to prejudice in any manner the rights of either of the Plan Debtors or the Liquidating Debtors in any further proceedings involving the Plan Debtors.

D. Binding Effect

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

E. Notices

All notices, requests and demands to or upon the Liquidating Debtors 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.

F. 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.

G. Allocation of Distributions Between Principal and Interest

To the extent that any 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 of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

H. 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.

I. Exhibits/Schedules

All exhibits and schedules to the Combined Plan and Disclosure Statement are incorporated into and are a part of the Combined Plan and Disclosure Statement as if set forth in full herein.

J. Filing of Additional Documents

On or before substantial consummation of the Combined Plan and Disclosure Statement, the Plan Debtors 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.

K. 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.

L. 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.

M. 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 Plan Debtors 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 Plan Debtors, Holders of Claims or Equity Interest before the Effective Date.

N. Implementation

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

O. 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.

P. Dissolution of the Debtors

For purposes of implementing and carrying out the terms of the Combined Plan and Disclosure Statement, the Plan Debtors' directors and officers, any employees and any professionals engaged by the Plan Debtors (unless such engagement shall be terminated on or before the Effective Date) shall be deemed to be directors and officers, employees and professionals of the Liquidating Debtors. Immediately following the distribution of all of the Liquidating Debtors Assets pursuant to the terms of the Combined Plan and Disclosure Statement and the entry of final decree by the Bankruptcy Court (i) the Plan Debtors' directors and officers and any remaining employees shall be deemed to have resigned and (ii) the Liquidating Debtors, as the case may be, are authorized to take any and all actions necessary to effectuate the Liquidating Debtors' dissolution for all purposes under applicable state law. The Plan Debtors and the Liquidating Debtors are further authorized to take all such further action as is necessary following the Confirmation Date to implement the foregoing.

Q. 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 this Combined Plan and Disclosure Statement shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Combined Plan and Disclosure Statement. 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

Cases, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Plan Debtors, the Pre-Confirmation Estates and all Holders of Claims and Equity Interests against the Plan Debtors.

R. Liquidating Debtors Tax Powers for Plan Debtors

Following the Effective Date, the Liquidating Debtors shall prepare and file (or cause to be prepared and filed), on behalf of the Plan Debtors, all tax returns, reports, certificates, forms or similar statements or documents required to be filed or that the Liquidating Debtors otherwise deems appropriate, including the filing of amended tax returns or requests for refunds, and the Liquidating Debtors shall pay any taxes shown as due and payable on such tax returns. The Plan Debtors shall execute on or prior to the Effective Date the documents necessary to authorize the Liquidating Debtors to correspond with any taxing authorities on the Plan Debtors' behalf and to sign, collect, negotiate, settle and administer all tax payments and tax returns. Following the Effective Date, the Liquidating Debtors shall have the sole right, at the Liquidating Debtors' expense, to control, conduct, compromise and settle any tax contest, audit or administrative or court proceeding relating to any liability for taxes of the Debtors. Following the Effective Date, the Liquidating Debtors shall be entitled to the entire amount of any refunds and credits (including interest thereon) with respect to or otherwise relating to any taxes of the Plan Debtors, including for any taxable period ending on or prior to, or including, the Effective Date. The Liquidating Debtors 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 Filing Date through the Effective Date.

| Dated: ~~October 11~~ November 7, 2016
Wilmington, Delaware

ALLIED FIBER – FLORIDA, LLC & ALLIED
FIBER – GEORGIA, LLC

By:

/s/ Michael E. Jacoby
Michael E. Jacoby, CRO