

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	Chapter 11
In re:	)	
	)	Case No. 16-11242 (BLS)
PHOENIX BRANDS LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	(Jointly Administered)
Debtors.	)	
	)	
	)	

**DISCLOSURE STATEMENT FOR THE JOINT PLAN OF  
LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor's tax identification number, are: Phoenix Brands LLC, (4609), Phoenix Brands Parent LLC, (8729), Phoenix North LLC, (no EIN), Phoenix Brands Canada ULC (a Nova Scotia Company), Phoenix RIT LLC, (5149), and Phoenix Brands Canada Laundry LLC (no EIN). The address of each of the Debtors is 1 Landmark Square, Suite 1810, Stamford, CT 06901, except Phoenix Brands Canada ULC, which is Box 50, 1 First Canadian Place, Toronto, Ontario, Canada M5X 1B8.

**DISCLAIMER**

**NOTHING CONTAINED IN THIS DOCUMENT SHALL CONSTITUTE AN OFFER, ACCEPTANCE, OR A LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY OTHER PARTY IN INTEREST, SINCE THIS DISCLOSURE STATEMENT AND THE PLAN IT SUPPORTS REMAINS, *INTER ALIA*, SUBJECT TO APPROVAL BY THE BANKRUPTCY COURT. YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED HEREIN FOR ANY PURPOSE PRIOR TO THE CONFIRMATION OF THE PLAN BY THE BANKRUPTCY COURT. THE INFORMATION CONTAINED HEREIN IS PRELIMINARY AND DEVELOPMENTS MAY OCCUR THAT REQUIRE MODIFICATIONS OR ADDITIONS TO, OR DELETIONS FROM, THIS DISCLOSURE STATEMENT AND THE PLAN IT SUPPORTS. THIS DISCLOSURE STATEMENT HAS BEEN PROVISIONALLY APPROVED BY THE COURT AND HAS NOT YET BEEN GRANTED FINAL APPROVAL.**

THIS DISCLOSURE STATEMENT AND THE PLAN IT SUPPORTS ARE THE ONLY DOCUMENTS THAT CREDITORS AND OTHER PARTIES IN INTEREST SHOULD CONSIDER IN CONNECTION WITH CONFIRMATION OF THE PLAN, INCLUDING, WITHOUT LIMITATION, THE SOLICITATION OF VOTES WITH RESPECT TO THE PLAN. NO REPRESENTATIONS HAVE BEEN AUTHORIZED CONCERNING THE DEBTORS, THEIR ASSETS, OR CLAIMS AGAINST THE DEBTORS, EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE PLAN IT SUPPORTS. ACCORDINGLY, CREDITORS AND OTHER PARTIES IN INTEREST SHOULD NOT RELY ON ANYTHING OTHER THAN THIS DISCLOSURE STATEMENT AND THE PLAN IT SUPPORTS, AND IN THE EXHIBITS ATTACHED HERETO AND THERETO, IN CONSIDERING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. ALL INFORMATION IN THIS DISCLOSURE STATEMENT IS FOR THE PURPOSE OF SOLICITING ACCEPTANCES OF THE PLAN.

THE PLAN PROPONENTS URGE YOU TO READ THIS DISCLOSURE STATEMENT CAREFULLY. IT CONTAINS IMPORTANT INFORMATION CONCERNING THE DEBTORS (INCLUDING THEIR HISTORY AND BUSINESS OPERATIONS), CLAIMS AGAINST THE DEBTORS, AND HOW CLAIMS WILL BE TREATED IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT.

YOU ALSO SHOULD CONSIDER CONSULTING WITH YOUR OWN COUNSEL AND/OR OTHER ADVISORS IN CONNECTION WITH YOUR CLAIM(S) AGAINST THE DEBTORS, THE TREATMENT TO BE AFFORDED TO YOUR CLAIM(S) UNDER THE PLAN, AND ANY TAX CONSEQUENCES TO YOU, IF ANY, ATTENDANT TO CONFIRMATION OF THE PLAN.

THE PLAN PROPONENTS CANNOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT INACCURACY OR ERROR, BUT THEY DO BELIEVE THAT THE INFORMATION CONTAINED HEREIN IS THE MOST ACCURATE INFORMATION AVAILABLE TO THEM AT THIS TIME. NOTHING

CONTAINED HEREIN IS AN ADMISSION OF ANY FACT OR LIABILITY NOR SHALL IT BE ADMISSIBLE IN ANY MATTER OR PROCEEDING ARISING IN OR RELATED TO THESE BANKRUPTCY CASES OR IN ANY OTHER ACTION, PROCEEDING, OR LITIGATION INVOLVING THE PLAN PROPONENTS.

NO REPRESENTATIONS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT ARE AUTHORIZED WITH RESPECT TO THE PLAN AND ANY SUCH REPRESENTATIONS ARE NOT ADOPTED BY THE DEBTORS AND SHOULD NOT BE RELIED UPON IN MAKING YOUR DECISION WHETHER TO ACCEPT OR TO REJECT THE PLAN.

THIS DISCLOSURE STATEMENT IS BEING DISTRIBUTED TO ALL CREDITORS OF EACH OF THE DEBTORS PURSUANT TO 11 U.S.C. § 1125.

THE DEADLINE TO CAST BALLOTS EVIDENCING VOTES EITHER TO ACCEPT OR TO REJECT THE PLAN IS [---], BY 4:00 P.M. (PREVAILING EASTERN TIME).

THE BANKRUPTCY CODE PROVIDES THAT ONLY THE BALLOTS OF CREDITORS THAT ACTUALLY VOTE ON THE PLAN WILL BE COUNTED FOR PURPOSES OF DETERMINING WHETHER THE ACCEPTANCES REQUIRED FOR CONFIRMATION OF THE PLAN HAVE BEEN ATTAINED. FAILURE TO DELIVER A PROPERLY COMPLETED BALLOT BY THE VOTING DEADLINE WILL CONSTITUTE AN ABSTENTION (I.E., WILL NOT BE COUNTED AS EITHER AN ACCEPTANCE OR A REJECTION), AND ANY IMPROPERLY COMPLETED OR LATE BALLOT WILL SIMILARLY NOT BE COUNTED.

THE PLAN PROPONENTS BELIEVE THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTORS, THE DEBTORS' CREDITORS, AND ALL OTHER PARTIES IN INTEREST. THE PLAN IS SUPPORTED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS APPOINTED IN THE DEBTORS' BANKRUPTCY CASES. ACCORDINGLY, THE PLAN PROPONENTS URGE YOU, FOR THE REASONS WHICH FOLLOW, TO VOTE IN FAVOR OF THE PLAN.

**ARTICLE I**  
**INTRODUCTION**

This disclosure statement (this “Disclosure Statement”) provides information regarding the *Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors Under Chapter 11 of the Bankruptcy Code* (the “Plan”), which the Plan Proponents are seeking to have confirmed by the Bankruptcy Court. A copy of the Plan is attached hereto as **Exhibit A**. All capitalized terms used but not otherwise defined in this Disclosure Statement shall have the meaning ascribed to them in the Plan. The rules of interpretation set forth in Article II of the Plan shall govern the interpretation of this Disclosure Statement.

The Court will hold a hearing on November 21, 2016 at \_\_\_\_ am/pm prevailing Eastern Time to consider the provisional approval of the Disclosure Statement, and to approve of the forms of Plan ballots and notice, as well as set a time for a hearing to give final approval to the Disclosure State and confirm the Plan of liquidation.

If confirmed and consummated, the Plan will facilitate the orderly wind down of the Debtors’ remaining business, including formation of a liquidating trust to pursue any remaining causes of action, liquidate remaining assets, and distribute all proceeds according to the Plan, among other things before finally closing these cases.

The Plan implements a comprehensive settlement stipulation negotiated among the Debtors, Fifth Street, and the Committee, which resolved, among other things, (a) Fifth Street’s motion to convert these cases to cases under chapter 7 of the Bankruptcy Code, (b) the Committee’s objections to the Debtors’ motion to extend their exclusive time period in which to file a plan in these cases, and (c) intercompany claim and value allocation issues which will permit allowed general unsecured claims to receive, in a relatively accelerated time frame, a meaningful distribution that they may not otherwise receive if the cases were converted and/or the various disputes were litigated. The settlement stipulation is designed to arrive at Plan confirmation and commence distributions to creditors pursuant to the Plan on an expedited timeline, and to limit and reduce the administrative expenses associated with completing the cases pursuant to an agreed operating and professional fee budget, both of which are incorporated into the Plan. The settlement stipulation provides certain milestones which, if not met, will allow Fifth Street’s motion to convert to go forward. Of note in these milestones is a Plan confirmation date of December 20, 2016 and a Plan Effective Date of December 29, 2016.

The Plan Proponents seek Bankruptcy Court approval of the Plan. Before soliciting acceptances of a proposed plan of reorganization, section 1125 of the Bankruptcy Code requires a plan proponent to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of a chapter 11 plan. This Disclosure Statement is being submitted in accordance with such requirements. This Disclosure Statement includes, without limitation, information about:

- the Debtors’ corporate history and corporate structure, business operations, and prepetition capital structure and indebtedness (Article III hereof)

- events leading to the Chapter 11 Cases, including the Debtors’ restructuring negotiations (Article III hereof)
- significant events in the Chapter 11 Cases and the Canadian Proceedings (Article IV hereof);
- the classification and treatment of Claims and Interests under the Plan (Article VI hereof), including who is entitled to vote and how to vote on the Plan (Article IX hereof);
- certain important effects of Confirmation of the Plan (Articles X and XI hereof);
- releases contemplated by the Plan that are integral to the overall settlement of Claims pursuant to the Plan (Article XVII hereof);
- the statutory requirements for confirming the Plan (Article XVIII hereof);
- certain risk factors Holders of Claims should consider before voting to accept or reject the Plan and information regarding alternatives to Confirmation of the Plan (Article XIX hereof); and
- certain United States federal income tax consequences of the Plan (Article XX hereof).

In light of the foregoing, the Debtors believe this Disclosure Statement contains “adequate information” to enable a hypothetical reasonable investor to make an informed judgment about the Plan and complies with all aspects of section 1125 of the Bankruptcy Code.

The Debtors’ boards of directors have approved the Plan and the transactions contemplated therein and believe the Plan is in the best interests of the Debtors, the Debtors’ estates, and the Debtors’ creditors. The Plan also has the support of the Committee which recommends that all creditors entitled to vote accept the Plan by returning their Ballots (as defined herein), so as to be **actually received** by the Claims Agent no later than **[●], 2016, at 5:00 p.m. prevailing Eastern Time**. Assuming the requisite acceptances to the Plan are obtained, the Debtors will seek the Bankruptcy Court’s approval of the Plan at the Confirmation Hearing and thereafter recognition of such approval order by the Canadian Court.

The Plan and all documents to be executed, delivered, assured, and/or performed in connection with the consummation of the Plan, including the documents to be included in the Plan Supplement, are subject to revision and modification from time to time prior to the Effective Date (subject to the terms of the Plan).

## ARTICLE II SOLICITATION, VOTING, AND CONFIRMATION DEADLINES

**A. Solicitation Packages.** On [●], 2016, the Bankruptcy Court entered the Disclosure Statement Order and on [●], 2016, the Canadian Court recognized and gave effect to such order in Canada (the “Disclosure Statement Recognition Order”). Holders of Claims who are eligible to vote to accept or reject the Plan will receive appropriate solicitation materials (collectively, the “Solicitation Package”), including:

- the Disclosure Statement, as approved by the Bankruptcy Court (with all exhibits thereto, including the Plan and the exhibits to the Plan);
- the Disclosure Statement Order (without exhibits thereto);
- the Disclosure Statement Recognition Order (without exhibits thereto);

- the Solicitation Procedures;
- the Confirmation Hearing Notice;
- an appropriate Ballot with voting instructions with respect thereto, together with a pre-addressed, postage prepaid return envelope;
- a cover letter from the Debtors (1) describing the contents of the Solicitation Package, and (2) urging the Holders of Claims in each of the Voting Classes to vote to accept the Plan; and
- any supplemental documents the Debtors may file with the Bankruptcy Court or that the Bankruptcy Court or the Canadian Court orders to be made available.

The Solicitation Package may also be obtained: (a) from the Debtors' claims and noticing agent, Rust Consulting/Omni Bankruptcy ("Claims Agent") by (i) writing to: Rust Omni, 5955 DeSoto Ave., Suite 100, Woodland Hills, CA 91367, or (ii) calling (818) 906-8300.

There will be no separate voting process for Canadian Holders of Claims or Interests, and Canadian Holders of Claims or Interests will be subject to the voting process set out in the Disclosure Statement Order and recognized in the Disclosure Statement Recognition Order. Canadian Holders of Claims or Interests may contact the Claims Agent for additional information.

**B. Voting Deadline.** The deadline to vote on the Plan is [●], 2016, at 5:00 p.m., prevailing Eastern Time (the "Voting Deadline"). All votes to accept or reject the Plan must be received by the Claims Agent by the Voting Deadline.

**C. Voting Procedures.** The Debtors are distributing this Disclosure Statement, accompanied by a ballot to be used for voting to accept or reject the Plan, to the Holders of Claims entitled to vote to accept or reject the Plan. If you are a Holder of a Claim in Class --- or Class ---, you may vote to accept or reject the Plan by completing the ballot and returning it in the envelopes provided.

Ballots must be actually received by the Claims Agent by the Voting Deadline at the following address, whether sent by first class mail, personal deliver, or overnight courier:

Phoenix Brands LLC  
c/o Rust Omni  
5955 DeSoto Ave., Suite 100  
Woodland Hills, CA 91367

More detailed instructions regarding how to vote on the Plan are contained on the ballots distributed to Holders of Claims that are entitled to vote to accept or reject the Plan. All votes to accept or reject the Plan must be cast by using the appropriate ballot. All ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first class mail, in the return envelope provided with each ballot; (b) overnight delivery; or (c) personal delivery, so that the ballots are actually received by the Claims Agent no later than the Voting Deadline at the return address set forth in the applicable ballot. Any ballot that is properly executed by the Holder of a Claim entitled to vote that does not clearly indicate an acceptance or

rejection of the Plan or that indicates both an acceptance and a rejection of the Plan will not be counted. Ballots received by facsimile or by electronic means will not be counted.

Each Holder of a Claim entitled to vote to accept or reject the Plan may cast only one ballot for each Claim held by such Holder. By signing and returning a ballot, each Holder of a Claim entitled to vote will certify to the Bankruptcy Court and the Debtors that no other ballots with respect to such Claim has been cast or, if any other ballots have been cast with respect to such Claim, such earlier ballots are superseded and revoked.

All ballots will be accompanied by return envelopes. It is important to follow the specific instructions provided on each ballot, as failing to do so may result in the ballot not being counted.

**D. Plan Objection Deadline.** The Bankruptcy Court has established [●], 2016, at 5:00 p.m., prevailing Eastern Time, as the deadline to object to confirmation of the Plan (the “Plan Objection Deadline”). All such objections must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the order approving the Disclosure Statement and Solicitation Procedures so that they are actually received on or before the Plan Objection Deadline. The Debtors believe that the Plan Objection Deadline, as established by the Bankruptcy Court, affords the Bankruptcy Court, the Debtors, and other parties in interest reasonable time to consider the objections to the Plan before a Confirmation Hearing.

**E. Confirmation Hearing.** Assuming the requisite acceptances are obtained for the Plan, the Debtors intend to seek confirmation of the Plan at a hearing to be scheduled on [●], 2016, --:- a/p.m., prevailing Eastern Time, before the Honorable Brendan L. Shannon, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801 (each such hearing, a “Confirmation Hearing”). A Confirmation Hearing may be continued from time to time in consultation with the Plan Proponents without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on the entities who have filed objections to the Plan, without further notice to other parties in interest. The Bankruptcy Court, in its discretion and before a Confirmation Hearing, may put in place additional procedures governing such hearing. The Plan may be modified, if necessary, before, during, or as a result of the hearing to confirm the Plan without further notice to parties in interest, subject to the terms of the Plan and the consent of the Fifth Street and the Committee.

The Debtors anticipate seeking recognition of the Confirmation Order from the Canadian Court as promptly as practical after entry of the Confirmation Order.

### **ARTICLE III** **BACKGROUND**

On May 19, 2016, Debtors Phoenix Brands, LLC, Phoenix Brands Parent, LLC, Phoenix North, LLC, and Phoenix Canada ULC (collectively, the “Original Debtors”) each commenced a case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On June 1,

2016, Debtor Phoenix Rit LLC filed its voluntary petition for relief. On June 17, 2016, Debtor Phoenix Canada Brands Laundry LLC (“Phoenix Canada”) filed its voluntary petition for relief. The Original Debtors, together with Phoenix Rit LLC and Phoenix Canada, are collectively referred to as the “Debtors.” The date each of the Debtors commenced its respective case is referred to as that Debtor’s “Petition Date.” The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

On June 1, 2016, the US Trustee for the District of Delaware appointed the Committee. The current members of the Committee are: XPO Logistics Worldwide, LLC, DS Containers, Inc., and Akzo Nobel Surface Chemistry LLC. No trustee or examiner has been appointed in the Debtors’ cases.

#### **A. The Debtors’ Prepetition Operations**

Prepetition, the Debtors were a nationally recognized laundry and fabric care company. The Debtors were formed in 2003 by a number of ex-Unilever employees as “Winter Brands.” The initial focus of Winter Brands was the fabrication of licensed consumer properties.

In 2004, Winter Brands was renamed “Phoenix Brands.” Subsequently, on or about January 5, 2004, Phoenix Brands acquired certain assets from Conopco, Inc., an affiliate of Unilever. The acquired assets included inventory, real property and leasehold improvements, equipment, trademarks, and recipes for the Rit dye (“Rit”), Niagara spray starch (“Niagara”),<sup>2</sup> Sunlight dish detergent (“Sunlight”),<sup>3</sup> Sun Guard wash-in powder, and Final Touch fabric softener (“Final Touch”) brands. On August 24, 2005, Phoenix Brands acquired from Colgate-Palmolive Company assets including inventory, molds, trademarks, and recipes for the Fab, Dynamo, Ajax Laundry Detergent (“Ajax”), Fresh Start, Cold Power, Arctic Power, and ABC brands of laundry detergent. The Debtors also acquired the license to use the name “Ajax” for the sale of laundry products.

Phoenix Brands was headquartered at 1 Landmark Square, Suite 1810, Stamford, CT 06901, and operated out of multiple other locations including a finance/operations office and a factory facility in Indianapolis, Indiana, and in Toronto, Ontario, Canada. Phoenix Brands operated under leases and office license agreements, and does not own any of these premises. The vast majority of the Debtors’ leases and licenses are in the name of Phoenix Brands.

As of the Petition Date, the Debtors had approximately forty-four full-time employees and five independent contractors, with almost all of them employed by Phoenix Brands. At the same time, Phoenix Brands Canada ULC employed one employee, who works from a home office located in or around Toronto, Canada.

For the twelve months ending December 31, 2015, Phoenix Brands generated approximately \$71,684,000 in net revenues on a consolidated basis (including the net revenues

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<sup>2</sup> The Debtors marketed and sold the Niagara brand in 2015.

<sup>3</sup> The Debtors acquired a license to use the Sunlight brand name. The Debtors marketed and sold the Sunlight brand in 2010.



from the Niagara Brand for 10 months). As of December 31, 2015, Phoenix Brands had assets per its balance sheet with a book value of approximately \$45,155,000 and liabilities of \$71,387,000 on a consolidated basis.

## B. Corporate Structure

Phoenix Brands Parent LLC is the ultimate parent company for the Debtors. A chart depicting the corporate organizational structure of the Company is attached hereto as Exhibit B. Phoenix Brands Parent's three classes of equity (referred to as "groups" rather than "classes" herein, to avoid confusion with the Plan Classes) are held by approximately 25 holders. The following is a general description of the three equity groups:

- Group A Units: Phoenix Brands Parent currently has 60,202,128.54 Group A Units outstanding. The Group A Units are held, directly or indirectly, by Lincolnshire Equity Fund IV, L.P., Lincolnshire Equity Fund IV-A, L.P. (collectively "LEF4"), certain former managers, and Madison Capital Funding LLC ("Madison"). The Group A units have voting rights on a 1 vote per unit basis.
- Group B Units: Phoenix Parent currently has 7,988 Group B Units outstanding and 100 Group B Units pending. The Group B Units do not have any voting rights, and are held by members of the Debtors' management team, as well as by current and past members of the Board of Managers and certain consultants to the Debtors. The Group B Units are profits interests and only have value to the extent Phoenix Brands Parent's valuation per unit exceeds the applicable threshold amount.
- Group C Units: Phoenix Brands Parent currently has 7,500,000 Group C Units outstanding. The Group C Units are held, directly or indirectly, by LEF4. The Group C units have voting rights on a 1 vote per unit basis. These units are not subject to a mandatory distribution, but have a distribution preference on liquidation of the Debtors.

## C. The Debtors' Management and Board of Managers

The following is, on Table A, an overview of the Debtors' key officers and management as of the Petition Date, each of whom served in the indicated capacities, and on Table B, an overview of the Phoenix Brands Parent's Boards of Managers, including each member's position on the Board and position within each other Debtor:

**TABLE A**

Name	Position
William H. Littlefield	President and CEO
Peter A. Furman	Chief Restructuring Officer
Douglas A. Mills	Vice President Finance
Jill A. Boerger	Vice President Sales
Eytan Eliahoo	Director Sales – Canada
Barry L. Kay	Vice President Sales Non-Food and Export
Christopher McGovern	Vice President Sales Grocery (Northeast)

Name	Position
Raymond H. Stack	Director Sales Non-Food
Douglas V. Wilson	Sales Director Grocery and Rit Dye
William H. Schmitt	Vice President Research & Development
Lori S. Sullivan	Senior Director Customer Operations
Teresa K. Clark	Controller
Alan P. Radovic	Director Financial Planning & Analysis
Michael M. Johnson	Director Manufacturing Operations
Kathleen A. Dreyer	Senior Director Manufacturing Operations and Purchasing
James P. Corcoran	Vice President Human Resources & Administration

Of those individuals listed in Table A, only William Littlefield, Douglas A. Mills, Teresa K. Clark, James P. Corcoran, and Alan P. Radovic are still currently employed by the Debtors.

**TABLE B**

Name	Board Position
William H. Littlefield	Board of Managers Member, President, and Chief Executive Officer, Phoenix Brands Canada ULC. President and Chief Executive Officer, Phoenix Brands LLC, and Phoenix North LLC. Chief Executive Officer and Board of Managers Member, Phoenix Brands Parent LLC.
Pieter Kodde	Board of Managers Member and Vice President, Phoenix Brands Canada ULC. Vice President, Phoenix Brands LLC, and Phoenix North LLC. Chairman of the Board of Managers, Vice President, and Secretary, Phoenix Brands Parent LLC.
Michael J. Lyons	Board of Managers Member and President, Phoenix Brands Parent LLC.
Philip Kim	Board of Managers Member and Vice President, Phoenix Brands Parent LLC.
Gary R. Fraser	Board of Managers Member, Phoenix Brands Parent LLC.
Hunter Gustman	Board of Managers Member, Phoenix Brands Parent LLC.

#### **D. The Debtors' Operations**

The Debtors sourced, manufactured, and distributed laundry detergent and fabric care products throughout North America with limited distribution through export distributors in foreign markets. The Debtors sold wholesale to regional and national retailers located within the United States and Canada. Apart from a small amount of direct to consumer business by Rit, which Rit outsourced to a third party to administer, the Debtors had no direct to consumer retail program; therefore a substantial amount of their revenue was derived from sales to retail outlets.

The Debtors outsourced the manufacture of all laundry detergent and fabric care products. The only product line produced by the Debtors in house was Rit. The Debtors also relied on vendors for bottle production, filling, and logistics. This raised significant challenges as the Debtors had to, at all times, manage their vendors to ensure timely deliveries of sufficient product to meet customer needs. This required careful and effective planning.

The vast majority of the Debtors' operations were conducted through Phoenix Brands, which served as the Debtors' operating company. The Debtors' operations in Canada were supported by Phoenix Brands Canada ULC, which held inventory in its own name and had its own set of vendor relationships. The bulk of the Debtors' operations were in support of their sales initiatives. Phoenix's sales function were led by six sales leaders primarily supported by a leading brokerage agency that specialized in growing brands in the consumer packaged goods industry in the United States and a third party broker network in Canada. The Debtors managed select key accounts in-house.

The Debtors' core businesses consisted of separated into four units: (i) Rit Dye; (ii) Canadian laundry detergent brands; (iii) Final Touch fabric softener; and (iv) United States laundry detergent brands. The following are descriptions of the Debtors' business units:

### 1. Rit Dye

Rit is the #1 selling dye in America and an iconic brand dating back to 1916. Rit products include powder and liquid dyes, including newly-released DyeMore, fabric treatments, and ProLine for commercial use. Rit core consumers use Rit to refresh clothing and fabric appearance. Rit also has a growing following among crafting enthusiasts and those engaging in do-it-yourself projects. Rit products also include the Sun Guard brand (Sun Guard is a wash-in powder that provides UV protection).

In order to facilitate Rit's continued growth and brand awareness, the Debtors hosted "The Rit Studio®," a dedicated online platform launched in 2013 to connect with consumers and drive usage occasions. The Rit Studio assisted the Debtors in increasing their overall consumer footprint through engaging consumers.

As of the Original Debtors' Petition Date, the Debtors manufactured Rit and had 22 employees at a factory facility in Indianapolis, Indiana.

Rit's assets included inventory, accounts receivable, the formulas, trademarks, intellectual property, and manufacturing operations (i.e., property, plant, and equipment). For the twelve months ending December 31, 2015, the Rit business generated approximately \$11,532,000 in net revenues.

### 2. Canadian laundry detergents ("Canada Laundry")

Canada Laundry consists of laundry detergent marketed under the Arctic Power and ABC laundry brands. Arctic Power is a heavy-duty formula that has a loyal following among Canadian consumers, especially in Quebec. ABC is a value brand liquid detergent. The Debtors outsourced the manufacturing of Canada Laundry products to various vendors located within the continental United States.

Canada Laundry assets included accounts receivable, the formulas, trademarks, intellectual property, and inventory. For the twelve months ending December 31, 2015, the Canada Laundry business generated approximately \$6,196,000 in net revenues.

**3. Final Touch fabric softeners (“Final Touch”)**

Final Touch brand offers a variety of fabric softeners and scent boosters. Final Touch products are distributed within the United States, and enjoy considerable success in the northeast region of the country. Final Touch brands also include the recently introduced “Fresh Expressions” line of scent enhancing products. The Debtors outsourced the manufacturing of their Final Touch products to various vendors within the continental United States.

Final Touch assets include the formulas, trademarks, intellectual property, and inventory. For the twelve months ending December 31, 2015, Final Touch generated approximately \$12,860,000 in net revenues.

**4. United States Laundry Detergents (“US Laundry”, and together with RIT, Canadian Laundry, and Final Touch, the “Brands”)**

US Laundry consist of four brands: Ajax, Fab, Dynamo, and Fresh Start. Ajax is a nationally recognized brand associated with everyday cleaning. The Ajax trademark was used under license from the Colgate-Palmolive Company. Ajax shares the same brand as Colgate-Palmolive’s Ajax dish and surface cleaner line, and enjoys a 65-year brand heritage under “Stronger than Dirt” slogan (also used under license from the Colgate-Palmolive Company). Ajax has earned the Good Housekeeping Seal of Approval, reinforcing quality with consumers, and has an active consumer engagement through social media.

Fab laundry detergent was positioned as Phoenix Brands’ enhanced sensorial product line. Before filing these cases, the Debtors completed upgrades to Fab’s packaging and formulas, including a longer lasting scent introduced in 2014. Fab had strong sales in the South, Southeast, and Northeast regions of the United States.

Dynamo is known as a tough, stain-fighting brand and has developed a strong following in the Northeast and Upper-Midwest parts of the United States. Dynamo’s brand heritage dates back to 1972. Dynamo is supported by on-going innovation, building on the brand’s reputation.

US Laundry also included the Fresh Start brand. Phoenix had devoted considerable resources to develop a full line of laundry products under the Fresh Start® brand, with potential to launch regionally or as a proprietary brand for a retail partner.

US Laundry assets included accounts receivable, formulas, trademarks, intellectual property, and inventory. For the twelve months ending December 31, 2015, US Laundry generated approximately \$26,160,000 in net revenues.

**E. Significant Prepetition Indebtedness**

The following is a summary of the Debtors' pre-petition indebtedness (all terms as defined below), with further description of each debt and the terms thereof provided below:

<b>Debt</b>	<b>Amount Outstanding</b>
Senior Secured Credit Facility	\$21,374,997.07 plus accrued interest and fees
Subordinated Unsecured Credit Facility	\$41,223,741.00 including accrued and unpaid interest to the Petition Date

### 1. Senior Credit Facility

On or around February 1, 2011, Phoenix Brands entered into that certain Senior Secured Credit Agreement (as amended from time to time, the "Senior Credit Agreement") by and between Phoenix Brands as borrower, Madison as Agent, and the lenders party who from time to time are a party to the Senior Credit Agreement (each a "Senior Lender").

The financing provided under the Senior Credit Agreement was divided into two tranches: (i) the Term A loan with an initial commitment of \$40,000,000 (the "Term A Loan") and (ii) a revolving loan with an initial commitment of \$30,000,000 (the "Revolving Loan" and, together with the Term A Loan, the "Senior Facility"). The Senior Facility was secured by substantially all the Debtors' assets. Each of the Debtors had guaranteed the Senior Facility.

The Senior Facility bore interest at the following fluctuating variable rates depending on certain factors: Base rate = Prime rate + 4.75% + 2% default interest; LIBOR rate = Libor (with a Libor floor of 1.5%) + 5.75% + 2% default interest. As of the Petition Date, there was approximately \$1,665,670.09 in accrued and unpaid interest and \$663,646.28 in fees outstanding under the Senior Facility.

The Debtors were obligated to make quarterly repayments of principal on the Term A Loan starting in June 30, 2011, and ending on January 31, 2016 (the "Termination Date"). The Revolving Loan was to be repaid in full on the Termination Date. Prior to an Event of Default, payments of principal were to be distributed ratably to all of the Senior Lenders. After the occurrence and during the continuance of an Event of Default, the Agent was to apply the proceeds of the collateral first to interest and principal on the Revolving Loan before applying the proceeds to interest or principal on the Term A Loan.

The Senior Facility matured on the Termination Date. As of the Original Debtors' Petition Date, there was approximately \$7,509,420 in principal, plus accrued interest, outstanding under the Term A Loan, and (ii) \$12,815,577.07 in principal, plus accrued interest, outstanding under the Revolving Loan. Certain of the Senior Lenders have traded their debt, and as of the Original Debtors' Petition Date, the Agent held nearly 87% of the amounts outstanding under the Senior Facility. The remaining amount outstanding is held by Fifth Street.

### 2. Subordinated Credit Agreement

On or around February 1, 2011, Phoenix Brands, as borrower, and Fifth Street, as lender (the "Subordinated Lender") entered into that certain Subordinated Credit Agreement (as

amended or modified, and together with all other ancillary loan documents and agreements, collectively, the “Subordinated Credit Agreement”) pursuant to which the Subordinated Lender made a loan to Phoenix Brands in an original principal amount of \$20,000,000. On or about April 9, 2014, the Subordinated Lender made an additional advance under the Subordinated Credit Agreement in the original principal amount of \$7,100,000.

Interest on the outstanding obligations pursuant to the Subordinated Credit Agreement, accrues at a rate of 13.875% per annum, provided that the Debtors, at their election could permit up to 3.875% thereof to accrue as PIK interest. Following an Event of Default, the applicable interest rate was 15.875% per annum. As of the Petition Date, the aggregate outstanding indebtedness owed to Fifth Street pursuant to the Subordinated Credit Agreement was \$41,223,731.00 (inclusive of accrued and unpaid interest, including PIK interest). The obligations owed to the Subordinated Lender pursuant to the Subordinated Credit Agreement are unsecured, and were unconditionally and irrevocably guaranteed, jointly and severally, by each of the Debtors. A list of the primary loan documents comprising this facility, along with copies of such documents, will be included in the Plan Supplement. Pursuant to the Plan Settlement Approval Order entered by the Bankruptcy Court (see Article IV.C herein), Fifth Street’s unsecured claims with respect to the Subordinated Credit Agreement were Allowed against each of the Debtor in the amount of \$41,223,731.00, which Allowed Claims shall not be subject to offset, recoupment, reduction, counterclaim, avoidance, objection or other challenge.

### **3. Intercreditor Agreements**

The relationship between the Senior Lenders and the Subordinated Lender was governed by that certain Subordination and Intercreditor Agreement dated as of February 1, 2011 (as amended, the “Intercreditor Agreement”).

### **4. Trade Debt**

The Debtors outsourced nearly all of their production. The Debtors purchased raw materials from multiple vendors located throughout the world. The Debtors then outsourced production for all Canada Laundry and US Laundry products. The Debtors fabricated Rit products in their facility.

## **F. Prepetition Financial Performance and Events Leading to Bankruptcy**

### **1. The Company’s Performance**

Over the three years immediately prepetition, the Debtors’ net sales steadily declined. While the Debtors saw market share growth in their Canada Laundry and Rit brands, US Laundry suffered as a result of changing industry dynamics driven by the introduction of “mono-dose” laundry products by Tide during the first quarter of 2012. Tide’s introduction of this new form of laundry product was complemented by heavy promotional support from Procter & Gamble’s Tide and Gain, and competing promotions from other large competitor brands such as Arm & Hammer and Purex. Procter & Gamble also launched a value segment line of liquid

laundry products, further increasing price pressures and promotional activity in the laundry category.

While the Debtors were in the process of researching their own mono-dose laundry products, the Debtors' core US Laundry brands could not compete with the promotional spend of its competitors. Additionally, the entire "value" sector of the United States consumer laundry market suffered declines, which further affected Phoenix's performance.

The Debtors' business model also affected its financial performance. The Debtors outsourced all manufacturing of US Laundry and Canada Laundry products. The Debtors were party to a number of long term supply agreements with key vendors involved in the manufacture of these products. These supply agreements were negotiated before the general downturn in the laundry detergent market and were based on the Debtors generating significantly more volume than the Debtors ultimately needed to purchase. Moreover, in certain cases, the Debtors were subject to fees and other penalties for failing to meet minimum purchase requirements. As a result, the Debtors' costs became prohibitive and unsustainable.

Although the consumer market showed signs of stabilization, despite numerous initiatives and extensive work by management and the Debtors' advisors, the Company continued to underperform in 2015.

## 2. The Company's Pre-Filing Turnaround and Restructuring Efforts

Prior to the Termination Date, the Debtors implemented numerous initiatives in an attempt to increase profitability and generate proceeds sufficient to repay amounts owing under the Senior Credit Facility.

Recognizing that the market for value based laundry products was stabilizing, the Debtors implemented a cost-savings program designed to increase profitability. The cost savings initiatives included (i) rationalizing and, where appropriate, reducing the number of unique SKU numbers of the Debtors' products that are sold to customers, and (ii) lowering the cost of producing its products through optimizing the cost of raw materials and mix.

In addition to implementing cost-cutting initiatives, the Debtors also looked to reduce their debt exposure by the sale of one of their core brands. In furtherance of these efforts, the Debtors, assisted by Sawaya Segalas & Co., LLC, an investment banking boutique specializing in the sale of consumer products, marketed for sale its Niagara brand. On November 4, 2015, the Debtors completed a sale transaction whereby the Niagara brand was sold to a company owned primarily by Faultless Starch/Bon Ami Company. Despite a robust sale and marketing effort the sales price achieved was significantly below the amount needed by the Debtors to reduce the debt load in a meaningful way.

During the pendency of these efforts to improve the Debtors' operations, the Debtors, with the active assistance of independent financial advisors, also solicited potential strategic or financial transactions with a variety of parties, as well as possible financing or refinancing transactions. These efforts continued on a substantially continuous basis from the second half of

2015 through the Petition Date. Among the possible transactions pursued were investments and other financial transactions, joint ventures, mergers or sales of the Brands (or portions of them), and discussions with existing creditors relating to possible recapitalizations.

These efforts intensified in October 2015, when the Debtors retained Peter A. Furman of Getzler Henrich & Associates LLC (“GH”) as their Chief Restructuring Officer (“CRO”) and GH as their financial advisor.<sup>4</sup> The Debtors also retained Houlihan Lokey Capital, Inc. (“HL”), as their investment banker, which, with the Debtors active support commenced a comprehensive marketing process that has resulted in the Debtors identifying potential purchasers for the Debtors’ remaining brands.

In addition to these efforts, in late 2015, LEF4 contributed a total of \$1 million of new capital into the Debtors. Lincolnshire Management continued to provide management support services, without charge.

### 3. Events Leading to the Filing of the Chapter 11 Cases

Despite the Company’s multi-faceted prepetition efforts to improve operations, the Debtors were unable to become profitable. As a result, the Debtors’ efforts moved from attempts to restructure their indebtedness and implement operational improvements to sales of substantially all their assets to satisfy claims of creditors. Prepetition, the Debtors located counterparties for the sales of their brands.

## **ARTICLE IV**

### **SIGNIFICANT EVENTS IN THE DEBTORS’ BANKRUPTCY**

Since the Original Debtors’ Petition Date, the Debtors have been moving these cases in one direction with two distinct phases—the sale phase and the wind-down phase. Initially, the Debtors continued the sale process, culminating in three auction sales under section 363 of the Bankruptcy Code, resulting in a significant increase of value for the Debtors’ estates. Second, the Debtors engaged in a plan process, working with various parties in interest to resolve open issues and propose the Plan and Disclosure Statement. Ultimately, the Debtors anticipate confirming the Plan, liquidating any remaining assets, and transferring control of all assets to a liquidating trust which will make a meaningful distribution to creditors.

#### **A. General Case Background**

On May 15, 2016, the Original Debtors filed for chapter 11 relief. Concurrent with filing the bankruptcy petitions, the Debtors filed various procedural and substantive pleadings. These included motions to allow the Debtors to continue operations through the sale process and any post-sale transition services periods necessary, such as motions to continue customer programs, pay employee wages, pay certain critical brokers integral to continued business operations, and continue insurance programs. Concurrently, the Debtors filed an ancillary proceeding in

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<sup>4</sup> Shortly before the Original Debtors’ Petition Date, Mr. Furman joined HunterPoint LLC. Postpetition, Mr. Furman has remained the Debtors’ CRO, and GH has remained the Debtors’ financial advisors.



Canada's Ontario Superior Court of Justice (Commercial List) in which Phoenix Brands LLC served and continues to serve as foreign representative.

The Debtors also filed motions to approve use of cash collateral and obtain debtor in possession financing ("DIP Financing") with Madison Capital, the Debtors' prepetition secured lender; and to establish, on shortened notice, bidding and sale procedures and establish auction and sale approval hearing dates (the "Sale Motion"). The Debtors resolved several formal and informal objections and obtained both authority to enter into DIP Financing and Bankruptcy Court approval to conduct an accelerated sale and auction process based, in part, on the Debtors' extensive prepetition marketing process. Under the DIP Financing, Madison Capital's prepetition secured debt was converted to post-petition debt to be repaid from the proceeds of the sales. Ultimately, the Debtors never drew down upon the DIP Financing, utilizing cash collateral to cover ongoing administrative expenses through the sale period, after which the DIP Financing (comprised of Madison Capital's prepetition secured debt plus interest) was paid in full.

Shortly after filing, the Bankruptcy Court entered an order approving the retention of Morrison Cohen LLP and Pachulski Stang Ziehl & Jones LLP as attorneys to the Debtors pursuant to section 327(a) of the Bankruptcy Code. Additionally, the Bankruptcy Court approved the retention of several other professionals of the Debtors: Getzler Henrich & Associates LLC as financial advisor, Houlihan Lokey Capital, Inc. as investment banker, Osler, Hoskin & Harcourt LLP as Canadian counsel, HunerPoint LLC to provide the CRO, and Rust/Consulting/Omni Bankruptcy as claims and noticing agent.

The US Trustee formed the Committee on June 1, 2016. The Committee retained, and the Bankruptcy Court approved of, Saul Ewing LLP as counsel and Deloitte Financial Advisory Services as financial advisor.

## **B. The Sale Phase**

### **1. The Sale Motion**

The Sale Motion sought approval of bidding procedures and authorization to enter into three asset purchase agreements.

- First, the Asset Purchase Agreement between the Debtors and Lavo Inc. ("Lavo") where the Debtors agreed to sell, and Lavo agreed to purchase, all of the Debtors' assets related to certain Canadian brands—including Arctic Power and ABC—for a gross purchase price of \$5,000,000 Canadian before other adjustments.
- Second, the Asset Purchase Agreement between the Debtors and Detergent 2.0, LLC ("D20"), where the Debtors agreed to sell, and D20 agreed to purchase, all of the Debtors' assets related to certain US Laundry brands—including Ajax, Fab, Dynamo, and the Final Touch unit—for a gross purchase price of \$5,900,000 before other adjustments.
- Third, the Asset Purchase Agreement between the Debtors and SS Robin Operating, LLC ("SS Robin") where the Debtors agreed to sell, and SS Robin agreed to purchase all of

the Debtors' Rit-related assets for a gross purchase price of \$13,000,000 before other adjustments.

## 2. Post-Petition Marketing Efforts and Subsequent Bids

Subsequent to the Petition Date, the Debtors continued their extensive marketing and sales process, re-contacting or contacting 170 potential strategic and financial parties. Of these, eight new parties signed NDAs and four parties who had previously entered NDAs, actively participated postpetition (excluding Lavo, D20, and SS Robin). Ten of these parties accessed material in the Debtors' electronic data room.

The Debtors did not receive any Qualified Bids for the Debtors' Canada Laundry assets, but did receive two Qualified Bids for the Debtors' US Laundry assets. The Debtors closely evaluated these bids, as well as the Bidders' ability to move expeditiously to consummate sale transactions. Before the start of the auction, one of the bidders withdrew its bid. The Debtors also received four Qualified Bids for the Rit-related assets. The Debtors closely evaluated these bids, as well as the Bidders' ability to move expeditiously to consummate sale transactions. Before the start of the auction, one of the bidders withdrew its bid.

After consulting with its consultation parties, and extensive discussions with their advisors, the Debtors' board of directors selected U.S. Nonwovens Corp. ("USN") as the Starting Bid for the auction of the US Laundry assets and Nakoma Products, LLC ("Nakoma") as the Starting Bid for the Rit assets.

## 3. The Auction and Post-Auction Transition Period

On July 11, 2016, the Debtors commenced an auction for its US Laundry and Rit-related asset. The Debtors began with the auction for the US Laundry assets. Bidding began in increments of \$100,000, and after 10 rounds of bidding, the Successful Bidder for the US Laundry assets was determined to be USN for \$10,706,500. The Debtors then concluded and closed the auction for the US Laundry assets. The increase in purchase price from the US Laundry auction totaled \$4,806,500, and even after considering the D20 break-up fee of \$206,500, represents a net increase of \$4,600,000, or 78% more than the stalking horse bid.

The Debtors next began the auction for the Rit assets. Bidding began in \$200,000 increments and after four rounds of bidding, the Debtors moved to a sealed bid asking the two remaining bidders to each provide their best and final offers. These bids were opened on the record. The Debtors announced the Successful Bidder for the Rit assets as Nakoma for \$16,880,000. Notably, Nakoma also agreed to remove certain purchase price holdbacks and adjustments that had been included in the stalking horse agreement. The Debtors then concluded and closed the auction for the Rit assets. The increase in purchase price from the Rit auction totaled \$5,005,000, and even after considering the SS Robin break-up fee of \$455,000, represents a net increase of \$4,550,000 or 38% more than the stalking horse bid.

Throughout the Auction, Houlihan, the Debtors' counsel, financial advisors, management, and two present board members, evaluated each bid and relevant risk factors to

ensure the best possible result for the estates, and advised the Debtors as to which offers were higher and better.

The sales were approved by Bankruptcy Court order dated July 18, 2016, and all sales closed by August 8, 2016. The Debtors continued providing services for the business units purchased pursuant to transition services agreements (“TSAs”).

The DIP was paid back in full, including accrued interest with three payments on August 2, 3, and 10, 2016 using proceeds from the sales of Canada Laundry, US Laundry, and Rit, respectively.

### **C. The Wind-Down Phase**

#### **1. Conclusion of TSAs.**

The TSA period proved to be long and time-consuming, as one of the buyers required significant resources from the Debtors, withdrawing those resources from the pool of actions necessary to prepare a Plan of liquidation. Moreover, the Rit TSA was extended several times, further delaying the process. Ultimately, the Canada Laundry TSA terminated as of August 31, 2016, the US Laundry TSA ended as of October 8, 2016, and the Rit TSA ended as of November 1, 2016.

#### **2. Negotiations Over Exit Strategy.**

Throughout and after the TSA period, the Debtors, the Committee, and Fifth Street spent time negotiating an exit strategy that provided the best recoveries for all general unsecured creditors, including Fifth Street, as expeditiously as possible.

During this period, on September 15, 2016, the Debtors filed their motion for an order extending the Debtors’ exclusive periods to file a plan (the “Exclusivity Motion”). The Committee interposed its objection to the Exclusivity Motion on September 29, 2016 and its supplemental objection on October 17, 2016. The Debtors submitted a comprehensive reply later the same day. The Committee and Debtors ultimately resolved the Exclusivity Motion by stipulation, which was approved by the Bankruptcy Court on October 20, 2016.

#### **3. Plan Settlement**

On October 21, 2016, Fifth Street filed a motion to covert the case to a case under chapter 7 (the “Conversion Motion”). In advance of the objection deadline, the Debtors, the Committee, and Fifth Street agreed to the Plan Settlement Stipulation that resolved the Conversion Motion, outlined agreed-upon terms of the parties in support of a plan of liquidation, and included a plan term sheet which outlined key terms to be included in the plan. As noted above, by order dated November 7, 2016, the Court approved the stipulation in its entirety.

**ARTICLE V**  
**THE LIQUIDATING PLAN**

In general, a chapter 11 plan (i) divides claims and equity interests into separate Classes, (ii) specifies the property that each Class is to receive under the Plan, and (iii) contains other provisions necessary to the reorganization or liquidation of the debtor. Under the Bankruptcy Code, “claims” and “equity interests” are classified rather than “creditors” and “shareholders” because such entities may hold claims or equity interests in more than one Class. For purposes of this Plan and Disclosure Statement, the term “holder” refers to the holder of a Claim or Interest, respectively, in a particular Class under the Plan.

To the extent the legal, contractual, or equitable rights with respect to any Claim or Interest asserted against the Debtors are altered, modified, or changed by treatment proposed under the Plan, such Claim or Interest is considered “Impaired,” and the holders of such Claim or Interest are entitled to vote in favor or against the Plan.

A chapter 11 plan may specify that certain Classes of claims or equity interests are either to be paid in full upon effectiveness of the Plan or are to remain unchanged by the Plan. Such Classes are referred to as “unimpaired,” and because of such favorable treatment the holders in such Classes are deemed to accept the Plan. Accordingly, it is not necessary to solicit votes from the holders of claims or equity interests in such Classes. A chapter 11 plan also may specify that certain Classes will not receive any distribution or property or retain any claim against a debtor. Such Classes are deemed to have rejected the Plan and, therefore, need not be solicited to vote to accept or reject the Plan.

Here, the Debtors, the Committee, and Fifth Street have worked together to propose a Plan that provides for a meaningful distribution to general unsecured creditors through, inter alia, professional compensation deferrals.

**ARTICLE VI**  
**TREATMENT, CLASSIFICATION, AND**  
**IMPAIRMENT OF CLAIMS AND INTERESTS**

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, Confirmation, and Distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

On the Effective Date, and except as specifically set forth below in this Article VI, the Debtors shall continue to maintain their separate corporate existence for all purposes. Subject in all respects to the distribution protocol set forth in the Waterfall (including the treatment of the Allowed Claims as provided in this Plan), the Plan implements a limited substantive consolidation for distribution purposes only, effective on the Effective Date. To effectuate such limited substantive consolidation, on the Effective Date (but subject in all respects to the Waterfall): (a) all assets (and the proceeds thereof) of the Debtors shall be deemed merged or treated as if they were merged for purposes of making distributions under the Plan, and (b) no distributions shall be made under the Plan on account of intercompany Claims among the

Debtors. Such limited substantive consolidation shall not (other than for the foregoing purposes related to the Plan) affect the legal and corporate structures of the Reorganized Debtors.

<b>Class and Description</b>	<b>Impairment</b>	<b>Entitlement to Vote</b>
<b>Class 1</b> – Priority Non-Tax Claims	Unimpaired	No; deemed to accept.
<b>Class 2</b> – Secured Tax Claims	Unimpaired	No; deemed to accept.
<b>Class 3</b> – Other Secured Claims	Unimpaired	No; deemed to accept.
<b>Class 4A</b> – General Unsecured Claims Against Phoenix Brands LLC	Impaired	Yes.
<b>Class 4B</b> – General Unsecured Claims Against Phoenix Brands Parent LLC	Impaired	No; deemed to reject.
<b>Class 4C</b> – General Unsecured Claims Against Phoenix North LLC	Impaired	No; deemed to reject.
<b>Class 4D</b> – General Unsecured Claims Against Phoenix Brands Canada ULC	Impaired	Yes.
<b>Class 4E</b> – General Unsecured Claims Against Phoenix Rit LLC	Impaired	No; deemed to reject.
<b>Class 4F</b> – General Unsecured Claims Against Phoenix Brands Canada Laundry LLC	Impaired	Yes.
<b>Class 5</b> – Equity Interests in Debtors	Impaired	No; deemed to reject.

## **ARTICLE VII**

### **ADMINISTRATIVE CLAIMS, PROFESSIONAL FEES, AND PRIORITY TAX CLAIMS**

**A. Introduction.** As provided in Bankruptcy Code § 1123(a)(1), Administrative Claims and Priority Tax Claims are unclassified claims, not considered Impaired and not entitled to vote on the Plan, because they are automatically entitled to the specific treatment provided for them in the Bankruptcy Code. These non-voting Claims shall be treated separately as unclassified Claims as set forth in this Article V.

**B. Administrative Claims in General.** Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a different treatment, the Trust shall pay to each holder of an Allowed Administrative Expense Claim Cash in an amount equal to such Allowed Claim on the Initial Distribution Date. Notwithstanding the foregoing, Professional Fees of Professionals retained by the Debtors and the Committee shall be subject to the Professional Fee Deferral pursuant to and in accordance with the Waterfall and shall not be paid on the Initial Distribution Date.

**C. Bar Date for Administrative Claims.** Proofs of Administrative Expense Claims and/or requests for the allowance and payment of Administrative Expense Claims other than Professional Fees, for the period from the Petition Date through October 8, 2016, had a bar date of October 28, 2016, as set by order of this court [Docket No. 469]. Any Proofs of Administrative Claims arising during this period filed after October 28, 2016 are barred, absent further order from this Court. Unless otherwise required pursuant to a prior order of the Bankruptcy Court, Proofs of Administrative Claims and/or requests for the allowance and payment of Administrative Claims must be filed and served by the date set by the Bankruptcy Court. Any entity failing to file a proof of Administrative Claim or request for payment thereof on or before the Administrative Claims Bar Date shall be forever barred from asserting such Claim against the Debtors or their Bankruptcy Estates, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process, or act to collect, offset, or recover such Administrative Claim.

**D. Statutory Fees.** On or before the Effective Date, all fees payable under section 1930 of chapter 123 of title 28 of the United States Code shall be paid in full in Cash. All unpaid fees due and payable under 28 U.S.C. § 1930 shall be paid by the Liquidating Trust, as such fees arise prior to and after the Effective Date until a Final Decree is entered in these Chapter 11 Cases.

**E. Professional Fees.**

**1. Time for Filing and Allowance.** All Professionals requesting compensation or reimbursement of expenses pursuant to Bankruptcy Code §§ 327, 328, 330, 331, 503(b), and 1103 for services rendered prior to the Effective Date must file and serve pursuant to the Bankruptcy Code and applicable rules, an application for final allowance of compensation and reimbursement of expenses no later than thirty (30) days after the Effective Date or be forever barred from asserting such claims against the Bankruptcy Estates or the Debtors and their respective successors and/or assigns, or the Liquidating Trust. Professional Fees shall be Allowed Professional Fees only to the extent allowed by Final Order of the Bankruptcy Court. Only Allowed Professional Fees shall be paid pursuant to the Plan. Any objection to Professional Fees shall be filed on or before the date specified in the application for final compensation.

**2. Payment of Professional Fees.** As set forth in the Waterfall, Debtors' and Committee's Professionals shall defer payments totaling \$1,000,000, split into two tranches, the A Piece and the B Piece (such terms as defined in Plan Exhibit A). Such Professional Fee Deferral shall be paid from Available Cash in accordance with the Waterfall. The Debtors' and Committee's Professional fees are capped in the gross amounts set forth in **Schedule 1** to Plan **Exhibit A**.

**F. Priority Tax Claims.** Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, each holder of an Allowed Priority Tax Claim shall receive from the Trust, in full and complete settlement, satisfaction, and discharge of such Claim, Cash in an amount equal to such Allowed Claim on the Initial Distribution Date.

**ARTICLE VIII**  
**TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary.** The classifications of Claims and Equity Interests in this Article VIII shall apply for all purposes, including voting, confirmation, and distribution pursuant to the Plan, pursuant to Bankruptcy Code §§ 1122 and 1123(a)(1). A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that: (i) the Claim or Equity Interest qualifies within the description of that Class (and shall be deemed classified in a different Class to the extent that any portion of such Claim or Equity Interest qualifies within the description of such different Class), (ii) the Claim or Equity Interest is Allowed as of the Effective Date, and (iii) the Claim or Equity Interest has not been paid or otherwise satisfied prior to the Effective Date.

**B. Funding of Plan on Effective Date.** The Debtors' cash on hand as of the Effective Date, which is anticipated to be approximately \$3,085,000, along with additional collections of receivables and recoveries from Avoidance Actions and other potential Rights of Action will fund the Plan. On the Initial Distribution Date, the Debtors anticipate having sufficient funds to pay (or to the extent of any such Claims that are Disputed Claims, reserve for) all Administrative Claims, Priority Tax Claims, and Priority Non-Tax Claims and to provide the initial \$100,000 to Class 4A-2 and at least \$2 million to Class 4A-1.

**C. Classification.** The Claims and Equity Interests against the Debtors are classified as identified in the table in Article VII above.

**1. Class 1 – Priority Non-Tax Claims.**

Classification: Class 1 shall consist of the Priority Non-Tax Claims.

Treatment: Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, each holder of an Allowed Priority Non-Tax Claim shall receive from the Trust, in full and final satisfaction, settlement, release, and discharge of such Allowed Priority Non-Tax Claim, Cash in the amount equal to such Allowed Claim, without interest, on or as soon as practicable after the later of (x) the Initial Distribution Date and (y) the date that such Claim becomes an Allowed Claim.

**2. Class 2 – Secured Tax Claims.**

Classification: Class 2 shall consist of the Secured Tax Claims.

Treatment: Except to the extent that a holder of an Allowed Secured Tax Claim agrees to a less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, each holder of an Allowed Secured Tax Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Allowed Secured Tax Claim and any Liens securing such Claim, in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, Cash in the amount of such Allowed Secured Tax Claim on, or as soon as practicable after, the latest of: (a) the Effective Date and (b) the date such Allowed Secured Tax Claim becomes an Allowed Claim.

### **3. Class 3 – Other Secured Claims.**

Classification: Class 3 shall consist of the Allowed Other Secured Claims.

Treatment: Except to the extent that a holder of an Allowed Other Secured Claim agrees to a less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, each holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Allowed Other Secured Claim and any Liens securing such Claim, at the sole option of the Liquidating Trustee, as applicable, (i) Cash in an amount equal to such Allowed Other Secured Claim on or as soon as practicable after the Initial Distribution Date, or (ii) the Collateral securing its Allowed Other Secured Claim, in full and complete satisfaction of such Allowed Other Secured Claim on or as soon as practicable after the Effective Date.

### **4. Class 4A – General Unsecured Claims Against Phoenix Brands LLC.**

Class 4A shall consist of Subclass 4A-1 and Subclass 4A-2, the classification and treatment of which are as follows:

#### **a. Subclass 4A-1**

Classification: Subclass 4A-1 shall consist of the Allowed General Unsecured Claim asserted by Fifth Street against Phoenix Brands LLC.

Treatment: Fifth Street will receive the distributions in accordance with the Waterfall attached to the Plan as **Exhibit A**. For the avoidance of doubt, General Unsecured Claims in Subclass 4A-2 do not share in the distributions to be made to Fifth Street in this Subclass 4A-1.

#### **b. Subclass 4A-2**

Classification: Subclass 4A-2 shall consist of the Allowed General Unsecured Claims against Phoenix Brands LLC asserted by creditors other than Fifth Street.

Treatment: Except to the extent that a holder of an Allowed General Unsecured Claim in Subclass 4A-2 agrees to a less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, each holder of an Allowed General Unsecured Claim in Class 4A shall receive, in full and final satisfaction, settlement, and release of such Allowed General Unsecured Claim its Pro Rata Share, based on the aggregate amount of Allowed General Unsecured Claims in Subclass 4A-1, the distributions in accordance with the Waterfall attached to the Plan as **Exhibit A**. For the avoidance of doubt, Fifth Street does not share in the distributions made to Subclass 4A-2.

### **5. Class 4B – General Unsecured Claims Against Phoenix Brands Parent LLC.**

Classification: Class 4B shall consist of the Allowed General Unsecured Claims against Phoenix Brands Parent LLC.



Treatment: There will be no distribution to General Unsecured Claims in Class 4B.

**6. Class 4C – General Unsecured Claims Against Phoenix North LLC.**

Classification: Class 4C shall consist of the Allowed General Unsecured Claims against Phoenix North LLC.

Treatment: There will be no distribution to General Unsecured Claims in Class 4C.

**7. Class 4D – General Unsecured Claims Against Phoenix Brands Canada ULC.**

Classification: Class 4D shall consist of the Allowed General Unsecured Claims against Phoenix Brands Canada ULC.

Treatment: Except to the extent that a holder of an Allowed General Unsecured Claim in Class 4D agrees to a less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, each holder of an Allowed General Unsecured Claim in Class 4D shall receive, in full and final satisfaction, settlement, and release of such Allowed General Unsecured Claim its Pro Rata Share, based on the aggregate amount of Allowed General Unsecured Claims in Subclass 4D, of the distributions to be provided to the holders of such Allowed Class 4D Claims in accordance with the Waterfall attached to the Plan as **Exhibit A**.

**8. Class 4E – General Unsecured Claims Against Phoenix Rit LLC.**

Classification: Class 4E shall consist of the Allowed General Unsecured Claims against Phoenix Rit LLC.

Treatment: There will be no distribution to General Unsecured Claims in Class 4E.

**9. Class 4F – General Unsecured Claims Against Phoenix Brands Canada Laundry LLC.**

Classification: Class 4F shall consist of the Allowed General Unsecured Claims asserted by Fifth Street against Phoenix Brands Canada Laundry LLC.

Treatment: Fifth Street, as sole creditor in Class 4F, will receive a distribution of 100% of the funds for distribution allocated to Phoenix Brands Canada Laundry LLC in accordance with the Waterfall attached to the Plan as **Exhibit A**.

**10. Class 5 – Equity Interests in Debtors.**

Classification: Class 5 shall consist of all Equity Interests in the Debtors.

Treatment: On the Effective Date, the Equity Interests in the Debtors shall be cancelled and the holders of the Equity Interests shall not be entitled to, and shall not receive or retain, any property on account of such Equity Interests under the Plan.

**ARTICLE IX**  
**ACCEPTANCE OR REJECTION OF THE PLAN**

A Class shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class (excluding Insiders) that have cast ballots with respect to the Plan. Only those votes cast by holders of Allowed Claims shall be counted in determining whether acceptances have been received in sufficient number and amount to obtain confirmation.

Class 4 is impaired and entitled to vote. Classes 4B, C, and E will receive no distribution and are deemed to have rejected the Plan. Classes 1–3 are unimpaired and conclusively deemed to have accepted the Plan and are not entitled to vote. Class 5 is conclusively deemed to have rejected the Plan and is not entitled to vote.

**ARTICLE X**  
**EFFECT OF CONFIRMATION**

**A. Vesting of Assets.** On the Effective Date, all remaining Assets of any kind and nature whatsoever, of the Bankruptcy Estates shall vest in and be conveyed and transferred to the Liquidating Trust free and clear of all Liens, Claims, Equity Interests, and encumbrances of the Debtors or any Creditor or any other Persons, except the obligations, rights, and liens continued or granted pursuant to the Plan and the Confirmation Order. The Liquidating Trust Assets shall be managed by the Liquidating Trustee in accordance with this Plan and the Liquidating Trust Agreement, and used for the sole purposes of consummating and carrying out the Plan and effectuating distributions to holders of Allowed Claims as provided hereunder. Nothing herein shall prevent the Liquidating Trust from abandoning any Assets after the Confirmation Date.

**B. Authority to Effectuate Plan.** Upon the entry of the Confirmation Order by the Bankruptcy Court (but subject to the occurrence of the Effective Date), and except as may otherwise be provided herein, any treatment or actions provided for or contemplated under the Plan shall be deemed to be authorized and approved without any further order or approval of the Bankruptcy Court. The Debtors and the Liquidating Trust shall be authorized, without further application to or order of the Bankruptcy Court but subject to the terms of the Plan and the Liquidating Trust Agreement, to take whatever action is necessary or proper to consummate and carry out the Plan, to consummate any transaction provided for herein, and to effectuate the distributions provided for hereunder. Subject to the terms of the Plan and the Liquidating Trust Agreement, the Liquidating Trust is also expressly authorized and empowered to liquidate, sell, dispose of, or abandon any and all Liquidating Trust Assets, to distribute the proceeds thereof in accordance with the Plan, and to pay all costs and expenses associated with such sale, liquidation, or disposition without further order of the Bankruptcy Court.

**C. Late Claims.** Any Claim filed after any applicable Bar Date shall be unenforceable unless the Claimant has been granted an extension of time to file a Claim by the Bankruptcy Court and such entity shall not be treated as a creditor or Claimant for the purposes of voting or distributions with respect to the Plan. Unless otherwise expressly ordered by the Bankruptcy Court, any such late-filed Claim shall not be entered on the official claims register, shall be

deemed Disallowed and expunged and the Claimant shall receive no distribution under the Plan or from the Liquidating Trust.

**ARTICLE XI**  
**IMPLEMENTATION OF THIS PLAN**

**A. Creation of Liquidating Trust.**

1. On the Effective Date, the Liquidating Trust shall be created as the vehicle for implementation of the Plan. A Liquidating Trust Agreement, in form and substance reasonably acceptable to Fifth Street and the Committee, shall be executed by the Debtors and the Liquidating Trustee and delivered to Fifth Street and the Committee. All right, title, and interest of the Bankruptcy Estates' in the Assets shall be transferred, assigned, and delivered to the Liquidating Trust, free of all Claims, Liens, and Interests, to be managed as Liquidating Trust Assets by the Liquidating Trustee in accordance with the terms of the Plan and the Liquidating Trust Agreement for the sole purposes of consummating and carrying out the Plan. All other necessary steps shall be taken to establish the Liquidating Trust and the beneficial interests therein.

2. The Liquidating Trustee shall manage the Debtors' orderly wind down, overseeing claims objections, and prosecution of Rights of Action (including Avoidance Actions), and shall reduce to Cash or otherwise liquidate the unliquidated Liquidating Trust Assets, and after deducting costs and expenses of liquidating, disposing, or maintaining such assets, other costs, and expenses of the Liquidating Trust, and setting aside such reserves as determined by the Liquidating Trustee, the Liquidating Trustee shall distribute the Liquidating Trust Assets in accordance with the terms of the Plan and Liquidating Trust Agreement.

3. The Liquidating Trustee shall have the powers, duties, and obligations set forth in the Plan and the Liquidating Trust Agreement. The costs and expenses incurred by the Liquidating Trustee on and after the Effective Date shall be paid from the Liquidating Trust Assets. Upon entry of the Final Order closing these Chapter 11 Cases and as otherwise provided in the Liquidating Trust Agreement, the Liquidating Trust shall be terminated and dissolved without further action by the Liquidating Trustee. In connection with the above-described assets, any and all rights, claims, and causes of action, any attorney-client or similar privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidating Trust shall vest with the Liquidating Trustee and its representatives.

4. The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement and shall not be required to file a fee application or obtain any approval of the Bankruptcy Court to receive compensation; provided, however, that all fees and expenses of the Liquidating Trustee (including the payment of compensation to professionals retained by the Liquidating Trustee and/or Liquidating Trust) shall be submitted to the Post-Confirmation Oversight Committee for approval prior to payment. Subject to the provisions of the Liquidating Trust Agreement, the Liquidating Trustee shall be entitled to hire and engage such professionals as it deems appropriate to assist in carrying out the duties of the Liquidating Trust, with the

reasonable fees and expenses of such professionals to be paid from the Trust Assets. The Liquidating Trustee may pay from the Trust Assets all reasonable fees and expenses incurred in connection with the duties and actions of the Liquidating Trustee, including, but not limited to, fees and expenses of the Liquidating Trustee's professionals, insurance, taxes, and other expenses arising in the ordinary course of business in maintaining, liquidating, disposing of, and the distribution of the Trust Assets and compensation to the Liquidating Trustee. The Liquidating Trustee may pay all such reasonable fees and expenses without Bankruptcy Court approval; provided, however, that all fees and expenses of the Liquidating Trustee (including the payment of compensation to professionals retained by the Liquidating Trustee and/or Liquidating Trust) shall be submitted to the Post-Confirmation Oversight Committee for approval prior to payment. Any disputes concerning the administration of the Liquidating Trust or implementation of the distribution of the Trust Assets may be brought before the Bankruptcy Court for resolution.

5. The Liquidating Trust will terminate no later than the second (2nd) anniversary of the Effective Date; provided, however, that upon motion of the Liquidating Trustee or a party in interest, the Bankruptcy Court may extend the term of the Liquidating Trust for a fixed period if it is necessary or appropriate to facilitate or complete the liquidation and distribution of the Liquidating Trust Assets. Additional extensions can be obtained so long as Bankruptcy Court approval is obtained; provided, however, that the aggregate of all such extensions shall not exceed five (5) years, unless the Liquidating Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a grantor trust for federal income tax purposes.

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

7. For federal income tax purposes, all parties including, without limitation, the Debtors, the Liquidating Trustee and the beneficiaries of the Liquidating Trust, shall treat the transfer of assets to the Liquidating Trust, in accordance with the terms of the Plan and the Liquidating Trust Agreement, as a transfer to the holders of Allowed Claims in full satisfaction of such Claims, followed by a transfer by such Claimants to the Liquidating Trust, and the beneficiaries of the Liquidating Trust shall be treated as the grantors and owners thereof.

8. The beneficial interests in the Liquidating Trust shall not be certificated and shall not be transferable.

## **B. Responsibilities of the Liquidating Trustee.**

1. As of the Effective Date, the Liquidating Trustee, on behalf of the holders of Allowed Claims, the Debtors, or the Bankruptcy Estates, as applicable, shall be responsible for: (i) liquidating or otherwise reducing to Cash the unliquidated Liquidating Trust Assets; (ii) filing, prosecuting, compromising, and settling Rights of Action (including Avoidance Actions); (iii) making distributions under the Plan; (iv) settling, resolving, and objecting to Claims including Unsecured Claims; (v) seeking estimation of contingent or unliquidated Claims including Unsecured Claims under Bankruptcy Code § 502(c); (vi) establishing claims reserves as

determined by the Liquidating Trustee; (vii) paying and satisfying Administrative Claims and Priority Claims; (viii) winding up the affairs of the Debtors and their Bankruptcy Estates; (ix) complying with, enforcing, and carrying out the terms of the Plan and Liquidating Trust Agreement; and (x) making and filing all tax returns for the Liquidating Trust.

2. The Liquidating Trustee shall have sole authority, subject to the direction and approval of the Post-Confirmation Oversight Committee (as defined below) but without further Bankruptcy Court approval, to liquidate or otherwise dispose of the Liquidating Trust Assets, to file, prosecute, and settle objections to Claims, to pursue, settle, or otherwise resolve or abandon any Rights of Action, to hire and pay (subject to Article VIII.B.3 of the Plan) professional fees and expenses of counsel and other advisors, and to take such other actions as shall be necessary to implement the Plan, wind down the affairs of the Debtors and the Bankruptcy Estates, and effect the closing of these Chapter 11 Cases or as otherwise provided under the Liquidating Trust Agreement.

3. The Debtors and the Committee in the period prior to the Effective Date, and the Liquidating Trustee and the Post-Confirmation Oversight Committee in the period from and after the Effective Date, will use their reasonable best efforts to ensure that any professionals retained to prosecute Rights of Action (including Avoidance Actions and other litigation claims) on behalf of the Liquidating Trust will cap their fees at the lesser of (i) the contingent fee of (x) 18% of any collections from a litigation target obtained prior to filing the applicable complaint, and (y) 25% of all collections obtained from litigation claims settled after the filing of a complaint, and (ii) the hourly rate charged by such firm. Costs will be reimbursed from the aggregate proceeds generated from the prosecution of all litigation claims, while fees will be limited to only the recoveries from the specific litigation for which the fees apply.

### C. The Liquidating Trustee.

1. Fifth Street (in consultation with the Committee and the Debtors) shall select the Liquidating Trustee. Without the permission of the Bankruptcy Court, no judicial, administrative, arbitration, or other action or proceeding shall be commenced against the Liquidating Trustee in its official or personal capacity, with respect to its status, duties, powers, acts, or omissions as the Liquidating Trustee in any forum other than the Bankruptcy Court.

2. The Liquidating Trust shall be governed by a three member oversight committee (the “**Post-Confirmation Oversight Committee**” to whom the Liquidating Trustee shall report, and which shall direct the Liquidating Trustee’s actions, all pursuant to the Liquidating Trust Agreement and the Plan. Fifth Street shall designate two members of the Post-Confirmation Oversight Committee, , and the Committee shall select the third member of such committee; provided, however, Fifth Street, the Committee, and the Debtors shall consult on the selection of all three members of the Post-Confirmation Oversight Committee. All actions of the Liquidating Trust and the Liquidating Trustee shall require approval of at least two members of the Board. Notwithstanding anything to the contrary contained in the Plan, all actions of the Liquidating Trustee shall be made in consultation with, and subject to the prior approval of, the Post-Confirmation Oversight Committee unless otherwise expressly provided in the Liquidating Trust Agreement. The members of the Post-Confirmation Oversight Committee shall serve without

compensation other than reimbursement by the Liquidating Trustee of reasonable out-of-pocket disbursements incurred by such members in connection with the Liquidating Trust (but, for the avoidance of doubt, such expenses shall not include any professional fees and expenses of the members of the Post-Confirmation Oversight Committee).

3. The Liquidating Trustee shall act on behalf of the Liquidating Trust to carry out its obligations and to exercise its rights in accordance with and subject to the Plan, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee shall be vested with the rights, powers, and benefits as set forth in the Liquidating Trust Agreement, including without limitation, all rights, powers, and benefits afforded a “trustee” under Bankruptcy Code §§ 704 and 1106.

4. The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement and shall not be required to file a fee application or obtain any approval of the Bankruptcy Court to receive compensation; provided, however, that all fees and expenses of the Liquidating Trustee (including the payment of compensation to professionals retained by the Liquidating Trustee and/or the Liquidating Trust) shall be submitted to the Post-Confirmation Oversight Committee for approval prior to payment. Subject to the provisions of the Liquidating Trust Agreement and Article VIII.B.3 of the Plan, the Liquidating Trustee shall be entitled to hire and engage such professionals as it deems appropriate to assist in carrying out the duties of the Liquidating Trust, with the reasonable fees and expenses of such professionals to be paid from the Liquidating Trust Assets. The Liquidating Trustee may pay from the Liquidating Trust Assets all reasonable fees and expenses incurred in connection with the duties and actions of the Liquidating Trustee, including, but not limited to, fees and expenses of the Liquidating Trustee’s professionals, insurance, taxes, and other expenses arising in the ordinary course of business in maintaining, liquidating, disposing of, and the distribution of the Liquidating Trust Assets and compensation to the Liquidating Trustee. The Liquidating Trustee may pay all such reasonable fees and expenses without Bankruptcy Court approval; provided, however, that all such fees and expenses shall be submitted to the Post-Confirmation Oversight Committee for approval prior to payment. Any disputes concerning the administration of the Liquidating Trust or implementation of the distribution of the Liquidating Trust Assets (including any disputes relating to the compensation of the Liquidating Trustee or any professionals retained by or on behalf of the Liquidating Trustee and/or the Liquidating Trust) shall be brought before the Bankruptcy Court for resolution

5. The Liquidating Trustee shall be authorized and empowered to object to Claims and to pursue and prosecute, to settle, or to decline to pursue such objections, as well as the Rights of Action, whether or not the Rights of Action or objections to Claims have been commenced prior to the Effective Date. The Liquidating Trustee shall be substituted as the real party in interest in any such action or objection, commenced by or against the Debtors or the Committee and may pursue, or decline to pursue, such objections or Rights of Action. The Liquidating Trustee may settle, release, sell, assign, otherwise transfer, or compromise such objections and Rights of Action, subject to the provisions of the Plan and the Liquidating Trust Agreement, without Bankruptcy Court approval.

6. The Liquidating Trustee may, but shall not be required to, set-off against any Claim and the distributions to be made pursuant to the Plan in respect of such Claim and/or Right of Action the Bankruptcy Estates may have against the Claimant; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trustee of any such Right of Action, set-off or recoupment which the Bankruptcy Estates may have against such Claimant.

7. A substituted Liquidating Trustee may be designated by the Post-Confirmation Oversight Committee after resignation or other removal of the Liquidating Trustee as provided under the Liquidating Trust Agreement.

8. The Liquidating Trustee shall strictly account to the Post-Confirmation Oversight Committee for all receipts and disbursements of the Liquidating Trust, and shall provide the Post-Confirmation Oversight Committee with such other reporting as is reasonably requested by the Post-Confirmation Oversight Committee.

**D. Cancellation of Instruments and Equity Interests.** On the Effective Date, except to the extent otherwise provided in the Plan, all notes, instruments, certificates, and other documents evidencing Claims and all Equity Interests in the Debtors shall be cancelled and deemed terminated, without any further act or action under any applicable agreement, law, regulations, order, or rule.

**E. Disposition of Books and Records.** After the Effective Date, the Debtors shall transfer the Debtors' books and records remaining in the Debtors' possession to the Liquidating Trust. From and after the Effective Date, the Liquidating Trustee may continue to preserve and maintain all documents and electronic data transferred to the Liquidating Trust by the Debtors, and the Liquidating Trustee may destroy or otherwise abandon any such documents and records (in electronic or paper format) without further order of the Bankruptcy Court. The Liquidating Trustee may destroy or abandon all remaining books and records upon entry of a Final Order closing the last Chapter 11 Case.

**F. Corporate Existence and Dissolution of Debtors.** Immediately after the Effective Date, the Liquidating Trustee shall be authorized to take all actions reasonably necessary to dissolve one or more of the Debtors under applicable laws, including under the laws of the jurisdictions in which they may be organized or registered, and to pay all reasonable costs and expenses in connection with such dissolutions, including the costs of preparing or filing any necessary paperwork or documentation. Upon the final Distributions, any Debtors that have not been previously dissolved shall be deemed dissolved for all purposes without the necessity for other or further actions to be taken by or on behalf of the Debtors, and the Liquidating Trustee shall be authorized to file any certificate of cancellation or other documents as may be necessary or desirable to terminate the legal existence of any remaining Debtor companies.

**G. Closing the Chapter 11 Cases.** After all Rights of Action and Disputed Claims have been resolved, the US Trustee quarterly fees have been paid, all of the Estates' and Liquidating Trust Assets have been distributed in accordance with this Plan, or at such earlier time as the Liquidating Trustee deems appropriate, the Liquidating Trustee shall seek authority from the

Bankruptcy Court to close any of the Chapter 11 Cases, in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

**ARTICLE XII**  
**DISTRIBUTIONS UNDER THE PLAN**

**A. Wind Down Budget.** The Debtors and the Liquidating Trust shall operate pursuant to the terms of the Wind Down Budget. All Professional's fees are capped by, and in no circumstances shall such Professionals seek allowance or payment of Professional fees in excess of, the amounts identified in the Wind Down Budget (and no such fees in excess in of amounts identified in the Wind Down Budget shall be Allowed or paid).

**B. Distribution to Creditors.** The Liquidating Trustee shall make distributions to holders of Allowed Claims on and after the Initial Distribution Date, as defined herein, to the extent required by and in accordance with the Waterfall attached to the Plan **Exhibit A**.

**C. Claims Allowed as of the Initial Distribution Date.** The Liquidating Trustee shall make a distribution on the Initial Distribution Date (or as soon thereafter as is practicable) to all beneficiaries of the Liquidating Trust by virtue of such persons holding Claims that have been Allowed and are entitled to receive distributions under the Plan as provided pursuant o the Waterfall and under the Liquidating Trust Agreement. Distributions on account of Claims that become Allowed after the Initial Distribution Date shall be made by the Liquidating Trustee pursuant to the provisions of the Plan and Liquidating Trust Agreement from the reserve set aside by the Liquidating Trustee for Disputed Claims. There will be no distribution on account of any Claim or administrative expense that is a Disputed Claim, including any claim that is subject to disallowance pursuant to section 502(d) of the Bankruptcy Code. For the avoidance of doubt, the foregoing shall not apply to the general unsecured claims of Fifth Street which claims have been Allowed pursuant to the Plan Settlement Approval Order and shall receive distributions pursuant to the Waterfall.

**D. Trust Reserves.** Subject to the terms of the Plan and the Liquidating Trust Agreement, the Liquidating Trustee shall maintain such reserves, for Disputed Claims and otherwise, as it deems necessary to administer the Liquidating Trust under the terms of the Plan. In the event that a portion or all of any reserve established by the Liquidating Trustee becomes unnecessary, the funds from such reserve shall be transferred to the Liquidating Trust for distribution to beneficiaries of the Liquidating Trust in accordance with the Plan and the Waterfall. For the avoidance of doubt, any reserve for Disputed Claims shall include an amount sufficient to cover the full amount such Disputed Claim would have received had the asserted amount not been disputed but Allowed as requested (unless the reserve amount for such Disputed Claim has otherwise been fixed at a lower amount pursuant to an order of the Bankruptcy Court). Notwithstanding anything to the contrary in this Plan, there shall be no reserve established on or after the Effective Date with respect to the Professional Fee Deferral.

**E. Time and Manner of Payments.** Any payment in Cash shall be made by check in United States Dollars drawn on a domestic bank, except that in respect of Distributions to be paid to Fifth Street pursuant to this Plan, such Distributions shall be made by wire transfer of



immediately available funds pursuant to written instructions to be delivered to the Debtors on or before the Effective Date (as such instructions may from time to time thereafter be modified by Fifth Street in a writing provided to the Liquidating Trustee with respect to Distributions to be made to Fifth Street after the Effective Date).

**F. Delivery of Distributions.** Subject to the provisions of Bankruptcy Rules 2002(g) and 9010 and except as otherwise agreed with a holder of an Allowed Claim as provided in the Plan, distributions to holders of Allowed Claims shall be made at the address of each such Claimant as set forth on the Schedules filed with the Bankruptcy Court unless superseded by the address set forth on proofs of claim filed by such Claimants, or if the Liquidating Trustee has been notified in writing of a change of address.

**G. Undeliverable Distributions.**

**1. Holding of Undeliverable Distributions:** If any distribution to any Claimant is returned to the Liquidating Trustee as undeliverable, no further distributions shall be made to such Claimant unless and until the Liquidating Trustee is notified, in writing, of such Claimant's then-current address, at which time all missed distributions, to the extent provided under this Article shall be made to such Claimant without interest. Subject to the Plan, undeliverable distributions shall remain in the possession of the Liquidating Trustee until such time as a distribution becomes deliverable, or until sixty (60) days passes from date of dispatch of the attempted and subsequently undeliverable delivery. Nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any holder of an Allowed Claim.

**2. Failure to Claim Undeliverable Distributions:** Within ten (10) Business Days after the later of, sixty (60) days following the Initial Distribution Date, or each distribution under the Plan, the Liquidating Trustee shall file a list with the Bankruptcy Court setting forth the names and addresses used by the Liquidating Trustee of those Claimants for which distributions have been attempted hereunder and have been returned as undeliverable as of the date thereof, or for which payments have been made by check but which checks have not been negotiated. Any such Claimant that does not assert its rights pursuant to the Plan to receive a distribution within thirty (30) days after the filing of such list shall have its Claim for such undeliverable distribution and all future distributions discharged and shall be forever barred from asserting any such Claim against the Bankruptcy Estates, the Debtors, and their respective successors and/or assigns, the Liquidating Trustee, the Liquidating Trust, or the Trust Assets. In such case, all unclaimed distributions shall revert to the Liquidating Trust and be applied in accordance with the terms of the Plan. All uncashed checks will be subject to and governed by this Section.

**H. Compliance with Tax Requirements.** To the extent applicable, the Liquidating Trustee in making distributions under the Plan shall comply with all tax withholding and reporting requirements imposed by federal, state, local, and foreign taxing authorities and all distributions hereunder shall be subject to such reporting and withholding requirements. The Debtors shall provide the Liquidating Trustee with all tax information, and shall assist in any tax reporting issues as requested by the Liquidating Trustee, including without limitation, by providing copies of all tax forms in the Debtors' possession related to Claimants. The Liquidating Trustee may withhold the entire distribution due to any holder of an Allowed Claim until such time as such

Claimant provides the Liquidating Trustee with the necessary information to comply with any withholding requirements. If the Claimant fails to provide the Liquidating Trustee with the necessary information to comply with withholding requirements within six (6) weeks after the date of the first request by the Liquidating Trustee for such information or for the Cash necessary to comply with any applicable withholding requirements, then the Claimant's distribution shall be treated as an undeliverable distribution in accordance with the Plan. For tax purposes, distributions received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

**I. Time Bar to Payments.** Checks issued by the Liquidating Trustee on account of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance. Requests for reissuance of any check shall be made in writing directly to the Liquidating Trustee by the holder of the Allowed Claim with respect to which such check originally was issued. Any Claim in respect of such a voided check shall be made on or before the later of: (a) six (6) weeks following the Distribution Date, or (b) sixty (60) days after the date of issuance of such check. After such date, all claims in respect of voided checks shall be discharged and forever barred and the right to all moneys from the voided checks and any future distributions to such Claimants shall revert to the Liquidating Trust and be applied in accordance with the terms of the Plan.

**J. Fractional Dollars, De Minimis Distributions.** Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. The Liquidating Trustee shall not be required to make payments of less than fifty dollars (\$50.00) on account of any Allowed Claim, unless a specific request is made in writing to the Liquidating Trustee. Absent written request, the Liquidating Trustee may retain any such sums and, until the total distribution due to such creditors exceeds \$50.00 or until the final distribution is made under the Plan, at which point the Liquidating Trustee shall distribute all sums due such Claimants. In addition, after the Initial Distribution Date, the Liquidating Trustee shall not be required to make any distribution on account of any Claim in the event that the costs of making such distribution payment exceed the amount of such distribution payment, and all Cash that otherwise would have been distributed to Claimant holding such de minimis claims shall otherwise be distributed in accordance with the terms of the Plan and Liquidating Trust Agreement.

**K. Set-Offs and Recoupments.** Except with respect to the Allowed Claims of Fifth Street pursuant to the Plan Settlement Approval Order, the Debtors or the Liquidating Trustee, as successor to the Debtors, pursuant to Bankruptcy Code § 553 or applicable non-bankruptcy law, may set off and/or recoup against any Allowed Claim against the distributions to be made pursuant to the Plan (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtors may hold against the holder of such Allowed Claim. Except with respect to the Allowed Claims of Fifth Street pursuant to the Plan Settlement Approval Order, neither the failure to effect such a set-off nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Bankruptcy Estates of

any such claims, rights and causes of action that such parties may possess under Bankruptcy Code § 553.

**L. Payments and Actions Not Required on Non-Business Days.** If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or performance of such act may be completed on the next succeeding Business Day and shall be deemed to have been completed as of the required date.

### **ARTICLE XIII** **PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

**A. Prosecution of Objections to Claims.** Unless another time is set by order of the Bankruptcy Court, all objections to Claims shall be filed with the Bankruptcy Court and served upon the Claimant whose Claim is objected to by the later of (a) one hundred-eighty (180) days after the Effective Date; or (b) one hundred-eighty (180) days after a timely Proof of Claim or request for payment with respect to such Claim is filed; provided, however, that, prior to the expiration of the foregoing deadline, the Liquidating Trust may seek an extension of such time to object, in which event the applicable objection deadline shall be automatically extended for a period of thirty days after the date the Court rules on such extension request. Objections to Professional Fees shall be filed in the manner required by the Bankruptcy Court.

**B. Estimation of Claims.** The Liquidating Trust may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated General Unsecured Claim pursuant to Bankruptcy Code § 502(c) regardless of whether the Debtors or the Liquidating Trust previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidating Trust may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim.

**C. Cumulative Remedies.** All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved as provided herein or by any mechanism approved by the Bankruptcy Court. Until such time as a Claim becomes Allowed, such Claim shall be treated as Disputed for purposes related to allocations and distributions.

**D. Allowance of Claims and Interests.**

**1. Disallowance of Claims:** Pursuant to Bankruptcy Code §§ 105 and 502(d), no distributions will be made with respect to Claims that are Disputed or to Claimants from which property is recoverable under Bankruptcy Code §§ 542, 543, 550, 553, 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) (including the Avoidance Actions) until such time as such objection or

Rights of Action against that Claimant have been settled or resolved by a Final Order and all sums due to the Debtors are turned over to the Trust. As soon as practicable after the date on which a Claim that is Disputed becomes Allowed, the holder of such newly Allowed Claim will receive all distributions to which it is entitled under the Plan.

**2. No Distribution Pending Allowance:** Notwithstanding any other provision of the Plan, no payment or distribution shall be made with respect to any Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. Any person who holds both an Allowed Claim and a Claim that is Disputed will receive the appropriate distribution on the Allowed Claim, but will not receive a distribution on the Claim that is Disputed.

**3. Allowance of Claims:** Except as expressly provided for in the Plan, for example with respect to the Allowed Claim of Fifth Street, no Claim shall be deemed Allowed by virtue of the Plan, Confirmation Order, or any order of the Bankruptcy Court in these Chapter 11 Cases, unless and until such Claim is Allowed.

#### **ARTICLE XIV** **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Rejection of Executory Contracts and Unexpired Leases.** Any executory contracts or unexpired leases (i) which have not expired by their own terms on or prior to the Confirmation Date, or (ii) which have not been assumed and assigned or rejected with the approval of the Bankruptcy Court or pursuant to procedures established by order of the Bankruptcy Court, shall be deemed rejected by the Debtors on the Confirmation Date unless expressly preserved by Order of the Bankruptcy Court. The entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections pursuant to Bankruptcy Code §§ 365(a) and 1123 as of the Confirmation Date.

**B. Bar Date For Rejection Damages.** If the rejection by the Debtors of an executory contract or an unexpired lease pursuant to this Article results in damages to the other party or parties to such executory contract or unexpired lease, a Rejection Claim arising from such rejection shall not be enforceable against the Debtors or their Estates or agents, successors, or assigns, unless a proof of Claim is filed with the Claims Agent so as to actually be received on or before the Rejection Bar Date.

**C.** Any Person required to file a proof of Claim arising from the rejection of an executory contract or unexpired lease under the Plan and that fails to timely do so shall be forever barred, estopped, and enjoined from asserting such Claim, and such Claim shall not be enforceable against the Trust, the Debtors, the Estates, and their respective properties, and the Trust, Debtors, the Estates, and their respective properties shall be forever discharged from any and all Liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein.

**ARTICLE XV**

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

**A. Conditions Precedent to Confirmation of Plan.** Confirmation of the Plan will not occur unless each of the following conditions precedent have occurred or have been waived in writing by the Committee and Fifth Street: (a) The Bankruptcy Court shall have approved a Disclosure Statement in form and substance acceptable to Fifth Street and the Committee; (b) The Debtor shall have demonstrated at the Confirmation Hearing that there will be sufficient Cash on the Effective Date to pay (or with respect to Disputed Claims to reserve for as required pursuant to the Plan) (i) Allowed Administrative Claims, Non-Tax Priority Claims, and Priority Tax Claims in full (or in such lesser amount as may be agreed to by the Claimant), and (ii) not less than \$2,000,000 in Cash to Fifth Street as required pursuant to the Waterfall; (c) The Debtors shall have complied with all “Milestones” as defined and set forth in the Plan Settlement Stipulation; (d) The Confirmation Order shall be in form and substance reasonably acceptable to Fifth Street and the Committee; and (e) Each of the Committee’s and Debtors’ respective Professionals shall have executed and delivered an acknowledgement of an agreement to the Professional Fee Deferral in accordance with and as required pursuant to plan Settlement Stipulation.

**B. Conditions to Effectiveness of Plan.** The Effective Date shall not occur unless each of the following conditions precedent has occurred or been waived in writing by the Debtors, Fifth Street, and the Committee: (a) The Confirmation Order shall have been entered by the Bankruptcy Court and shall have become a Final Order; (b) The Liquidating Trust shall have been created pursuant to the terms of the Plan, the Liquidating Trustee shall have been appointed, and the Liquidating Trust Agreement shall have been executed by the Liquidating Trustee; (c) All other actions and documents necessary to implement the Plan shall have been effected and executed; (d) There shall be sufficient Cash to pay (i) Fifth Street not less than \$2,000,000 and (ii) Brands GUCs \$100,000 on the Effective Date, as required pursuant to the Waterfall; (e) the Professional Fee Deferral shall not be less than \$1,000,000, and (f) the Debtors shall have complied with all “Milestones” as defined and set forth in the Plan Settlement Stipulation.

**C. Waiver of Conditions Precedent to the Effective Date.** Each of the conditions precedent in this section may be waived, in whole or in part, in a writing signed by each of the Debtors, the Committee and Fifth Street without leave or further order of the Bankruptcy Court and without any formal action on the part of the Bankruptcy Court. The Liquidating Trustee reserves the right to assert that any appeal from the Confirmation Order shall be moot after the Effective Date of this Plan.

**D. Satisfaction of Conditions.** Except as expressly provided or permitted in the Plan, any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. In the event that one or more of the conditions specified in herein shall not have occurred or otherwise not have been waived, (a) the Confirmation Order shall be vacated, (b) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Order were never entered, and (c) the Debtors’ obligations with respect to Claims

and Equity Interests shall remain unchanged and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Debtors or any other Person or prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors. Notwithstanding anything to the contrary contained in this Plan, nothing herein shall alter or impair the terms of the Plan Settlement Approval Order or the Plan Settlement Stipulation, including without limitation, all rights and remedies contained in Plan Settlement Stipulation in the event of a breach of the terms of such Stipulation or the failure of the Debtors to confirm the Plan or cause the Plan to become effective as required pursuant to such Stipulation.

**ARTICLE XVI**  
**RETENTION OF JURISDICTION**

**A. Retention of Jurisdiction.** The Bankruptcy Court shall retain and have subject matter jurisdiction over any matter arising under the Bankruptcy Code, or arising in or related to these Chapter 11 Cases and the Plan and for the following purposes:

1. to resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtors were or are a party or with respect to which the Debtors may be liable, and to hear, determine, and, if necessary, liquidate any Claims arising therefrom;

2. to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, transactions, and other agreements or documents created in connection with the Plan;

3. to determine any and all motions, adversary proceedings, applications, and contested or litigated matters that may be pending on the Effective Date or that, pursuant to the Plan, are available to the Bankruptcy Estates and that may be instituted by the Liquidating Trustee after the Effective Date (including, but not limited to any claims or Rights of Action arising under Bankruptcy Code §§ 542, 543, 544, 545, 547, 548, 549, or 553(b));

4. to ensure that distributions to holders of Allowed Claims are accomplished as provided herein;

5. to hear and determine any timely objections to Claims, both before and after the Effective Date, including any objections to the classification of any Claim, and to allow, disallow, determine, liquidate, classify, estimate, or establish the priority of, or secured or unsecured status of any Claim, in whole or in part;

6. to enforce the Liquidating Trustee's interest in the Cash, the Assets, and the Liquidating Trust Assets, and the Liquidating Trustee's right to pursue objections to Claims, Rights of Action, and all other rights of the Liquidating Trustee to the Trust Assets;

7. to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;

8. to issue orders in aid of execution of the provisions of the Plan to the extent authorized by Bankruptcy Code § 1142, including, but not limited to, orders interpreting, enforcing, or clarifying the provisions thereof;

9. to consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order to the extent authorized by the Bankruptcy Code;

10. to hear and determine all applications for allowance of compensation for services rendered and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code or the Plan incurred prior to the Effective Date;

11. to hear and determine any and all objections to and proceedings involving the allowance, estimation, classification, and subordination of Claims;

12. to hear and determine all suits, controversies and disputes arising in connection with or relating to the Plan, or any orders of the Bankruptcy Court in the Chapter 11 Cases entered on or before the Effective Date, the interpretation, implementation, enforcement or consummation of the Plan, or any orders of the Bankruptcy Court in the Chapter 11 Cases entered on or before the Confirmation Date, or the extent of any entity's obligations incurred in connection with or released under the Plan;

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 entity with the consummation or enforcement of the Plan;

14. to enforce all orders, judgments, and rulings entered in connection with the Chapter 11 Cases and to determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Confirmation Order, or the Liquidating Trust Agreement;

15. to enter any order, including injunctions necessary to enforce the title, rights, and powers of the Debtors or the Liquidating Trustee and to impose such limitations, restrictions, terms and conditions on such title, rights and powers as the Bankruptcy Court may deem necessary or appropriate, the Liquidating Trust Agreement or any contract, instrument, release, or other agreement or document created in connection with the Plan or the Disclosure Statement;

16. to hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code §§ 346, 505, and 1146;

17. to hear any other matter for any purpose specified in the Confirmation Order that is not inconsistent with the Bankruptcy Code, including the allowance or disallowance and classification of late-filed proofs of claim in accordance with Bankruptcy Rule 9006(b);

18. to enter a Final Decree closing these Chapter 11 Cases;

19. to resolve any matters that may arise in connection with the Liquidating Trust or the Liquidating Trust Agreement;

20. to determine and hear any actions or controversies by or against the Liquidating Trustee, including but not limited to the Rights of Action;

21. to hear and determine any matter relating to or arising out of any action or act taken or omission in connection with or related to the formulation, preparation, dissemination, implementation, administration, confirmation, or consummation of the Plan, the Disclosure Statement or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, or any other act or omission taken or to be taken in connection with the Chapter 11 Cases commenced against any party in the Chapter 11 Cases, including, without limitation, the Liquidating Trustee, the Debtors, the Committee, and their respective current and former directors and officers, members, agents, advisors, attorneys, advisors, and other professionals and Entities employed pursuant to Bankruptcy Code §§ 327 and 1103;

22. to adjudicate all Rights of Action to recover all assets and properties of the Debtors and Bankruptcy Estates wherever located;

23. to hear and determine any and all objections to payments under the Plan;

24. to adjudicate all claims or controversies arising out of any purchases, sales, or contracts made or undertaken by the Debtors during the pendency of the Chapter 11 Cases; and

25. to enforce the permanent injunction created by the Confirmation Order and Section XIV.C of the Plan.

## **ARTICLE XVII**

### **EXCULPATION, INJUNCTION, AND RELATED PROVISIONS**

**A. Exculpation.** None of the Debtors, the Debtors-in-Possession, and the current or former directors, officers, or employees of the Debtors who served or were employed in such capacities after the Petition Date, the professionals retained by the Debtors pursuant to Bankruptcy Court order, members of the Committee (solely in their capacity as Committee members and not in their individual creditor or any other capacity) and the professionals retained by the Committee pursuant to Bankruptcy Court order, or Fifth Street shall have or incur any Liability for any Claim, Cause of Action, or other assertion of Liability for any act taken or omitted to be taken in connection with or arising out of the Chapter 11 Cases, the sale of the Debtors' Assets, the formulation, dissemination, implementation, approval, confirmation, consummation, or administration of the Plan, property to be distributed under the Plan, or any other act or omission in connection with or arising out of the Chapter 11 Cases, the Plan, the Disclosure Statement, or any contract, instrument, document or other agreement related thereto; provided, however, that the foregoing shall not affect the Liability of any Person resulting from any such act or omission to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, fraud, or gross negligence. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, discharges, and any other applicable law, Bankruptcy Court order, or rules protecting such Persons from liability.



**B. Claims under Title I of ERISA.** Nothing in this Plan, the Disclosure Statement, the Confirmation Order, or section 1141 of the Bankruptcy Code shall be construed as discharging, releasing, or relieving the Debtors, or their reorganized forms, or any entity in the Debtors' controlled group, or any such parties' officers, directors, or other representatives, or any other person or entity, in any capacity, from any liability with respect to the Pension Plan under Title I of ERISA, the Internal Revenue Code, or any other law, government policy, or regulatory provision. PBGC shall not be enjoined or precluded from enforcing such liability against any party as a result of this Plan's provisions for satisfaction, release, and discharge of claims.

**C. Injunction.** Except as otherwise provided in the Plan, all Persons that have held, hold, or may hold Claims against or Equity Interests in the Debtors or their Estates that arose prior to the Effective Date are permanently enjoined, solely with respect to any such Claims or Equity Interests, from: (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding of any kind against any property of the Debtors or their Estates that is transferred to the Liquidating Trust or any other Person pursuant to the Plan, the Liquidating Trust, or the Liquidating Trustee; (b) enforcing, attaching, collecting, or recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against any property of the Debtors or their Estates that is transferred to the Liquidating Trust or any other Person pursuant to the Plan, the Liquidating Trust, or the Liquidating Trustee; (c) creating, perfecting, or enforcing, in any manner, directly or indirectly, any Lien or encumbrance against any property of the Debtors or their Estates that is transferred to the Liquidating Trust or any other Person pursuant to the Plan, the Liquidating Trust, or the Liquidating Trustee; (d) except to the extent permitted by sections 362(b), 553, 559, 560, or 561 of the Bankruptcy Code, asserting any right of setoff, subrogation, or recoupment against the Debtors, their Estates, the Liquidating Trust, or the Liquidating Trustee; (e) pursuing any Claim or Cause of Action released pursuant to the Plan; or (f) taking any actions which interfere with the implementation or consummation of the Plan. The rights afforded in the Plan and the treatment of all Claims and Equity Interests therein shall be in exchange for and in complete satisfaction of all Claims and Equity Interests of any nature whatsoever. However, notwithstanding any provision of the Plan, the Debtors shall not receive a discharge as set forth in section 1141(d)(3)(A) of the Bankruptcy Code. Following the Effective Date, these injunctions shall remain permanently in full force and effect.

**D. Debtor Release.**

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after and subject to the occurrence of the Effective Date, the Debtors and their estates shall release each Released Party, and each Released Party is deemed released by the Debtors and the estates from any and all claims, obligations, rights, suits, damages, Rights of Action, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of any of the Debtors or their estates, as applicable, whether known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, existing or hereinafter arising, in law, equity, or otherwise, that the Debtors or the estates would have been legally entitled to assert in their own right (whether individually or collectively), or on behalf of the Holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising

from, in whole or in part, the Debtors, the Debtors' liquidation, the DIP Facility (pursuant to the order entered at Docket No. 135), the Chapter 11 Cases, the Canadian Proceedings, the purchase, sale, transfer, or rescission of the purchase, sale, or transfer of any security, asset, right, or interest of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the Canadian Proceedings, the negotiation, formulation, or preparation of the Plan or related agreements, instruments, or other documents, any other act or omission, transaction, agreement, event, or other occurrence taking place on and before the Petition Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud, willful misconduct, or gross negligence; provided, that the foregoing Debtor Release shall not operate to waive or release any obligations of any party under the Plan or any other document, instrument, or agreement executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the Claims released by the Debtor Release; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Debtors or their estates asserting any Claim or Cause of Action released pursuant to the Debtor Release. Entry of the Confirmation Recognition Order shall constitute the Canadian equivalent of the same.

#### **E. Third Party Release.**

On and after and subject to the occurrence of the Effective Date, except as otherwise provided in the Plan, the Claimants ("Releasing Parties") that affirmatively elect to grant the release described herein, by checking the appropriate box on the Ballot provided to such Releasing Parties in connection with solicitation of such releasing Parties' vote to accept or to reject the Plan, for themselves and their respective successors, assigns, transferees, and such Claimants' officers and directors, agents, members, financial and other advisors, attorneys, employees, partners, affiliates, and representatives (in each case in their capacity as such), shall release (the "Third Party Release") each Released Party, and each of the Debtors, their estates, and the Released Parties shall be deemed released from any and all claims, interests, obligations, rights, suits, damages, Rights of Action, remedies, and liabilities whatsoever, including any derivative claims asserted or assertable on behalf of any of the Debtors or their estates, as applicable, whether known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, existing or hereinafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the Canadian Proceedings, the purchase, sale, or rescission of the purchase of the Debtors assets, the DIP Facility, the subject matter of, or the transactions or events giving rise to, any claim or interest that is treated

in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the Canadian Proceedings, the negotiation, formulation, or preparation of the Plan and related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on and before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud, willful misconduct or gross negligence. Notwithstanding anything to the contrary in the foregoing, the Third Party Release shall not release any obligations of any party under the Plan or any other document, instrument, or agreement executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third Party Release, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the claims released by the Third Party Release; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Releasing Parties asserting any claim or cause of action released pursuant to the Third Party Release. Entry of the Confirmation Recognition Order shall constitute the Canadian equivalent of the same.

### **ARTICLE XVIII**

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

The following is a brief summary of the confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own advisors with respect to the summary provided in the Disclosure Statement.

**A. Confirmation Hearing.** Section 1128(a) of the Bankruptcy Code requires a bankruptcy court, after notice, to conduct a hearing to consider confirmation of a chapter 11 plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. The Bankruptcy Court has scheduled the Confirmation Hearing for [●], 2016, at --:-- a/p.m., prevailing Eastern Time. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or the filing of a notice of such adjournment served in accordance with the order approving the Disclosure Statement and Solicitation Procedures. Any objection to the Plan must: (1) be in writing; (2) conform to the Bankruptcy Rules and the Local Rules for the United States Bankruptcy Court for the District of Delaware; (3) state the name, address, phone number, and e-mail address of the objecting party and the amount and nature of the Claim or Interest of such entity, if any; (4) state with particularity the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (5) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is actually received by the following notice parties set forth below no later than the Plan Objection Deadline. Unless an objection to the Plan is timely served and filed, it may not be considered by the Bankruptcy Court.

To the Debtors: (a) Morrison Cohen LLP, 909 Third Avenue, New York, NY 10022 (Attn: Joseph T. Moldovan, Esq. (jmoldovan@morrisoncohen.com) and Robert K. Dakis, Esq. (rdakis@morrisoncohen.com)), and (b) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq. (ljones@pszjlaw.com) and Joseph M. Mulvihill, Esq. (jmulvihill@pszjlaw.com))

To Fifth Street: (a) Proskauer Rose LLP, Eleven Times Square, New York, NY 10036 (Attn: Scott K. Rutsky, Esq. (srutsky@proskauer.com) and Maja Zerjal, Esq. (mzerjal@proskauer.com)), and (b) Cozen O'Connor, 1201 N. Market Street, Suite 1001, Wilmington, DE 19801 (Attn: Mark Felger, Esq. (mfelger@cozen.com))

To the Committee: Saul Ewing LLP, 1201 North Market Street, Suite 2300, P.O. Box 1266, Wilmington, DE 19899 (Attn: Mark Minuti, Esq. (mminuti@saul.com) and Lucian B. Murley, Esq. (lmurley@saul.com)), and (b) Saul Ewing LLP, One Riverfront Plaza, 1037 Raymond Boulevard, Suite 1520, Newark, NJ 07102-5426 (Attn: Sharon L. Levine, Esq. (slevine@saul.com) and Dipesh Patel, Esq. (dpatel@saul.com))

To the US Trustee: Office of the United States Trustee, The District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn. Hannah Mufson McCollum (hannah.mccollum@usdoj.gov)

**B. Confirmation Standards.** At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code and that they have complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code. Specifically, the Debtors believe that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code, including those set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Plan Proponents, have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been or will be disclosed to the Bankruptcy Court, and any such payment: (1) made before the confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after confirmation of the Plan.
- With respect to each Class of Claims, each Holder of an Impaired Claim has accepted the Plan or will receive or retain under the Plan on account of such Claim property of a value as of the Effective Date of the Plan that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on that date under chapter 7 of the Bankruptcy Code. With respect to each Class of Interests, each Holder of an Impaired Interest has accepted the Plan or will receive or retain under the Plan on account of such

Interest property of a value as of the Effective Date of the Plan that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on that date under chapter 7 of the Bankruptcy Code.

- Each Class of Claims or Interests that is entitled to vote on the Plan has either accepted the Plan or is not Impaired under the Plan, or the Plan can be confirmed without the approval of such voting Class of Claims or Interests pursuant to section 1129(b) of the Bankruptcy Code.
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that: (1) Holders of Claims specified in sections 507(a)(2) and 507(a)(3) will receive, under different circumstances, Cash equal to the amount of such Claim either on the Effective Date (or as soon as practicable thereafter), no later than thirty (30) days after the Claim becomes Allowed, or pursuant to the terms and conditions of the transaction giving rise to the Claim; (2) Holders of Claims specified in sections 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code will receive on account of such Claims Cash equal to the Allowed amount of such Claim on the Effective Date of the Plan (or as soon thereafter as is reasonably practicable) or Cash payable over no more than six (6) months after the Petition Date; and (3) Holders of Claims specified in section 507(a)(8) of the Bankruptcy Code will receive on account of such Claim regular installment payments of Cash of a total value, as of the Effective Date of the Plan, equal to the Allowed amount of such Claim over a period ending not later than five years after the Petition Date.
- At least one Class of Impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any “insider,” as that term is defined by section 101(31) of the Bankruptcy Code, holding a Claim in that Class.
- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors or any successors thereto under the Plan, unless the Plan contemplates such liquidation or reorganization.
- The Debtors have paid or the Plan provides for the payment of the required filing fees pursuant to 28 U.S.C. § 1930 to the clerk of the Bankruptcy Court.

#### **1. The Debtor Release, Third Party Release, Exculpation, and Injunction Provisions.**

Article XIV.D and E of the Plan provides for releases of certain claims and Causes of Action the Debtors may hold against the Released Parties. The Released Parties are, in each case solely in their capacity as such: (a) each Debtor and the Debtors’ Estates; (b) each of the Debtors’ current and former officers, directors, and managers; (c) the Plan Proponents; (d) the Committee; and (e) solely with respect to the Entities identified in subsections (a) and (b) herein, each of such Entities’ respective predecessors, successors, and assigns, and respective current and former shareholders, affiliates, subsidiaries, principals, employees, agents, officers, directors, managers, trustees, partners, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants.

Under applicable law, a debtor’s release of certain parties, such as the Debtors’ release of the Released Parties, is appropriate where: (a) there is an identity of interest between the debtor and the third party, such that a suit against the released non-debtor party is, at core, a suit against the debtor or will deplete assets of the estate; (b) there is a substantial contribution by the non-

debtor of assets to the reorganization; (c) the injunction is essential to the reorganization; (d) there is overwhelming creditor support for the injunction; and (e) the chapter 11 plan will pay all or substantially all of the claims affected by the injunction. *See, e.g., In re Indianapolis Downs, LLC*, 486 B.R. 286, 303 (Bankr. D. Del. 2013) (citation omitted). Importantly, these factors are “neither exclusive nor are they a list of conjunctive requirements,” but “[i]nstead, they are helpful in weighing the equities of the particular case after a fact-specific review.” *Id.* (citations omitted). Further, a chapter 11 plan may provide for a release of third party claims against non-debtors, such as the Third-Party Release, where such releases are consensual. *Id.* at 304–06. In addition, exculpation is appropriate where it applies to estate fiduciaries. *Id.* at 306. Finally, an injunction is appropriate where it is necessary to the reorganization and fair pursuant to section 105(a) of the Bankruptcy Code. *In re W.R. Grace & Co.*, 475 B.R. 34, 107 (D. Del. 2012) (citing *In re Global Indus. Techs., Inc.*, 645 F.3d 201, 206 (3d Cir. 2011)).

The Debtors believe that the releases, exculpations, and injunctions set forth in the Plan are appropriate because, among other things, the releases are narrowly tailored to the Debtors’ liquidation proceedings, and each of the Released Parties has afforded value to the Debtors and aided in the liquidation process, which facilitated the Debtors’ ability to propose and pursue confirmation of the Plan. The Debtors believe that each of the Released Parties has played an integral role in formulating the Plan and has expended significant time and resources analyzing and negotiating the issues presented. The Debtors further believe that such releases, exculpations, and injunctions are a necessary part of the Plan. In addition, the Debtors believe the Third Party Release is entirely consensual under the established case law in the United States Bankruptcy Court for the District of Delaware. *See, e.g., Indianapolis Downs*, 486 B.R. at 304–06; *In re Washington Mut. Inc.*, 442 B.R. 314, 352 (Bankr. D. Del. 2011). The Debtors will be prepared to meet their burden to establish the basis for the releases, exculpations, and injunctions for each Released Party and Exculpated Party as part of Confirmation of the Plan.

**2. Best Interests of Creditors Test – Liquidation Analysis.** Often called the “best interests” test, section 1129(a)(7) of the Bankruptcy Code requires that a bankruptcy court find, as a condition to confirmation, that a chapter 11 plan provides, with respect to each class, that each holder of a claim or an interest in such class either (a) has accepted the plan, or (b) will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtors liquidated under chapter 7 of the Bankruptcy Code.

### **3. Creditor Recoveries.**

The Plan provides recoveries to, among others, the Holders of Claims in Classes 1, 2, 3, 4A, 4D, and 4F. As shown in the Liquidation Analysis attached hereto as **Exhibit C**, the Holders of General Unsecured Claims would receive a smaller recovery if the Debtors were liquidated under chapter 7 of the Bankruptcy Code than what is provided to them under the Plan.

The recoveries described in this Disclosure Statement that are available to the Holders of Claims are estimates and actual recoveries could differ materially based on, among other things, whether the amount of Claims actually Allowed against the applicable Debtor exceeds the estimates provided herein.

The Debtors believe that the treatment of Claims in Classes 4B, 4C, 4E and 5 complies with the established case law in the United States Bankruptcy Court for the District of Delaware because the Debtors do not believe the Holders of such Claims would be entitled to a recovery in a liquidation scenario as shown in the Liquidation Analysis, attached hereto as **Exhibit C**.

**4. Financial Feasibility.** Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that Confirmation is not likely to be followed by the liquidation of the Reorganized Debtors or the need for further financial reorganization, unless the Plan contemplates such liquidation or reorganization. This Plan contemplates an orderly liquidation of the debtors and their estates.

**C. Acceptance by Impaired Classes.**

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or interests that is impaired under a plan, accept the plan. A class that is not impaired under a plan is presumed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. Pursuant to section 1124 of the Bankruptcy Code, a class is impaired unless the plan: (1) leaves unaltered the legal, equitable, and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest; (2) cures any default, reinstates the original terms of such obligation, and compensates the applicable party in question; or (3) provides that, on the consummation date, the holder of such claim or equity interest receives cash equal to the allowed amount of that claim or, with respect to any equity interest, any fixed liquidation preference to which the holder of such equity interest is entitled to any fixed price at which the debtor may redeem the security.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired creditors as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject a plan. Thus, a Class of Claims will have voted to accept the Plan only if two-thirds in amount and more than one-half in number actually voting cast their ballots in favor of acceptance.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of impaired interests as acceptance by holders of at least two-thirds in dollar amount of those interests who actually vote to accept or to reject a plan. Votes that have been “designated” under section 1126(e) of the Bankruptcy Code are not included in the calculation of acceptance by a class of interests. Thus, a Class of Interests will have voted to accept the Plan only if two-thirds in amount actually voting cast their ballots in favor of acceptance, not counting designated votes.

**D. Confirmation Without Acceptance by All Impaired Classes.** Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if impaired classes entitled to vote on the plan have not accepted it or if an impaired class is deemed to reject the plan; provided, however, the plan is accepted by at least one impaired class (without regard to the votes of insiders). Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an

impaired class's rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

**1. No Unfair Discrimination.** The test for unfair discrimination applies to classes of claims or interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent but that such treatment be "fair." In general, courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). The Debtors do not believe the Plan discriminates unfairly against any Impaired Class of Claims or Interests, and have set forth the basis for the disparate treatment of certain Classes of Claims in Article VI hereof. Moreover, the treatment implements an approved settlement without which the general unsecured creditors (other than Fifth Street) might receive no distribution. Accordingly, the Debtors believe that the Plan and the treatment of all Classes of Claims and Interests satisfy the foregoing requirements for non-consensual Confirmation.

**2. Fair and Equitable Test.** The fair and equitable test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to each non-accepting class, the test sets different standards depending on the type of claims or interests in such class. As set forth below, the Debtors believe that the Plan satisfies the "fair and equitable" requirement, notwithstanding the fact that certain Classes are deemed to reject the Plan. There is no Class receiving more than a 100% recovery and no junior Class is receiving a distribution under the Plan until all senior Classes have received a 100% recovery.

**a. Secured Claims.** The condition that a plan be "fair and equitable" to a non-accepting class of secured claims may be satisfied, among other things, if a debtor demonstrates that: (i) (x) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan, and (y) each holder of a secured claim in the class receives deferred cash payments totaling at least the allowed amount of such claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens; or (ii) the holders of such secured claims realize the indubitable equivalent of such claims. 11 U.S.C. § 1129(b)(2)(A).

**b. Unsecured Claims.** The condition that a plan be "fair and equitable" to a non-accepting class of unsecured claims includes the requirement that either: (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (ii) the holder of any claim or any interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or junior interest any property. 11 U.S.C. § 1129(b)(2)(B).

**c. Interests.** The condition that a plan be "fair and equitable" to a non-accepting class of interests includes the requirements that either: (i) the plan provides that each holder of an



interest in that class receives or retains under the plan on account of that interest property of a value, as of the effective date of the plan, equal to the greater of (x) the allowed amount of any fixed liquidation preference to which such holder is entitled, and (y) any fixed redemption price to which such holder is entitled; (ii) the value of such interest; or (iii) if the class does not receive the amount as required under (i) no class of interests junior to the non-accepting class may receive a distribution under the plan. 11 U.S.C. § 1129(b)(2)(C).

**ARTICLE XIX**  
**RISK FACTORS TO BE CONSIDERED BEFORE VOTING**

There is a risk under the Plan that Allowed Claims will materially exceed the Debtors' estimates, in which case distributions to other creditor constituents would be significantly reduced or diluted. The process of reconciling all such Claims has not been completed and outstanding disputes remain that will need to be litigated or otherwise resolved. Plus, the Debtors have been informed of various previously unknown Claims that remain to be analyzed and additional Claims could be asserted in the future.

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

Further, there is a risk that the Plan may not be confirmed by the Bankruptcy Court, either because the requisite votes in favor of the Plan are not received or the Bankruptcy Court decides not to confirm the Plan on some other basis.

Notwithstanding the risks, however, the Debtors believe that the same risks described herein are present in and greater to Claim holders in a chapter 7 case. Although the Debtors believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

Finally, there can be no assurance that modifications to the Plan will not be required for confirmation or that such modifications would not necessitate the re-solicitation of votes.

**ARTICLE XX**  
**CERTAIN TAX CONSEQUENCES OF THE PLAN**

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to Holders of Claims against the Debtors. This discussion is based on the Internal Revenue Code (the "Tax Code"), Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the Internal Revenue Service ("IRS"), all as in effect on the date hereof. Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the Claims (including Claims within the same Class), the Holder's status and method of accounting (including Holders within the same Class) and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are subject to significant uncertainties. No legal opinions have been requested from

counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Further, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtors and the Holders of Claims.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or the Holders of Claims in light of their personal circumstances, nor does the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, brokers and dealers in securities, traders that mark-to-market their securities, mutual funds, insurance companies, other financial institutions, real estate investment trusts, tax-exempt organizations, small business investment companies, regulated investment companies, foreign taxpayers, persons whose functional currency is not the U.S. dollar, persons subject to the alternative minimum tax, and persons holding Claims or Interests as part of a “straddle,” “hedge,” “constructive sale” or “conversion transaction” with other investments). This discussion does not address the tax consequences to Holders of Claims who did not acquire such Claims at the issue price on original issue. No aspect of foreign, state, local or estate and gift taxation is addressed.

The U.S. federal income tax consequences of the distributions contemplated by the Plan to the Holders of Claims that are U.S. Persons will depend upon a number of factors. For purposes of the following discussion, a “U.S. Person” is any person or entity (1) who is a citizen or resident of the United States, (2) that is a corporation or partnership created or organized in or under the laws of the United States or any state thereof, (3) that is an estate, the income of which is subject to U.S. federal income taxation regardless of its source or (4) that is a trust (a) the administration over which a United States person can exercise primary supervision and all of the substantial decisions of which one or more U.S. persons have the authority to control; or (b) that has in effect a valid election to continue to be treated as a U.S. Person for U.S. federal income tax purposes. In the case of a partnership, the tax treatment of its partners will depend on the status of the partner and the activities of the partnership. U.S. Persons who are partners in a partnership should consult their tax advisors. A “Non-U.S. Person” is any person or entity that is not a U.S. Person. For purposes of the following discussion and unless otherwise noted below, the term “Holder” will mean a Holder of a Claim that is a U.S. Person.

Except where otherwise indicated, this discussion assumes that the Claims are held as capital assets within the meaning of section 1221 of the Tax Code.

THE FOLLOWING SUMMARY IS NOT INTENDED TO CONSTITUTE ADVICE TO ANY PARTY, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE PERSONAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM, AS WELL AS EACH HOLDER OF AN INTEREST, IS URGED TO CONSULT WITH SUCH HOLDER’S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

***IRS Circular 230 Notice. To ensure compliance with IRS Circular 230, Holders of Claims and Interests are hereby notified that: (a) any discussion of federal tax issues contained or referred to in this Disclosure Statement is not intended or written to be used, and cannot be used, by Holders of Claims and Interests for the purpose of avoiding penalties that may be imposed on them under the Tax Code; (b) such discussion is written in connection with the promotion or marketing by the Debtors of the transactions or matters addressed herein; and (c) Holders of Claims and Interests should seek advice based on their particular circumstances from an independent tax advisor.***

#### **A. Federal Taxation Issues Related to Pass-Through Entities in General**

For U.S. federal income tax law purposes, an entity can be organized as a corporation, a partnership, or a hybrid entity (otherwise known as S corporations and limited liability companies). The two primary differences between corporations and partnerships are how the entity's earnings are taxed and whether or not the shareholder/owners are shielded from the liabilities of the entity. Generally, corporations are treated as independent tax-paying entities, unaffected by the personal characteristics of their shareholders or changes in their composition as a result of transfers of stock from old shareholders to new ones, giving rise to the potential for double taxation. Because corporations are treated independently, corporate income is taxed to a corporation as it is received or accrued, and is taxed at the shareholder level when and if the corporation distributes earnings to the shareholders or they sell their stock. Partnerships, however, are not entities subject to income tax. Instead, the partners are taxed directly on partnership income whether or not it is actually distributed to them.

Hybrid entities, on the other hand, combine the two primary differences between corporations and partnerships. As to S corporations, shareholders are shielded from entity level liability similar to that of a corporation; however, generally, the earnings of the entity are taxed at the ownership level similar to that of a partnership. As to limited liability companies, member-owners are shielded from entity level liability similar to that of a corporation; however, unique to the LLC, an option exists to be taxed as a corporation or taxed as a partnership, provided that the LLC has at least two member-owners, as set forth under Treasury Regulations Section 301.7701-3.

Generally, pass-through entities are subject to a single layer of tax on their earnings at the ownership level (partner, member, or shareholder depending on entity type). Taxable income of pass-through entities is computed at the entity level (generally each type of entity will file a tax return showing no tax liability at the entity level); however, each owner is taxed separately on his, her, or its distributive share of income, gain, loss, deduction, and/or credit, as applicable. The character of the items included in taxable income is determined at the entity level with no regard to the owners' individual characteristics. With respect to tax attributes, pass-through entities are generally not allowed to maintain certain tax attributes, such as net operating losses, given such entities are not directly taxable. These tax attributes pass-through to the owners, and usage, carryback, or carryforward of these attributes is determined at the ownership level.

BECAUSE THE FINAL TAX TREATMENT OUTCOME DEPENDS ON EACH PARTY'S SPECIFIC SITUATION, PARTIES IN INTEREST ARE URGED TO CONSULT WITH THEIR TAX ADVISORS REGARDING THE TAX IMPLICATIONS TO THEM WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED UNDER OR IN CONNECTION

WITH THE PLAN AND THEIR SPECIFIC SITUATION, AND NOTHING HEREIN IS INTENDED TO CONSTITUTE ADVICE TO ANY PARTY.

## **B. Consequences to Holders**

### **1. Holders of Claims.**

Generally, a holder of a Claim should in most, but not all circumstances, recognize gain or loss equal to the difference between the “amount realized” by such holder in exchange for its Claim and such holder’s adjusted tax basis in the Claim. The “amount realized” is equal to the sum of the cash and the fair market value of any other consideration received under a plan of reorganization in respect of a holder’s Claim. The tax basis of a holder in a Claim will generally be equal to the holder’s cost therefore. To the extent applicable, the character of any recognized gain or loss (*e.g.*, ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the holder, the nature of the Claim in the holder’s hands, the purpose and circumstances of its acquisition, the holder’s holding period of the Claim, and the extent to which the holder previously claimed a deduction for the worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset in the holder’s hands, any gain or loss realized will generally be characterized as capital gain or loss, and will constitute long-term capital gain or loss if the holder has held such Claim for more than one year.

A Holder who received Cash in satisfaction of its Claims may recognize ordinary income or loss to the extent that any portion of such consideration is characterized as accrued interest. A Holder who did not previously include in income accrued but unpaid interest attributable to its Claim, and who receives a distribution on account of its Claim pursuant to the Plan, will be treated as having received interest income to the extent that any consideration received is characterized for United States federal income tax purposes as interest, regardless of whether such Holder realizes an overall gain or loss as a result of surrendering its Claim. A Holder who previously included in its income accrued but unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such accrued but unpaid interest is not satisfied, regardless of whether such Holder realizes an overall gain or loss as a result of the distribution it may receive under the Plan on account of its Claim.

Under the Plan, certain Creditors may receive only a partial distribution of their Allowed Claims. Whether the Holder of such Claims will recognize a loss or any other tax treatment will depend upon facts and circumstances that are specific to the nature of the Holder and its Claims. Creditors should consult their own tax advisors.

**2. Non-United States Persons.** A Holder of a Claim that is a Non-U.S. Person generally will not be subject to United States federal income tax with respect to property (including money) received in exchange for such Claim pursuant to the Plan, unless (i) such Holder is engaged in a trade or business in the United States to which income, gain or loss from the exchange is “effectively connected” for United States federal income tax purposes, or (ii) if such Holder is an individual, such Holder is present in the United States for 183 days or more during the taxable year of the exchange and certain other requirements are met.

### 3. Liquidating Trust Matters.

For all federal income tax purposes, all parties (including the Liquidating Trustee and the holders of beneficial interests in the Liquidating Trust) will treat the transfer of assets to the Liquidating Trust, pursuant to the Liquidating Trust Agreement, as a transfer by the Debtors and Bankruptcy Estates of those assets directly to the holders of the applicable Allowed Claims followed by the transfer of such assets by such holders to the Liquidating Trust. The tax consequences of the Plan in relation to the Liquidating Trust and the beneficiaries thereof are subject to uncertainties due to the complexity of the Plan and the lack of interpretative authority regarding certain changes in the tax law.

The Liquidating Trust is intended to qualify as a liquidating trust for federal income tax purposes. In general, a liquidating trust is not a separate taxable entity but rather is treated for federal income tax purposes as a “grantor” trust (i.e., a pass-through entity). The IRS, in Revenue Procedure 94-45, 1994.28 I.R.B. 124, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Liquidating Trust has been structured with the intention of complying with such general criteria. While the following discussion assumes that the Liquidating Trust would be so treated for federal income tax purposes, no ruling has been requested from the IRS concerning the tax status of the Liquidating Trust as a grantor trust.

**C. Importance of Obtaining Professional Tax Assistance.** THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A CLAIM HOLDER’S OR INTEREST HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, CLAIM AND INTEREST HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE, AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

## **ARTICLE XXI**

### **MISCELLANEOUS PLAN PROVISIONS**

**A. Modification of Plan.** The Debtors reserve their right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, and with the prior written consent of the Committee and Fifth Street, to amend or modify the Plan at any time prior to the entry of the Confirmation Order subject to compliance with Bankruptcy Code § 1125 and provided that the Plan, as modified, meets the requirements of Bankruptcy Code §§ 1122 and 1123. Upon entry of the Confirmation Order, the Debtors may, upon order of the Bankruptcy Court and with the prior written consent of the Committee and Fifth Street, amend or modify the Plan in accordance with Bankruptcy Code § 1127(b), or remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. Claimants accepting the Plan shall be deemed to have accepted the Plan as modified if the

proposed modification does not materially and adversely change the treatment of their Claims under the Plan.

**B. Revocation or Withdrawal.** The Plan may be revoked or withdrawn by the Debtors prior to the Confirmation Date. If the Plan is revoked or withdrawn prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by the Debtors or any other entity or to prejudice in any manner the rights of the Debtors or any other entity in any further proceedings involving the Debtors. Notwithstanding anything to the contrary contained in this Plan, nothing herein shall alter or impair the terms of the Plan Settlement Approval Order or the Plan Settlement Stipulation, including without limitation, all rights and remedies contained in Plan Settlement Stipulation in the event of a breach of the terms of such Stipulation or the failure of the Debtors to confirm the Plan or cause the Plan to become effective as required pursuant to such Stipulation.

**C. Effectuating Documents and Further Transactions.** The appropriate officers or directors of the Debtors or the Liquidating Trustee, as applicable, shall be, and hereby are, authorized to execute, deliver, file, and record such contracts, instruments, releases, indentures, certificates, and other agreements or documents, and take such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**D. Date of Distributions and Other Actions.** In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**E. Withholding and Reporting Requirements.** In connection with this Plan and all Distributions hereunder, the Liquidating Trustee shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each holder of an Allowed Claim that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such holder by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution. The Liquidating Trustee has the right, but not the obligation, to refrain from making a Distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

**F. Plan Supplement.** The Plan Supplement and the documents contained therein shall be filed with the Bankruptcy Court no later than five (5) business days before the deadline for voting to accept or reject the Plan; provided, that the documents included therein may thereafter be amended and supplemented, prior to execution, so long as such amendment or supplement does not materially and adversely change the treatment of holders of Claims. The Plan Supplement and the documents contained therein are incorporated into and made a part of the Plan as if set forth in full herein.

**G. Dissolution of the Committee.** On the Effective Date, the Committee shall be dissolved and the members thereof shall be released and discharged of and from all further authority, duties, responsibilities and obligations related to, arising from or in connection with the Chapter 11 Cases, and the retention or employment of the Committee's attorneys, accountants, and other agents, if any, shall terminate, except for purposes of filing and prosecuting applications for final allowances of compensation for professional services rendered and reimbursement of expenses incurred in connection therewith, or any appeal of the Confirmation Order.

**H. Exemption from Transfer Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of notes or equity securities under or in connection with the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including the issuance of any stock, any merger agreements, or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

**I. Expedited Tax Determination.** The Liquidating Trustee is authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any or all returns filed for, or on behalf of, the Debtors for any and all taxable periods (or portions thereof) ending after the applicable Petition Date through and including the Effective Date.

**J. Exhibits/Schedules.** All exhibits and schedules to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein. In the event of any inconsistency between the Plan and the exhibits and schedules to the Plan or the Plan Supplement, the terms of the Plan shall control.

**K. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101(2) and 1127(b) of the Bankruptcy Code.

**L. Discharge.** As provided in Bankruptcy Code § 1141(d)(3), the Plan does not grant the Debtors a discharge. Notwithstanding the foregoing, except as otherwise provided herein, the rights afforded in the Plan and the treatment of all Claims and Equity Interests shall be in exchange for and in complete satisfaction, discharge, and release of such Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Filing Date, against the Debtors or any of their Assets or properties. All Persons and Entities shall be precluded from asserting against the Debtors, or any of their Assets or properties, any other or further Claims or Equity Interests based upon any act or omission, transaction, or other activity of any kind or nature that occurred before the Confirmation Date, except as otherwise provided in the Plan.

**M. Severability.** If the Bankruptcy Court determines that any provision of the Plan is unenforceable either on its face or as applied to any Claim transaction, the Debtors may modify the Plan so that such provision shall not be applicable to the holder of any Claim or Interest. Such a determination of unenforceability shall not (i) limit or effect the enforceability and

operative effect of any other provision of the Plan, or (ii) require the resolicitation of any acceptance or rejection of the Plan.

**N. Binding Effect.** The rights, benefits, and obligations conferred on any person by the Plan shall be binding upon, and inure to the benefit of, the executors, successors, heirs, and assigns of and any persons claiming an interest in any Asset through such person.

**O. Notices.** Any notices, requests, or demands to or upon the Debtors, the Committee, Fifth Street, or the Liquidating Trustee, to be effective, shall be in writing, including by facsimile transmission, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered to the following or, in the case of notice by facsimile transmission, when received by the following and telephonically confirmed, addressed as follows or to such other addresses as filed with the Bankruptcy Court.

To the Debtors: (a) Morrison Cohen LLP, 909 Third Avenue, New York, NY 10022 (Attn: Joseph T. Moldovan, Esq. (jmoldovan@morrisoncohen.com) and Robert K. Dakis, Esq. (rdakis@morrisoncohen.com)), and (b) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq. (ljones@pszjlaw.com) and Joseph M. Mulvihill, Esq. (jmulvihill@pszjlaw.com))

To Fifth Street: (a) Proskauer Rose LLP, Eleven Times Square, New York, NY 10036 (Attn: Scott K. Rutsky, Esq. (srutsky@proskauer.com) and Maja Zerjal, Esq. (mzerjal@proskauer.com)), and (b) Cozen O'Connor, 1201 N. Market Street, Suite 1001, Wilmington, DE 19801 (Attn: Mark Felger, Esq. (mfelger@cozen.com))

To the Committee: Saul Ewing LLP, 1201 North Market Street, Suite 2300, P.O. Box 1266, Wilmington, DE 19899 (Attn: Mark Minuti, Esq. (mminuti@saul.com) and Lucian B. Murley, Esq. (lmurley@saul.com)), and (b) Saul Ewing LLP, One Riverfront Plaza, 1037 Raymond Boulevard, Suite 1520, Newark, NJ 07102-5426 (Attn: Sharon L. Levine, Esq. (slevine@saul.com) and Dipesh Patel, Esq. (dpatel@saul.com))

**P. Right to be Heard.** Each of the Liquidating Trustee, the Debtors, Fifth Street, and the Creditors' Committee shall have the right to bring any dispute between them to the Bankruptcy Court for adjudication.

**Q. Reservation of Rights.** If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not become effective, the rights of all parties-in-interest in the Chapter 11 Cases are and will be reserved in full. Any concessions or settlements reflected herein, if any, are made for purposes of the Plan only, and if the Plan does not become effective, no party in interest in the Chapter 11 Cases shall be bound or deemed prejudiced by any such concession or settlement.

**R. Continuing Viability of Other Orders/Agreements.** Except to the extent expressly modified by the Plan, all Final Orders previously entered by the Bankruptcy Court shall continue in full force and effect.



**S. Entire Agreement.** Except to the extent incorporated herein by reference, the Plan supersedes all prior discussions, understandings, agreements, and documents pertaining or relating to any subject matter of the Plan.

**T. Governing Law.** Except to the extent that the Bankruptcy Code is inapplicable, the rights, duties, and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the Bankruptcy Code and, to the extent not inconsistent therewith, the laws of the State of New York, without giving effect to the principles of conflicts of law of such jurisdiction.

**U. Failure of Bankruptcy Court to Exercise Jurisdiction.** If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction over any matter arising out of these Chapter 11 Cases, including any of the matters set forth in the Plan, the Plan shall not prohibit or limit the exercise of jurisdiction by any other court of competent jurisdiction with respect to such matter.

**V. Post-Confirmation Reporting.** Following confirmation of the Plan, the Liquidating Trustee shall file reports of its activities and financial affairs with the Bankruptcy Court, on a quarterly basis, within thirty (30) calendar days after the conclusion of each such period; provided that the Liquidating Trustee's obligation to file such reports with the Bankruptcy Court shall terminate automatically upon the closing of the Chapter 11 Cases. Any such reports shall be prepared consistent with the applicable Bankruptcy Court and US Trustee guidelines on such matters.

**W. Limiting Notices.** After the Effective Date, the Liquidating Trustee may, in its sole discretion, notify Persons that, to continue to receive documents pursuant to Bankruptcy Rule 2002, such Person must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Persons receiving documents pursuant to Bankruptcy Rule 2002 to those Persons who have filed such renewed requests.

**Exhibit A**

(Plan)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	Chapter 11
In re:	)	
	)	Case No. 16-11242 (BLS)
PHOENIX BRANDS LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	(Jointly Administered)
Debtors.	)	
	)	
	)	

**JOINT PLAN OF LIQUIDATION OF THE DEBTORS AND  
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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-and-

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Possession*

*Counsel to the Official Committee of  
Unsecured Creditors*

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor's tax identification number, are: Phoenix Brands LLC, (4609), Phoenix Brands Parent LLC, (8729), Phoenix North LLC, (no EIN), Phoenix Brands Canada ULC (a Nova Scotia Company), Phoenix RIT LLC, (5149), and Phoenix Brands Canada Laundry LLC (no EIN). The address of each of the Debtors is 1 Landmark Square, Suite 1810, Stamford, CT 06901, except Phoenix Brands Canada ULC, which is Box 50, 1 First Canadian Place, Toronto, Ontario, Canada M5X 1B8.

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**JOINT PLAN OF LIQUIDATION OF THE DEBTORS, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND FIFTH STREET FINANCE CORP. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

The Debtors, the Official Committee of Unsecured Creditors, and Fifth Street Finance Corp. hereby propose the following joint plan of liquidation under chapter 11 of the Bankruptcy Code.

**ARTICLE I**  
**DEFINITIONS**

The capitalized terms used in the Plan have the respective meanings set forth below.

**Administrative Claim:** A Claim, including, but not limited to Professional Fee Claims, entitled to payment as an administrative expense as specified in Bankruptcy Code § 503(b) that is entitled to priority under Bankruptcy Code § 507(a), which Claim must be filed by the Administrative Claim Bar Date or the Professional Fee Claim Bar Date, as applicable.

**Administrative Claims Bar Date:** For all Administrative Claims except Professional Fee Claims, the first business day that is fifteen (15) days following the Effective Date.

**Allowed:** means, with respect to any Claim against the Debtors, (a) any Claim against any Debtor that has been listed by the Debtors in the Schedules (as such Schedules may be amended from time-to-time in accordance with Bankruptcy Rule 1009) as liquidated in amount and not disputed or contingent and for which no contrary proof of Claim has been filed or no timely objection to allowance or request for estimation has been interposed, (b) any timely filed proof of Claim as to which no objection has been or is interposed in accordance with the Plan or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder of such Claim, or (c) any Claim expressly allowed by a Final Order or under the Plan “Allowed Administrative Expense Claim” or “Allowed Claim” shall not, for any purpose under the Plan, include interest on such Claim from and after the Petition Date. In addition, for purposes of determining the amount of an Allowed Claim (other than a Claim specifically Allowed under the Plan), there shall be deducted therefrom an amount equal to the amount of any claim that the Debtors may hold against the Creditor under 11 U.S.C. § 553.

**Allowed [...] Claim:** means an Allowed Claim in the particular Class or category specified.

**Assets:** Any and all real or personal property of any nature, tangible or intangible, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts, chattel paper, cash, cash equivalents, deposit accounts, reserves,

deposits, contractual rights, intellectual property rights, claims, Rights of Action, and any other general intangibles of the Debtors, as the case may be, of any nature whatsoever, including, without limitation, any and all property in which the Debtors have an interest within the meaning of Bankruptcy Code § 541.

**Available Cash:** Cash remaining or becoming available in the estates after Fifth Street has received Cash distributions totaling \$2.5 million in accordance with, and subject to, in all events, the Waterfall set forth in **Exhibit A**.

**Avoidance Actions:** Any and all rights to recover or avoid transfers under Chapter 5 of the Bankruptcy Code or otherwise, including, but not limited to, §§ 522, 541, 542, 543, 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code, to recover transfers pursuant to § 550 of the Bankruptcy Code, to avoid any lien under § 506(d) of the Bankruptcy Code, or otherwise to exercise the avoidance powers provided under the Bankruptcy Code.

**Bankruptcy Court:** The United States Bankruptcy Court for the District of Delaware, in which these Chapter 11 Cases are pending, or in the event such court ceases to exercise jurisdiction over the Chapter 11 Cases, such other court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases.

**Bankruptcy Estates:** The estates created on the Petition Date pursuant to Bankruptcy Code § 541.

**Bankruptcy Rules:** The Federal Rules of Bankruptcy Procedure, together with all amendments and modifications to the extent applicable to these Chapter 11 Cases, and the General, Local, and Chambers Rules of the Bankruptcy Court.

**Bar Date:** August 31, 2016, at 5:00 p.m. (prevailing Eastern Time), the date fixed by order of the Bankruptcy Court as the date by which all proofs of claim with the exception of those asserted by governmental entities (as defined in the Bankruptcy Code) were required to be filed against the Debtors. For the avoidance of doubt, the Bar Date is not inclusive of the Rejection Claim Bar Date.

**Brands GUCs:** Holders of Allowed General Unsecured Claims against Debtor Phoenix Brands LLC in Subclass 4A-2 of this Plan.

**Business Day:** Any day except Saturday, Sunday, or any legal holiday expressly set forth in Bankruptcy Rule 9006(a).

**Cash:** Cash and cash equivalents, including, but not limited to, bank and other deposits, wire transfers, checks, and readily marketable securities, instruments, and obligations of the United States of America or agencies or instrumentalities thereof.

**Chapter 11 Cases:** Collectively, the chapter 11 cases of the Debtors, being jointly administered



under Delaware bankruptcy case no. 16-11242.

**Claim:** Has the meaning set forth in § 101(5) of the Bankruptcy Code.

**Claimant:** An entity that holds a Claim against the Debtors that arose at the time of or before the Petition Date, or an entity that has a Claim against the Bankruptcy Estates of a kind specified in Bankruptcy Code §§ 348(d), 502(f), 502(g), 502(h), or 502(i).

**Class:** A category of Claims as set forth in the Plan pursuant to Bankruptcy Code § 1122.

**Committee:** The Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases by the Office of the United States Trustee pursuant to Bankruptcy Code § 1102 on or about June 1, 2016.

**Confirmation Date:** The date on which the Bankruptcy Court enters the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.

**Confirmation Hearing:** The hearing at which the Bankruptcy Court considers confirmation of the Plan pursuant to Bankruptcy Code § 1129, as such hearing may be adjourned from time to time.

**Confirmation Order:** The order entered by the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code § 1129.

**Debtors:** Phoenix Brands LLC, Phoenix Brands Parent LLC, Phoenix North LLC, Phoenix Brands Canada ULC, Phoenix RIT LLC, and Phoenix Brands Canada Laundry LLC.

**Debtors-in-Possession:** The Debtors, during the period commencing on the Petition Date and ending on the Effective Date.

**Disallowed:** A Claim as to which a Final Order has been entered disallowing the Claim or a portion thereof.

**Disclosure Statement:** The disclosure statement proposed in connection with the Plan, as approved by the Bankruptcy Court pursuant to Bankruptcy Code § 1125 and Bankruptcy Rule 3017, and as modified and amended, including all exhibits and attachments thereto.

**Disclosure Statement Approval Date:** The date on which the Bankruptcy Court enters an order approving the Disclosure Statement.

**Disputed Claim:** Any Claim that is not an Allowed Claim and (a) is listed on the Schedules as disputed, unliquidated, or contingent, (b) is filed pursuant to Bankruptcy Code § 501(a) as unliquidated or contingent, (c) as to which the Debtors, the Committee, or any party in interest with standing, has interposed a timely objection or request for estimation or subordination in

accordance with the Bankruptcy Code and the Bankruptcy Rules that has not been determined by Final Order, or (d) which differs from the nature or amount of the Claim in the Debtors' Schedules and the period within which to object has not yet expired.

**Disputed Claim Reserve:** Any Liquidating Trust Assets allocable to, or retained on account of, Disputed Claims, which shall be held in a segregated account in accordance with this Plan.

**Distribution:** A payment by the Liquidating Trustee to the Holders of an Allowed Claim.

**Distribution Date:** A date on which a Distribution occurs.

**Effective Date:** The later of (a) the first business day after the Confirmation Order is entered and all conditions precedent to Plan effectiveness have been satisfied or waived pursuant to Article XII of this Plan, or (b) December 29, 2016.

**Equity Interests:** Any equity interest in the Debtors, including, but not limited to, all issued, unissued, authorized, or outstanding shares or stock, together with any warrants, options or contract rights to purchase or acquire such interests at any time and all rights arising with respect thereto.

**Fifth Street:** Fifth Street Finance Corp. or its designee.

**Final Decree:** An order entered by the Bankruptcy Court closing the Bankruptcy Cases.

**Final Distribution:** The last Distribution to be made by the Liquidating Trustee upon the full administration of the Liquidating Trust Assets.

**Final Order:** An unstayed order or judgment of the Bankruptcy Court or other court of competent jurisdiction provided that (i) such order has not been reversed, stayed, or vacated, and (ii) the time to appeal, petition for certiorari, or move for a new trial, re-argument, or rehearing has expired, and that no appeal, petition for certiorari, or other proceeding seeking a new trial, re-argument, or rehearing is pending, or, if an appeal, writ of certiorari, new trial, re-argument or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order or judgment was appealed, certiorari shall have been denied, or a new trial, re-argument, or rehearing shall have been denied; provided, however, the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be filed with respect to such order shall not cause such order not to be a Final Order.

**Governmental Bar Date:** December 14, 2016 at 5:00 p.m. (prevailing Eastern Time), the last day upon which governmental entities may file proofs of claim.

**Holder:** An entity holding a Claim or Equity Interest or any authorized agent who has completed, executed, and delivered a Ballot in accordance with the applicable voting

instructions.

**Impaired:** A Claim or Class of Claims that is impaired within the meaning of Bankruptcy Code § 1124.

**Initial Distribution Date:** The Effective Date, as defined herein.

**Insider:** Insider shall have the meaning ascribed to it in Bankruptcy Code § 101(31).

**Lien:** Any lien, security interest, mortgage, or similar encumbrance on property of the applicable Debtor that secured payment of a debt or obligation, which lien, interest, mortgage, or similar encumbrance is valid, perfected, and enforceable against such property or the proceeds thereof and is non-avoidable.

**Liquidating Trust:** The liquidating trust created pursuant to the Plan for the benefit of Holders of Allowed Claims that is to be formed and governed by the terms of the Plan and the Liquidating Trust Agreement.

**Liquidating Trust Agreement:** That certain Liquidating Trust Agreement that is to govern the Liquidating Trust, in substantially the form of such document included in the Plan Supplement, pursuant to which, among other things, the Liquidating Trust Assets shall be initially conveyed to the Liquidating Trust and shall ultimately be distributed pursuant to the terms of this Plan; provided, however, the Liquidating Trust Agreement shall be in form and substance reasonably satisfactory to Fifth Street and the Committee.

**Liquidating Trust Assets:** All Assets of the Bankruptcy Estates as of the Effective Date together with all profits and proceeds therefrom including without limitation: (i) the Rights of Action; and (ii) all other Assets not transferred pursuant to the Sale Order.

**Liquidating Trustee:** The individual or entity who shall be selected by Fifth Street in consultation with the Debtors and the Committee and named in the Liquidating Trust Agreement, who shall be empowered to pursue, without limitation, all Rights of Action and to manage the Liquidating Trust pursuant to the terms of the Plan and the Liquidating Trust Agreement.

**Other Secured Claim:** Any Secured Claim other than a Secured Tax Claim.

**Petition Date:** May 19, 2016, the date upon which the initial Debtors filed their voluntary Chapter 11 bankruptcy petitions. If specifically referencing Phoenix Rit LLC, June 1, 2016; if specifically referencing Phoenix Brands Canada Laundry LLC, June 17, 2016.

**Plan:** This joint liquidating plan and all exhibits hereto, either in its present form or as may be altered, amended, modified, or supplemented from time to time in accordance with this Plan and the Bankruptcy Code and the Bankruptcy Rules.

**Plan Proponents:** The parties proposing the Plan, made up of the Debtors and the Committee.

**Plan Settlement Approval Order:** The order of the Bankruptcy Court dated November 7, 2016 [Docket No. 519], *inter alia*, authorizing and approving the Plan Settlement Stipulation.

**Plan Settlement Stipulation:** The *Stipulation Resolving Disputes and in Support of Chapter 11 Plan of Liquidation* attached as **Exhibit 1** to the Plan Settlement Approval Order.

**Plan Supplement:** The supplement to the Plan that will be filed with the Clerk of the Bankruptcy Court on or before the Plan Supplement Filing Date and will, among other things, contain the forms of the Liquidating Trust Agreement, the identity of the Liquidating Trustee, and copies of the Subordinated Credit Agreement and other ancillary loan documents relating thereto.

**Plan Supplement Filing Date:** The date by which the Plan Supplement (together with and any exhibits or schedules to the Plan that are not filed with the Plan) shall be filed with the Clerk of the Bankruptcy Court, which date shall be no later than five (5) calendar days before the deadline for voting to accept or reject the Plan

**Post-Confirmation Oversight Committee:** As defined in Section VIII.C.2 of the Plan.

**Priority Claims:** All Priority Non-Tax Claims and Priority Tax Claims.

**Priority Non-Tax Claims:** Those claims afforded priority under Bankruptcy Code § 507(a) other than Administrative Claims and Priority Tax Claims.

**Priority Tax Claims:** Those claims afforded priority under Bankruptcy Code §§ 502(i) or 507(a)(8).

**Pro Rata Share:** The proportionate share of a distribution calculated by dividing proportionately among the Allowed Claims in a Class according to the aggregate amount of the Allowed Claims in such Class.

**Professional:** Those persons (a) retained pursuant to an order of the Bankruptcy Court in accordance with Bankruptcy Code §§ 327, 1103, and/or 1106 and to be compensated for services rendered prior to the Effective Date pursuant to Bankruptcy Code §§ 327, 328, 329, 330, and/or 331; or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to Bankruptcy Code §§ 330 and 503(b)(2).

**Professional Fee Claim:** To the extent Allowed pursuant to a Final Order of the Bankruptcy Court, (a) a claim under Bankruptcy Code §§ 327, 331, 503(b), 1103, or 1106 for compensation for professional services rendered or expenses incurred prior to the Effective Date on the Estates' behalf; or (b) a claim under Bankruptcy Code § 503(b)(4) for compensation for professional services rendered.

**Professional Fee Deferral:** The deferral of \$1,000,000 in the aggregate of Professional Fees of the Debtors' and the Committee's Professionals as provided in and subject to the terms of the Waterfall.

**Rejection Claim:** Any Claim for amounts due as a result of the rejection of any executory contract or unexpired lease that is rejected by the Debtors pursuant to the Plan, which Claim must be filed by the Rejection Claim Bar Date.

**Rejection Claim Bar Date:** \_\_\_ (--) days after the Effective Date; provided, however, if a motion seeking assumption or rejection is not heard and determined prior to the Effective Date, any Claim based thereon shall be filed within \_\_\_ (--) days of entry of an Order ruling on such a motion.

**Rejection Date:** The date on which an executory contract or unexpired lease is rejected, which date shall be the Confirmation Date unless another Order of the Bankruptcy Court specifies otherwise.

**Released Parties:** The Released Parties are, in each case solely in their capacity as such: (a) each Debtor and the Debtors' Estates; (b) each of the Debtors' current and former officers, directors, and managers; (c) the Plan Proponents; (d) the Committee; (e) the members of the Committee (but as to such Committee members, solely in their capacities as Committee members and not in their individual creditor capacities or any other capacity) and (f) with respect to the entities or persons identified in subsections (a), (b), (c), (d), and (e) herein, each of such entities' or persons' respective predecessors, successors, and assigns, and respective current and former shareholders, affiliates, subsidiaries, principals, employees, agents, officers, directors, managers, trustees, partners, members, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants

**Releasing Parties:** As defined in Section XIV.E of the Plan.

**Rights of Action:** Any and all claims, actions, causes of action, suits, judgments, third party claims, counterclaims, cross-claims, or other rights of recovery, whether asserted or unasserted or pending as of the Effective Date or direct, indirect, derivative or otherwise, or known or unknown, or asserted or unasserted, that are held by the applicable Debtor or Estate against any person, entity, or property, wherever located, from the beginning of the world to the Effective Date, including Avoidance Actions, all claims objections, and all claims against all persons having dealings, relationships or transactions with or related to the Debtors or Debtors in possession.

**Schedules:** The Debtors' schedules of assets and liabilities, statements of financial affairs, and such other schedules in accordance with Bankruptcy Code § 521 filed by the Debtors with the Bankruptcy Court, as amended.

**Secured Claim:** A Claim against the Debtors that is secured by a Lien against the Debtors' property as provided by Bankruptcy Code § 506(a) or that is subject to recoupment or setoff under Bankruptcy Code § 553.

**Secured Tax Claim:** Any Secured Claim of a governmental unit arising from unpaid taxes that is secured by a Lien on property of the Debtors arising by statute.

**Subordinated Credit Agreement:** Shall have the meaning set forth in the Disclosure Statement.

**Tax Code:** The Internal Revenue Code of 1986, as amended from time to time.

**Third Party Release:** As defined in Section XIV.E of the Plan.

**Unsecured Claim:** Any Claim that is not an Administrative Claim, a Professional Fee Claim, a Priority Tax Claim, a Secured Claim, or a Priority Non-Tax Claim.

**US Trustee:** The United States Trustee for the District of Delaware.

**Waterfall:** The priority and distribution protocol approved by the Bankruptcy Court pursuant to the Plan Settlement Approval Order, which Waterfall (together with schedules and exhibits) is attached hereto as Exhibit A.

**Wind Down Budget:** Schedule 1 to Exhibit A to the Plan.

## ARTICLE II INTERPRETATION OF PLAN

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 genders. For purposes of the Plan, (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (b) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented, and (c) unless otherwise specified, all references in the Plan to Sections, Articles, Schedules, and Exhibits are references to Sections, Articles, Schedules, and Exhibits of or to the Plan. The words "herein," "hereof," "hereto," "hereunder," and other words of similar meaning refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan. A capitalized term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code or in the Exhibits hereto. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan. The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan. Unless otherwise indicated herein, all references to dollars means

United States dollars. In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006 shall apply.

**ARTICLE III**  
**TREATMENT, CLASSIFICATION, AND**  
**IMPAIRMENT OF CLAIMS AND INTERESTS**

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, Confirmation, and Distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

On the Effective Date, and except as specifically set forth below in this Article III, the Debtors shall continue to maintain their separate corporate existence for all purposes. Subject in all respects to the distribution protocol set forth in the Waterfall (including the treatment of the Allowed Claims as provided in this Plan), the Plan implements a limited substantive consolidation for distribution purposes only, effective on the Effective Date. To effectuate such limited substantive consolidation, on the Effective Date (but subject in all respects to the Waterfall): (a) all assets (and the proceeds thereof) of the Debtors shall be deemed merged or treated as if they were merged for purposes of making distributions under the Plan, and (b) no distributions shall be made under the Plan on account of intercompany Claims among the Debtors. Such limited substantive consolidation shall not (other than for the foregoing purposes related to the Plan) affect the legal and corporate structures of the Reorganized Debtors.

<b>Class and Description</b>	<b>Impairment</b>	<b>Entitlement to Vote</b>
<b>Class 1</b> – Priority Non-Tax Claims	Unimpaired	No; deemed to accept.
<b>Class 2</b> – Secured Tax Claims	Unimpaired	No; deemed to accept.
<b>Class 3</b> – Other Secured Claims	Unimpaired	No; deemed to accept.
<b>Class 4A</b> – General Unsecured Claims Against Phoenix Brands LLC	Impaired	Yes.
<b>Class 4B</b> – General Unsecured Claims Against Phoenix Brands Parent LLC	Impaired	No; deemed to reject.
<b>Class 4C</b> – General Unsecured Claims Against Phoenix North LLC	Impaired	No; deemed to reject.
<b>Class 4D</b> – General Unsecured Claims Against Phoenix Brands Canada ULC	Impaired	Yes.
<b>Class 4E</b> – General Unsecured Claims Against Phoenix Rit LLC	Impaired	No; deemed to reject.
<b>Class 4F</b> – General Unsecured	Impaired	Yes.

Claims Against Phoenix Brands Canada Laundry LLC		
<b>Class 5</b> – Equity Interests in Debtors	Impaired	No; deemed to reject.

#### ARTICLE IV

#### ADMINISTRATIVE CLAIMS, PROFESSIONAL FEES, AND PRIORITY TAX CLAIMS

**A. Introduction.** As provided in Bankruptcy Code § 1123(a)(1), Administrative Claims and Priority Tax Claims are unclassified claims, not considered Impaired and not entitled to vote on the Plan, because they are automatically entitled to the specific treatment provided for them in the Bankruptcy Code. These non-voting Claims shall be treated separately as unclassified Claims as set forth in this Article V.

**B. Administrative Claims in General.** Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a different treatment, the Trust shall pay to each holder of an Allowed Administrative Expense Claim Cash in an amount equal to such Allowed Claim on the Initial Distribution Date. Notwithstanding the foregoing, Professional Fees of Professionals retained by the Debtors and the Committee shall be subject to the Professional Fee Deferral pursuant to and in accordance with the Waterfall and shall not be paid on the Initial Distribution Date.

**C. Bar Date for Administrative Claims.** Proofs of Administrative Expense Claims and/or requests for the allowance and payment of Administrative Expense Claims other than Professional Fees, for the period from the Petition Date through October 8, 2016, had a bar date of October 28, 2016, as set by order of this court [Docket no. 469]. Any Proofs of Administrative Claims arising during this period filed after October 28, 2016 are barred, absent further order from this Court. Unless otherwise required pursuant to a prior order of the Bankruptcy Court, Proofs of Administrative Claims and/or requests for the allowance and payment of Administrative Claims must be filed and served by the date set by the Bankruptcy Court. Any entity failing to file a proof of Administrative Claim or request for payment thereof on or before the Administrative Claims Bar Date shall be forever barred from asserting such Claim against the Debtors or their Bankruptcy Estates, and the holder thereof shall be enjoined from commencing or continuing any action, employment of process, or act to collect, offset, or recover such Administrative Claim.

**D. Statutory Fees.** On or before the Effective Date, all fees payable under section 1930 of chapter 123 of title 28 of the United States Code shall be paid in full in Cash. All unpaid fees due and payable under 28 U.S.C. § 1930 shall be paid by the Liquidating Trust, as such fees arise prior to and after the Effective Date until a Final Decree is entered in these Chapter 11 Cases.

**E. Professional Fees.**

**1. Time for Filing and Allowance.** All Professionals requesting compensation or



reimbursement of expenses pursuant to Bankruptcy Code §§ 327, 328, 330, 331, 503(b), and 1103 for services rendered prior to the Effective Date must file and serve pursuant to the Bankruptcy Code and applicable rules, an application for final allowance of compensation and reimbursement of expenses no later than thirty (30) days after the Effective Date or be forever barred from asserting such claims against the Bankruptcy Estates or the Debtors and their respective successors and/or assigns, or the Liquidating Trust. Professional Fees shall be Allowed Professional Fees only to the extent allowed by Final Order of the Bankruptcy Court. Only Allowed Professional Fees shall be paid pursuant to the Plan. Any objection to Professional Fees shall be filed on or before the date specified in the application for final compensation.

**2. Payment of Professional Fees.** As set forth in the Waterfall, Debtors' and Committee's Professionals shall defer payments totaling \$1,000,000, split into two tranches, the A Piece and the B Piece (such terms as defined on Exhibit A). Such Professional Fee Deferral shall be paid from Available Cash in accordance with the Waterfall. The Debtors' and Committee's Professional fees are capped in the gross amounts set forth in **Schedule 1 to Exhibit A**.

**F. Priority Tax Claims.** Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, each holder of an Allowed Priority Tax Claim shall receive from the Trust, in full and complete settlement, satisfaction, and discharge of such Claim, Cash in an amount equal to such Allowed Claim on the Initial Distribution Date.

## **ARTICLE V**

### **TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

**A. Summary.** The classifications of Claims and Equity Interests in this Article V shall apply for all purposes, including voting, confirmation, and distribution pursuant to the Plan, pursuant to Bankruptcy Code §§ 1122 and 1123(a)(1). A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that: (i) the Claim or Equity Interest qualifies within the description of that Class (and shall be deemed classified in a different Class to the extent that any portion of such Claim or Equity Interest qualifies within the description of such different Class), (ii) the Claim or Equity Interest is Allowed as of the Effective Date, and (iii) the Claim or Equity Interest has not been paid or otherwise satisfied prior to the Effective Date.

**B. Funding of Plan on Effective Date.** The Debtors' cash on hand as of the Effective Date, which is anticipated to be approximately \$3,085,000, along with additional collections of receivables and recoveries from Avoidance Actions and other potential Rights of Action will fund the Plan. On the Initial Distribution Date, the Debtors anticipate having sufficient funds to pay (or to the extent of any such Claims that are Disputed Claims, reserve for) all Administrative Claims, Priority Tax Claims, and Priority Non-Tax Claims and to provide the initial \$100,000 to Class 4A-2 and at least \$2 million to Class 4A-1.

**C. Classification.** The Claims and Equity Interests against the Debtors are classified as identified in the table in Article III above.

**1. Class 1 – Priority Non-Tax Claims.**

Classification: Class 1 shall consist of the Priority Non-Tax Claims.

Treatment: Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to a less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, each holder of an Allowed Priority Non-Tax Claim shall receive from the Trust, in full and final satisfaction, settlement, release, and discharge of such Allowed Priority Non-Tax Claim, Cash in the amount equal to such Allowed Claim, without interest, on or as soon as practicable after the later of (x) the Initial Distribution Date and (y) the date that such Claim becomes an Allowed Claim.

**2. Class 2 – Secured Tax Claims.**

Classification: Class 2 shall consist of the Secured Tax Claims.

Treatment: Except to the extent that a holder of an Allowed Secured Tax Claim agrees to a less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, each holder of an Allowed Secured Tax Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Allowed Secured Tax Claim and any Liens securing such Claim, in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, Cash in the amount of such Allowed Secured Tax Claim on, or as soon as practicable after, the latest of: (a) the Effective Date and (b) the date such Allowed Secured Tax Claim becomes an Allowed Claim.

**3. Class 3 – Other Secured Claims.**

Classification: Class 3 shall consist of the Allowed Other Secured Claims.

Treatment: Except to the extent that a holder of an Allowed Other Secured Claim agrees to a less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, each holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Allowed Other Secured Claim and any Liens securing such Claim, at the sole option of the Liquidating Trustee, as applicable, (i) Cash in an amount equal to such Allowed Other Secured Claim on or as soon as practicable after the Initial Distribution Date, or (ii) the Collateral securing its Allowed Other Secured Claim, in full and complete satisfaction of such Allowed Other Secured Claim on or as soon as practicable after the Effective Date.

**4. Class 4A – General Unsecured Claims Against Phoenix Brands LLC.**

Class 4A shall consist of Subclass 4A-1 and Subclass 4A-2, the classification and treatment of which are as follows:

**a. Subclass 4A-1**

Classification: Subclass 4A-1 shall consist of the Allowed General Unsecured Claim asserted by Fifth Street against Phoenix Brands LLC.

Treatment: Fifth Street will receive the distributions in accordance with the Waterfall attached hereto as **Exhibit A**. For the avoidance of doubt, General Unsecured Claims in Subclass 4A-2 do not share in the distributions to be made to Fifth Street in this Subclass 4A-1.

**b. Subclass 4A-2**

Classification: Subclass 4A-2 shall consist of the Allowed General Unsecured Claims against Phoenix Brands LLC asserted by creditors other than Fifth Street.

Treatment: Except to the extent that a holder of an Allowed General Unsecured Claim in Subclass 4A-2 agrees to a less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, each holder of an Allowed General Unsecured Claim in Class 4A shall receive, in full and final satisfaction, settlement, and release of such Allowed General Unsecured Claim its Pro Rata Share, based on the aggregate amount of Allowed General Unsecured Claims in Subclass 4A-1, the distributions in accordance with the Waterfall attached hereto as **Exhibit A**. For the avoidance of doubt, Fifth Street does not share in the distributions made to Subclass 4A-2.

**5. Class 4B – General Unsecured Claims Against Phoenix Brands Parent LLC.**

Classification: Class 4B shall consist of the Allowed General Unsecured Claims against Phoenix Brands Parent LLC.

Treatment: There will be no distribution to General Unsecured Claims in Class 4B.

**6. Class 4C – General Unsecured Claims Against Phoenix North LLC.**

Classification: Class 4C shall consist of the Allowed General Unsecured Claims against Phoenix North LLC.

Treatment: There will be no distribution to General Unsecured Claims in Class 4C.

**7. Class 4D – General Unsecured Claims Against Phoenix Brands Canada ULC.**

Classification: Class 4D shall consist of the Allowed General Unsecured Claims against Phoenix Brands Canada ULC.

Treatment: Except to the extent that a holder of an Allowed General Unsecured Claim in Class 4D agrees to a less favorable treatment or has been paid by any applicable Debtor prior to the Effective Date, each holder of an Allowed General Unsecured Claim in Class 4D shall receive, in full and final satisfaction, settlement, and release of such Allowed General Unsecured Claim its Pro Rata Share, based on the aggregate amount of Allowed General Unsecured Claims in Subclass 4D, of the distributions to be provided to the holders of such Allowed Class 4D Claims

in accordance with the Waterfall attached hereto as **Exhibit A**.

**8. Class 4E – General Unsecured Claims Against Phoenix Rit LLC.**

**Classification:** Class 4E shall consist of the Allowed General Unsecured Claims against Phoenix Rit LLC.

**Treatment:** There will be no distribution to General Unsecured Claims in Class 4E.

**9. Class 4F – General Unsecured Claims Against Phoenix Brands Canada Laundry LLC.**

**Classification:** Class 4F shall consist of the Allowed General Unsecured Claims asserted by Fifth Street against Phoenix Brands Canada Laundry LLC.

**Treatment:** Fifth Street, as sole creditor in Class 4F, will receive a distribution of 100% of the funds for distribution allocated to Phoenix Brands Canada Laundry LLC in accordance with the Waterfall attached hereto as **Exhibit A**.

**10. Class 5 – Equity Interests in Debtors.**

**Classification:** Class 5 shall consist of all equity interests in the Debtors.

**Treatment:** On the Effective Date, the Equity Interests in the Debtors shall be cancelled and the holders of the Equity Interests shall not be entitled to, and shall not receive or retain, any property on account of such Equity Interests under the Plan.

**ARTICLE VI**  
**ACCEPTANCE OR REJECTION OF THE PLAN**

A Class shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class (excluding Insiders) that have cast ballots with respect to the Plan. Only those votes cast by holders of Allowed Claims shall be counted in determining whether acceptances have been received in sufficient number and amount to obtain confirmation.

Class 4 is impaired and entitled to vote. Classes 4B, C, and E will receive no distribution and are deemed to have rejected the Plan. Classes 1–3 are unimpaired and conclusively deemed to have accepted the Plan and are not entitled to vote. Class 5 is conclusively deemed to have rejected the Plan and is not entitled to vote.

**ARTICLE VII**  
**EFFECT OF CONFIRMATION**

**A. Vesting of Assets.** On the Effective Date, all remaining Assets of any kind and nature whatsoever, of the Bankruptcy Estates shall vest in and be conveyed and transferred to the

Liquidating Trust free and clear of all Liens, Claims, Equity Interests, and encumbrances of the Debtors or any Creditor or any other Persons, except the obligations, rights, and liens continued or granted pursuant to the Plan and the Confirmation Order. The Liquidating Trust Assets shall be managed by the Liquidating Trustee in accordance with this Plan and the Liquidating Trust Agreement, and used for the sole purposes of consummating and carrying out the Plan and effectuating distributions to holders of Allowed Claims as provided hereunder. Nothing herein shall prevent the Liquidating Trust from abandoning any Assets after the Confirmation Date.

**B. Authority to Effectuate Plan.** Upon the entry of the Confirmation Order by the Bankruptcy Court (but subject to the occurrence of the Effective Date), and except as may otherwise be provided herein, any treatment or actions provided for or contemplated under the Plan shall be deemed to be authorized and approved without any further order or approval of the Bankruptcy Court. The Debtors and the Liquidating Trust shall be authorized, without further application to or order of the Bankruptcy Court but subject to the terms of the Plan and the Liquidating Trust Agreement, to take whatever action is necessary or proper to consummate and carry out the Plan, to consummate any transaction provided for herein, and to effectuate the distributions provided for hereunder. Subject to the terms of the Plan and the Liquidating Trust Agreement, the Liquidating Trust is also expressly authorized and empowered to liquidate, sell, dispose of, or abandon any and all Liquidating Trust Assets, to distribute the proceeds thereof in accordance with the Plan, and to pay all costs and expenses associated with such sale, liquidation, or disposition without further order of the Bankruptcy Court.

**C. Late Claims.** Any Claim filed after any applicable Bar Date shall be unenforceable unless the Claimant has been granted an extension of time to file a Claim by the Bankruptcy Court and such entity shall not be treated as a creditor or Claimant for the purposes of voting or distributions with respect to the Plan. Unless otherwise expressly ordered by the Bankruptcy Court, any such late-filed Claim shall not be entered on the official claims register, shall be deemed Disallowed and expunged and the Claimant shall receive no distribution under the Plan or from the Liquidating Trust.

## **ARTICLE VIII**

### **IMPLEMENTATION OF THIS PLAN**

#### **A. Creation of Liquidating Trust.**

**1.** On the Effective Date, the Liquidating Trust shall be created as the vehicle for implementation of the Plan. A Liquidating Trust Agreement, in form and substance reasonably acceptable to Fifth Street and the Committee, shall be executed by the Debtors and the Liquidating Trustee and delivered to Fifth Street and the Committee. All right, title, and interest of the Bankruptcy Estates' in the Assets shall be transferred, assigned, and delivered to the Liquidating Trust, free of all Claims, Liens, and Interests, to be managed as Liquidating Trust Assets by the Liquidating Trustee in accordance with the terms of the Plan and the Liquidating Trust Agreement for the sole purposes of consummating and carrying out the Plan. All other necessary steps shall be taken to establish the Liquidating Trust and the beneficial interests

therein.

2. The Liquidating Trustee shall manage the Debtors' orderly wind down, overseeing claims objections, and prosecution of Rights of Action (including Avoidance Actions), and shall reduce to Cash or otherwise liquidate the unliquidated Liquidating Trust Assets, and after deducting costs and expenses of liquidating, disposing, or maintaining such assets, other costs, and expenses of the Liquidating Trust, and setting aside such reserves as determined by the Liquidating Trustee, the Liquidating Trustee shall distribute the Liquidating Trust Assets in accordance with the terms of the Plan and Liquidating Trust Agreement.

3. The Liquidating Trustee shall have the powers, duties, and obligations set forth in the Plan and the Liquidating Trust Agreement. The costs and expenses incurred by the Liquidating Trustee on and after the Effective Date shall be paid from the Liquidating Trust Assets. Upon entry of the Final Order closing these Chapter 11 Cases and as otherwise provided in the Liquidating Trust Agreement, the Liquidating Trust shall be terminated and dissolved without further action by the Liquidating Trustee. In connection with the above-described assets, any and all rights, claims, and causes of action, any attorney-client or similar privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidating Trust shall vest with the Liquidating Trustee and its representatives.

4. The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement and shall not be required to file a fee application or obtain any approval of the Bankruptcy Court to receive compensation; provided, however, that all fees and expenses of the Liquidating Trustee (including the payment of compensation to professionals retained by the Liquidating Trustee and/or Liquidating Trust) shall be submitted to the Post-Confirmation Oversight Committee for approval prior to payment. Subject to the provisions of the Liquidating Trust Agreement, the Liquidating Trustee shall be entitled to hire and engage such professionals as it deems appropriate to assist in carrying out the duties of the Liquidating Trust, with the reasonable fees and expenses of such professionals to be paid from the Trust Assets. The Liquidating Trustee may pay from the Trust Assets all reasonable fees and expenses incurred in connection with the duties and actions of the Liquidating Trustee, including, but not limited to, fees and expenses of the Liquidating Trustee's professionals, insurance, taxes, and other expenses arising in the ordinary course of business in maintaining, liquidating, disposing of, and the distribution of the Trust Assets and compensation to the Liquidating Trustee. The Liquidating Trustee may pay all such reasonable fees and expenses without Bankruptcy Court approval; provided, however, that all fees and expenses of the Liquidating Trustee (including the payment of compensation to professionals retained by the Liquidating Trustee and/or Liquidating Trust) shall be submitted to the Post-Confirmation Oversight Committee for approval prior to payment. Any disputes concerning the administration of the Liquidating Trust or implementation of the distribution of the Trust Assets may be brought before the Bankruptcy Court for resolution.

5. The Liquidating Trust will terminate no later than the second (2nd) anniversary of the Effective Date; provided, however, that upon motion of the Liquidating Trustee or a party in

interest, the Bankruptcy Court may extend the term of the Liquidating Trust for a fixed period if it is necessary or appropriate to facilitate or complete the liquidation and distribution of the Liquidating Trust Assets. Additional extensions can be obtained so long as Bankruptcy Court approval is obtained; provided, however, that the aggregate of all such extensions shall not exceed five (5) years, unless the Liquidating Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidating Trust as a grantor trust for federal income tax purposes.

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

7. For federal income tax purposes, all parties including, without limitation, the Debtors, the Liquidating Trustee and the beneficiaries of the Liquidating Trust, shall treat the transfer of assets to the Liquidating Trust, in accordance with the terms of the Plan and the Liquidating Trust Agreement, as a transfer to the holders of Allowed Claims in full satisfaction of such Claims, followed by a transfer by such Claimants to the Liquidating Trust, and the beneficiaries of the Liquidating Trust shall be treated as the grantors and owners thereof.

8. The beneficial interests in the Liquidating Trust shall not be certificated and shall not be transferable.

## **B. Responsibilities of the Liquidating Trustee.**

1. As of the Effective Date, the Liquidating Trustee, on behalf of the holders of Allowed Claims, the Debtors, or the Bankruptcy Estates, as applicable, shall be responsible for: (i) liquidating or otherwise reducing to Cash the unliquidated Liquidating Trust Assets; (ii) filing, prosecuting, compromising, and settling Rights of Action (including Avoidance Actions); (iii) making distributions under the Plan; (iv) settling, resolving, and objecting to Claims including Unsecured Claims; (v) seeking estimation of contingent or unliquidated Claims including Unsecured Claims under Bankruptcy Code § 502(c); (vi) establishing claims reserves as determined by the Liquidating Trustee; (vii) paying and satisfying Administrative Claims and Priority Claims; (viii) winding up the affairs of the Debtors and their Bankruptcy Estates; (ix) complying with, enforcing, and carrying out the terms of the Plan and Liquidating Trust Agreement; and (x) making and filing all tax returns for the Liquidating Trust.

2. The Liquidating Trustee shall have sole authority, subject to the direction and approval of the Post-Confirmation Oversight Committee (as defined below) but without further Bankruptcy Court approval, to liquidate or otherwise dispose of the Liquidating Trust Assets, to file, prosecute, and settle objections to Claims, to pursue, settle, or otherwise resolve or abandon any Rights of Action, to hire and pay (subject to Article VIII.B.3 of the Plan) professional fees and expenses of counsel and other advisors, and to take such other actions as shall be necessary to implement the Plan, wind down the affairs of the Debtors and the Bankruptcy Estates, and effect the closing of these Chapter 11 Cases or as otherwise provided under the Liquidating Trust

Agreement.

3. The Debtors and the Committee in the period prior to the Effective Date, and the Liquidating Trustee and the Post-Confirmation Oversight Committee in the period from and after the Effective Date, will use their reasonable best efforts to ensure that any professionals retained to prosecute Rights of Action (including Avoidance Actions and other litigation claims) on behalf of the Liquidating Trust will cap their fees at the lesser of (i) the contingent fee of (x) 18% of any collections from a litigation target obtained prior to filing the applicable complaint, and (y) 25% of all collections obtained from litigation claims settled after the filing of a complaint, and (ii) the hourly rate charged by such firm. Costs will be reimbursed from the aggregate proceeds generated from the prosecution of all litigation claims, while fees will be limited to only the recoveries from the specific litigation for which the fees apply.

**C. The Liquidating Trustee and Post-Confirmation Oversight Committee.**

1. Fifth Street (in consultation with the Committee and the Debtors) shall select the Liquidating Trustee. Without the permission of the Bankruptcy Court, no judicial, administrative, arbitration, or other action or proceeding shall be commenced against the Liquidating Trustee in its official or personal capacity, with respect to its status, duties, powers, acts, or omissions as the Liquidating Trustee in any forum other than the Bankruptcy Court.

2. The Liquidating Trust shall be governed by a three member oversight committee (the “**Post-Confirmation Oversight Committee**” to whom the Liquidating Trustee shall report, and which shall direct the Liquidating Trustee’s actions, all pursuant to the Liquidating Trust Agreement and the Plan. Fifth Street shall designate two members of the Post-Confirmation Oversight Committee, , and the Committee shall select the third member of such committee; provided, however, Fifth Street, the Committee, and the Debtors shall consult on the selection of all three members of the Post-Confirmation Oversight Committee. All actions of the Liquidating Trust and the Liquidating Trustee shall require approval of at least two members of the Board. Notwithstanding anything to the contrary contained in the Plan, all actions of the Liquidating Trustee shall be made in consultation with, and subject to the prior approval of, the Post-Confirmation Oversight Committee unless otherwise expressly provided in the Liquidating Trust Agreement. The members of the Post-Confirmation Oversight Committee shall serve without compensation other than reimbursement by the Liquidating Trustee of reasonable out-of-pocket disbursements incurred by such members in connection with the Liquidating Trust (but, for the avoidance of doubt, such expenses shall not include any professional fees and expenses of the members of the Post-Confirmation Oversight Committee).

3. The Liquidating Trustee shall act on behalf of the Liquidating Trust to carry out its obligations and to exercise its rights in accordance with and subject to the Plan, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee shall be vested with the rights, powers, and benefits as set forth in the Liquidating Trust Agreement, including without limitation, all rights, powers, and benefits afforded a “trustee” under Bankruptcy Code §§ 704 and 1106.



4. The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement and shall not be required to file a fee application or obtain any approval of the Bankruptcy Court to receive compensation; provided, however, that all fees and expenses of the Liquidating Trustee (including the payment of compensation to professionals retained by the Liquidating Trustee and/or the Liquidating Trust) shall be submitted to the Post-Confirmation Oversight Committee for approval prior to payment. Subject to the provisions of the Liquidating Trust Agreement and Article VIII.B.3 of the Plan, the Liquidating Trustee shall be entitled to hire and engage such professionals as it deems appropriate to assist in carrying out the duties of the Liquidating Trust, with the reasonable fees and expenses of such professionals to be paid from the Liquidating Trust Assets. The Liquidating Trustee may pay from the Liquidating Trust Assets all reasonable fees and expenses incurred in connection with the duties and actions of the Liquidating Trustee, including, but not limited to, fees and expenses of the Liquidating Trustee's professionals, insurance, taxes, and other expenses arising in the ordinary course of business in maintaining, liquidating, disposing of, and the distribution of the Liquidating Trust Assets and compensation to the Liquidating Trustee. The Liquidating Trustee may pay all such reasonable fees and expenses without Bankruptcy Court approval; provided, however, that all such fees and expenses shall be submitted to the Post-Confirmation Oversight Committee for approval prior to payment. Any disputes concerning the administration of the Liquidating Trust or implementation of the distribution of the Liquidating Trust Assets (including any disputes relating to the compensation of the Liquidating Trustee or any professionals retained by or on behalf of the Liquidating Trustee and/or the Liquidating Trust) shall be brought before the Bankruptcy Court for resolution.

5. The Liquidating Trustee shall be authorized and empowered to object to Claims and to pursue and prosecute, to settle, or to decline to pursue such objections, as well as the Rights of Action, whether or not the Rights of Action or objections to Claims have been commenced prior to the Effective Date. The Liquidating Trustee shall be substituted as the real party in interest in any such action or objection, commenced by or against the Debtors or the Committee and may pursue, or decline to pursue, such objections or Rights of Action. The Liquidating Trustee may settle, release, sell, assign, otherwise transfer, or compromise such objections and Rights of Action, subject to the provisions of the Plan and the Liquidating Trust Agreement, without Bankruptcy Court approval.

6. The Liquidating Trustee may, but shall not be required to, set-off against any Claim and the distributions to be made pursuant to the Plan in respect of such Claim and/or Right of Action the Bankruptcy Estates may have against the Claimant; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trustee of any such Right of Action, set-off or recoupment which the Bankruptcy Estates may have against such Claimant.

7. A substituted Liquidating Trustee may be designated by the Post-Confirmation Oversight Committee after resignation or other removal of the Liquidating Trustee as provided under the Liquidating Trust Agreement.

8. The Liquidating Trustee shall strictly account to the Post-Confirmation Oversight Committee for all receipts and disbursements of the Liquidating Trust, and shall provide the Post-Confirmation Oversight Committee with such other reporting as is reasonably requested by the Post-Confirmation Oversight Committee.

**D. Cancellation of Instruments and Equity Interests.** On the Effective Date, except to the extent otherwise provided in the Plan, all notes, instruments, certificates, and other documents evidencing Claims and all Equity Interests in the Debtors shall be cancelled and deemed terminated, without any further act or action under any applicable agreement, law, regulations, order, or rule.

**E. Disposition of Books and Records.** After the Effective Date, the Debtors shall transfer the Debtors' books and records remaining in the Debtors' possession to the Liquidating Trust. From and after the Effective Date, the Liquidating Trustee may continue to preserve and maintain all documents and electronic data transferred to the Liquidating Trust by the Debtors, and the Liquidating Trustee may destroy or otherwise abandon any such documents and records (in electronic or paper format) without further order of the Bankruptcy Court. The Liquidating Trustee may destroy or abandon all remaining books and records upon entry of a Final Order closing the last Chapter 11 Case.

**F. Corporate Existence and Dissolution of Debtors.** Immediately after the Effective Date, the Liquidating Trustee shall be authorized to take all actions reasonably necessary to dissolve one or more of the Debtors under applicable laws, including under the laws of the jurisdictions in which they may be organized or registered, and to pay all reasonable costs and expenses in connection with such dissolutions, including the costs of preparing or filing any necessary paperwork or documentation. Upon the final Distributions, any Debtors that have not been previously dissolved shall be deemed dissolved for all purposes without the necessity for other or further actions to be taken by or on behalf of the Debtors, and the Liquidating Trustee shall be authorized to file any certificate of cancellation or other documents as may be necessary or desirable to terminate the legal existence of any remaining Debtor companies.

**G. Closing the Chapter 11 Cases.** After all Rights of Action and Disputed Claims have been resolved, the US Trustee quarterly fees have been paid, all of the Estates' and Liquidating Trust Assets have been distributed in accordance with this Plan, or at such earlier time as the Liquidating Trustee deems appropriate, the Liquidating Trustee shall seek authority from the Bankruptcy Court to close any of the Chapter 11 Cases, in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

## **ARTICLE IX**

### **DISTRIBUTIONS UNDER THE PLAN**

**A. Wind Down Budget:** The Debtors and the Liquidating Trust shall operate pursuant to the terms of the Wind Down Budget. All Professional's fees are capped by, and in no circumstances

shall such Professionals seek allowance or payment of Professional fees in excess of, the amounts identified in the Wind Down Budget (and no such fees in excess in of amounts identified in the Wind Down Budget shall be Allowed or paid).

**B. Distribution to Creditors.** The Liquidating Trustee shall make distributions to holders of Allowed Claims on and after the Initial Distribution Date, as defined herein, to the extent required by and in accordance with the Waterfall attached hereto as Exhibit A.

**C. Claims Allowed as of the Initial Distribution Date.** The Liquidating Trustee shall make a distribution on the Initial Distribution Date (or as soon thereafter as is practicable) to all beneficiaries of the Liquidating Trust by virtue of such persons holding Claims that have been Allowed and are entitled to receive distributions under the Plan as provided pursuant o the Waterfall and under the Liquidating Trust Agreement. Distributions on account of Claims that become Allowed after the Initial Distribution Date shall be made by the Liquidating Trustee pursuant to the provisions of the Plan and Liquidating Trust Agreement from the reserve set aside by the Liquidating Trustee for Disputed Claims. There will be no distribution on account of any Claim or administrative expense that is a Disputed Claim, including any claim that is subject to disallowance pursuant to section 502(d) of the Bankruptcy Code. For the avoidance of doubt, the foregoing shall not apply to the general unsecured claims of Fifth Street which claims have been Allowed pursuant to the Plan Settlement Approval Order and shall receive distributions pursuant to the Waterfall.

**D. Trust Reserves.** Subject to the terms of the Plan and the Liquidating Trust Agreement, the Liquidating Trustee shall maintain such reserves, for Disputed Claims and otherwise, as it deems necessary to administer the Liquidating Trust under the terms of the Plan. In the event that a portion or all of any reserve established by the Liquidating Trustee becomes unnecessary, the funds from such reserve shall be transferred to the Liquidating Trust for distribution to beneficiaries of the Liquidating Trust in accordance with the Plan and the Waterfall. For the avoidance of doubt, any reserve for Disputed Claims shall include an amount sufficient to cover the full amount such Disputed Claim would have received had the asserted amount not been disputed but Allowed as requested (unless the reserve amount for such Disputed Claim has otherwise been fixed at a lower amount pursuant to an order of the Bankruptcy Court). Notwithstanding anything to the contrary in this Plan, there shall be no reserve established on or after the Effective Date with respect to the Professional Fee Deferral.

**E. Time and Manner of Payments.** Any payment in Cash shall be made by check in United States Dollars drawn on a domestic bank, except that in respect of Distributions to be paid to Fifth Street pursuant to this Plan, such Distributions shall be made by wire transfer of immediately available funds pursuant to written instructions to be delivered to the Debtors on or before the Effective Date (as such instructions may from time to time thereafter be modified by Fifth Street in a writing provided to the Liquidating Trustee with respect to Distributions to be made to Fifth Street after the Effective Date).

**F. Delivery of Distributions.** Subject to the provisions of Bankruptcy Rules 2002(g) and

9010 and except as otherwise agreed with a holder of an Allowed Claim as provided in the Plan, distributions to holders of Allowed Claims shall be made at the address of each such Claimant as set forth on the Schedules filed with the Bankruptcy Court unless superseded by the address set forth on proofs of claim filed by such Claimants, or if the Liquidating Trustee has been notified in writing of a change of address.

**G. Undeliverable Distributions.**

**1. Holding of Undeliverable Distributions:** If any distribution to any Claimant is returned to the Liquidating Trustee as undeliverable, no further distributions shall be made to such Claimant unless and until the Liquidating Trustee is notified, in writing, of such Claimant's then-current address, at which time all missed distributions, to the extent provided under this Article shall be made to such Claimant without interest. Subject to the Plan, undeliverable distributions shall remain in the possession of the Liquidating Trustee until such time as a distribution becomes deliverable, or until sixty (60) days passes from date of dispatch of the attempted and subsequently undeliverable delivery. Nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any holder of an Allowed Claim.

**2. Failure to Claim Undeliverable Distributions:** Within ten (10) Business Days after the later of, sixty (60) days following the Initial Distribution Date, or each subsequent distribution under the Plan, the Liquidating Trustee shall file a list with the Bankruptcy Court setting forth the names and addresses used by the Liquidating Trustee of those Claimants for which distributions have been attempted hereunder and have been returned as undeliverable as of the date thereof, or for which payments have been made by check but which checks have not been negotiated. Any such Claimant that does not assert its rights pursuant to the Plan to receive a distribution within thirty (30) days after the filing of such list shall have its Claim for such undeliverable distribution and all future distributions discharged and shall be forever barred from asserting any such Claim against the Bankruptcy Estates, the Debtors, and their respective successors and/or assigns, the Liquidating Trustee, the Liquidating Trust, or the Trust Assets. In such case, all unclaimed distributions shall revert to the Liquidating Trust and be applied in accordance with the terms of the Plan. All uncashed checks will be subject to and governed by this Section.

**H. Compliance With Tax Requirements.** To the extent applicable, the Liquidating Trustee in making distributions under the Plan shall comply with all tax withholding and reporting requirements imposed by federal, state, local, and foreign taxing authorities and all distributions hereunder shall be subject to such reporting and withholding requirements. The Debtors shall provide the Liquidating Trustee with all tax information, and shall assist in any tax reporting issues as requested by the Liquidating Trustee, including without limitation, by providing copies of all tax forms in the Debtors' possession related to Claimants. The Liquidating Trustee may withhold the entire distribution due to any holder of an Allowed Claim until such time as such Claimant provides the Liquidating Trustee with the necessary information to comply with any withholding requirements. If the Claimant fails to provide the Liquidating Trustee with the necessary information to comply with withholding requirements within six (6) weeks after the

date of the first request by the Liquidating Trustee for such information or for the Cash necessary to comply with any applicable withholding requirements, then the Claimant's distribution shall be treated as an undeliverable distribution in accordance with the Plan. For tax purposes, distributions received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest.

**I. Time Bar to Payments.** Checks issued by the Liquidating Trustee on account of Allowed Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance. Requests for reissuance of any check shall be made in writing directly to the Liquidating Trustee by the holder of the Allowed Claim with respect to which such check originally was issued. Any Claim in respect of such a voided check shall be made on or before the later of: (a) six (6) weeks following the Distribution Date, or (b) sixty (60) days after the date of issuance of such check. After such date, all claims in respect of voided checks shall be discharged and forever barred and the right to all moneys from the voided checks and any future distributions to such Claimants shall revert to the Liquidating Trust and be applied in accordance with the terms of the Plan.

**J. Fractional Dollars, De Minimis Distributions.** Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. The Liquidating Trustee shall not be required to make payments of less than fifty dollars (\$50.00) on account of any Allowed Claim, unless a specific request is made in writing to the Liquidating Trustee. Absent written request, the Liquidating Trustee may retain any such sums and, until the total distribution due to such creditors exceeds \$50.00 or until the final distribution is made under the Plan, at which point the Liquidating Trustee shall distribute all sums due such Claimants. In addition, after the Initial Distribution Date, the Liquidating Trustee shall not be required to make any distribution on account of any Claim in the event that the costs of making such distribution payment exceed the amount of such distribution payment, and all Cash that otherwise would have been distributed to Claimant holding such de minimis claims shall otherwise be distributed in accordance with the terms of the Plan and Liquidating Trust Agreement.

**K. Set-Offs and Recoupments.** Except with respect to the Allowed Claims of Fifth Street pursuant to the Plan Settlement Approval Order, the Debtors or the Liquidating Trustee, as successor to the Debtors, pursuant to Bankruptcy Code § 553 or applicable non-bankruptcy law, may set off and/or recoup against any Allowed Claim against the distributions to be made pursuant to the Plan (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtors may hold against the holder of such Allowed Claim. Except with respect to the Allowed Claims of Fifth Street pursuant to the Plan Settlement Approval Order, neither the failure to effect such a set-off nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Bankruptcy Estates of any such claims, rights and causes of action that such parties may possess under Bankruptcy Code § 553.

**L. Payments and Actions Not Required on Non-Business Days.** If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or performance of such act may be completed on the next succeeding Business Day and shall be deemed to have been completed as of the required date.

**ARTICLE X**  
**PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

**A. Prosecution of Objections to Claims.** Unless another time is set by order of the Bankruptcy Court, all objections to Claims shall be filed with the Bankruptcy Court and served upon the Claimant whose Claim is objected to by the later of (a) one hundred-eighty (180) days after the Effective Date; or (b) one hundred-eighty (180) days after a timely Proof of Claim or request for payment with respect to such Claim is filed; provided, however, that, prior to the expiration of the foregoing deadline, the Liquidating Trust may seek an extension of such time to object, in which event the applicable objection deadline shall be automatically extended for a period of thirty days after the date the Court rules on such extension request. Objections to Professional Fees shall be filed in the manner required by the Bankruptcy Court.

**B. Estimation of Claims.** The Liquidating Trust may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated General Unsecured Claim pursuant to Bankruptcy Code § 502(c) regardless of whether the Debtors or the Liquidating Trust previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Liquidating Trust may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim.

**C. Cumulative Remedies.** All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved as provided herein or by any mechanism approved by the Bankruptcy Court. Until such time as a Claim becomes Allowed, such Claim shall be treated as Disputed for purposes related to allocations and distributions.

**D. Allowance of Claims and Interests.**

**1. Disallowance of Claims:** Pursuant to Bankruptcy Code §§ 105 and 502(d), no distributions will be made with respect to Claims that are Disputed or to Claimants from which property is recoverable under Bankruptcy Code §§ 542, 543, 550, 553, 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) (including the Avoidance Actions) until such time as such objection or

Rights of Action against that Claimant have been settled or resolved by a Final Order and all sums due to the Debtors are turned over to the Trust. As soon as practicable after the date on which a Claim that is Disputed becomes Allowed, the holder of such newly Allowed Claim will receive all distributions to which it is entitled under the Plan.

**2. No Distribution Pending Allowance:** Notwithstanding any other provision of the Plan, no payment or distribution shall be made with respect to any Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. Any person who holds both an Allowed Claim and a Claim that is Disputed will receive the appropriate distribution on the Allowed Claim, but will not receive a distribution on the Claim that is Disputed.

**3. Allowance of Claims:** Except as expressly provided for in the Plan, for example with respect to the Allowed Claim of Fifth Street, no Claim shall be deemed Allowed by virtue of the Plan, Confirmation Order, or any order of the Bankruptcy Court in these Chapter 11 Cases, unless and until such Claim is Allowed.

## **ARTICLE XI**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Rejection of Executory Contracts and Unexpired Leases.** Any executory contracts or unexpired leases (i) which have not expired by their own terms on or prior to the Confirmation Date, or (ii) which have not been assumed and assigned or rejected with the approval of the Bankruptcy Court or pursuant to procedures established by order of the Bankruptcy Court, shall be deemed rejected by the Debtors on the Confirmation Date unless expressly preserved by Order of the Bankruptcy Court. The entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejections pursuant to Bankruptcy Code §§ 365(a) and 1123 as of the Confirmation Date.

**B. Bar Date for Rejection Damages.** If the rejection by the Debtors of an executory contract or an unexpired lease pursuant to this Article results in damages to the other party or parties to such executory contract or unexpired lease, a Rejection Claim arising from such rejection shall not be enforceable against the Debtors or their Estates or agents, successors, or assigns, unless a proof of Claim is filed with the Claims Agent so as to actually be received on or before the Rejection Bar Date.

**C. Rejection Damages Proofs of Claims.** Any Person required to file a proof of Claim arising from the rejection of an executory contract or unexpired lease under the Plan and that fails to timely do so shall be forever barred, estopped, and enjoined from asserting such Claim, and such Claim shall not be enforceable against the Trust, the Debtors, the Estates, and their respective properties, and the Trust, Debtors, the Estates, and their respective properties shall be forever discharged from any and all Liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein.

**ARTICLE XII**  
**CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE**

**A. Conditions Precedent to Confirmation of Plan.** Confirmation of the Plan will not occur unless each of the following conditions precedent have occurred or have been waived in writing by the Committee and Fifth Street: (a) The Bankruptcy Court shall have approved a Disclosure Statement in form and substance acceptable to Fifth Street and the Committee; (b) The Debtor shall have demonstrated at the Confirmation Hearing that there will be sufficient Cash on the Effective Date to pay (or with respect to Disputed Claims to reserve for as required pursuant to the Plan) (i) Allowed Administrative Claims, Non-Tax Priority Claims, and Priority Tax Claims in full (or in such lesser amount as may be agreed to by the Claimant), and (ii) not less than \$2,000,000 in Cash to Fifth Street as required pursuant to the Waterfall; (c) The Debtors shall have complied with all “Milestones” as defined and set forth in the Plan Settlement Stipulation; (d) The Confirmation Order shall be in form and substance reasonably acceptable to Fifth Street and the Committee; and (e) Each of the Committee’s and Debtors’ respective Professionals shall have executed and delivered an acknowledgement of an agreement to the Professional Fee Deferral in accordance with and as required pursuant to plan Settlement Stipulation.

**B. Conditions to Effectiveness of Plan.** The Effective Date shall not occur unless each of the following conditions precedent has occurred or been waived in writing by the Debtors, Fifth Street, and the Committee: (a) The Confirmation Order shall have been entered by the Bankruptcy Court and shall have become a Final Order; (b) The Liquidating Trust shall have been created pursuant to the terms of the Plan, the Liquidating Trustee shall have been appointed, and the Liquidating Trust Agreement shall have been executed by the Liquidating Trustee; (c) All other actions and documents necessary to implement the Plan shall have been effected and executed; (d) There shall be sufficient Cash to pay (i) Fifth Street not less than \$2,000,000 and (ii) Brands GUCs \$100,000 on the Effective Date, as required pursuant to the Waterfall; (e) the Professional Fee Deferral shall not be less than \$1,000,000, and (f) the Debtors shall have complied with all “Milestones” as defined and set forth in the Plan Settlement Stipulation.

**C. Waiver of Conditions Precedent to the Effective Date.** Each of the conditions precedent in this section may be waived, in whole or in part, in a writing signed by each of the Debtors, the Committee and Fifth Street without leave or further order of the Bankruptcy Court and without any formal action on the part of the Bankruptcy Court. The Liquidating Trustee reserves the right to assert that any appeal from the Confirmation Order shall be moot after the Effective Date of this Plan.

**D. Satisfaction of Conditions.** Except as expressly provided or permitted in the Plan, any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. In the event that one or more of the conditions specified in herein shall not have occurred or otherwise not have been waived, (a) the Confirmation Order shall be vacated, (b) the Debtors and all holders of Claims and Equity Interests shall be restored to the



*status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Order were never entered, and (c) the Debtors' obligations with respect to Claims and Equity Interests shall remain unchanged and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Debtors or any other Person or prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors. Notwithstanding anything to the contrary contained in this Plan, nothing herein shall alter or impair the terms of the Plan Settlement Approval Order or the Plan Settlement Stipulation, including without limitation, all rights and remedies contained in Plan Settlement Stipulation in the event of a breach of the terms of such Stipulation or the failure of the Debtors to confirm the Plan or cause the Plan to become effective as required pursuant to such Stipulation.

**ARTICLE XIII**  
**RETENTION OF JURISDICTION**

The Bankruptcy Court shall retain and have subject matter jurisdiction over any matter arising under the Bankruptcy Code, or arising in or related to these Chapter 11 Cases and the Plan and for the following purposes:

- A.** to resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which the Debtors were or are a party or with respect to which the Debtors may be liable, and to hear, determine, and, if necessary, liquidate any Claims arising therefrom;
- B.** to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, transactions, and other agreements or documents created in connection with the Plan;
- C.** to determine any and all motions, adversary proceedings, applications, and contested or litigated matters that may be pending on the Effective Date or that, pursuant to the Plan, are available to the Bankruptcy Estates and that may be instituted by the Liquidating Trustee after the Effective Date (including, but not limited to any claims or Rights of Action arising under Bankruptcy Code §§ 542, 543, 544, 545, 547, 548, 549, or 553(b));
- D.** to ensure that distributions to holders of Allowed Claims are accomplished as provided herein;
- E.** to hear and determine any timely objections to Claims, both before and after the Effective Date, including any objections to the classification of any Claim, and to allow, disallow, determine, liquidate, classify, estimate, or establish the priority of, or secured or unsecured status of any Claim, in whole or in part;
- F.** to enforce the Liquidating Trustee's interest in the Cash, the Assets, and the Liquidating Trust Assets, and the Liquidating Trustee's right to pursue objections to Claims, Rights of Action, and all other rights of the Liquidating Trustee to the Trust Assets;

- G.** to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;
- H.** to issue orders in aid of execution of the provisions of the Plan to the extent authorized by Bankruptcy Code § 1142, including, but not limited to, orders interpreting, enforcing, or clarifying the provisions thereof;
- I.** to consider any modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order to the extent authorized by the Bankruptcy Code;
- J.** to hear and determine all applications for allowance of compensation for services rendered and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code or the Plan incurred prior to the Effective Date;
- K.** to hear and determine any and all objections to and proceedings involving the allowance, estimation, classification, and subordination of Claims;
- L.** to hear and determine all suits, controversies and disputes arising in connection with or relating to the Plan, or any orders of the Bankruptcy Court in the Chapter 11 Cases entered on or before the Effective Date, the interpretation, implementation, enforcement or consummation of the Plan, or any orders of the Bankruptcy Court in the Chapter 11 Cases entered on or before the Confirmation Date, or the extent of any entity's obligations incurred in connection with or released under the Plan;
- M.** to issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with the consummation or enforcement of the Plan;
- N.** to enforce all orders, judgments, and rulings entered in connection with the Chapter 11 Cases and to determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Confirmation Order, or the Liquidating Trust Agreement;
- O.** to enter any order, including injunctions necessary to enforce the title, rights, and powers of the Debtors or the Liquidating Trustee and to impose such limitations, restrictions, terms and conditions on such title, rights and powers as the Bankruptcy Court may deem necessary or appropriate, the Liquidating Trust Agreement or any contract, instrument, release, or other agreement or document created in connection with the Plan or the Disclosure Statement;
- P.** to hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code §§ 346, 505, and 1146;
- Q.** to hear any other matter for any purpose specified in the Confirmation Order that is not inconsistent with the Bankruptcy Code, including the allowance or disallowance and classification of late-filed proofs of claim in accordance with Bankruptcy Rule 9006(b);

- R. to enter a Final Decree closing these Chapter 11 Cases;
- S. to resolve any matters that may arise in connection with the Liquidating Trust or the Liquidating Trust Agreement;
- T. to determine and hear any actions or controversies by or against the Liquidating Trustee, including but not limited to the Rights of Action;
- U. to hear and determine any matter relating to or arising out of any action or act taken or omission in connection with or related to the formulation, preparation, dissemination, implementation, administration, confirmation, or consummation of the Plan, the Disclosure Statement or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan, or any other act or omission taken or to be taken in connection with the Chapter 11 Cases commenced against any party in the Chapter 11 Cases, including, without limitation, the Liquidating Trustee, the Debtors, the Committee, and their respective current and former directors and officers, members, agents, advisors, attorneys, advisors, and other professionals and Entities employed pursuant to Bankruptcy Code §§ 327 and 1103;
- V. to adjudicate all Rights of Action to recover all assets and properties of the Debtors and Bankruptcy Estates wherever located;
- W. to hear and determine any and all objections to payments under the Plan;
- X. to adjudicate all claims or controversies arising out of any purchases, sales, or contracts made or undertaken by the Debtors during the pendency of the Chapter 11 Cases; and
- Y. to enforce the permanent injunction created by the Confirmation Order and Section XIV.C hereof.

**ARTICLE XIV**  
**EXCULPATION, INJUNCTION, AND RELATED PROVISIONS**

**A. Exculpation.** None of the Debtors, the Debtors-in-Possession, and the current or former directors, officers, or employees of the Debtors who served or were employed in such capacities after the Petition Date, the professionals retained by the Debtors pursuant to Bankruptcy Court order, members of the Committee (solely in their capacity as Committee members and not in their individual creditor or any other capacity) and the professionals retained by the Committee pursuant to Bankruptcy Court order, or Fifth Street shall have or incur any Liability for any Claim, Cause of Action, or other assertion of Liability for any act taken or omitted to be taken in connection with or arising out of the Chapter 11 Cases, the sale of the Debtors' Assets, the formulation, dissemination, implementation, approval, confirmation, consummation, or administration of the Plan, property to be distributed under the Plan, or any other act or omission in connection with or arising out of the Chapter 11 Cases, the Plan, the Disclosure Statement, or any contract, instrument, document or other agreement related thereto; provided, however, that the foregoing shall not affect the Liability of any Person resulting from any such act or omission

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to the extent such act or omission is determined by a Final Order to have constituted willful misconduct, fraud, or gross negligence. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, discharges, and any other applicable law, Bankruptcy Court order, or rules protecting such Persons from liability.

**B. Claims Under Title I of ERISA.** Nothing in this Plan, the Disclosure Statement, the Confirmation Order, or section 1141 of the Bankruptcy Code shall be construed as discharging, releasing, or relieving the Debtors, or their reorganized forms, or any entity in the Debtors' controlled group, or any such parties' officers, directors, or other representatives, or any other person or entity, in any capacity, from any liability with respect to the Pension Plan under Title I of ERISA, the Internal Revenue Code, or any other law, government policy, or regulatory provision. PBGC shall not be enjoined or precluded from enforcing such liability against any party as a result of this Plan's provisions for satisfaction, release, and discharge of claims.

**C. Injunction.** Except as otherwise provided in the Plan, all Persons that have held, hold, or may hold Claims against or Equity Interests in the Debtors or their Estates that arose prior to the Effective Date are permanently enjoined, solely with respect to any such Claims or Equity Interests, from: (a) commencing or continuing in any manner, directly or indirectly, any action or other proceeding of any kind against any property of the Debtors or their Estates that is transferred to the Liquidating Trust or any other Person pursuant to the Plan, the Liquidating Trust, or the Liquidating Trustee; (b) enforcing, attaching, collecting, or recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against any property of the Debtors or their Estates that is transferred to the Liquidating Trust or any other Person pursuant to the Plan, the Liquidating Trust, or the Liquidating Trustee; (c) creating, perfecting, or enforcing, in any manner, directly or indirectly, any Lien or encumbrance against any property of the Debtors or their Estates that is transferred to the Liquidating Trust or any other Person pursuant to the Plan, the Liquidating Trust, or the Liquidating Trustee; (d) except to the extent permitted by sections 362(b), 553, 559, 560, or 561 of the Bankruptcy Code, asserting any right of setoff, subrogation, or recoupment against the Debtors, their Estates, the Liquidating Trust, or the Liquidating Trustee; (e) pursuing any Claim or Cause of Action released pursuant to the Plan; or (f) taking any actions which interfere with the implementation or consummation of the Plan. The rights afforded in the Plan and the treatment of all Claims and Equity Interests therein shall be in exchange for and in complete satisfaction of all Claims and Equity Interests of any nature whatsoever. However, notwithstanding any provision of the Plan, the Debtors shall not receive a discharge as set forth in section 1141(d)(3)(A) of the Bankruptcy Code. Following the Effective Date, these injunctions shall remain permanently in full force and effect.

**D. Debtor Release.**

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after and subject to the occurrence of the Effective Date, the Debtors and their estates shall release each Released Party, and each Released Party is deemed released by the Debtors and the estates from any and all claims, obligations, rights, suits, damages, Rights of Action, remedies, and liabilities whatsoever,

including any derivative claims, asserted or assertable on behalf of any of the Debtors or their estates, as applicable, whether known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, existing or hereinafter arising, in law, equity, or otherwise, that the Debtors or the estates would have been legally entitled to assert in their own right (whether individually or collectively), or on behalf of the Holder of any Claim or Interest or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' liquidation, the DIP Facility (pursuant to the order entered at Docket No. 135), the Chapter 11 Cases, the Canadian Proceedings, the purchase, sale, transfer, or rescission of the purchase, sale, or transfer of any security, asset, right, or interest of the Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the Canadian Proceedings, the negotiation, formulation, or preparation of the Plan or related agreements, instruments, or other documents, any other act or omission, transaction, agreement, event, or other occurrence taking place on and before the Petition Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud, willful misconduct, or gross negligence; provided, that the foregoing Debtor Release shall not operate to waive or release any obligations of any party under the Plan or any other document, instrument, or agreement executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the Claims released by the Debtor Release; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Debtors or their estates asserting any Claim or Cause of Action released pursuant to the Debtor Release. Entry of the Confirmation Recognition Order shall constitute the Canadian equivalent of the same.

#### **E. Third Party Release.**

On and after and subject to the occurrence of the Effective Date, except as otherwise provided in the Plan, the Claimants ("Releasing Parties") that affirmatively elect to grant the release described herein, by checking the appropriate box on the Ballot provided to such Releasing Parties in connection with solicitation of such releasing Parties' vote to accept or to reject the Plan, for themselves and their respective successors, assigns, transferees, and such Claimants' officers and directors, agents, members, financial and other advisors, attorneys, employees, partners, affiliates, and representatives (in each case in their capacity as such), shall release (the "Third Party Release") each Released Party, and each of the Debtors, their estates, and the Released Parties shall be deemed released from any and all claims, interests, obligations, rights, suits, damages, Rights of Action, remedies, and liabilities whatsoever, including any

derivative claims asserted or assertable on behalf of any of the Debtors or their estates, as applicable, whether known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, existing or hereinafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the Canadian Proceedings, the purchase, sale, or rescission of the purchase of the Debtors assets, the DIP Facility, the subject matter of, or the transactions or events giving rise to, any claim or interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the Canadian Proceedings, the negotiation, formulation, or preparation of the Plan and related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event or other occurrence taking place on and before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud, willful misconduct or gross negligence. Notwithstanding anything to the contrary in the foregoing, the Third Party Release shall not release any obligations of any party under the Plan or any other document, instrument, or agreement executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third Party Release, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the claims released by the Third Party Release; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Releasing Parties asserting any claim or cause of action released pursuant to the Third Party Release. Entry of the Confirmation Recognition Order shall constitute the Canadian equivalent of the same.

## **ARTICLE XV**

### **MISCELLANEOUS PROVISIONS**

**A. Modification of Plan.** The Debtors reserve their right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, and with the prior written consent of the Committee and Fifth Street, to amend or modify the Plan at any time prior to the entry of the Confirmation Order subject to compliance with Bankruptcy Code § 1125 and provided that the Plan, as modified, meets the requirements of Bankruptcy Code §§ 1122 and 1123. Upon entry of the Confirmation Order, the Debtors may, upon order of the Bankruptcy Court and with the prior written consent of the Committee and Fifth Street, amend or modify the Plan in accordance with Bankruptcy Code § 1127(b), or remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. Claimants accepting the Plan shall be deemed to have accepted the Plan as modified if the

proposed modification does not materially and adversely change the treatment of their Claims under the Plan.

**B. Revocation or Withdrawal.** The Plan may be revoked or withdrawn by the Debtors prior to the Confirmation Date. If the Plan is revoked or withdrawn prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by the Debtors or any other entity or to prejudice in any manner the rights of the Debtors or any other entity in any further proceedings involving the Debtors. Notwithstanding anything to the contrary contained in this Plan, nothing herein shall alter or impair the terms of the Plan Settlement Approval Order or the Plan Settlement Stipulation, including without limitation, all rights and remedies contained in Plan Settlement Stipulation in the event of a breach of the terms of such Stipulation or the failure of the Debtors to confirm the Plan or cause the Plan to become effective as required pursuant to such Stipulation.

**C. Effectuating Documents and Further Transactions.** The appropriate officers or directors of the Debtors or the Liquidating Trustee, as applicable, shall be, and hereby are, authorized to execute, deliver, file, and record such contracts, instruments, releases, indentures, certificates, and other agreements or documents, and take such other actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**D. Date of Distributions and Other Actions.** In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**E. Withholding and Reporting Requirements.** In connection with this Plan and all Distributions hereunder, the Liquidating Trustee shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all Distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each holder of an Allowed Claim that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such holder by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution. The Liquidating Trustee has the right, but not the obligation, to refrain from making a Distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

**F. Plan Supplement.** The Plan Supplement and the documents contained therein shall be filed with the Bankruptcy Court no later than five (5) calendar days before the deadline for voting to accept or reject the Plan; provided, that the documents included therein may thereafter be amended and supplemented, prior to execution, so long as such amendment or supplement does not materially and adversely change the treatment of holders of Claims. The Plan

Supplement and the documents contained therein are incorporated into and made a part of the Plan as if set forth in full herein.

**G. Dissolution of the Committee.** On the Effective Date, the Committee shall be dissolved and the members thereof shall be released and discharged of and from all further authority, duties, responsibilities and obligations related to, arising from or in connection with the Chapter 11 Cases, and the retention or employment of the Committee's attorneys, accountants, and other agents, if any, shall terminate, except for purposes of filing and prosecuting applications for final allowances of compensation for professional services rendered and reimbursement of expenses incurred in connection therewith, or any appeal of the Confirmation Order.

**H. Exemption from Transfer Taxes.** Pursuant to section 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of notes or equity securities under or in connection with the Plan, the creation of any mortgage, deed of trust, or other security interest, the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including the issuance of any stock, any merger agreements, or agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

**I. Expedited Tax Determination.** The Liquidating Trustee is authorized to request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for any or all returns filed for, or on behalf of, the Debtors for any and all taxable periods (or portions thereof) ending after the applicable Petition Date through and including the Effective Date.

**J. Exhibits/Schedules.** All exhibits and schedules to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein. In the event of any inconsistency between the Plan and the exhibits and schedules to the Plan or the Plan Supplement, the terms of the Plan shall control.

**K. Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101(2) and 1127(b) of the Bankruptcy Code.

**L. Discharge.** As provided in Bankruptcy Code § 1141(d)(3), the Plan does not grant the Debtors a discharge. Notwithstanding the foregoing, except as otherwise provided herein, the rights afforded in the Plan and the treatment of all Claims and Equity Interests shall be in exchange for and in complete satisfaction, discharge, and release of such Claims and Equity Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Filing Date, against the Debtors or any of their Assets or properties. All Persons and Entities shall be precluded from asserting against the Debtors, or any of their Assets or properties, any other or further Claims or Equity Interests based upon any act or omission, transaction, or other activity of any kind or nature that occurred before the Confirmation Date, except as otherwise provided in the Plan.



**M. Severability.** If the Bankruptcy Court determines that any provision of the Plan is unenforceable either on its face or as applied to any Claim transaction, the Debtors may modify the Plan so that such provision shall not be applicable to the holder of any Claim or Interest. Such a determination of unenforceability shall not (i) limit or effect the enforceability and operative effect of any other provision of the Plan, or (ii) require the resolicitation of any acceptance or rejection of the Plan.

**N. Binding Effect.** The rights, benefits, and obligations conferred on any person by the Plan shall be binding upon, and inure of the benefit of, the executors, successors, heirs, and assigns of and any persons claiming an interest in any Asset through such person.

**O. Notices.** Any notices, requests, or demands to or upon the Debtors, the Committee, Fifth Street, or the Liquidating Trustee, to be effective, shall be in writing, including by facsimile transmission, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered to the following or, in the case of notice by facsimile transmission, when received by the following and telephonically confirmed, addressed as follows or to such other addresses as filed with the Bankruptcy Court.

To the Debtors: (a) Morrison Cohen LLP, 909 Third Avenue, New York, NY 10022 (Attn: Joseph T. Moldovan, Esq. (jmoldovan@morrisoncohen.com) and Robert K. Dakis, Esq. (rdakis@morrisoncohen.com)), and (b) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq. (ljones@pszjlaw.com) and Joseph M. Mulvihill, Esq. (jmulvihill@pszjlaw.com))

To Fifth Street: (a) Proskauer Rose LLP, Eleven Times Square, New York, NY 10036 (Attn: Scott K. Rutsky, Esq. (srutsky@proskauer.com) and Maja Zerjal, Esq. (mzerjal@proskauer.com)), and (b) Cozen O'Connor, 1201 N. Market Street, Suite 1001, Wilmington, DE 19801 (Attn: Mark Felger, Esq. (mfelger@cozen.com))

To the Committee: Saul Ewing LLP, 1201 North Market Street, Suite 2300, P.O. Box 1266, Wilmington, DE 19899 (Attn: Mark Minuti, Esq. (mminuti@saul.com) and Lucian B. Murley, Esq. (lmurley@saul.com)), and (b) Saul Ewing LLP, One Riverfront Plaza, 1037 Raymond Boulevard, Suite 1520, Newark, NJ 07102-5426 (Attn: Sharon L. Levine, Esq. (slevine@saul.com) and Dipesh Patel, Esq. (dpatel@saul.com))

**P. Right to be Heard.** Each of the Liquidating Trustee, the Debtors, Fifth Street, and the Creditors' Committee shall have the right to bring any dispute between them to the Bankruptcy Court for adjudication.

**Q. Reservation of Rights.** If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not become effective, the rights of all parties-in-interest in the Chapter 11 Cases are and will be reserved in full. Any concessions or settlements reflected herein, if any, are made for purposes of the Plan only, and if the Plan does not become effective, no party in

interest in the Chapter 11 Cases shall be bound or deemed prejudiced by any such concession or settlement.

**R. Continuing Viability of Other Orders/Agreements.** Except to the extent expressly modified by the Plan, all Final Orders previously entered by the Bankruptcy Court shall continue in full force and effect.

**S. Entire Agreement.** Except to the extent incorporated herein by reference, the Plan supersedes all prior discussions, understandings, agreements, and documents pertaining or relating to any subject matter of the Plan.

**T. Governing Law.** Except to the extent that the Bankruptcy Code is inapplicable, the rights, duties, and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the Bankruptcy Code and, to the extent not inconsistent therewith, the laws of the State of New York, without giving effect to the principles of conflicts of law of such jurisdiction.

**U. Failure of Bankruptcy Court to Exercise Jurisdiction.** If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction over any matter arising out of these Chapter 11 Cases, including any of the matters set forth in the Plan, the Plan shall not prohibit or limit the exercise of jurisdiction by any other court of competent jurisdiction with respect to such matter.

**V. Post-Confirmation Reporting.** Following confirmation of the Plan, the Liquidating Trustee shall file reports of its activities and financial affairs with the Bankruptcy Court, on a quarterly basis, within thirty (30) calendar days after the conclusion of each such period; provided that the Liquidating Trustee's obligation to file such reports with the Bankruptcy Court shall terminate automatically upon the closing of the Chapter 11 Cases. Any such reports shall be prepared consistent with the applicable Bankruptcy Court and US Trustee guidelines on such matters.

**W. Limiting Notices.** After the Effective Date, the Liquidating Trustee may, in its sole discretion, notify Persons that, to continue to receive documents pursuant to Bankruptcy Rule 2002, such Person must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Persons receiving documents pursuant to Bankruptcy Rule 2002 to those Persons who have filed such renewed requests.

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*Counsel to the Official Committee of Unsecured Creditors*

**Exhibit A**  
(Plan Waterfall)<sup>2</sup>

- On the Initial Distribution Date, General unsecured creditors of Phoenix Brands Canada ULC (“**ULC**”) will receive their Pro Rata Share of the Cash allocated to ULC (such allocated Cash amount is estimated to be approximately \$408.00 in total).
- On the Initial Distribution Date, Brands GUCs will receive their Pro Rata Share of \$100,000 in Cash.
- Next, after paying or reserving for the amounts set forth in the above two bullet points, on the Initial Distribution Date, Fifth Street will receive all Cash available on such date up to \$2.5 million (but with a minimum Cash distribution to Fifth Street on the Initial Distribution Date of \$2 million).
- Debtors’ and Committee Professionals will defer payments totaling \$1,000,000, split into two tranches, (A) \$487,000 (the “**A Piece**”) and (B) \$513,000 (the “**B Piece**”) to the post-Effective Date period; provided, however, that any Cash available on and after the Effective Date and after Fifth Street receives \$2.5 million in Cash shall be applied as per the next 2 bullets. For the avoidance of doubt, no interest shall accrue or be paid on the A Piece or the B Piece.
- Until total Cash distributions to Fifth Street total \$2.75 million:
  - All Cash shall be distributed (a) 50% to Fifth Street, and (b) 50% to the Professionals (to be apportioned *pro rata* among the Debtors’ and the Committee’s professionals according to Schedule 1 attached hereto).
  - After Fifth Street has received total Cash distributions totaling \$2.75 million:
    - Professionals shall receive all next available Cash until the A Piece has been repaid.
    - Thereafter, the next \$50,000 shall be distributed to (and/or reserved for) the Brands GUCs on a *pro rata* basis,
- Thereafter, all Cash shall be paid solely to Fifth Street until Fifth Street has received total Cash distributions of \$3.5 million.
  - Once Fifth Street has received total Cash distributions totaling \$3.5 million, all Cash shall then be distributed 100% to the Professionals (to be allocated among the Professionals on a *pro rata* basis based on the total incurred and projected capped fees in Schedule 1 attached hereto) until the B Piece is repaid.
  - All Cash available after the B Piece is repaid shall be distributed solely to Fifth Street.

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<sup>2</sup> Capitalized terms used but not defined on this **Exhibit A** shall have the meanings given to such terms in the Plan.

- The Debtors' and Committee's Professional fees are capped as set forth in the Plan Settlement Stipulation and Schedule 1 attached hereto.

**SCHEDULE 1**

# Wind Down Budget

		(\$ in 000s)																										
Week (Thurs - Wed) Ending:		7/20/16	7/27/16	8/3/16	8/10/16	8/17/16	8/24/16	8/31/16	9/7/16	9/14/16	9/21/16	9/28/16	10/5/16	10/12/16	10/19/16	10/26/16	11/2/16	11/9/16	11/16/16	11/23/16	11/30/16	12/7/16	12/14/16	12/21/16	12/28/16	Totals		
Beginning Balance Cash		\$2,172	\$3,037	\$3,083	\$4,183	\$5,717	\$9,560	\$9,836	\$10,353	\$11,076	\$10,465	\$11,627	\$10,026	\$9,284	\$7,606	\$5,682	\$4,622	\$4,594	\$4,583	\$3,794	\$3,774	\$3,477	\$3,453	\$3,109	\$3,085	\$2,172		
<b>Inflows</b>																												
Pre-Sale Receipts		2,003	1,068	1,336	416	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4,823	
Collection of Pre-Closing Laundry Receivables		-	-	-	144	421	371	86	44	43	29	85	73	64	56	43	34	26	21	17	9	-	-	-	-	-	1,566	
Collection of Buyers' AR		-	-	-	128	216	422	534	473	939	810	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3,778	
Repayment of R/I AR Collections		-	-	-	-	-	-	(1,007)	-	-	-	(566)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,573)	
Repayment of US Nonwovens AR Collections		-	-	-	-	-	-	-	-	-	(680)	(187)	(735)	(602)	-	-	-	-	-	-	-	-	-	-	-	-	(2,204)	
Sale Proceeds		-	-	20,356	9,879	-	-	171	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	30,406	
Inventory Adjustments		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	807	
Estimated Preference Recovery (1)		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Miscellaneous Asset Sales (2)		-	-	-	135	240	25	240	111	-	-	55	-	-	-	-	-	-	-	-	-	-	-	-	-	-	806	
TSA Reimbursement		-	-	-	207	889	793	831	784	248	1,355	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5,107	
Working Capital PreFund Receipts		-	-	-	-	-	-	188	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	188	
Add Back Niagara Adjustment		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Exchange Rate Loss on Transfer from Canada	(210)	-	-	(18)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Total Inflows</b>		\$1,793	\$1,068	\$21,938	\$11,102	\$1,591	\$1,586	\$1,810	\$1,411	\$223	\$2,433	(\$595)	(\$539)	(\$1,237)	(\$547)	\$43	\$34	\$26	\$21	\$17	\$9	-	-	-	-	\$807	\$43,475	
<b>Outflows</b>																												
Direct Payments Payroll		-	(205)	(25)	(2)	-	-	-	-	-	-	(105)	-	-	(75)	-	-	-	-	-	-	-	-	-	-	-	(410)	
Direct Payments Other	(93)	(6)	(2)	(2)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(41)	
Property and Related Expenses	(12)	(43)	(29)	(2)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(74)	
Taxes	(3)	(46)	(78)	(1)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(127)	
Outside Services	(2)	(39)	(13)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(95)	
Trade Spending	(60)	(12)	(8)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(69)	
Trade Vendors Disbursements	(818)	(641)	(996)	-	(180)	(177)	(40)	(169)	(18)	(189)	(417)	(48)	(57)	(45)	-	-	-	-	-	-	-	-	-	-	-	-	(4,480)	
SG&A Costs Paid by TSA	-	-	-	(177)	(17)	(40)	(169)	(18)	(168)	(12)	(90)	(17)	(11)	(17)	-	-	-	-	-	-	-	-	-	-	-	-	(745)	
Working Capital Disbursements	-	-	-	(649)	(467)	(631)	(683)	(960)	(193)	(727)	(784)	(248)	(314)	-	-	-	-	-	-	-	-	-	-	-	-	-	(5,107)	
Estimated Disbursements not paid by TSA	-	-	-	(64)	(64)	(64)	(64)	(64)	(64)	(64)	(64)	(64)	(106)	(70)	(106)	(70)	(62)	(37)	(62)	(37)	(50)	(24)	(12)	(24)	(42)	(42)	(1,214)	
<b>Total Outflows</b>	(908)	(8991)	(\$1,153)	(\$990)	(\$728)	(\$1,290)	(\$1,272)	(\$668)	(\$613)	(\$1,220)	(\$985)	(\$532)	(\$441)	(\$197)	(\$37)	(\$62)	(\$81)	(\$62)	(\$37)	(\$50)	(\$24)	(\$24)	(\$12)	(\$24)	(\$42)	(\$42)	(\$12,321)	
<b>Net Inflows/(Outflows)</b>	885	77	20,785	10,211	863	296	538	744	(390)	(390)	1,213	(1,580)	(592)	(1,678)	(743)	(39)	(28)	(12)	(41)	(20)	(41)	(64)	(12)	(24)	765	31,153		
<b>DIP Fees and Interest Expense</b>																												
US Trustee Fees	-	-	(225)	(22)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(248)	
Silver Swan Break Up Fee	-	-	(17)	-	-	-	-	-	-	-	-	(41)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(75)	
Detergent 2.0 Break Up Fee	-	-	(455)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(455)	
Restructuring Expenses	(21)	(21)	(47)	(25)	(21)	(21)	(21)	(21)	(21)	(222)	(51)	(21)	(359)	-	-	-	-	-	(747)	-	-	-	(332)	-	-	-	(207)	
Release of Warehousemen's Lien	-	-	-	-	-	-	-	-	-	-	-	(250)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(3,565)	
Senior Lender Professional Fees	-	-	-	(360)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	250	
Senior Debt Repayment	-	-	(18,951)	(5,063)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(360)	
Employee Severance Plan (3)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(24,014)	
Employee Incentive Plan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(294)	
Repayment of 303(b)(5) Claims	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(887)	
HLHZ transaction Fee (Net of Fees Paid)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(497)	
Non-Payroll Priority Claims	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(1,276)	
Monthly Transaction Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(65)	
DIP Borrowings	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>Ending Cash Balance</b>		\$3,037	\$3,083	\$4,183	\$5,717	\$9,560	\$9,836	\$10,353	\$11,076	\$10,465	\$11,627	\$10,026	\$9,284	\$7,606	\$5,682	\$4,622	\$4,594	\$4,583	\$3,794	\$3,774	\$3,477	\$3,453	\$3,109	\$3,085	\$1,634	\$1,634		
<b>DIP Ending Balance</b>		24,014	24,014	5,063	(0)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	

**Note:**  
 (1) It is assumed that any preference recoveries will occur beyond the completion of this Budget (or December 28)  
 (2) There is a placeholder for Miscellaneous Asset Sales but the Company believes these will be minimal  
 (3) The severance may be reduced for the eight estimated employees taking jobs with Nakoma and USNonwovens

# Professional Fee Summary

**PHOENIX BRANDS LLC  
PROFESSIONAL FEE DEFERRAL SCHEDULE  
FOR DISCUSSION PURPOSES ONLY**

	Total Fees Incurred <sup>1</sup>	Total Expenses Incurred	Total Fees and Expenses	Paid To 10/7 <sup>2</sup>	Net Fees & Expenses Before Effective Date Payments <sup>3</sup>	Effective Date Payments <sup>4</sup>	Unpaid Fees After Effective Date Payments	Deferral A	Deferral B
Morrison Cohen	\$2,010,764	24,598	\$ 2,035,362	\$ (483,850)	\$ 1,501,512	\$ (1,097,323)	\$ 504,189		
Pachulski	568,510	23,821	592,331	(83,474)	508,857	(362,128)	146,729		
Getzler	228,543	9,030	237,573	(48,100)	189,473	(130,623)	58,850		
Osler	132,272	11,849	144,121	(73,205)	70,916	(35,215)	35,701		
HunterPoint	434,600	6,287	440,887	(399,995)	40,892	-	40,892		
Total Debtors	3,374,690	75,585	3,450,275	(1,038,624)	2,411,651	(1,625,289)	786,362	73.8%	\$ (359,563)
Saul Ewing	701,948	5,506	707,454	(295,555)	411,899	(350,661)	61,238		
Deloitte	510,476	4,926	515,402	-	515,402	(397,955)	117,467		
Total Creditors' Professionals	1,212,424	10,432	1,222,856	(295,555)	927,301	(648,597)	278,704	26.3%	(127,437)
Total Professional Fees	\$4,587,113	\$ 86,017	\$ 4,673,130	\$ (1,334,179)	\$ 3,338,952	\$ (2,273,886)	\$ 1,065,066	100.0%	\$ (487,000)
									\$ (578,066)

**Notes**

<sup>1</sup> Fees incurred from petition date through Effective Date; does not include expenses or payments. Includes Committee's estimate of Committee Professional fees, and Debtors' estimate of Debtors' fees.

<sup>2</sup> Includes retainers applied and actual payments made through 10/7

<sup>3</sup> Total fees and expenses remaining after application of retainers and payments through 10/7

<sup>4</sup> Reflects remaining payments per the Restructuring Budget after accounting for payments made through 10/7. Effective Date payments are allocated based on percentage of total fees incurred. Payments to individual professionals may need to be reallocated based on payments received to date.

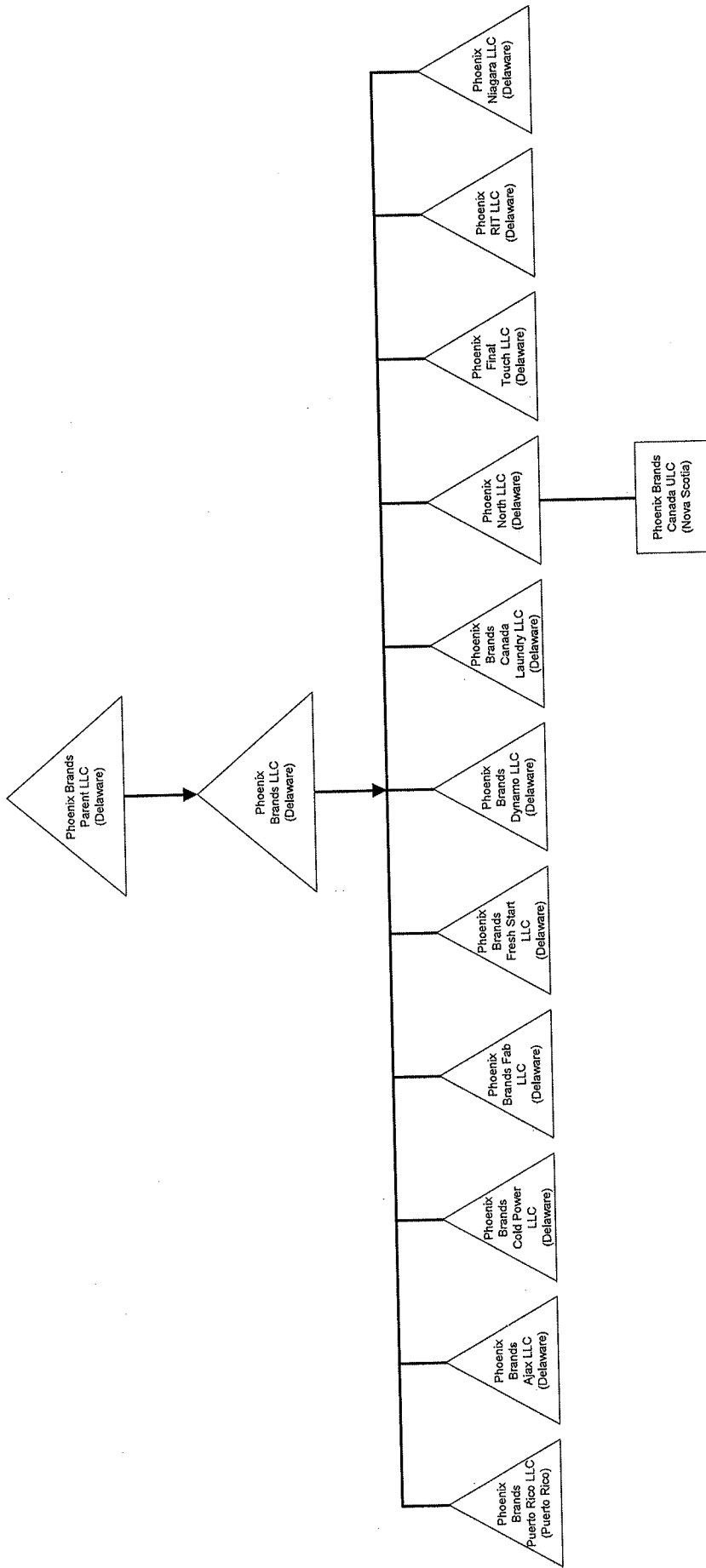


**Exhibit B**

(Company Organization Chart)

Privileged & Confidential

# PHOENIX BRANDS LLC STRUCTURE CHART



**Exhibit C**

(Liquidation Analysis)