

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

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In re:

APP WINDDOWN, LLC, *et al.*,<sup>1</sup>

Debtors.

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Chapter 11

Case No. 16-12551 (BLS)

(Jointly Administered)

Re: Docket No. 1747

**NOTICE OF FILING OF CLEAN AND BLACKLINE VERSIONS OF:  
DISCLOSURE STATEMENT FOR AMENDED JOINT PLAN OF LIQUIDATION  
PROPOSED BY THE DEBTORS AND DEBTORS IN POSSESSION**

**PLEASE TAKE NOTICE** that on June 12, 2018, APP Winddown, LLC and its affiliates, the debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”), filed the *Disclosure Statement for Joint Plan of Liquidation Proposed by the Debtors and Debtors in Possession* [Docket No. 1747] (the “Disclosure Statement”).

**PLEASE TAKE FURTHER NOTICE** that, attached hereto as **Exhibit A** is the revised *Disclosure Statement for Joint Plan of Liquidation Proposed by the Debtors and Debtors in Possession* (the “Amended Disclosure Statement”).

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Rule 3016-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware, attached hereto as **Exhibit B** is a blackline of the Amended Disclosure Statement, showing changes made from the Disclosure Statement.

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<sup>1</sup> The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): APP Winddown, LLC (f/k/a American Apparel, LLC) (0601); APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC) (8940); APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.) (7829); APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.) (0324); APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC) (9518); and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.) (3870). The address of each of the Debtors is 107 Millcreek Corners, Suite B, P O Box 5129, Brandon, MS 39047.

**PLEASE TAKE FURTHER NOTICE** that a hearing to consider approval of the Amended Disclosure Statement (the “Disclosure Statement Hearing”) will be held before the Honorable Brendan L. Shannon in the United States Bankruptcy Court for the District of Delaware, located at 824 Market Street, 6th Floor, Courtroom 1, Wilmington, Delaware 19801, on October 16, 2018, at 10:00 a.m. (prevailing Eastern Time). Please be advised that the Disclosure Statement Hearing may be continued from time to time by the Bankruptcy Court without further notice other than by such adjournment being announced in open court or by a notice of adjournment being filed with the Bankruptcy Court and served on parties entitled to notice under Bankruptcy Rule 2002 and the local rules of the Bankruptcy Court or otherwise.

*[Remainder of Page Intentionally Left Blank]*

Dated: September 7, 2018  
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Laura Davis Jones

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and Debtors-in-Possession

**Exhibit A**

**Amended Disclosure Statement**

**THIS IS NOT A SOLICITATION OF AN ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT YET BEEN APPROVED BY THE COURT FOR PURPOSES OF SOLICITATION. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.**

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

In re:	:	Chapter 11
	:	
	:	
APP WINDDOWN, LLC, <i>et al.</i> , <sup>1</sup>	:	Case No. 16-12551 (BLS)
	:	
Debtors.	:	(Jointly Administered)
	:	

**DISCLOSURE STATEMENT FOR AMENDED JOINT PLAN OF LIQUIDATION  
PROPOSED BY THE DEBTORS AND DEBTORS IN POSSESSION**

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ATTORNEYS FOR THE DEBTORS AND DEBTORS IN POSSESSION

Dated: September 7, 2018

<sup>1</sup> The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): APP Winddown, LLC (f/k/a American Apparel, LLC) (0601); APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC) (8940); APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.) (7829); APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.) (0324); APP Knitting Winddown LLC (f/k/a KCL Knitting, LLC) (9518); and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.) (3870). The address of each of the Debtors is 107 Millcreek Corners, Suite B, P O Box 5129, Brandon, MS 39047.

**IMPORTANT INFORMATION FOR YOU TO READ**

**THE DEADLINE TO VOTE ON THE PLAN IS [\_\_\_\_], 2018  
AT 5:00 P.M. PREVAILING EASTERN TIME, UNLESS EXTENDED BY THE  
DEBTORS (THE “VOTING DEADLINE”).**

**FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE *ACTUALLY  
RECEIVED* BY THE VOTING AGENT BEFORE THE VOTING DEADLINE.**

**PLEASE BE ADVISED THAT ARTICLE VI OF THE PLAN CONTAINS RELEASE,  
EXCULPATION, AND INJUNCTION PROVISIONS. YOU SHOULD REVIEW AND  
CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MAY BE  
AFFECTED THEREUNDER.**

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APP Winddown, LLC (f/k/a American Apparel, LLC) (“APP”), APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC), APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.), APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.), APP Knitting Winddown LLC (f/k/a KCL Knitting, LLC), and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.) (“Shipping”), as debtors and debtors in possession (collectively, the “Debtors” and, together with their affiliates and subsidiaries, the “Company”), are providing you with the information in this Disclosure Statement (as amended, supplemented and modified from time to time, the “Disclosure Statement”) because you may be a creditor entitled to vote on the Plan.<sup>2</sup>

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The Debtors believe that the Plan is in the best interests of their creditors and other stakeholders. All creditors entitled to vote thereon are urged to vote in favor of the Plan. A summary of the voting instructions is set forth herein, beginning on page [\_\_\_\_] of this Disclosure Statement, and in the Disclosure Statement Order. More detailed instructions are contained on the Ballots distributed to the creditors entitled to vote on the Plan. To be counted, your Ballot must be duly completed, executed and actually received by the Voting Agent by 5:00 p.m., prevailing Eastern time, on \_\_\_\_\_, 2018, unless extended by the Debtors.

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The effectiveness of the proposed Plan is subject to material conditions precedent, some of which may not be satisfied or waived. See Section IV.F. There is no assurance that these conditions will be satisfied or waived.

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This Disclosure Statement is the only document to be used in connection with the solicitation of votes on the Plan. Subject to the statutory obligations of a statutory creditors’ committee to provide access to information to creditors, no person is authorized by any of the

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<sup>2</sup> Except as otherwise provided herein, capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Amended Joint Plan of Liquidation of the Debtors and Debtors in Possession (as amended, supplemented and modified from time to time, the “Plan”), attached hereto as Exhibit 1.

Debtors in connection with the Plan or the solicitation of acceptances of the Plan to give any information or to make any representation other than as contained in this Disclosure Statement and the exhibits attached hereto or incorporated by reference or referred to herein. If given or made, such information or representation may not be relied upon as having been authorized by any of the Debtors. Although the Debtors will make available to creditors entitled to vote on the Plan such additional information as may be required by applicable law prior to the Voting Deadline, the delivery of this Disclosure Statement will not under any circumstances imply that the information herein is correct as of any time after the date hereof.

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**ALL CREDITORS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ AND CAREFULLY CONSIDER THIS ENTIRE DISCLOSURE STATEMENT, INCLUDING THE PLAN ATTACHED AS EXHIBIT 1 AND THE RISK FACTORS DESCRIBED UNDER SECTION X, PRIOR TO SUBMITTING BALLOTS IN RESPONSE TO THIS SOLICITATION.**

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The summaries of the Plan and other documents contained in this Disclosure Statement are qualified in their entirety by reference to the Plan itself, the exhibits thereto (the “Confirmation Exhibits”) and documents described therein as Filed prior to approval of this Disclosure Statement or subsequently as Plan Supplement materials. In the event that any inconsistency or conflict exists between this Disclosure Statement and the Plan, the terms of the Plan will control. Except as otherwise indicated, the Debtors will File all Confirmation Exhibits with the Bankruptcy Court and make them available for review at the Debtors’ document website located online at <http://cases.primeclerk.com/americanapparel> (the “Document Website”) no later than seven days before the Voting Deadline (or such later date as may be approved by the Bankruptcy Court).

This Disclosure Statement contains, among other things, descriptions and summaries of provisions of the Plan being proposed by the Debtors. The Debtors reserve the right to modify the Plan consistent with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement, and there can be no assurance that the statements contained herein will be correct at any time after this date. The information contained in this Disclosure Statement, including the information regarding the history, businesses and operations of the Debtors, and the other financial information regarding the Debtors, is included for purposes of soliciting acceptances of the Plan, but is not to be construed as admissions or stipulations, but rather as statements made in settlement negotiations as part of the Debtors’ attempt to settle and resolve their Liabilities pursuant to the Plan. Except where specifically noted, the financial information contained in this Disclosure Statement and in its exhibits has not been audited by a certified public accountant and has not been prepared in accordance with generally accepted accounting principles in the United States.

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## **FORWARD-LOOKING STATEMENTS**

This Disclosure Statement contains certain forward-looking statements prepared by the Debtors, all of which are based on various estimates and assumptions. The words “believe,” “may,” “estimate,” “continue,” “anticipate,” “intend,” “expect” and similar expressions identify these forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described below under the caption “Plan-Related Risk Factors” in Section X. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward-looking statements. The Debtors do not undertake any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

**This Disclosure Statement has been prepared in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 and not necessarily in accordance with federal or state securities laws or other non-bankruptcy laws. This Disclosure Statement has not been approved or disapproved by the United States Securities and Exchange Commission (the “SEC”), any state securities commission or any securities exchange or association nor has the SEC, any state securities commission or any securities exchange or association passed upon the accuracy or adequacy of the statements contained herein.**

<b>QUESTIONS AND ADDITIONAL INFORMATION</b>
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**If you would like to obtain copies of this Disclosure Statement, the Plan or any of the documents attached hereto or referenced herein, or have questions about the solicitation and voting process or the Debtors’ Chapter 11 Cases generally, please contact Prime Clerk LLC, the Voting Agent, by (i) visiting the Document Website at <http://cases.primeclerk.com/americanapparel>, (ii) emailing to [aaballots@primeclerk.com](mailto:aaballots@primeclerk.com), (iii) calling 844-596-2261 (U.S. and Canada only) or 914-266-82421 (International), or writing APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022.**



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**TABLE OF EXHIBITS**

EXHIBIT 1 Joint Plan of Liquidation of the Debtors and Debtors in Possession

## I. INTRODUCTION

APP Winddown, LLC (f/k/a American Apparel, LLC), APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC), APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.), APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.), APP Knitting Winddown LLC (f/k/a KCL Knitting, LLC), and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.), as debtors and debtors in possession (collectively, the “Debtors”), submit this Disclosure Statement pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”) in connection with the solicitation of acceptances of the Plan. A copy of the Plan is attached as Exhibit 1.

This Disclosure Statement sets forth certain information regarding the prepetition operating and financial history of the Debtors, the events leading up to the commencement of the Chapter 11 Cases, events that have occurred during the Chapter 11 Cases and the anticipated liquidation of the Debtors’ remaining assets and distributions to holders of claims on or after the Effective Date if the Plan is confirmed and becomes effective. This Disclosure Statement also describes terms and provisions of the Plan, including certain effects of Confirmation of the Plan, certain risk factors, certain alternatives to the Plan and the manner in which distributions will be made under the Plan. The Confirmation process and the voting procedures that Holders of Claims entitled to vote on the Plan must follow for their votes to be counted are also discussed herein.

The Debtors believe that the Plan is the best means to efficiently and effectively implement the continued liquidation of their assets, as well as to effectuate distributions to creditors.

Except as otherwise provided herein, capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan. Except as otherwise stated herein, all dollar amounts provided in this Disclosure Statement and in the Plan are given in United States dollars.

On \_\_\_\_\_, 2018, the Bankruptcy Court entered an order approving this Disclosure Statement as containing “adequate information,” i.e., information of a kind and in sufficient detail to enable a hypothetical reasonable investor typical of the Holders of Claims or Interests to make an informed judgment about the Plan. THE BANKRUPTCY COURT’S APPROVAL OF THIS DISCLOSURE STATEMENT CONSTITUTES NEITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN NOR AN ENDORSEMENT OF THE MERITS OF THE PLAN BY THE BANKRUPTCY COURT.

THE DEBTORS BELIEVE THAT THE IMPLEMENTATION OF THE PLAN IS IN THE BEST INTERESTS OF EACH OF THE DEBTORS AND ITS STAKEHOLDERS. FOR ALL OF THE REASONS DESCRIBED IN THIS DISCLOSURE STATEMENT, THE DEBTORS URGE YOU TO RETURN YOUR BALLOT ACCEPTING THE PLAN BY THE VOTING DEADLINE (I.E., THE DATE BY WHICH YOUR BALLOT MUST BE ACTUALLY RECEIVED), WHICH IS \_\_\_\_\_, 2018 AT 5:00 P.M. PREVAILING EASTERN TIME.

### **A. General Summary of the Plan**

As discussed in more detail in Section IV below, the Plan contemplates the further liquidation of the Debtors' assets, the dissolution of the Debtors, distributions to creditors, the rejection of substantially all of the Debtors' remaining Executory Contracts and Unexpired Leases, and the release and exculpation of certain parties to by the Debtors and, to the maximum extent permitted by law, Holders of Claims and Interests.

Under the Plan, the Debtors' remaining assets, predominately causes of action, interests in foreign subsidiaries, and recoveries of collateral, will be liquidated for the benefit of Holders of Claims in Class 3 (Prepetition Term Loan Secured Claims). In addition, the Plan contemplates that all of the Debtors other than APP and Shipping will be deemed dissolved on or promptly after the Effective Date of the Plan. APP and Shipping will subsequently dissolve once the Post-Confirmation Debtor Functions have been completed or otherwise satisfied. The Plan also provides for the resolution of claims against the Debtors' estates, either by the Post-Confirmation Debtors (with respect to all claims except General Unsecured Claims and the Unbudgeted Administrative Claims), and by the Creditors' Fund Trustee (with respect to General Unsecured Claims and Unbudgeted Administrative Claims). The Plan also provides for distributions to be made to Holders of Allowed Claims.

### **B. Summary of Classes and Treatment of Claims and Interest**

For administrative purposes, the Plan assigns a letter to each Debtor (as set forth in the table below) and a number to each of the Classes of Claims against or Interests in the Debtors. For consistency, similarly designated Classes of Claims and Interests are assigned the same number across each of the Debtors.

Letter	Debtor
A	APP Winddown, LLC (f/k/a American Apparel, LLC)
B	APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC)
C	APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.)
D	APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.)
E	APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC)
F	APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.)

The following summarizes the treatment of the Classes of Claims and Interests, whether such Classes are impaired or unimpaired, whether such Classes entitled to vote on the Plan, and the estimated Allowed amount and the estimated recovery for each of the separate Classes of Claims provided for in the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Fee Claims) and Priority Tax Claims have not been classified.



<b>Class</b>	<b>Treatment</b>	<b>Status/ Entitlement to Vote</b>	<b>Estimated Allowed Amount<sup>3</sup></b>	<b>Estimated Recovery Rate<sup>4</sup></b>
Class 1A-1F  Other Priority Claims	On the later of (a) the Effective Date, and (b) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, or as soon as reasonably practicable thereafter, unless otherwise agreed to the Holder of an Allowed Other Priority Claim and by the Debtors or the Post-Confirmation Debtors, in either case with the consent of the Required Lenders, each Holder of an Allowed Other Priority Claim against a Debtor shall receive on account and in full and complete settlement and release of such Claim, Cash in the amount of such Allowed Other Priority Claim in accordance with section 1129(a)(9) of the Bankruptcy Code.	Unimpaired  Deemed to Accept the Plan  Not Entitled to Vote	\$50,000- \$135,000 <sup>5</sup>	100%
Class 2A-2F  Other Secured Claims	On the later of (a) the Effective Date and (b) the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, or as soon as reasonably practicable thereafter, unless otherwise agreed by the Holder of an Allowed Other Secured Claim and by the Debtors or the Post-Confirmation Debtors, in either case with the consent of the Required Lenders, each Holder of an Allowed Other Secured Claim shall receive the following treatment	Unimpaired  Deemed to Accept the Plan  Not Entitled to Vote	\$130,000- \$140,000 <sup>6</sup>	100%

<sup>3</sup> The Estimated Allowed Amounts are estimates only and actual amounts may be materially greater or less than those set forth herein.

<sup>4</sup> The Estimated Recovery Rates are estimates only and actual recoveries may be materially greater or less than those set forth herein based on, among other things, Allowed Claims arising from the rejection of Executory Contracts or Unexpired Leases and resolution of disputed or unliquidated Claims.

<sup>5</sup> This amount does not include Priority Tax Claims, which are estimated to be approximately \$250,000-\$275,000.

<sup>6</sup> The estimated amount of Other Secured Claims is net of deposits or cash collateral (including cash equivalents) securing such obligations. The Debtors have posted more than \$35 million in cash collateral.

	at the option of the Debtors, with the consent of the Required Lenders: (i) payment in full (in Cash) of any such Allowed Other Secured Claim; (ii) satisfaction of any such Allowed Other Secured Claim by delivering the collateral securing any such Allowed Other Secured Claim and paying any interest required to be paid under section 506(b) of the Bankruptcy Code; or (iii) such other recovery necessary to satisfy section 1129 of the Bankruptcy Code to render such claim unimpaired.			
Class 3A-3F Prepetition Term Loan Secured Claims	Unless otherwise agreed by the Holder of an Allowed Prepetition Term Secured Loan Claim and the Debtors or the Post-Confirmation Debtors, each Holder of an Allowed Prepetition Term Loan Secured Claim, subject to the terms of the Lender Settlement, in full and final satisfaction, settlement and release of, and in exchange for, such Claim, shall receive its respective share of each Prepetition Term Loan Distribution. In accordance with the Lender Settlement, each Prepetition Term Loan Distribution shall be allocated, after the payment of the reasonable fees and expenses of the Prepetition Agent (including the reasonable fees and expenses of counsel), among the Standard General Parties, on the one hand, and the Lender Committee Parties, on the other hand, as follows: (a) the Standard General Parties shall receive, in the aggregate, (i) 10% of	Impaired  Entitled to Vote	\$[ ] million- \$[ ] million (after the interim distribution) <sup>7</sup>	Less than 100%

<sup>7</sup> As of the Petition Date, the outstanding obligations under the Prepetition Loan Documents was \$216.91 million. After giving effect to the interim distribution pursuant to the Lender Settlement of \$95.8 million, the Debtors anticipate making additional distributions on account of the Prepetition Term Loan Secured Claims of approximately [ ] to [ ] million. The estimated amount of the Allowed Prepetition Term Loan Secured Claims is net of the interim distribution and represents that anticipated additional distributions by the Post-Confirmation Debtors.

	such Prepetition Term Loan Distribution (other than WC Recovered Cash Collateral) and (ii) (A) the first \$2.5 million of WC Recovered Cash Collateral and (B) 10% of all WC Recovered Cash Collateral in excess of such \$2.5 million; and (b) the Lender Committee Parties shall receive, in the aggregate, (i) 90% of such Prepetition Term Loan Distribution (other than WC Recovered Cash Collateral) and (ii) all WC Recovered Cash Collateral not distributed to the Standard General Parties pursuant to Section II.C.3.c of the Plan.			
Class 4A-4F General Unsecured Claims	Each Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such General Unsecured Claim, its Pro Rata Share of the Creditors' Fund Trust Net Class 4 Distributable Cash, up to the Allowed amount of said Holder's General Unsecured Claim; <i>provided, however</i> , that pursuant to the UCC-LT Settlement, members of the Committee of Lead Lenders that are Holders of Prepetition Term Loan Deficiency Claims shall not receive a distribution on account of such Prepetition Term Loan Deficiency Claims, and any such Prepetition Term Loan Deficiency Claims shall not be used in the calculation of Pro Rata Share.	Impaired  Entitled to Vote	\$126 million - \$200 million	0-2%
Class 5A-5F Intercompany Claims	Intercompany Claims shall be cancelled, reinstated or modified, in the discretion of the Post-Confirmation Debtors, and no distribution shall be made on account of such Claims.	Impaired  Deemed to Reject  Not Entitled to Vote	Intercompany Claims of approximately \$300 million are set forth on the Debtors'	0%

			Schedules as disputed.	
Class 6A-6F Interests	Interests in a Debtor shall be cancelled if and when such Debtor is dissolved in accordance with Section III.A.1 of the Plan, which shall be on the Effective Date for Debtors other than for the Post-Confirmation Debtors (the Post-Confirmation Debtors are APP Winddown and APP Shipping Winddown). Each holder of an Allowed Interest shall receive in full satisfaction, settlement, and release of, and in exchange for, such Interest its Pro Rata Share of the Class 6 Distribution.	Impaired  Deemed to Reject  Not Entitled to Vote	N/A	\$0

### **C. Parties Entitled to Vote on the Plan**

Under the provisions of the Bankruptcy Code, not all parties in interest are entitled to vote on a chapter 11 plan. Creditors or equity interest holders whose claims or interests are not impaired by a plan are deemed to accept the plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote. In addition, creditors or equity interest holders whose claims or interests are impaired by the plan and will receive no distribution under the plan are also not entitled to vote because they are deemed to have rejected the plan under section 1126(g) of the Bankruptcy Code. For a discussion of these matters, see Section VI.B below.

Holders of Claims in Classes 3 (Prepetition Term Loan Secured Claims) and 4 (General Unsecured Claims) are impaired by the Plan and may receive a distribution under the Plan. These Classes are entitled to vote. Holders of Claims in Classes 1 (Other Priority Claims) and 2 (Other Secured Claims) are unimpaired under the Plan and are deemed to have accepted the Plan, and are not entitled to vote. Holders of Claims in Class 5 (Intercompany Claims) and Interests in Class 6 (Interests) will not receive or retain any property under the Plan following dissolution of the Debtors, are deemed to have rejected the Plan, and are not entitled to vote.

The Bankruptcy Code section 1126 defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims actually voted to accept or reject the plan. Your vote on the Plan is important. The Bankruptcy Code requires as a condition to confirmation of a chapter 11 plan that each class that is impaired and entitled to vote under a plan votes to accept such plan, unless the plan is being confirmed under the “cramdown” provisions of section 1129(b) of the Bankruptcy Code. Section 1129(b) permits confirmation of a chapter 11 plan, notwithstanding the non-acceptance of the plan by one or more impaired classes of claims or equity interests, so long as at least one impaired class of claims votes to accept a proposed plan. Under that section,

a plan may be confirmed by a bankruptcy court if it does not “discriminate unfairly” and is “fair and equitable” with respect to each non-accepting class.

For a detailed description of the Classes of Claims and Interests and their treatment under the Plan, see Section V.B.

#### **D. Solicitation Package**

The package of materials (the “Solicitation Package”) to be sent to Holders of Claims and Interests will contain:

1. a cover letter describing (A) the contents of the Solicitation Package; (B) copies of the Plan, the Disclosure Statement, and the Disclosure Statement Order in electronic format (e.g., either CDs, DVDs, or USB drives in the Debtors’ discretion); and (C) information about how to obtain, free of charge, paper copies of any of the documents included in the Solicitation Package, and, if so determined by the Debtors, setting forth the Debtors’ recommendations with respect to the Plan;
2. a notice of the Confirmation Hearing (the “Confirmation Hearing Notice”);
3. for Holders of Claims in voting Classes (i.e., Holders of Claims in Classes 3A through 3F (Prepetition Term Loan Secured Claims) and 4A through 4F (General Unsecured Claims), an appropriate form of Ballot, instructions on how to complete the Ballot and a pre-paid, pre-addressed Ballot return envelope and such other materials as the Bankruptcy Court may direct; and
4. any Plan support letter prepared by the Creditors’ Committee.

In addition to the service procedures outlined above (and to accommodate creditors who wish to review exhibits not included in the Solicitation Packages in the event of paper service): (1) the Plan, the Disclosure Statement and, once they are filed, all exhibits to both documents will be made available online at no charge at the Document Website (<http://cases.primeclerk.acom/americanapparel>); and (2) the Debtors will provide parties in interest (at no charge) with hard copies of the Plan and/or Disclosure Statement upon written request to Prime Clerk LLC at APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022.

#### **E. Voting Procedures, Ballots and Voting Deadline**

If you are entitled to vote to accept or reject the Plan, a Ballot(s) has been enclosed in your Solicitation Package for the purpose of voting on the Plan. Please vote and return your Ballot(s) to Prime Clerk, LLC (the “Voting Agent”) at APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022, or by overnight delivery or by hand courier.

After carefully reviewing (1) the Plan, (2) this Disclosure Statement, (3) the order entered by the Bankruptcy Court (the “Disclosure Statement Order”) that, among other things,

established the voting procedures, scheduled a Confirmation Hearing and set the voting deadline and the deadline for objecting to Confirmation of the Plan and (4) the detailed instructions accompanying your Ballot, please indicate on your Ballot your vote to accept or reject the Plan. These documents contain important information concerning how Claims are classified for voting purposes and how votes will be tabulated. Holders of Claims entitled to vote are also encouraged to review the relevant provisions of the Bankruptcy Code and Bankruptcy Rules and/or consult their own attorney.

In addition to accepting Ballots via first class mail, overnight courier, and hand delivery, the Voting Agent will accept Ballots via electronic, online transmissions, solely through a customized online balloting portal on the Document Website (<http://cases.primeclerk.com/americanapparel>). Parties entitled to vote may cast an electronic Ballot and electronically sign and submit the Ballot instantly by utilizing the online balloting portal (which allows a Holder eligible to vote to submit an electronic signature). Instructions for electronic, online transmission of Ballots are set forth on the forms of Ballots. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective. Except with respect to Ballots timely submitted via the Voting Agent's online balloting portal, no Ballots may be submitted electronically to the Voting Agent, including by electronic mail. Any Ballots submitted by electronic mail will not be accepted by the Voting Agent.

Ballots should not be sent directly to the Debtors, the Creditors' Committee, or their agents (other than the Voting Agent).

In order to be counted, Ballots must be properly completed in accordance with the voting instructions on the Ballot and **actually received** no later than the Voting Deadline (i.e., [\_\_\_\_], 2018 at 5:00 p.m. (prevailing Eastern time)). However, the Debtors reserve the right, in their sole discretion, to accept Ballots submitted by a means other than those outlined above or submitted after the Voting Deadline.

Each Ballot has been coded to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan by a means other than the online voting portal, you must use only the coded Ballot or Ballots sent to you with this Disclosure Statement. If you (1) hold Claims in more than one voting Class, or (2) hold multiple Claims within one Class, you may receive more than one Ballot.

If a Holder of a Claim delivers to the Voting Agent more than one timely, properly completed Ballot with respect to such Claim prior to the Voting Deadline, the latest dated properly executed Ballot received before the Voting Deadline will be deemed to reflect the voter's intent and, thus, will supersede any prior Ballots.

If you are a Holder of a Claim who is entitled to vote on the Plan as set forth in the Disclosure Statement Order and did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the Disclosure Statement, the Plan, the Ballot or the procedures for voting on the Plan, please contact the Voting Agent (1) by telephone (a) for U.S. and Canadian callers toll-free at 844-596-2261 and (b) for international callers at [914-266-

8242, (2) by e-mail at [aaballots@primeclerk.com](mailto:aaballots@primeclerk.com), or (3) in writing at APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022.

FOR FURTHER INFORMATION AND INSTRUCTIONS ON VOTING TO ACCEPT OR REJECT THE PLAN, SEE SECTION V BELOW.

#### **F. Confirmation Exhibits**

The Debtors will separately file copies of all Confirmation Exhibits with the Bankruptcy Court no later than seven days before the Voting Deadline (or such later date as may be approved by the Bankruptcy Court). All Confirmation Exhibits will be made available on the Document Website once they are Filed. The Debtors reserve the right, in accordance with the terms of the Plan, to modify, amend, supplement, restate or withdraw any of the Confirmation Exhibits after they are Filed and will promptly make such changes available on the Document Website.

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

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on whether the Debtors have fulfilled the confirmation requirements of section 1129 of the Bankruptcy Code. The Confirmation Hearing has been scheduled for[ \_\_\_\_ ], 2018 at[\_\_\_\_]:00 [\_\_].m., prevailing Eastern time, before the Honorable Chief Judge Brendan L. Shannon, United States Bankruptcy Judge for the District of Delaware, in Courtroom No. 1, Sixth Floor, at the United States Bankruptcy Court for the District of Delaware, located at 824 North Market Street, Wilmington, Delaware 19801. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice.

Any objection to Confirmation must (1) be in writing, (2) state the name and address of the objecting party and the nature of the Claim or Interest of such party and (3) state with particularity the basis and nature of such objection. Any such objections must be Filed and served upon the persons designated in the Confirmation Hearing Notice in the manner and by the deadline described therein.

### **II. THE DEBTORS' BUSINESS AND CORPORATE STRUCTURE<sup>8</sup>**

#### **A. Overview of the Debtors' Business and Corporate Structure**

APP, the direct or indirect parent of each of the Debtors and their non-Debtor foreign subsidiaries, is a Delaware limited liability company. Each of the other Debtors is organized under the laws of California. The Debtors' foreign subsidiaries are organized under the laws of various foreign countries. A corporate organization chart depicting the ownership structure of the Debtors and the foreign direct and indirect subsidiaries as of the Petition Date is attached as Exhibit A to the *Declaration of Mark Weinstein in Support of First Day Pleadings* [Docket No. 24] (the "First Day Declaration") on the Document Website.

Prior to the sale of certain of the Debtors' assets to Gildan Activewear SRL ("Gildan"), the cessation of their manufacturing and distribution operations, and the closing of the Debtors' retail locations, the Debtors and their non-Debtor foreign subsidiaries operated a vertically

<sup>8</sup> Certain figures and percentages reflected in this Section II have been approximated.

integrated manufacturing, distribution and retail business focused on branded fashion-basic apparel. The Debtors operated through three domestic business segments — manufacturing, retail, and wholesale.

As of the Petition Date, (i) the Debtors' manufacturing business segment operated three manufacturing facilities in and around the downtown Los Angeles area and one distribution center located in La Mirada, California; (ii) the Debtors' retail business segment operated approximately 110 retail and outlet stores located in 28 states and the District of Columbia, as well as an online store; and (iii) the Debtors' wholesale business sold undecorated apparel products to distributors and third party screen printers. Prior to commencing the winding down of their operations shortly before the Petition Date, the Debtors' non-Debtor foreign subsidiaries operated approximately 80 retail stores across 18 other countries.

## **B. The Prior Chapter 11 Cases**

On October 5, 2015, the Debtors commenced the Prior Cases in order to pursue and effectuate a pre-arranged chapter 11 plan of reorganization. From the outset, the Debtors' proposed pre-arranged plan of reorganization had the overwhelming support of its secured lenders. And during the course of the Prior Chapter 11 Cases, the Company worked cooperatively with representatives of its remaining creditor constituencies to garner their support, which ultimately resulted in a plan of reorganization that was supported by all of the Debtors' key creditor constituencies. This plan of reorganization (the "Prior Plan") was unanimously approved by all classes of creditors, and was confirmed by the Court on January 27, 2016. The Prior Plan was substantially consummated and became effective on February 5, 2016.

More detail regarding the Prior Cases and the events that preceded the Prior Cases may be found in the *Declaration of Mark Weinsten in Support of First Day Pleadings*, filed in the Prior Cases [Docket No. 3], and the *Disclosure Statement for Joint Plan of Reorganization Proposed by the Debtors and Debtors in Possession*, dated November 20, 2015, filed in the Prior Cases [Docket No. 369].

## **C. Non-Debtor Foreign Operations**

In the days leading up to the filing of these chapter 11 Cases, non-Debtor foreign subsidiaries in the United Kingdom, Ireland, Germany, Spain, Canada, Japan and Australia commenced proceedings to wind down their operations in their local jurisdictions. Following the Petition Date, the Debtors' remaining non-Debtor subsidiaries likewise commenced wind down proceedings or otherwise ceased operations. The Debtors believe there is limited or no value attributable to the Debtors' equity interests in their foreign subsidiaries, with the possible exception of the Debtors' equity interests in non-Debtor foreign subsidiaries located in China and Canada.<sup>9</sup>

## **D. The Debtors' Prepetition Organizational and Capital Structure**

As of the Petition Date, the Debtors had outstanding long-term debt in the aggregate principal amount of approximately \$217 million under the Prepetition Credit Agreement (defined

<sup>9</sup> As noted below, the Debtors sold their equity interests in their South Korean subsidiary [See Docket No. 1576]. In addition, the Debtors received funds relating to their interest in their Japanese subsidiary [See Docket No. 801].



below). Additionally, APP has guaranteed the obligations of American Apparel (Carnaby) Limited (“AA Carnaby”) under a \$15 million unsecured loan due October 15, 2020.

## **1. Secured Debt**

### *a.* Prepetition Credit Agreement

During the Prior Cases, the Company had access to approximately \$90.1 million in debtor-in-possession credit financing (the “Prior DIP Facility”). Upon the effective date of the Prior Plan, loans outstanding under the Prior DIP Facility were converted (the “Converted Loans”) to loans under that certain Credit Agreement dated as of February 5, 2016, by and among certain of the Debtors as Borrowers, the Prepetition Term Loan Lenders and Wilmington Trust, National Association, as Administrative Agent (the “Prepetition Credit Agreement”). In addition to the Converted Loans, the Prepetition Credit Agreement also provided the Company with an additional \$30 million in funds upon emergence (such loans, together with the Converted Loans, the “Exit Loans”). Subsequent amendments on April 5, May 11, July 5, July 12, August 5, September 6, September 20, September 28 and October 21 of 2016 amended the agreement and added an additional principal amount of approximately \$82 million in the aggregate to the Prepetition Credit Agreement. The Debtors’ obligations under the Prepetition Credit Agreement are secured by a first-priority lien over substantially all of the Debtors’ assets. As of the Petition Date, approximately \$217 million was outstanding under the Prepetition Credit Facility.

### *b.* Funded Unsecured Guaranty Obligations

On March 25, 2015, one of the Debtors’ foreign subsidiaries, American Apparel (Carnaby), Limited, entered into a credit agreement to borrow \$15 million from Standard General L.P., with interest accruing at 14% per annum (the “UK Loan”). APP guaranteed this loan, and reinstated that guarantee during the Prior Cases.

As of the Petition Date, an aggregate principal balance of approximately \$15 million was outstanding under the UK Loan.

### *c.* Trade Debt

The Debtors owe material amounts, on an unsecured basis, to various vendors and landlords.

### *d.* Foreign Subsidiary Claims

Various foreign, non-Debtor subsidiaries filed proofs of claim against the Debtors. As of November 1, 2017, the unresolved filed claims by the Debtors’ foreign subsidiaries (or their representatives) aggregate to approximately \$45.8 million.

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

From their inception in 1998 through 2009, the Debtors, together with their non-Debtor foreign subsidiaries, opened more than 280 stores in 19 countries, opened five manufacturing facilities in Southern California and increased its net sales revenue to \$663 million. The Debtors financed their growth—as well as their general operations—largely with a combination of

borrowings from related and unrelated parties, bank and other debt, lease financing and proceeds from the exercise of purchase rights and issuance of common stock. As a result, the Debtors were for years burdened with a high level of indebtedness, forcing them to dedicate a substantial portion of their cash flow to pay interest and principal on their debt. In turn, the Debtors were plagued with reduced liquidity, increased vulnerability to downturns in the business, industry or the general economy, and limited flexibility in planning for or reacting to changes or disruptions in the business and the retail industry.

By the end of 2015, the Debtors' nearly \$300 million in indebtedness (which came at a cost of nearly \$40 million annually) had become unsustainable, and they filed the Prior Cases to consummate a financial restructuring. The Prior Cases successfully reduced the Debtors' indebtedness and provided the Debtors with \$40 million of fresh liquidity (as well as the contemplated Additional New Capital (as defined in the First Day Declaration), along with the Converted Loans, in order to execute the then-CEO's turnaround plan. The turnaround plan contemplated an overhaul of the Debtors' operational systems and processes to improve quality and reduce losses, while at the same time increasing sales through the design and sale of new apparel and developing e-commerce.

Unfortunately, the turnaround plan was not successful and the anticipated stabilization and gains in revenue were not fully realized. In addition to a challenging macroeconomic environment in retail generally, certain key elements of the turnaround plan were not implemented. This led to a further decline in revenue. In the face of mounting losses, members of the Debtors' senior management began to leave, including Hassan Natha, the Debtors' CFO and Ms. Schneider, the CEO.

In the months leading up to the filing of these Chapter 11 Cases, the Debtors were borrowing more than \$2 million each week just to keep afloat. This was not sustainable. As a result, the Debtors began to explore strategic options, including a sale of some or all of their assets. The Debtors hired Houlihan Lokey Capital, Inc. ("Houlihan") and conducted a lengthy and robust marketing process for the Debtors' assets. Houlihan explored all reasonable alternatives, including selling the Debtors as a whole and by the Debtors' individual business lines, as well as combining bids to create strategic partnerships. After a lengthy prepetition process, the Debtors determined that filing for chapter 11 relief in order to conduct an auction for substantially all of their assets with Gildan's bid as the stalking horse bid for the Debtors' intellectual property and certain of their wholesale assets while self-liquidating retail operations represented the best way to maximize the value of the Debtors' estates for the benefit of their creditors and stakeholders.

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

#### **A. Voluntary Petitions**

On November 14, 2016 (defined in the Plan as the "Petition Date"), the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. All of the Chapter 11 Cases have been consolidated for procedural purposes only and are being administered jointly.

The Debtors have continued, and will continue until the Effective Date, to manage their properties as debtors-in-possession, subject to the supervision of the Bankruptcy Court and in accordance with the provisions of the Bankruptcy Code. An immediate effect of the filing of the Chapter 11 Cases was the imposition of the automatic stay under section 362 of the Bankruptcy Code, which, with limited exceptions, enjoined the commencement or continuation of: (1) all collection efforts by creditors; (2) enforcement of liens against any assets of the Debtors; and (3) litigation against the Debtors.

## **B. First Day Relief**

On the Petition Date, the Debtors filed a number of motions and other pleadings (the "First Day Motions"), the most significant of which are described below, to be considered at the hearing before the Bankruptcy Court on November 15, 2016 (the "First Day Hearing") and for a subsequent hearing to be held in early December 2016. The purpose of these motions was to stabilize the Debtors' business in the initial days of these Bankruptcy Cases and to ensure a smooth transition into chapter 11 with minimal disruption to the Debtors' business.

In particular, the First Day Motions sought authority to, among other things: (1) administer the Bankruptcy Cases jointly for procedural purposes; (2) maintain certain customer programs and honor related prepetition obligations to the Debtors' customers; (3) pay certain prepetition employee wages, benefits and related items; (4) continue use of the Debtors' cash management system; (5) pay certain prepetition claims held by the Debtors' shippers and processors; (6) confirm certain protections of the Bankruptcy Code; (7) pay certain prepetition taxes; (8) establish notice and objection procedures for transfer of equity of the Debtors and establish a record date for notice and sell down procedures for trading in claims against the Debtors' estates; (9) establish adequate assurance procedures with respect to the Debtors' utility providers; (10) continue the Debtors' insurance programs and pay related obligations; (11) obtain post-petition financing (the "DIP Motion," as described in further detail below); (12) shorten time and schedule a hearing regarding approval of bidding procedures for the sale of substantially all of their assets and authorization to enter into the stalking horse purchase agreement with Gildan (as described in further detail below); (13) appoint a claims noticing agent; and (14) file a consolidated list of creditors.

In addition to the First Day Motions, on the Petition Date, the Debtors also filed motions seeking authority to, among other things, (1) establish procedures for the rejection of executory contracts and unexpired leases, and to abandon owned personal property remaining at any rejected leased premises (the "Rejection Procedures"); (2) reject certain executory contracts and unexpired leases; and (3) extend the deadline to file their Schedules and statements of financial information.

On November 15 and November 17, 2016, the First Day Motions were granted, including a subset of them on an interim basis. On December 9, 2016 and December 12, 2016, final orders were entered with respect to all First Day Motions not previously approved on a final basis.

## **C. Debtor-in-Possession Credit Facility**

On the Petition Date, the Debtors filed the DIP Motion, seeking authority to obtain postpetition financing (the "DIP Credit Facility") in the aggregate principal amount of \$30

million with Encina Business Credit, LLC, as administrative and collateral agent, and the lenders thereunder (the “DIP Lenders”) and to utilize cash collateral. Prepetition, the Debtors had engaged in a competitive marketing process designed to secure postpetition financing on the best available terms. The Debtors and Houlihan sought proposals from potential financing sources, including 18 third party lenders and the Debtors’ existing secured lenders. Of the 18 third party lenders that were contacted, seven executed non-disclosure agreements and received access to an electronic data room containing due diligence information related to the Debtors and their financing needs. Ultimately, the Debtors received six proposals for possible debtor-in-possession financing. The Debtors determined that the DIP Credit Facility was the most favorable proposal.

On November 17, 2016, the Bankruptcy Court entered an interim order authorizing certain relief requested in the DIP Motion. The Final DIP Order was entered on December 12, 2016 [Docket No. 299]. The Debtors did not borrow, and are no longer able to borrow, any amounts under the DIP Credit Facility.

#### **D. The Creditors’ Committee**

On November 22, 2016, the U.S. Trustee appointed the Creditors’ Committee in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, and on April 25, 2017, the U.S. Trustee amended its notice of appointment of the Creditors’ Committee.

The Creditors’ Committee currently consists of the following members: (1) E & C Fashion, Inc.; (2) Simon Property Group; (3) Flintfox Consulting Group, Inc.; (4) Andari Fashion Inc.; (5) Mediamath, Inc.; and (6) Garden City Group, LLC. Atalaya Asset Income Fund I LP was appointed to the Creditors’ Committee upon its formation, but resigned as of April 24, 2017. Counsel to the Creditors’ Committee are Cooley LLP and Bayard, P.A. The Creditors’ Committee’s financial advisor is Emerald Capital Advisors.

The Creditors’ Committee supports the Plan.

#### **E. Sale**

On January 9, 2017, the Debtors conducted an auction for substantially all of their assets pursuant to the terms of the Bidding Procedures Order. In addition to a \$66 million bid submitted by Gildan, the Debtors received a qualifying offer from S&E Apparel, for the sale of the Debtors’ intellectual property rights, the right to purchase certain wholesale work orders and the option to assume certain of the Debtors’ industrial leases. After multiple rounds of bidding, including bids submitted by certain retail liquidators for the Debtors’ inventory, the Debtors designated Gildan’s \$88 million bid as the winning bidding for the Debtors’ intellectual property rights, certain equipment (subject to a carve-out for the Atalaya Equipment, among other equipment), plus the aforementioned wholesale purchase orders. *See Supplemental Declaration of Saul E. Burian in Support of Debtors Sale and Bidding Procedures Motion and Entry of One or More Sale Orders* [Docket No. 485]. The sale to Gildan (the “Sale”) closed on February 8, 2017.

## **F. Further Motions and Related Events in the Existing Chapter 11 Cases**

Since the Petition Date, the Debtors have sought and obtained approval for a number of additional motions to aid in the efficient administration of the Chapter 11 Cases as evidenced on the docket for these Cases. Some of the more substantive relief sought by the Debtors is detailed in Sections III.F.1 through III.F.8.

### **1. Claims Process and Bar Date**

On January 11, 2017, the Debtors filed their Schedules identifying the assets and liabilities of their Estates. Debtor APP Retail Winddown, Inc. filed amended Schedule E/F on February 23, 2017. In addition, pursuant to an order entered on February 21, 2017 [Docket No. 588] (the “Bar Date Order”), the Bankruptcy Court established the following bar dates for filing Proofs of Claim in the Chapter 11 Cases:

- ☐ the general bar date (the “General Bar Date”) for all Claims, except as noted below, of April 11, 2017;
- ☐ a bar date for government units holding Claims against the Debtors of May 15, 2017;
- ☐ a bar date for Claims amended or supplemented by the Debtors’ amended Schedules by the later of (a) the General Bar Date; and (b) the date that is thirty (30) days after the date that notice of the applicable amendment to the Schedules is served on the claimant; and
- ☐ a bar date for any claims arising from or relating to the rejection of executory contracts or unexpired leases, in accordance with section 365 of the Bankruptcy Code pursuant to a rejection notice as authorized by the Order approving the Rejection Procedures [Docket No. 310] or any other an order of the Bankruptcy Court, the later of (a) the General Bar Date, (b) the date that is thirty (30) days after the entry of the Rejection Date or the Objection Deadline (as defined in the rejection notice in accordance with the Rejection Procedures), and (c) any other date as set by an Order of the Court.

In addition, the Bar Date Order established April 11, 2017 as the date by which any person or entity (including governmental units) asserting an administrative expense claim incurred on or after the Petition Date through and including March 15, 2017 were required to file such proofs of claim (the “Administrative Bar Date”), including claims under sections 365(d)(3), 365(d)(5) or 503(b)(1) through (8) of the Bankruptcy Code (but excluding (1) claims for stub rent, to the extent that a holder of a claim for stub rent did not dispute the payment it received from the Stub Rent Escrow (as defined in the Bar Date Order), and (2) claims under section 503(b)(9) of the Bankruptcy Code, which proofs of claim were required to be filed by the General Bar Date).

The Debtors provided notice of the bar dates above as required by the Bar Date Order.

As of [September 5], 2018, approximately [3,418] proofs of claim and requests for payment of administrative claims were filed. The aggregate liquidated amount of filed and scheduled claims exceeds \$[22,036,801,942]. To date, the Debtors have filed 10 omnibus objections to claims, seeking to expunge, reclassify or reduce approximately [1,535] claims.

The Debtors estimate that their non-priority, unsecured claims, in the aggregate, will total approximately \$[120] to \$[200] million.

## **2. KEIP/KERP**

On December 14, 2016, the Debtors sought approval of a Key Executive Incentive Plan (the “KEIP”) and Key Employee Retention Plan (the “KERP,” and together with the KEIP, the “KEIP/KERP”) for seven (7) of the Debtors’ non-insider employees and four (4) of the Debtors’ senior executives, all of whom were critical to running the Debtors’ operations, marketing their assets and ultimately winding up the Debtors’ affairs following a sale or other transaction [Docket No. 327] (the “KEIP/KERP Motion”). On January 4, 2017, the court entered an order approving the KEIP/KERP [Docket No. 422].

Briefly summarized, the KERP had two components, a retention component and a transaction component. The timing of the payments varied based on when the closing of a sale of substantially all of the Debtors’ assets occurred, and if there were any transition services required of the Debtors after the closing of any such sale. With a pre-June 30, 2017 closing of a sale, which was the case here with the sale of certain of the Debtors’ assets to Gildan, 50 percent of the retention component was payable on closing of the sale transaction and the remaining 50 percent of the retention component was payable on the first business day that was 60 days after such closing, provided that the employee remained employed by the Debtors, was employed or retained by the purchaser, or was terminated by the Debtors without cause. In addition, certain employees were entitled to a transaction component payable upon closing of a sale transaction. The KERP also had a discretionary bonus pool for non-insider employees not already included in the KERP. The maximum total cost of the KERP was expected to be \$867,500. The Debtors have fulfilled their obligations to the seven named participants.

The amounts payable under the KEIP were based on Distributable Proceeds (as defined in the KEIP/KERP Motion). Based on the Sale proceeds, the Debtors determined that they were, immediately upon closing of the Sale, in a position to distribute the maximum threshold of Distributable Proceeds under the KEIP (as projected Distributable Proceeds exceeded \$100 million, and the full KEIP (plus a 10 percent kicker) was payable if Distributable Proceeds exceeded \$88 million). In their discretion, however, the Debtors held back 10 percent of each executive’s allotted payment pending their dismissal from the Debtors. Senior executives have now been released and KEIP payments have been made.

## **3. Store Closing Procedures**

On December 7, 2016, the Debtors sought approval, among other things, to conduct store closing sales at nine (9) of their “American Apparel” stores and to put in place procedures to conduct additional store closing sales, as necessary, [Docket No. 235] (the “Store Closure Motion”) in accordance with the terms of the Sale Guidelines (as defined in the Store Closure

Motion). As part of the Store Closing Motion, the Debtors also sought authorization to enter into a Liquidation Consulting Agreement with a joint venture comprised of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC. On December 19, 2016, the Court entered an order approving the Store Closure Motion [Docket No. 357].

Pursuant to the order approving the Store Closure Motion, on February 2, 2017, the Debtors filed a notice stating that they intended to close an additional ninety-five (95) stores pursuant to the Sale Guidelines. Ultimately, all of the Debtors' retail stores were closed and the related leases rejected or terminated.

#### **4. Settlement with the Litigation Trustee and Creditors' Committee**

On January 4, 2017, the Debtors and the Creditors' Committee filed a joint motion seeking approval of a settlement (the "UCC-LT Settlement") among the Debtors, the Creditors' Committee, the Litigation Trustee appointed in the Prior Cases and the Committee of Lead Lenders [Docket No 428]. On January 12, 2017, the Bankruptcy Court approved the UCC-LT Settlement [Docket No. 493].

The UCC-LT Settlement resolved certain objections by the Creditors' Committee to the DIP Motion, as set forth in the Creditors' Committee's objection filed on December 7, 2016 [Docket No. 238]. In addition, the UCC-LT Settlement resolved the Litigation Trustee's motion to dismiss the Chapter 11 Cases, filed on December 8, 2016 [Docket No. 274].

Pursuant to the UCC-LT Settlement, the Debtors were authorized to, among other things, establish the following Escrows from the proceeds generated by the Sale: (a) a fund in an amount sufficient to pay the Debtors' unpaid November 2016 rent obligations (the "Stub Rent Escrow"); (b) a fund in an amount sufficient to pay the Debtors' obligations to holders of allowed claims arising under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Escrow"); and (c) a fund in the amount of \$2.5 million for the benefit of the Debtors' general unsecured creditors and the beneficiaries of the litigation trust established in the Prior Cases (with the cost and expense of such funding and the costs and professional fees of these chapter 11 Cases to be allocated among all of the Debtors' assets pursuant to a further order of the Court) (the "Settlement Escrow"). The Committee of Lead Lenders waived their right to participate in distributions from the Settlement Escrow.

In addition, the UCC-LT Settlement, among other things, provided that (a) the Creditors' Committee and the Litigation Trustee consented to the entry of a final cash collateral order; (b) the Litigation Trustee's motion to dismiss would be deemed dismissed with prejudice; (c) the Creditors' Committee's objection to the DIP Motion would be deemed withdrawn; (d) the parties would not object to the KEIP/KERP Motion; (e) the ongoing fees of the Creditors' Committee's professionals would be capped at \$500,000 post-settlement; (f) the Creditors' Committee and the Litigation Trustee would not object to mechanisms to conclude the Chapter 11 Cases that were not materially inconsistent with the UCC-LT Settlement; and (g) the Litigation Trustee (and not the Debtors) would resolve general unsecured claims in the Prior Cases, subject to certain conditions.

The Debtors complied with the Settlement Order, and created segregated escrow accounts upon the closing of the Gildan Sale. While distributions of the Stub Rent Escrow were made within seven days of the UCC-LT Settlement's effective date, as required under the Settlement Order, distributions from the 503(b)(9) Escrow and the Settlement Escrow have not been made and may not be made without a further order of the Court. To that end, the Plan provides for distributions to be made from the 503(b)(9) Escrow and the Settlement Escrow upon the Effective Date of the Plan and in accordance with the terms therein.

## 5. The Lender Settlement

On November 22, 2017, the Debtors filed a motion seeking approval of a settlement (the "Lender Settlement") with the Lender Committee Parties, the Standard General Parties, and the Prepetition Agent. On December 12, 2017, the Bankruptcy Court approved the Lender Settlement [Docket No. 1415].

The Lender Settlement resolved two disputes that the UCC-LT Settlement did not resolve. First, shortly after the Committee Settlement was approved, the Standard General Parties initiated an adversary proceeding against the Lender Committee Parties and the Prepetition Agent alleging certain causes of action relating to amendments to the Prepetition Credit Agreement. *See Standard General L.P. v. Monarch Master Funding, Ltd.*, Adv. Pro. 17-50014 (BLS) (January 23, 2017) (the "Adversary Proceeding"). The Lender Committee Parties moved to dismiss the adversary proceeding in its entirety, and the Court heard arguments on May 31, 2017, though no ruling had been rendered at the time of the Lender Settlement. Second, the UCC-LT Settlement left unresolved the issue of how to allocate expenses incurred by the Debtors' estates during the course of the Chapter 11 Cases and sale proceeds realized by the Debtors during the Chapter 11 Cases as among the collateral securing the debt under the Prepetition Credit Agreement.

After months of hard-fought negotiations, the parties agreed to the terms of the Lender Settlement. The Lender Settlement provided for, among other things, (i) the allowance of the Prepetition Term Loan Claims of the non-Debtor parties as set forth in the Final DIP Order, (ii) the allocation of distributions to the Prepetition Term Loan Lenders as described below, (iii) certain provisions regarding recoveries on account of collateral posted to secure the Debtors' workers compensation policies, (iv) releases among the Parties; (v) an interim distribution to the Prepetition Term Loan Lenders in the amount of approximately \$95.8 million; (vi) that funds remaining in the Debtors' estates after the interim distribution would be available for actual, reasonable and necessary expenses incurred in connection with seeking confirmation of, and funding certain distributions under, the Plan and for winding down the Debtors' affairs; (vii) that the parties would negotiate in good faith documentation for, and support (and subject to receipt of the Disclosure Statement, vote for) the Plan, to the extent consistent with the Lender Settlement; (ix) subject to the terms of the Lender Settlement, that the Prepetition Term Loan Lenders would not assign their Prepetition Term Loan Claims or commence litigation against each other; and (ix) that the Plan would provide for the releases included in the Plan .

Pursuant to the Lender Settlement, distributions to the Prepetition Term Loan Lenders are to be allocated as follows:



- The Standard General Parties are to receive, in the aggregate, (i) \$400,000 (which amount was distributed as part of the interim distribution) on account of certain fees and expenses; (ii) 10% of each Prepetition Term Loan Distribution (other than WC Recovered Cash Collateral) and (iii) (x) the first \$2.5 million of WC Recovered Cash Collateral and (y) 10% of all WC Recovered Cash Collateral in excess of such \$2.5 million;
- The Lender Committee Parties are to receive, in the aggregate, (i) \$400,000 (which amount was distributed as part of the interim distribution), (ii) 90% of each Prepetition Term Loan Distribution (other than WC Recovered Cash Collateral) and (iii) all WC Recovered Cash Collateral not distributed to the Standard General Parties pursuant to Section II.C.3.c of the Plan (described in clause (iii) of the above paragraph).

Further, the Lender Settlement provided that the Standard General Parties would have exclusive authority to direct or authorize settlements of Causes of Action for turnover of the cash collateral or cash equivalents securing the Debtors' worker' compensation deductible obligations for 18 months after the effective date of the Lender Settlement (subject to the consent of the Lender Committee Parties if the amounts recovered were less than \$1.5 million), and thereafter, such authority would reside with the Lender Committee Parties. In addition, \$1.6 million was to be (and was reserved) from the interim distribution as follows: (i) \$100,000 was reserved for certain costs incurred in prosecuting Causes of Action relating to such workers' compensation collateral, and (ii) \$1.5 million was reserved for distribution to the Standard General Parties, which \$1.5 million reserve would be reduced, on a dollar-for-dollar basis, by distributions of WC Recovered Cash Collateral paid to the Standard General Parties (no such distributions have been made as of the date hereof). Any amounts remaining in that reserve shall be distributed to the Standard General Parties 18 months after the effective date of the Lender Settlement.

The Debtors made the initial distribution of approximately \$95.8 million to the Prepetition Agent. Separately, the Debtors reserved \$1.6 million under the terms of the Lender Settlement relating to the WCCC Causes of Action.

## **6. Other Asset Sales and Remaining Assets**

In addition to the Gildan Sale, the Debtors monetized or sold certain other assets. Following the auction, the Debtors entered into lease termination transactions with three different landlords (although one did not close when the cure costs asserted by the landlord rendered the transaction uneconomical). The Debtors also entered into a purchase agreement with Bronco's, Inc. to sell certain equipment (the "Atalaya Equipment") that was subject to litigation in *American Apparel, LLC v. Atalaya Asset Income Fund I LP*, Case No. 30-2016-00866694 (Cal. Sup. Ct.), and to assume and assign the lease to the Debtors' facility located in Garden Grove California. The transaction with Bronco's closed in April 2017.

The Debtors also received Bankruptcy Court approval to sell certain emission reduction trading credits, authority to sell additional assets in connection with the Store Closure Motion, and authority to sell additional assets pursuant to a de minimis asset sale motion [Docket No. 774] ("De Minimis Sale Order"). Among other assets sold pursuant to the De Minimis Sale Order

were merchandise, certain equipment located at their La Mirada, California facility and certain IT equipment.

On January 8, 2018, the Debtors filed a motion to sell their interests in their non-Debtor Korean subsidiary American Apparel Korea Co., Ltd. ("AA Korea") to Mr. Bong Jae Huh, a director of AA Korea, for KRW 850 million. On January 24, 2018 the Bankruptcy Court entered an order authorizing, among other things, the sale of AA Korea. The transaction closed in February 2018, resulting in net proceeds of approximately \$785,000.

The Debtors' principal remaining assets that may be monetized include interests in certain foreign subsidiaries, Causes of Action (including those arising under chapter 5 of the Bankruptcy Code), and certain deposits or collateral posted by the Debtors.

- With respect to Causes of Action under chapter 5 of the Bankruptcy Code, the Debtors sent demand letters to approximately 470 entities that received transfers within 90 days of the Prior Cases and/or these Chapter 11 Cases. Thereafter, the Debtors commenced over 300 adversary proceedings to recover such transfers. As of [August 23, 2018], approximately [175] adversary proceedings are currently active.
- With respect to deposits or collateral, National Union Fire Insurance Company of Pittsburgh, Pa. on behalf of itself and its affiliates (such entities are referred to herein as "AIG"), which provided insurance coverage to the Debtors, affiliates, or predecessors, has indicated to the Debtors that, in the view of AIG, the deposits or collateral held by AIG on account of the workers' compensation policies issued by AIG have been, or will be, completely depleted by the claims already asserted against such policies, and accordingly, there will not be any excess deposits or collateral returned to the Debtors. AIG and the Debtors reserve all of their rights with respect to any such deposits or collateral.

The above-described assets are being monetized for the benefit of the Prepetition Term Lenders in accordance with the UCC-LT Settlement and the Lender Settlement.

## **7. Executory Contracts and Unexpired Leases**

On December 13, 2016, the Bankruptcy Court entered an order establishing procedures for the rejection of executory contracts and unexpired leases. Together with leases rejected pursuant to a December 9, 2017 Order of the Bankruptcy Court, the Debtors rejected all of their real estate leases that were not terminated or assigned as noted in [Section III.F.5] above, including leases for their retail stores, headquarters, manufacturing facilities, and distribution center.

After the shutting down of manufacturing operations and the closing of their stores, the Debtors no longer required the goods or services to be provided under most of their executory contracts. During these cases, the Debtors have rejected certain executory contracts pursuant to the rejection procedures. Certain other contracts related to Oracle were assigned to Gildan. All of the Debtors' remaining contracts will be rejected pursuant to the Plan, except to the extent

previously assumed or rejected or, as of the Confirmation Date, the subject of a pending motion to assume or reject.

## **8. Miscellaneous Motions and Applications**

During the Chapter 11 Cases, the Debtors received Bankruptcy Court approval to enter into various stipulations and settlements. The Debtors also received authority to abandon certain records that were not needed for the winding down of their estates.

The Bankruptcy Court also granted relief typical in large chapter 11 cases, including authorizing the Debtors to employ various professionals and extending certain deadlines set forth in the Bankruptcy Code.

### **G. Workers' Compensation Policies Collateral and Claims**

Prior to and during the Chapter 11 Cases, the Debtors posted over \$36 million to insurance companies to secure the Debtors' workers' compensation obligations, of which over \$30 million was provided to AIG and over \$6 million was provided to Arch. Arch and AIG have informed the Debtors that, in the view of Arch and AIG, the respective funds, deposits or collateral posted to Arch and AIG will be insufficient to cover the workers' compensation claims under the insurance programs administered by Arch and AIG, respectively, and that the funds in their possession have been, or will be, exhausted and thus will not be available for return to the Debtors.

#### **1. AIG's Claims**

AIG has filed proofs of claim in excess of \$40 million, of which over \$10 million was asserted as an unsecured claim and the balance as a secured claim (up to the value of its collateral). AIG has indicated to the Debtors that it believes its unsecured claim may be significantly in excess of the filed amount. The Debtors have not made any determination as to the validity, nature, or extent of these claims, and nothing herein or in the Plan shall be construed as an acknowledgement of the validity, priority, or amount of any claim asserted (or that may be asserted) by AIG.

#### **2. Arch's Prepetition Claims**

Arch filed two proofs of claim (Claim Nos. 809 and 810) asserting a secured claim of not less than \$4.7 million (up to the value of its collateral) and an unsecured claim in an undetermined amount. The Arch claims contain no information or supporting documentation related to the underlying workers' compensation claims filed by the Debtors' former employees, or the other charges and amounts allegedly comprising the Arch claims. The Debtors dispute that Arch has provided sufficient evidence to support its claims.

As described below, the Debtors and Arch have agreed to a comprehensive settlement resolving Arch's claims in these Chapter 11 Cases. The Debtors anticipate filing a motion to approve their settlement with Arch, and expect to receive approval of such motion prior to the confirmation of the Plan. To the extent such settlement is not approved prior to Plan confirmation, nothing herein or in the Plan shall be construed as an acknowledgement of the validity, priority, or amount of any claim asserted (or that may be asserted) by Arch.

### 3. Arch's Administrative Claim

On July 11, 2018, Arch filed a motion seeking payment of an asserted administrative expense claim (Docket 1789). According to Arch, since the Petition Date, Arch has paid more than \$8.9 million in losses and more than \$1.1 million to a third party claims administrator, an aggregate amount that exceeds the collateral by almost \$3.9 million. In its motion, Arch seeks allowance and payment of an administrative expense for \$3.9 million and estimates that it will incur an additional approximately \$12 million in losses going forward.

As described below, the Debtors and Arch have agreed to a comprehensive settlement resolving Arch's claims in these Chapter 11 Cases. The Debtors anticipate filing a motion to approve their settlement with Arch, and expect to receive approval of such motion prior to the confirmation of the Plan. To the extent such settlement is not approved prior to Plan confirmation, nothing herein or in the Plan shall be construed as an acknowledgement of the validity, priority, or amount of any claim asserted (or that may be asserted) by Arch.

### 4. The Settlement of Arch's Claims

The Debtors dispute Arch's prepetition claims and administrative claim. However, to avoid (a) the risk of payment of the full amount of Arch's claims and (b) protracted litigation that would delay confirmation of the Plan and payment of other claims, the Debtors have entered into an agreement in principle with Arch resolving all claims between the parties, subject to definitive documentation and approval by the Court. The essential terms of the agreement are as follows:

- Arch will receive an Allowed Administrative Claim of \$600,000 and will be entitled to the treatment specified by Section II.A.1 of the Plan;
- Arch will retain the deposit posted as collateral under its WC Policies;
- All of Arch's remaining or other claims in these cases will be disallowed; and
- Arch and the Debtors mutually release one another from all possible claims, demands or causes of actions, *provided, however*, that Arch will continue to honor the terms of the Insurance Policies issued by Arch to the Debtors (and such policies shall remain in full force and effect as provided by Section III.L of the Plan).

The Standard General Parties and the Creditors' Committee support the settlement with Arch.

A portion of the Arch Allowed Administrative Claim, in the amount of \$300,000, shall be an Allowed Unbudgeted Administrative Claim.

The Debtors anticipate filing a motion to approve the settlement with Arch pursuant to Bankruptcy Rule 9019, and expect to receive approval of such motion prior to the confirmation of the Plan. To the extent such settlement is not approved prior to Plan confirmation, nothing herein or in the Plan shall be construed as an acknowledgement of the validity, priority, or amount of any claim asserted (or that may be asserted) by Arch.

#### **IV. THE PLAN**

THE FOLLOWING SUMMARY HIGHLIGHTS CERTAIN OF THE SUBSTANTIVE PROVISIONS OF THE PLAN, AND IS NOT, NOR IS IT INTENDED TO BE, A COMPLETE DESCRIPTION OR A SUBSTITUTE FOR A FULL AND COMPLETE REVIEW OF THE PLAN. THE DEBTORS URGE ALL HOLDERS OF CLAIMS AND INTERESTS TO READ AND STUDY CAREFULLY THE PLAN, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT 1.

Section 1123 of the Bankruptcy Code provides that, except for Administrative Claims and Priority Tax Claims, a chapter 11 plan must categorize claims against and equity interests in a debtor into individual classes. Although the Bankruptcy Code gives a debtor significant flexibility in classifying claims and interests, section 1122 of the Bankruptcy Code dictates that a chapter 11 plan may only classify a claim or an equity interest with claims or equity interests, respectively, that are substantially similar.

The Plan creates 5 Classes of Claims and 1 Class of Interests. These Classes take into account the differing nature and priority of Claims against and Interests in the Debtors. Administrative Claims and Priority Tax Claims are not classified for purposes of voting or receiving distributions under the Plan (as is permitted by section 1123(a)(1) of the Bankruptcy Code) but are treated separately as unclassified Claims.

The Plan provides specific treatment for each Class of Claims and Interests. Only Holders of Claims that are impaired under the Plan and who will receive distributions under the Plan are entitled to vote on the Plan.

The following discussion sets forth the classification and treatment of all Claims against, or Interests in, the Debtors. It is qualified in its entirety by the terms of the Plan, which is attached hereto as Exhibit 1, and which you should read carefully before deciding whether to vote to accept or reject the Plan.

##### **A. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described in Section II.A of the Plan, are not classified in the Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes.

If the Plan is confirmed by the Bankruptcy Court, unless a Holder of an Allowed Claim consents to different treatment, each Allowed Claim in a particular Class will receive the same treatment as the other Allowed Claims in such Class, whether or not the Holder of such Claim voted to accept the Plan. Such treatment will be in exchange for and in full satisfaction, release and discharge of, the Holder's respective Claims against a Debtor, except as otherwise provided in the Plan. Moreover, upon Confirmation, the Plan will be binding on (A) all Holders

of Claims regardless of whether such Holders voted to accept the Plan and (B) all Holders of Interests.

## **1. Unclassified Claims**

### **a. Administrative Claims**

#### **1. Administrative Claims in General**

Except as specified in Section II.A.1 of the Plan, and subject to the bar date provisions herein and set forth in the Bar Date Order, unless otherwise agreed by (i) the Holder of an Administrative Claim, (ii)(a) the Debtors (prior to the Effective Date) or (b) the Post-Confirmation Debtors (on or after the Effective Date), (iii) the Required Lenders, and (iv) solely with respect to Unbudgeted Administrative Claims, the Post-Confirmation Debtors and the Creditors' Fund Trustee (unless an order of the Bankruptcy Court or agreement of the Post-Confirmation Debtors and Creditors' Fund Trustee provides otherwise), each Holder of an Allowed Administrative Claim shall receive, in full satisfaction of its Administrative Claim, Cash equal to the Allowed amount of such Administrative Claim on either (1) if the Administrative Claim is Allowed on the Effective Date, the Effective Date (or as soon thereafter as practicable) or (2) if the Administrative Claim is not Allowed on the Effective Date, within 60 days after the date on which such Administrative Claim becomes an Allowed Administrative Claim. Payment of Allowed Administrative Claims that are not Allowed Unbudgeted Administrative Claims shall be made by the Post-Confirmation Debtors only from the Administrative/Priority/Tax Claims Reserve and the proceeds of the Remaining Assets. Payment of Allowed Unbudgeted Administrative Claims shall be made by the Creditors' Fund Trustee from the Creditors' Fund Trust Assets. For the avoidance of doubt, the Post-Confirmation Debtors shall have no liability or responsibility to pay any Allowed Unbudgeted Administrative Claims. The Arch Allowed Administrative Claim shall be paid as follows: (a) \$300,000 shall be paid by the Post-Confirmation Debtors on the Effective Date (or as soon thereafter as practicable) from the Administrative/Priority/Tax Claims Reserve, and (b) \$300,000 shall be paid by the Creditors' Fund Trustee on the Effective Date (or as soon thereafter as practicable) from the Creditors' Fund Trust.

#### **2. Bar Dates for Administrative Claims**

Unless previously Filed or except as required to have been filed by the First Administrative Expense Bar Date pursuant to the Bar Date Order or as governed in another order of the Bankruptcy Court, requests for payment of Administrative Claims must be Filed and served on the parties identified in Section X.K of the Plan (other than the Creditors Committee) and the Creditors' Fund Trustee pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Second Administrative Expense Bar Date. Any Holder of an Administrative Claim who was not required to File proof of such Administrative Claim or a request for payment thereof pursuant to the Bar Date Order shall be required to file a request for payment of such Administrative Claim by the Second Administrative Expense Bar Date. Any Holders of Administrative Claims that were or are required to File and serve a request for payment of Administrative Claims and that did not or do not File and serve such a request by the applicable bar date will be forever barred from asserting

such Administrative Claims against the Debtors, or their respective property, and such Administrative Claims will be deemed Disallowed as of the Effective Date and not entitled to payment under the Plan. Objections to the requests for payment of Administrative Claims must be Filed and served on the parties identified in Section X.K.1 of the Plan, the Creditors Fund Trustee, and the requesting party no later than the latest of (i) 120 days after the Effective Date, (ii) 60 days after such request is Filed, and (iii) such date as may be agreed between the Post-Confirmation Debtors and the Holder of an Administrative Claim, in each case, as the same may be extended, for cause, by the Bankruptcy Court upon request of the Post-Confirmation Debtor. Nothing in Section II.A.1.b of the Plan shall waive, extend or lengthen the applicable Claims Bar Date for the Holder of any prepetition Claim or Administrative Claim subject to a Claims Bar Date established by any Bankruptcy Court order

### 3. Professional Compensation

#### (a) Final Fee Applications

Professionals or other entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the parties identified in Section X.K of the Plan and such other entities who are designated by the Bankruptcy Rules, the Fee Order, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Fee Claim no later than 30 days after the Effective Date; *provided, however*, that any Professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order without further Bankruptcy Court review or approval (except as provided in the Ordinary Course Professionals Order). Except as otherwise agreed to by the Holder of a Fee Claim, objections to any Fee Claim must be Filed and served on the parties identified in Section X.K of the Plan and the requesting party by 75 days after the Effective Date or such other period of limitation as may be specifically fixed by a Final Order for objecting to such Fee Claims. To the extent necessary, the Confirmation Order will supersede any previously entered order of the Bankruptcy Court regarding the payment of Fee Claims.

#### (b) Post-Effective Date Professionals' Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and (i) the Post-Confirmation Debtors may employ and pay the actual, reasonable, and necessary fees and expenses of any Professional from the funds in the Administrative/Priority/Tax Claims Reserve and the Remaining Assets (and, with respect to Professionals retained on a contingency basis, from the proceeds of the Causes of Action for which such Professionals were retained) for services rendered or expenses incurred after the Effective Date in the ordinary course of business without any further notice to any party or action, order or approval of the Bankruptcy Court, and (ii) the Creditors' Fund Trustee may employ and pay any Professional from the Creditors' Fund Trust Assets for services rendered or

expenses incurred after the Effective Date without any further notice to any party or action, order or approval of the Bankruptcy Court.

#### 4. Statutory Fees

On or before the Effective Date, Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930 will be paid by the applicable Debtors in Cash equal to the amount of such Administrative Claims. Fees payable pursuant to 28 U.S.C. § 1930 for each Debtor's Estate after the Effective Date will be by the Post-Confirmation Debtors until the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

#### b. Payment of Priority Tax Claims

##### 1. Priority Tax Claims

Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the Holder of a Priority Tax Claim and the Debtors, each Holder of an Allowed Priority Tax Claim shall receive, at the option of the Debtors, in full satisfaction of its Allowed Priority Tax Claim that is due and payable on or before the Effective Date, on account of and in full and complete settlement and release of such Claim, (i) Cash in an amount equal to the amount of such Allowed Priority Tax Claim or (ii) Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period of time not to exceed five years after the Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; *provided, however*, that all Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business by the Post-Confirmation Debtors as they become due, except as otherwise agreed by the Post-Confirmation Debtors; *provided, further*, that, in the event an Allowed Priority Tax Claim is also a Secured Tax Claim, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full.

##### 2. Other Provisions Concerning Treatment of Priority Tax Claims

Notwithstanding Section II.A.4.a of the Plan, any Claim on account of any penalty arising with respect to or in connection with an Allowed Priority Tax Claim that does not compensate the Holder for actual pecuniary loss shall be treated as a General Unsecured Claim, and the Holder (other than as the Holder of a General Unsecured Claim) may not assess or attempt to collect such penalty from the Debtors, the Post-Confirmation Debtors, or their respective property. For the avoidance of doubt, the Post-Confirmation Debtors, and not the Creditors' Fund Trustee, shall be responsible for objecting to the classification of any Claim on account of any penalty arising with respect to or in connection with a Priority Tax Claim.

## 2. Classified Claims and Interests

#### a. General

Pursuant to sections 1122 and 1123 of the Bankruptcy Code, Claims and Interests are classified for voting and distribution pursuant to the Plan, as set forth herein. A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest



qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such other Class. Except as otherwise specifically provided for herein, the Confirmation Order or other order of the Bankruptcy Court, or required by applicable bankruptcy law, in no event shall the aggregate value of all property received or retained under the Plan on account of an Allowed Claim exceed 100% of the underlying Allowed Claim.

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for the purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims; provided, however, that in the event no Holder of a Claim with respect to a specific Class timely submits a Ballot in compliance with the Disclosure Statement Order indicating acceptance or rejection of the Plan, such Class will be deemed to have accepted the Plan. The Debtors may seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests.

To the extent a Holder has Claims arising from the same transaction or occurrence that may be asserted against more than one Debtor, the vote of such Holder in connection with such Claims will be counted as a vote of each such Claim against each applicable Debtor against which such Holder has a Claim. The Plan assigns a letter to each Debtor and a number to each of the Classes of Claims against or Interests in the Debtors. For consistency, similarly designated Classes of Claims and Interests are assigned the same number across each of the Debtors.

<b>Letter</b>	<b>Debtor</b>
A	APP Winddown, LLC (f/k/a American Apparel, LLC)
B	APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC)
C	APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.)
D	APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.)
E	APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC)
F	APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.)

*b.* Identification of Classes of Claims Against and Interests in the Debtors

The following table designates the Classes of Claims against and Interests in the Debtors and specifies which Classes are (a) Impaired or Unimpaired by the Plan, (b) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code or (c) deemed to accept or reject the Plan.

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
1A-1F	Other Priority Claims	Unimpaired	Deemed to Accept
2A-2F	Other Secured Claims	Unimpaired	Deemed to Accept
3A-3F	Prepetition Term Loan Secured Claims	Impaired	Entitled to Vote
4A-4F	General Unsecured Claims	Impaired	Entitled to Vote
5A-5F	Intercompany Claims	Impaired	Deemed to Reject
6A-6F	Interests	Impaired	Deemed to Reject

*c.* Treatment of Claims

1. Other Priority Claims (Class 1)

Other Priority Claims are Claims that are entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code and that are not Administrative Claims or Priority Tax Claims.

On the later of (a) the Effective Date, and (b) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, or as soon as reasonably practicable thereafter, unless otherwise agreed to the Holder of an Allowed Other Priority Claim and by the Debtors or the Post-Confirmation Debtors, in either case with the consent of the Required Lenders, each Holder of an Allowed Other Priority Claim against a Debtor shall receive on account and in full and complete settlement and release of such Claim, Cash in the amount of such Allowed Other Priority Claim in accordance with section 1129(a)(9) of the Bankruptcy Code

Claims in Class 1 are Unimpaired. Each Holder of an Allowed Claim in Classes 1A through 1F is conclusively presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code and is, therefore, not entitled to vote.

2. Other Secured Claims (Class 2)

Other Secured Claims are Claims, including Secured Tax Claims but excluding Prepetition Term Loan Secured Claims, that are secured by a lien on property in which an Estate has an interest or that are subject to a valid right of setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in such Estate's interest in such property or to the extent of the amount subject to such valid right of setoff, as applicable, as determined pursuant to section 506 of the Bankruptcy Code.

On the later of (a) the Effective Date and (b) the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, or as soon as reasonably practicable thereafter,

unless otherwise agreed by the Holder of an Allowed Other Secured Claim and by the Debtors or the Post-Confirmation Debtors, in either case with the consent of the Required Lenders, each Holder of an Allowed Other Secured Claim shall receive the following treatment at the option of the Debtors, with the consent of the Required Lenders: (i) payment in full (in Cash) of any such Allowed Other Secured Claim; (ii) satisfaction of any such Allowed Other Secured Claim by delivering the collateral securing any such Allowed Other Secured Claim and paying any interest required to be paid under section 506(b) of the Bankruptcy Code; or (iii) such other recovery necessary to satisfy section 1129 of the Bankruptcy Code to render such claim unimpaired.

Claims in Class 2 are Unimpaired. Each Holder of an Allowed Claim in Classes 2A through 2F is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and is, therefore, not entitled to vote.

### 3. Prepetition Term Loan Secured Claims (*Class 3*)

Prepetition Term Loan Secured Claims are Secured Claims against any of the Debtors arising under, related to or evidenced by the Prepetition Loan Documents, including, without limitation, any guaranty obligations with respect to any of the foregoing.

Unless otherwise agreed by the Holder of an Allowed Prepetition Term Loan Secured Claim and the Debtors or the Post-Confirmation Debtors, each Holder of an Allowed Prepetition Term Loan Secured Claim, subject to the terms of the Lender Settlement, in full and final satisfaction, settlement and release of, and in exchange for, such Claim, shall receive its respective share of each Prepetition Term Loan Distribution. In accordance with the Lender Settlement, each Prepetition Term Loan Distribution shall be allocated, after the payment of the reasonable fees and expenses of the Prepetition Agent (including the reasonable fees and expenses of counsel), among the Standard General Parties, on the one hand, and the Lender Committee Parties, on the other hand, as follows: (a) the Standard General Parties shall receive, in the aggregate, (i) 10% of such Prepetition Term Loan Distribution (other than WC Recovered Cash Collateral) and (ii) (A) the first \$2.5 million of WC Recovered Cash Collateral and (B) 10% of all WC Recovered Cash Collateral in excess of such \$2.5 million; and (b) the Lender Committee Parties shall receive, in the aggregate, (i) 90% of such Prepetition Term Loan Distribution (other than WC Recovered Cash Collateral) and (ii) all WC Recovered Cash Collateral not distributed to the Standard General Parties pursuant to Section II.C.3.c of the Plan. If the amount of Cash available for a Prepetition Term Loan Distribution exceeds the Allowed Prepetition Term Loan Secured Claims, then the Holders of Prepetition Term Loan Secured Claims shall be entitled, to one or more Prepetition Term Loan Distributions in an amount equal to Prepetition Term Loan Interest Claim, which additional distribution shall be allocated 90% to the Lender Committee Parties and 10% to the Standard General Parties, until either Prepetition Term Loan Interest Claims of either the Lender Committee Parties or the Standard General Parties are paid in full, and thereafter to the Prepetition Term Loan Lenders whose Prepetition Term Loan Interest Claims have not been satisfied in full.

Claims in Class 3 are impaired. Each Holder of an Allowed Claim in Class 3 is entitled to vote.

4. General Unsecured Claims (Class 4)

General Unsecured Claims are all Claims that are not an Administrative Claim, Priority Tax Claim, Other Priority Claim, Other Secured Claim, Intercompany Claims, or Prepetition Term Loan Secured Claim, and includes Prepetition Term Loan Deficiency Claims to the extent not waived in connection with the UCC-LT Settlement.

Each Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such General Unsecured Claim, its Pro Rata Share of the Creditors' Fund Trust Net Class 4 Distributable Cash, up to the Allowed amount of said Holder's General Unsecured Claim; *provided, however*, that pursuant to the UCC-LT Settlement, members of the Committee of Lead Lenders that are Holders of Prepetition Term Loan Deficiency Claims shall not receive a distribution on account of such Prepetition Term Loan Deficiency Claims, and any such Prepetition Term Loan Deficiency Claims shall not be used in the calculation of Pro Rata Share.

Claims in Class 4 are impaired. Each Holder of an Allowed Claim in Class 4 is entitled to vote.

5. Intercompany Claims (Class 5)

Intercompany Claims are any Claims held by a Debtor against a Debtor.

Intercompany Claims shall be cancelled, reinstated or modified, in the discretion of the Post-Confirmation Debtors, and no distribution shall be made on account of such Claims.

Claims in Class 5 are impaired. Each Holder of a Claim in Class 5 is deemed to have not accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote.

6. Interests (Class 6)

Class 6 consists of all Interests in any of the Debtors. Interest means the rights of the Holders of the common stock, membership interests or partnership interests issued by a Debtor and outstanding immediately prior to the Petition Date, and any options, warrants or other rights with respect thereto, or any other instruments evidencing an ownership interest in a Debtor and the rights of any Entity to purchase or demand the issuance of any of the foregoing, including: (a) redemption, conversion, exchange, voting, participation and dividend rights (including any rights in respect of accrued and unpaid dividends); (b) liquidation preferences; and (c) stock options and warrants. Interests include the membership interests in APP Winddown. Interests will be Allowed in the amounts set forth on the respective Schedule of Equity Security Holders of each of the Debtors, and with respect to Interests in APP Winddown, LLC, in the operating agreement set forth in the Plan Supplement

Interests in a Debtor that is not a Post-Confirmation Debtor shall be cancelled as of the Effective Date, which is the date on which such Debtor is dissolved in accordance with Section III.A.1 of the Plan. Each Holder of an Allowed Interest in such a Debtor shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Interest, its Pro Rata Share of the Class 6 Distribution.

Interests in a Debtor that is a Post-Confirmation Debtor shall be cancelled if and when such Debtor is dissolved in accordance with Section III.A.1 of the Plan. Each Holder of an Allowed Interest in such a Debtor shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Interest, its Pro Rata Share of the Class 6 Distribution.

Interests in Class 6 are impaired. Each Holder of an Allowed Interest in Class 6 is deemed to have not accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote.

### **3. Reservation of Rights Regarding Claims**

Except as otherwise provided in the Plan, nothing shall affect the Debtors', the Post-Confirmation Debtors' or Creditors' Fund Trustee's rights and defenses, whether legal or equitable, with respect to any Claims, including, without limitation, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

### **4. Insurance**

Notwithstanding anything to the contrary in the Plan, if any Allowed Claim is covered by an Insurance Policy, such Claim shall first be paid from proceeds of such Insurance Policy to the extent such proceeds are available, with the balance, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

## **B. Treatment of Executory Contracts and Unexpired Leases**

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

Except for any Executory Contracts or Unexpired Leases of the Debtors: (i) that previously were assumed or rejected by an order of the Bankruptcy Court, pursuant to section 365 of the Bankruptcy Code; (ii) as to which a motion for approval of the assumption or rejection of such contract or lease has been filed and served prior to, and remains pending as of, Confirmation; or (iii) set forth on Exhibit III.L of the Plan, each Executory Contract and Unexpired Lease entered into by the Debtors prior to the Petition Date that has not previously expired or terminated pursuant to its own terms shall be deemed rejected pursuant to section 365 of the Bankruptcy Code as of the Effective Date. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejection, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. Nothing herein in the Plan is intended to affect the validity of contracts and leases entered into by the Debtors on or after the Petition Date, or the rights of the Debtors thereunder, which shall remain in full force and effect after the Effective Date in accordance with their terms.

### **2. Bar Date for Rejection Damages**

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan or otherwise gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors, Estates, Creditors' Fund Trust and Post-Confirmation Debtors unless a Proof of Claim is filed with the Bankruptcy Court by no later than 30 days after the Effective Date.

### **3. Pre-Existing Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors under such Executory Contracts or Unexpired Leases. Notwithstanding any applicable non-bankruptcy law to the contrary, the Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnifications or continued maintenance obligations on goods or services previously purchased by the contracting Debtors from counterparties to rejected Executory Contracts or Unexpired Leases.

## **C. Provisions Governing Distributions**

### **1. Distributions Under the Plan**

The Post-Confirmation Debtors shall administer all Claims and Interests other than General Unsecured Claims and Unbudgeted Administrative Claim. The Post-Confirmation Debtors shall make Distributions to Holders of Allowed Administrative Claims (other than Unbudgeted Administrative Claims), Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims, which Distributions shall reduce the Administrative/Priority/Tax Claims Reserve, to Holders of Allowed Class 3 Claims, and to Holders of Allowed Class 6 Interests. The Creditors' Fund Trustee shall administer and make Distributions in respect of Allowed Unbudgeted Administrative Claims and Allowed General Unsecured Claims (to the extent there is Creditors' Fund Trust Net Class 4 Distributable Cash available). Distributions to be made by the Post-Confirmation Debtors and Creditors' Fund Trustee may be made by any Person(s) designated or retained to serve as the Disbursing Agent(s) without the need for any further order of the Bankruptcy Court. Each Disbursing Agent may serve without bond, and any Disbursing Agent may employ or contract with other entities to assist in or make the distributions required by the Plan if approved by (a) the Post-Confirmation Debtors with respect to Distributions to Holders of Allowed Administrative Claims (other than Allowed Unbudgeted Administrative Claims), Allowed Priority Tax Claims, Allowed Other Secured Claims, Allowed Other Priority Claims, Allowed Class 3 Claims, and Allowed Interests and (b) the Creditors' Fund Trustee with respect to Distributions to Holders of Allowed Unbudgeted Administrative Claims and Allowed General Unsecured Claims.

### **2. Disbursing Agents; No Liability**

#### *a.* Powers of the Disbursing Agents

The Disbursing Agents shall be empowered to: (a) effect all actions and execute all agreements, instruments and other documents necessary to perform their duties under the Plan; (b) make all distributions contemplated hereby; and (c) exercise such other powers as may be vested in the Disbursing Agents by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agents to be necessary and proper to implement the provision of the Plan.

*b.* Expenses Incurred on or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Disbursing Agents on or after the Effective Date and any reasonable compensation to the Disbursing Agents for services rendered shall be paid in Cash by (a) the Post-Confirmation Debtors for Disbursing Agents designated or retained by the Post-Confirmation Debtors or (b) the Creditors' Fund Trust for Disbursing Agents designated or retained by the Creditors' Fund Trust.

*c.* No Liability

The Debtors, the Post-Confirmation Debtors, the Creditors' Fund Trustee, and the Disbursing Agents, as applicable, shall only be required to act and make distributions in accordance with the terms of the Plan. Except on account of gross negligence, fraud, illegality or willful misconduct, such parties shall have no (i) liability to any party for actions taken in accordance with the Plan or in reasonable reliance upon information provided to it in accordance with the Plan or (ii) obligation or liability for distributions under the Plan to any party who does not hold a Claim against the Debtors as of the Distribution Record Date or any other date on which a distribution is made or who does not otherwise comply with the terms of the Plan.

### **3. Estimation**

In order to establish appropriate reserves under the Plan and avoid undue delay in the administration of the Chapter 11 Cases, the Post-Confirmation Debtors shall have the right to seek orders of the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code, estimating the amounts of the Administrative Claims, Priority Tax Claims, Other Secured Claims, Other Priority Claims, and Class 3 Claims. The Creditors' Fund Trustee shall have the right to seek orders of the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code, estimating the amounts of Unbudgeted Administrative Claims and General Unsecured Claims in order to establish appropriate reserves under the Creditors' Fund Trust Agreement and avoid undue delay in the administration of the Chapter 11 Cases.

### **4. Distributions on Account of Disputed Claims**

Except as otherwise provided in a Final Order or as agreed by the relevant parties, Distributions on account of Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Other Secured Claims, and Disputed Other Priority Claims, if any, shall be made by the Post-Confirmation Debtors at such periodic intervals as the Post-Confirmation Debtors determine to be reasonably prudent. Except as otherwise provided in a Final Order or as agreed by the relevant parties, Distributions on account of Disputed General Unsecured Claims and Unbudgeted Administrative Claims that become Allowed after the Effective Date shall be made by the Creditors' Fund Trust at such periodic intervals as the Creditors' Fund Trustee determines to be reasonably prudent.

### **5. No Distributions Pending Allowance**

Notwithstanding anything herein to the contrary: (a) no Distribution shall be made with respect to any Disputed Claim until such Claim becomes an Allowed Claim (as applicable), and

(b) (i) unless determined otherwise by the Post-Confirmation Debtors with respect to Administrative Claims (other than Unbudgeted Administrative Claims), Priority Tax Claims, Other Secured Claims, and Other Priority Claims, no Distribution shall be made to any Person that holds both an Allowed Claim and a Disputed Claim until such Person's Disputed Claims have been resolved by settlement or Final Order; and (ii) unless determined otherwise by the Creditors' Fund Trustee with respect to General Unsecured Claims and Unbudgeted Administrative Claims, no Distribution shall be made to any Person that holds both an Allowed Claim and a Disputed Claim until such Person's Disputed Claims have been resolved by settlement or Final Order.

## **6. Objection Deadline**

The Creditors' Fund Trustee and Post-Confirmation Debtors (subject to the Creditors' Fund Trust Functions and Post-Confirmation Debtor Functions, respectively) shall file all objections to Disputed Claims or Interests, and shall file all motions to estimate Claims under section 502(c) of the Bankruptcy Code, on or before the Claims Objection Deadline or the Administrative Claims Objection Deadline, as applicable, *provided, however*, that the Post-Confirmation Debtors may request that the Bankruptcy Court extend the Claims Objection Deadline and/or the Administrative Claims Objection Deadline, and the Creditors' Fund Trustee may request that the Bankruptcy Court extend the Claims Objection Deadline and/or the Administrative Claims Objection Deadline with respect to Class 4 Claims and Unbudgeted Administrative Claims.

## **7. Creditors' Fund Trust Reserves and Determination of Unbudgeted Administrative Claims**

### *a.* Creditors' Fund Trust Expense Reserve

On and after the Effective Date, the Creditors' Fund Trustee shall maintain in reserve such Cash from the Creditors' Fund Trust Assets as the Creditors' Fund Trustee estimates to be reasonably necessary to satisfy the Creditors' Fund Trust Expenses, which are entitled to first payment under the Creditors' Fund Trust Agreement.

### *b.* Creditors' Fund Trust Claims Reserve

On and after the Effective Date, the Creditors' Fund Trustee shall establish a reserve from the Creditors' Fund Trust Assets for (i) all Unbudgeted Administrative Claims and (ii) only after all Allowed Unbudgeted Administrative Claims are paid in full, all Disputed General Unsecured Claims. Except for that portion of the Arch Allowed Administrative Claim that is an Unbudgeted Administrative Claim, the Creditors' Fund Trustee shall treat the Creditors' Fund Trust Claims Reserve as a 'disputed ownership fund' governed by Treasury Regulation section 1.468B-9 (and make any appropriate elections consistent with such tax treatment) and shall report for United States federal, state, and local income tax purposes consistently with the foregoing. The Creditors' Fund Trustee shall be the administrator of the Creditors' Fund Trust Claims Reserve within the meaning of Treasury Regulation section 1.468B-9(b)(2) and shall be responsible for all tax reporting and withholding required by the Creditors' Fund Trust Claims Reserve or with respect to the Creditors' Fund Trust Assets. Notwithstanding anything to the contrary contained herein, the entire amount of the Creditors' Fund Trust Assets, less the amount



reserved for payment of Creditors' Fund Trust Expenses, shall initially be reserved for payment of Allowed Unbudgeted Administrative Claims.

The Creditors' Fund Trustee shall not make any distributions to General Unsecured Creditors prior to 60 days after the Second Administrative Claims Bar Date; *provided, however*, that if there is a dispute between the Post-Confirmation Debtors and the Creditors' Fund Trustee as to whether an Administrative Claim is an Unbudgeted Administrative Claim, no distributions to General Unsecured Creditors shall be made until such disputes are resolved or the Creditors' Fund Trustee has fully reserved for the Administrative Claims subject to such dispute.

*c.* Determination of Unbudgeted Administrative Claims

The Post-Confirmation Debtors will review Filed Administrative Claims and, within 60 days of the Second Administrative Bar Date, the Post-Confirmation Debtors will provide to the Creditors' Fund Trustee one or more lists of Administrative Claims that the Post-Confirmation Debtors have designated as Unbudgeted Administrative Claims, which list or lists shall each be acceptable to the Required Lenders. The Debtors will also provide to the Holder of such Claim (other than those set forth on Exhibit 1.142) notice of such designation. The Post-Confirmation Debtors shall not be permitted to designate any Administrative Claim Filed on or prior to the Second Administrative Bar Date as an Unbudgeted Administrative Claim more than 60 days after the Second Administrative Bar Date (*provided, however*, that the Post-Confirmation Debtors may designate further Unbudgeted Administrative Claims that were Filed or amended after the Second Administrative Bar Date). The Creditors' Fund Trustee will promptly review and shall inform the Post-Confirmation Debtors within 21 days of receipt of any such list delivered on or after the Effective Date whether it disputes the designation of any Administrative Claim on such list and its basis for disputing such characterization, and any holder of such a designated Administrative Claim shall File an objection to such designation within 21 days of receipt of such designation; *provided, however*, that any asserted Administrative Claims set forth on Exhibit 1.142 of the Plan shall be deemed to be Unbudgeted Administrative Claims and the designation as such shall not be subject to dispute. For those Administrative Claims that the Creditors' Fund Trustee does not believe are Unbudgeted Administrative Claims, the Creditors' Fund Trustee shall treat such Administrative Claims as Unbudgeted Administrative Claims for purposes of reserves until the earlier of (a) the Post-Confirmation Debtors' agreement, in writing and with the consent of the Required Lenders, that such Administrative Claims are not Unbudgeted Administrative Claims and (b) a determination, by Final Order, that such Administrative Claims are not Unbudgeted Administrative Claims.

## **8. Settling Disputed Claims**

The Post-Confirmation Debtors shall be authorized to, with the consent of the Required Lenders, settle, or withdraw any objections to any Disputed Claims that are Administrative Claims, Priority Tax Claims, Other Secured Claims, or Other Priority Claims following the Effective Date, without need for approval of the Bankruptcy Court, Creditors' Fund Trustee (except with respect to any settlement of an Unbudgeted Administrative Claim), or any other Entity (other than the Required Lenders). The Creditors' Fund Trustee shall be authorized to settle or withdraw any objections to any General Unsecured Claims or Unbudgeted Administrative Claims following the Effective Date without need for approval of the Bankruptcy Court, the Post-Confirmation Debtors, or any other Entity. No settlement of any Claims by the

Post-Confirmation Debtors or the Creditors' Fund Trustee shall impair any of the LTCA without the consent of the Litigation Trustee.

## **9. Distributions in Cash**

Any required Cash payments to the Holders of Allowed Claims or Interests shall be made by the Post-Confirmation Debtors or Creditors' Fund Trustee, as applicable: (a) in U.S. dollars by check, draft or warrant, drawn on a domestic bank, or by wire transfer from a domestic bank, and (b) by first-class mail (or by other equivalent or superior means as determined by the Post-Confirmation Debtors or Creditors' Fund Trustee, as the case may be).

## **10. Unclaimed Distributions**

Any entity which fails to claim any Cash within 90 days from the date upon which a distribution is first made to such entity shall forfeit all rights to any Distribution under the Plan, and the Post-Confirmation Debtors and Creditors' Fund Trustee (as applicable) shall be authorized to cancel any Distribution that is not timely claimed. Pursuant to section 347(b) of the Bankruptcy Code, upon forfeiture, such Cash (including interest thereon, if any) shall revert to the Entity that paid such distribution (i.e., the Post-Confirmation Debtors or Creditors' Fund Trust) free of any restrictions under the Plan, the Bankruptcy Code or the Bankruptcy Rules, in each case other than restrictions in favor of the Prepetition Term Loan Lenders. Upon forfeiture, the claim of any Creditor or Interest Holder with respect to such funds shall be irrevocably waived and forever barred against the Creditors' Fund Trust, the Debtors, the Post-Confirmation Debtors and the Estates, notwithstanding any federal or state escheat laws to the contrary, and such Creditor or Interest Holder shall have no claim whatsoever against the Creditors' Fund Trust, the Debtors, the Post-Confirmation Debtors, the Estates, or any Holder of an Allowed Claim or Interest to whom distributions are made by the Creditors' Fund Trust or the Post-Confirmation Debtors. Such forfeited funds shall, (a) if a Distribution on account of a General Unsecured Claim or Unbudgeted Administrative Claim, be re-allocated to other claimants entitled to distribution from the Creditors' Fund Trust, and (b) if a Distribution on account of an Allowed Claim other than a General Unsecured Claim or Unbudgeted Administrative Claim revert to the Post-Confirmation Debtors and be deemed a Remaining Asset.

## **11. Delivery of Distributions and Undeliverable Distributions to Holders of Claims**

### *a.* Address for Delivery of Distributions

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims (other than Holders of Prepetition Term Loan Claims) and Allowed Interests shall be made to holders of record as of the Distribution Record Date by the Debtors, the Post-Confirmation Debtors (for all Allowed Claims other than Unbudgeted Administrative Claims (to the extent less than the Creditors' Fund Assets) and Class 4 Claims), or the Creditors' Fund Trustee (for Unbudgeted Administrative Claims (to the extent of the Creditors' Fund Assets) and Class 4 Claims), as applicable, as set forth on the latest date of the following documents: (a) to the address of payment set forth on any of the Proofs of Claim Filed by such Holder or other representative identified therein (or at the last known addresses of such holder if no Proof of Claim is Filed; (b) at the addresses set forth in any written notices of address changes delivered

to the Debtors after the date of any related Proof of Claim and prior to the Effective Date; (c) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Debtors have not received a written notice of a change of address prior to the Effective Date; (d) solely with respect to General Unsecured Claims or Unbudgeted Administrative Claims (to the extent of Creditors' Fund Assets), at the address provided to the Creditors' Fund Trustee on or after the Effective Date; (e) solely with respect to Interests, the most current address on file with the Post-Confirmation Debtors, or (f) solely with respect to Claims other than General Unsecured Claims, at the address provided to the Post-Confirmation Debtors on or after the Effective Date. Subject to Article V of the Plan, and unless the applicable Disbursing Agent otherwise determines with respect to a distribution on account of a Claim, distributions under the Plan on account of Allowed Claims or Interests shall not be subject to levy, garnishment, attachment, or like legal process, so that each holder of an Allowed Claim or Interest shall have and receive the benefit of the distributions in the manner set forth in the Plan. As set forth in Section V.B.3 of the Plan, the Debtors, the Post-Confirmation Debtors, the Creditors' Fund Trustee, and the Disbursing Agents shall not incur any liability whatsoever on account of any distributions under the Plan.

*b.* Undeliverable Distributions

The Disbursing Agents shall make one attempt to make the distributions contemplated hereunder in accordance with the procedures set forth herein. Each Disbursing Agent in its sole discretion may, but shall have no obligation to, attempt to locate Holders of undeliverable distributions. Any distributions returned to the Disbursing Agent as undeliverable or otherwise shall remain in the possession of the Disbursing Agent making such Distribution (i.e., Post-Confirmation Debtors or Creditors' Fund Trustee), until such time as a distribution becomes deliverable, and no further distributions shall be made to such Holder unless such Holder notifies the applicable Disbursing Agent of its then current address. Any Holder of an Allowed Claim or Interest entitled to a distribution of property under the Plan that does not assert a claim pursuant to the Plan for an undeliverable distribution, or notify the applicable Disbursing Agent of such Holder's then current address, within 90 days of such distribution shall have its claim for such undeliverable distribution irrevocably waived and shall be forever barred from asserting any such claim against the Debtors or their respective property, and such distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and (a) if a Distribution on account of a General Unsecured Claim or an Unbudgeted Administrative Claim, be re-allocated to other claimants entitled to distribution from the Creditors' Fund Trust, and (b) if a Distribution on account of an Allowed Claim other than a General Unsecured Claim or an Unbudgeted Administrative Claim, revert to the Post-Confirmation Debtors and be deemed a Remaining Asset, in each case, notwithstanding any federal or state escheat laws to the contrary

**12. Distribution Record Date**

As of 5:00 p.m. (prevailing Eastern time) on the Distribution Record Date, the transfer registers for Claims shall be closed. The Disbursing Agents shall have no obligation to recognize the transfer or sale of any Claim that occurs after such time on the Distribution Record Date and shall be entitled for all purposes herein to recognize and make distributions only to those Holders who are Holders of Claims as of 5:00 p.m. (prevailing Eastern time) on the Distribution Record Date.

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to 5:00 p.m. (prevailing Eastern time) on the Distribution Record Date shall be treated as the Holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date.

### **13. Defenses and Setoff**

Nothing contained in the Plan shall constitute a waiver or release by the Post-Confirmation Debtors or the Creditors' Fund Trustee of any right rights in respect of legal and equitable objections, defenses, setoffs, or recoupment the Estates, the Post-Confirmation Debtors, or the Creditors' Fund Trustee may have against any Creditor or Interest Holder. To the extent permitted by applicable law, the Post-Confirmation Debtors or Creditors' Fund Trustee, as applicable, may, but shall not be required to, set off or recoup against any Claim or Interest and the payments or other distributions to be made under the Plan in respect of such Claim or Interest, claims of any nature whatsoever that arose before the Petition Date that the Estates, the Post-Confirmation Debtors, or the Creditors' Fund Trustee may have against the Holder of such Claim or Interest. Notwithstanding the foregoing, the Creditors' Fund Trustee may not offset, recoup, raise any objections, or assert any objections that would impair any Causes of Action of the Post-Confirmation Debtors or the LTCA of the Litigation Trust.

### **14. Compliance with Tax Requirements**

Notwithstanding anything to the contrary in the Plan, any applicable Disbursing Agent shall be entitled to deduct any federal, state or local withholding taxes from any Distributions made with respect to Allowed Claims or Interests, as appropriate. A Disbursing Agent shall be authorized to take all actions necessary to comply with applicable withholding and reporting requirements, including, without limitation, applying a portion of any Distribution of Cash to be made under the Plan to pay applicable withholding Taxes. Any amounts withheld pursuant to the immediately preceding sentence will be deemed to have been distributed and received by the applicable recipient for all purposes of the Plan. Notwithstanding any other provision of the Plan, each Holder of an Allowed Claim or Interest that has received a Distribution under the Plan shall have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding and other tax obligation, on account of such Distribution. A Disbursing Agent shall have the right, but not the obligation, to not make a Distribution until the applicable recipient has made arrangements satisfactory to the disbursing party for the payment of any Tax obligations. For tax purposes, Distributions received in respect of Allowed Claims (including, for the avoidance of doubt, Distributions made in accordance with the Lender Settlement) will be allocated first to the principal amount of such Claims until such principal amount is paid in full and then to any interest accrued on such Claim prior to the Petition Date, and the remaining portion of such Distributions, if any, will apply to any interest on such Claim after the Petition Date.

Any applicable Disbursing Agent shall be authorized to require each Holder of a Claim or Interest set forth in Section II.C of the Plan (or any transferee thereof) to provide it with an executed Form W-9, Form W-8, or any other tax form, documentation or certification as may be requested by the Disbursing Agent as a condition precedent to being sent a Distribution. If a Holder of an Allowed Claim does not provide the applicable Disbursing Agent with an executed

Form W-9, Form W-8 or other requested tax form within 90 days after the date of the Disbursing Agent's initial request, the Disbursing Agent may, at its sole discretion (a) make such Distribution net of applicable withholding or (b) reserve such Distribution, in which case (i) such Holder shall be deemed to have forfeited the right to receive any Distribution under the Plan, (ii) any such Distribution shall revert to the Post-Confirmation Debtors or the Creditors' Fund Trust, as applicable, for distribution on account of other Allowed Claims and (iii) the Claim of the Holder originally entitled to such Distribution shall be irrevocably waived and forever barred without further order of the Bankruptcy Court. The Post-Confirmation Debtors reserve the right to delay any distribution under Section II.C of the Plan until they have been provided executed tax forms acceptable to the Post-Confirmation Debtors in their sole and absolute discretion.

Each Disbursing Agent reserves the right to allocate and distribute all Distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, Liens and similar encumbrances.

#### **15. De Minimis Distributions**

If any interim Distribution under the Plan to the Holder of an Allowed Claim or Interest would be less than \$100.00, the Creditors' Fund Trustee and Post-Confirmation Debtors (as applicable) may withhold such Distribution until a final Distribution is made to such Holder. If any final Distribution under the Plan to the Holder of an Allowed Claim or Interest would be less than \$25.00, the Creditors' Fund Trustee and Post-Confirmation Debtors (as applicable) may cancel such Distribution. Any unclaimed Distributions pursuant to Section V.O of the Plan shall be treated as unclaimed property under Section V.J of the Plan. To the extent that the Post-Confirmation Debtors or Creditors' Fund Trust, respectively, have assets remaining that do not exceed \$25,000 in value, the respective Post-Confirmation Debtors or Creditors' Fund Trustee, in their discretion, can donate such assets to a charitable organization of its choice.

#### **16. Distribution to the Prepetition Term Loan Lenders to be Made to the Prepetition Agent**

Notwithstanding anything to the contrary in Section V.K of the Plan, distributions to Holders of Allowed Class 3 Claims shall be made to the Prepetition Agent by the Post-Confirmation Debtors, for further distribution to Holders of Allowed Prepetition Term Loan Secured Claims in accordance with the Lender Settlement. Beginning on the Effective Date and on not less than a quarterly basis thereafter (i.e., every three (3) months), Prepetition Term Loan Distributions to the Prepetition Agent for the benefit of such Holders shall be made on a quarterly basis (i.e., every three (3) months) unless the Post-Confirmation Debtors determine, in consultation with the Required Lenders, that the Cash available at such time does not exceed the Administrative/Priority/Tax Claims Reserve and the anticipated expenses of the Post-Confirmation Debtors, *provided, however*, that except for the final distribution, the Post-Confirmation Debtors shall not be required to make such a distribution if the aggregate amount to be distributed is less than \$1 million.

## **17. Creditors' Fund Trust Supplemental Distribution and Distribution to Interests**

Beginning on the first business day of the first calendar quarter after payment in full of all Prepetition Term Loan Secured Claims and Prepetition Term Loan Interest Claims, and on the first business day of each subsequent calendar quarter, the Post-Confirmation Debtors shall make distributions to the Creditors' Fund Trustee of the amount of Cash constituting the Creditors' Fund Trust Supplemental Distribution; *provided, however*, that except for the final distribution, the Post-Confirmation Debtors shall not be required to make such a distribution if the aggregate amount to be distributed is less than \$1 million.

Beginning on the first business day of the first calendar quarter after payment in full of all Allowed General Unsecured Claims and General Unsecured Interest Claims, and on the first business day of each subsequent calendar quarter, the Post-Confirmation Debtors shall make distributions to the Holders of Allowed Interests the amount of Cash constituting the Class 6 Distribution; *provided, however*, that except for the final distribution, the Post-Confirmation Debtors shall not be required to make such a distribution if the aggregate amount to be distributed is less than \$1 million.

## **D. Settlement, Releases, Injunction And Related Provisions**

### **1. Compromise and Settlement of Claims, Interests and Controversies**

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests and controversies relating to the contractual, legal and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any Distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders of Claims and Interests and is fair, equitable and reasonable and the product of good faith arms' length negotiations. In accordance with the provisions of the Plan, the Post-Confirmation Debtors and Creditors' Fund Trustee (as applicable) may compromise and settle Claims and Interests and Causes of Action against other Entities after the Effective Date without any further notice to or action, order or approval of the Bankruptcy Court

### **2. Releases by Debtors**

**As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties<sup>10</sup> in facilitating the administration of the Chapter 11**

<sup>10</sup> "Released Parties" is defined in the Plan to mean collectively and individually, (i) the Debtors, (ii) the Creditors' Committee, (iii) the Prepetition Agent, (iv) the Committee of Lead Lenders, (v) the Lender Committee Parties, (vi) Standard General Parties, and (vii) the Representatives of each of the parties enumerated in the preceding clauses (i)–(vi) solely in their capacities as Representatives of such parties; *provided that* each any Entity that objects to Confirmation of, or votes to reject, the Plan, and any of their respective Representatives, in each case, shall not be a Released Party; *provided, further*, that none of the Excluded Parties shall be a Released Party

Cases and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, the Released Parties are deemed forever released and discharged by the Debtors and Estates from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Estates or their Affiliates 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 in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan, the Disclosure Statement, the Prepetition Loan Documents, or related agreements, instruments or other documents, other than Claims or liabilities to the extent arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, actual fraud or willful misconduct, as determined by a Final Order.

### 3. Releases by Holders of Claims and Interests

As of the Effective Date, for good and valuable consideration, including the contributions of the Debtors and Released Parties in facilitating the administration of the Chapter 11 Cases and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, to the fullest extent permitted by applicable law, each of the Releasing Parties<sup>11</sup> shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released the Debtors and the Post-Confirmation Debtors, and released and discharged the Creditors' Fund Trust, and the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative claims or claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan, the Disclosure Statement, the Prepetition Loan Documents, or related agreements, instruments or other documents, other than claims, claims or liabilities to the extent arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, actual fraud or willful misconduct, as determined by a Final Order; *provided, however*, that nothing herein shall be deemed a waiver or release of any right of

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<sup>11</sup> "Releasing Parties" is defined in the Plan to mean, collectively, (a) all holders of Claims and Interests; or (b) solely if the Bankruptcy Court finds that the Third Party Release may only be approved with the consent of the applicable holder of a Claim or Interest, all holders of Claims or Interests who, with respect to such Claims or Interests, (i) vote to accept the Plan, (ii) vote to reject the Plan but who do not elect to opt out of the Third Party Release, (iii) receive a ballot providing them with the potential right to opt out of the Third Party Release but abstain from voting on the Plan and do not opt out of the Third Party Release, or (iv) are not entitled to vote on the Plan but receive a notice advising them of their potential right to elect to opt out of the Third Party Release and do not elect to opt out of the Third Party Release

any such Releasing Parties to receive a Distribution pursuant to the terms of the Plan. For the avoidance of doubt, notwithstanding anything to the contrary herein, the foregoing release by the Releasing Parties is not and shall not be deemed to be in exchange for a waiver of the Debtors' rights or claims against the Releasing Parties, including to the Debtors' rights to assert setoffs, recoupments or counterclaims, or to object or assert defenses to any Claim or Interest, and all such rights and claims are expressly reserved. Notwithstanding any of the foregoing, nothing in Section VI.C of the Plan is intended to limit or otherwise modify any releases or waivers that are separately provided for in the Settlements, Final DIP Order, Final Cash Collateral Order and the Settlement Orders. Notwithstanding any language to the contrary contained in the Plan or Confirmation Order, no provision of this Plan or the Confirmation Order shall (i) preclude the SEC from enforcing its police or regulatory powers; or (ii) enjoin the SEC from commencing or continuing any claims, causes of action, proceeding or investigations against any non-Debtor Entities in any forum or release any claims of the SEC against such non-Debtor Entities.

#### **4. Exculpation**

No Exculpated Party shall have or incur any liability to any Entity for any act taken or omission made in connection with, relating to or arising out of the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation or filing of the Disclosure Statement, Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of any Plan securities, or the Distribution of property under the Plan or any other related agreements; provided, however, that the foregoing shall not apply to the extent of any act or omission that is determined in a Final Order to have constituted gross negligence, actual fraud or willful misconduct, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. Notwithstanding any of the foregoing, nothing in Section VI.D of the Plan is intended to expand, limit, or otherwise modify any releases or waivers that are separately provided for in the Settlements, Final DIP Order, Final Cash Collateral Order and the Settlement Orders.

The Exculpated Parties have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distributions pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

#### **5. Post-Effective Date Personnel**

In addition to (i) the exculpation provided in Section VI.D of the Plan and (ii) the limitations of liability for the Creditors' Fund Trustee provided in Section III.B.6 of the Plan, the directors, officers, managers, and employees of the Post-Confirmation Debtors serving after the Effective Date shall incur no personal liability to any Entity for any act or commission in



connection with, arising out of, or relating to, their administration of the Plan and distributions under the Plan, any reserves created under the Plan, or in connection with the affairs of the Post-Confirmation Debtors (including, without limitation, any of the Post-Confirmation Debtor Functions), unless related to an action or omission that is determined in a Final Order to have constituted gross negligence, fraud, illegality or willful misconduct. The Post-Confirmation Debtors shall indemnify such directors, officers, managers and employees serving after the Effective Date for any losses, claims, costs, damages or liabilities resulting from such person's service in such a capacity at any time from and after the Petition Date, unless related to an action or omission that is determined in a Final Order to have constituted gross negligence, fraud, illegality or willful misconduct. The Bankruptcy Court shall retain exclusive jurisdiction over any action or proceeding in connection with, arising out of, or related to their service as directors, officers, or employees of the Post-Confirmation Debtors (from and after the Effective Date). No action or proceeding may be commenced against the directors, officers, or employees of the Post-Confirmation Debtors serving from and after the Effective Date in connection with, arising out of, or relating to their service as directors, officers, or employees from and after the Effective Date without approval of the Bankruptcy Court.

## **6. Injunction**

FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN SECTIONS VI.C, VI.D AND VI.F OF THE PLAN, THE APPLICABLE RELEASING PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE RELEASED PARTIES AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO ARTICLE VI OF THE PLAN.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT, RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED PURSUANT TO SECTION VI.C OR VI.F OF THE PLAN, OR THAT ARE SUBJECT TO THE EXCULPATORY PROVISIONS OF SECTION VI.D OF THE PLAN, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (I) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (II) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (III)

CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATE OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (IV) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, OR SETTLED PURSUANT TO THE PLAN; AND (V) ACTING OR PROCEEDING IN ANY MANNER, IN ANY PLACE WHATSOEVER, THAT DOES NOT CONFORM WITH THE PROVISIONS OF THE PLAN TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THEIR ASSETS, PROPERTY OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED, AND ALL SUCH CLAIMS AND INTERESTS SHALL BE DEEMED SURRENDERED AND EXTINGUISHED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED, AND ALL INTERESTS SHALL BE DEEMED SURRENDERED OR EXTINGUISHED, AS THE CASE MAY BE, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.

ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS OR ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

#### **7. No Consent to Change of Control Required**

To the fullest extent permitted by applicable law, except as otherwise expressly provided by order of the Bankruptcy Court, none of (a) the facts or circumstances giving rise to the commencement of, or occurring in connection with, the Chapter 11 Cases, (b) consummation of any other transaction pursuant to the Plan shall constitute a "change in ownership" or "change of control" (or a change in working control) of, or in connection with, any Debtor requiring the consent of any person other than the Debtors or the Bankruptcy Court.

#### **8. Releases Implemented by the Settlement**

For the avoidance of doubt, nothing herein is intended to limit or otherwise modify any releases, waivers and/or limitations on liability set forth in and implemented by the Settlements.

## **E. MEANS OF IMPLEMENTATION OF THE PLAN**

### **1. Post-Confirmation Debtors;**

#### *a.* Corporate Action; Winding-Up of Affairs

On the Effective Date and automatically and without further action, all matters provided under the Plan shall be deemed to be authorized and approved without further approval from the Bankruptcy Court.

All Debtors other than the Post-Confirmation Debtors shall be deemed dissolved for all purposes as of the Effective Date, without need of further Court order, notice or action and their business operations withdrawn for all purposes without any necessity of filing any document, taking any further action or making any payment to any governmental authority in connection therewith; provided, however, without the need of any further approval, the Post-Confirmation Debtors, in their discretion, may execute and file documents and take all other actions as they deem appropriate relating to the dissolution of the Debtors under applicable state laws, and in such event, all applicable regulatory or governmental agencies shall take all steps necessary to allow and effect the prompt dissolution of the subject Debtor as provided herein, without the payment of any fee, franchise or similar tax, or charge and without need for the filing of reports or certificates.

All existing Interests in the Debtors other than the Post-Confirmation Debtors shall be deemed extinguished and cancelled as of the Effective Date. The Post-Confirmation Debtors shall be deemed dissolved, and their business operations withdrawn and all existing interests extinguished and cancelled, upon the Filing by the Post-Confirmation Debtors of a notice that the Post-Confirmation Debtor Functions have been completed or otherwise satisfied; provided, however, without the need for further approval, the Post-Confirmation Debtors, in their discretion, may execute and file documents and take all other actions as they deem appropriate relating to their dissolution under applicable state laws, and in such event, all applicable regulatory or governmental agencies shall take all steps necessary to allow and effect the prompt dissolution of the Post-Confirmation Debtors as provided herein, without the payment of any fee, franchise or similar tax, or charge and without the need for filing of reports or certificates.

The Post-Confirmation Debtors shall continue and remain in existence on and after the Effective Date solely for implementation of the Post-Confirmation Debtor Functions. The form of operating agreement governing APP Winddown shall be filed as part of the Plan Supplement and shall be in form and substance reasonably acceptable to, and subject to the prior written approval of, the Required Lenders (it being understood that such operating agreement will contain restrictions on transfer of interests in APP Winddown, such that economic interests of APP Winddown generally will be nontransferable).

#### *b.* Authority

On and after the Effective Date, the Post-Confirmation Debtors shall carry out the Post-Confirmation Debtor Functions. Subject to the foregoing, on and after the Effective Date, the Post-Confirmation Debtors may take such actions without supervision or approval by the

Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed by the Plan or Confirmation Order.

Notwithstanding any other provision herein, the Post-Confirmation Debtors shall be solely responsible for making Distributions to Holders of (i) Allowed Administrative Claims (including Fee Claims), except that the Creditors' Fund Trustee shall be responsible for Distributions to Holders of Allowed Unbudgeted Administrative Claims, (ii) Allowed Priority Tax Claims, (iii) Allowed Other Priority Claims, and (iv) Allowed Other Secured Claims, pursuant to Article II of the Plan, and payments of any Taxes owed by the Post-Confirmation Debtors as part of the Post-Confirmation Debtor Functions, using the funds in the Administrative/Priority/Tax Claims Reserve and the Remaining Assets. The Creditors' Fund Trustee shall be solely responsible for making Distributions to Holders of (i) Allowed Unbudgeted Administrative Claims, (ii) Allowed General Unsecured Claims (to the extent there is Creditors' Fund Trust Net Class 4 Distributable Cash), and (iii) Allowed General Unsecured Interest Claims (to the extent there is Creditors' Fund Trust Net Class 4 Distributable Cash). After all asserted Administrative Claims, Priority Tax Claims, Other Priority Claims, and Other Secured Claims have been Allowed, Disallowed or otherwise resolved, and all Tax obligations of the Post-Confirmation Debtors have been resolved or otherwise addressed by the Post-Confirmation Debtors, any Cash allocated to the Administrative/Priority/Tax Claims Reserve and the Remaining Assets shall be used to pay any outstanding or remaining expenses of the Post-Confirmation Debtors (including in connection with their dissolution) and thereafter distributed to the Prepetition Term Loan Lenders in accordance with the Plan.

*c.* Management of Post-Confirmation Debtors

The Post-Confirmation Debtors shall be APP Winddown and APP Shipping Winddown. The board of directors of each Post-Confirmation Debtor shall consist initially of one member, Bradley E. Scher. The sole officers of each Post-Confirmation Debtor shall initially be Bradley E. Scher, in the capacities he served prior to the Effective Date. The compensation to be paid to each officer and director of a Post-Confirmation Debtor shall be determined by the Required Lenders. The Required Lenders (a) may remove any officer or director of a Post-Confirmation Debtor from such office and (b) upon the removal, resignation or death of any officer or director of a Post-Confirmation Debtor, the Required Lenders may appoint a replacement director or officer, as applicable.

**2. Creditors' Fund Trust**

*a.* Establishment and Governance of the Creditors' Fund Trust

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

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

*b.* Purpose of the Creditors Fund Trust

The Creditors' Fund Trust shall be established for the purpose of, among other things, carrying out the Creditors' Fund Trust Functions, including making Distributions pursuant to the Plan and the Creditors' Fund Trust Agreement in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

*c.* The Creditors' Fund Trustee and Creditors' Fund Trust Agreement

1. The Creditors' Fund Trust Agreement generally will provide for, among other things: (i) the payment of the Creditors' Fund Trust Expenses; (ii) the filing, prosecution, settlement and/or other disposition of any and all objections to Class 4 Claims and Unbudgeted Administrative Claims; and (iii) the distribution of the proceeds of the Creditors' Fund Trust Assets (after payment of or reserve for all Creditors' Fund Trust Expenses) to the Creditors' Fund Trust beneficiaries pursuant to the Creditors' Fund Trust Agreement

2. The Creditors' Fund Trust Expenses shall be payable solely from the Creditors' Fund Trust Assets in accordance with the Plan and Creditors' Fund Trust Agreement. The Creditors' Fund Trustee may, but shall not be obligated to, physically segregate and maintain separate accounts or sub-accounts for Creditors' Fund Trust Expenses. Reserves may be merely bookkeeping entries or accounting methodologies, which may be revised from time to time, to enable the Creditors' Fund Trustee to determine reserves and amounts to be paid in accordance with the Creditors' Fund Trust Agreement and the Plan.

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

4. The Creditors' Fund Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Creditors' Fund Trust in favor of the Creditors' Fund Trustee and his or her agents, employees, or representatives. Any such indemnification shall be the sole responsibility of the Creditors' Fund Trust and payable solely from the Creditors' Fund Trust Assets.

*d.* Cooperation and Preservation of Privileges and Defenses

On and after the Effective Date, the Creditors' Fund Trustee shall have all of the Debtors' and the Estates' rights under Bankruptcy Code section 558 with respect to all Class 4 Claims and Unbudgeted Administrative Claims; provided, however, that if the Post-Confirmation Debtors have asserted, or may assert, Causes of Action against the Holders of such Claims, the Creditors' Fund Trustee's rights shall be subject to the Debtors' right to prosecute or settle the Causes of Action on any terms acceptable to the Post-Confirmation Debtors in their sole and absolute discretion. For the sake of clarity, the Creditors' Fund Trustee may not assert any objection under section 502(d) of the Bankruptcy Code if the Post-Confirmation Debtors are prosecuting, or may prosecute, an Avoidance Action against the Holder of an unsecured claim.

Notwithstanding any Debtors or Post-Confirmation Debtors providing any privileged information to the Creditors' Fund Trustee, the Creditors' Fund Trust or any party or person associated with the Creditors' Fund Trust, such privileged information shall be without waiver in recognition of the joint and/or successor interest in prosecuting objections to Claims, as applicable, and shall remain privileged.

The Post-Confirmation Debtors shall use commercially reasonable efforts to cooperate with the Creditors' Fund Trustee in connection with investigating and prosecuting objections to Class 4 Claims and Unbudgeted Administrative Claims, including with respect to promptly providing evidence and information as requested by the Creditors' Fund Trustee (including, but not limited to, reasonable access to the Debtors' and Post-Confirmation Debtors' books and records); provided, however, that the Post-Confirmation Debtors shall not be required to incur any cost or expense in connection with such cooperation unless Creditors' Fund Trustee pays such costs or expenses in advance or on terms and conditions otherwise acceptable to the Post-Confirmation Debtors.

*e.* Compensation and Duties of Creditors' Fund Trustee

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

*f.* Limitations of Liability

Neither the Creditors' Fund Trustee, nor its members, designee, agents, advisors, representatives or professionals shall be liable for the act or omission of any other member, designee, agent, advisor, representative or professional, nor shall the Creditors' Fund Trustee be liable for any act or omission taken or omitted to be taken in its capacity as Creditors' Fund Trustee, respectively, other than for specific actions or omissions resulting from its willful misconduct, gross negligence, or fraud. The Creditors' Fund Trustee shall enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee. The Creditors' Fund Trustee may, in connection with the performance of its functions, in its sole and absolute discretion, consult with its attorneys, accountants, advisors and agents, and shall not be liable for any act taken, or omitted to be taken, or suggested to be done in accordance with advice or opinions

rendered by such persons, regardless of whether in writing. Notwithstanding such authority, the Creditors' Fund Trustee shall be under no obligation to consult with any such attorneys, accountants, advisors or agents, and its determination not to do so shall not result in the imposition of liability on the Creditors' Fund Trustee or its members unless such determination is based on willful misconduct, gross negligence or fraud. Persons dealing with the Creditors' Fund Trustee shall look only to the Creditors' Fund Trust Assets to satisfy any liability incurred by the Creditors' Fund Trustee to such person in carrying out the terms of the Plan or the Creditors' Fund Trust Agreement, and the Creditors' Fund Trustee shall have no personal obligation to satisfy such liability.

### **3. Distributions From Escrows Under the UCC-LT Settlement**

On the Effective Date, or as soon thereafter as is practicable, the Post-Confirmation Debtors shall: (i) transfer from the Settlement Escrow to the Litigation Trust the amount of the Litigation Trust Payment; (ii) transfer from the Settlement Escrow to the Creditors' Fund Trust the amount of the Creditors' Fund Trust Initial Assets; and (iii) transfer all funds from the 503(b)(9) Escrow (as defined in the UCC-LT Settlement) to the Post-Confirmation Debtors.

The Litigation Trustee and Creditors' Committee have agreed to the allocation of the Settlement Escrow as set forth in clauses (i) and (ii) of Section III.C of the Plan. Except for the transfer set forth in clause (i) of Section III.C. of the Plan, neither the Litigation Trust nor the Litigation Trustee shall receive any distribution on account of its Claims in these Chapter 11 Cases, including those asserted in Proofs of Claim Nos. 1740, 1741, 1747, 1756, 1783, 1960 and 3052, and Scheduled Claim Nos. 493780 and 494111.

### **4. Causes of Action**

Unless any Causes of Action are expressly waived, relinquished, released, compromised, or settled in the Plan, the Settlements, or any Final Order (including, without limitation, the Confirmation Order, Final DIP Order, Final Cash Collateral Order and the Settlement Orders), the Debtors and Post-Confirmation Debtors expressly reserve all such Causes of Action for later adjudication. The reservation set forth in Section III.D of the Plan shall include, without limitation, a reservation by the Debtors and Post-Confirmation Debtors of any Causes of Action not specifically identified in the Plan or Disclosure Statement, or of which the Debtors may presently be unaware, or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), or laches will apply to such Causes of Action upon or after the Confirmation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such claims and/or defenses have been expressly waived, relinquished, released, compromised, or settled in the Plan or Settlements or by Final Order. Following the Effective Date, with the consent of the Required Lenders or, in the case of WCC Causes of Action, subject to Section III.I of the Plan, the Post-Confirmation Debtors may assert, compromise or dispose of the Causes of Action without further notice to Creditors or Interest Holders or authorization of the Bankruptcy Court, except as otherwise expressly provided herein.

## **5. Release of Liens**

Except as otherwise provided in the Plan (including in Section III.F of the Plan) or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens against the property of any Estate will be fully released, and all of the right, title and interest of any holder of such Liens, including any rights to any collateral thereunder, shall attach to and be enforceable solely against any net proceeds of sales of such assets, except to the extent the Claim secured by such Lien is reinstated. For the avoidance of doubt, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code.

## **6. Vesting and Sale or Other Disposition of Assets; Representative of the Estate**

Except as otherwise provided in the Plan, on the Effective Date, all property of the Debtors' Estates, including, without limitation, the Remaining Assets, shall vest in APP Winddown as a Post-Confirmation Debtor (or, solely with respect to any post-petition contracts entered into by APP Shipping Winddown's Estate, in APP Shipping Winddown as a Post-Confirmation Debtor), in each case, free and clear of all Claims, liens, charges, other encumbrances, Interests or other interests. Notwithstanding anything in the Plan or the Prepetition Loan Documents to the contrary, all Liens and similar encumbrances of the Prepetition Term Loan Lenders shall remain in full force and effect on all of the Prepetition Collateral until all of the Prepetition Term Loan Secured Claims are paid in Cash in full. On and after the Effective Date, the Post-Confirmation Debtors may use, acquire and dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions imposed by the Plan, the Confirmation Order or the Lender Settlement.

The Post-Confirmation Debtors, on and after the Effective Date, may, with the consent of the Required Lenders, conduct any sales or liquidations of assets on any terms they deem reasonable, without further order of the Bankruptcy Court, except as otherwise provided in the Plan or the Confirmation Order.

APP Winddown, as a Post-Confirmation Debtor, shall be the successor to and representative of the Estate of each of the Debtors appointed for purposes of section 1123(b)(3)(B) of the Bankruptcy Code, including, without limitation, with respect to Avoidance Actions, WCCC Causes of Action, and any other Cause of Action. Except as provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, APP Winddown, as a Post-Confirmation Debtor, will retain and may enforce any claims, demands, rights and Causes of Action (including Avoidance Actions and WCCC Causes of Action) that any Estate may hold against any Person to the extent not released under the Plan. A nonexclusive schedule of currently pending actions and claims brought by one or more Debtors is set forth on Exhibit III.F to the Plan. In accordance with and subject to any applicable law, the Debtors' inclusion or failure to include any right of action or claim on Exhibit III.F to the Plan



shall not be deemed an admission, denial limitation or waiver of any claims, demands, rights or causes of action that any Debtor or Estate may hold against any entity. The Debtors intend to preserve all such claims, demands, rights or Causes of Action as Avoidance Actions (except to the extent any such claim is specifically waived or released under the Plan, including pursuant to Article VI of the Plan).

## **7. Effectuating Documents; Further Transactions**

On and after the Effective Date, the Post-Confirmation Debtors, and the officers and members of the boards of directors thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan and the transactions contemplated thereby, in each case, in the name of and on behalf of the Debtors, without the need for any approvals, authorization or consents except those expressly required pursuant to the Plan.

## **8. Substitution in Pending Legal Actions**

On the Effective Date, the Post-Confirmation Debtors, shall be deemed to be substituted as the party to any litigation in which any of the Debtors are a party, including (i) pending contested matters or adversary proceedings in the Bankruptcy Court, (ii) any appeals of orders of the Bankruptcy Court and (iii) federal or state legal or administrative proceedings pending as of the Petition Date (provided that any Claims arising out of any such proceeding shall be deemed asserted against the Estate of the applicable Debtor(s) prior to the substitution of the Post-Confirmation Debtors); provided, however, that the Creditors' Fund Trustee, solely in his or her capacity as the trustee for the Creditors' Fund Trust, shall be deemed to be substituted as the party to any such litigation in which the Debtors are a defendant and not a counter-claimant or third-party plaintiff that may give rise solely to a General Unsecured Claim. The Post-Confirmation Debtors and the Creditors' Fund Trustee and their respective professionals, as applicable, are not required to, but may take such steps as are appropriate to provide notice of such substitution.

## **9. Certain Workers Compensation Matters Relating to the Lender Settlement**

### *a.* Authorization of Settlements of WCCC Causes of Action

Pursuant to the Lender Settlement, exclusive authority to direct or authorize the settlement of, as the case may be, the WCCC Causes of Action shall reside with (A) from and after December 12, 2017 until the 18-month anniversary thereof, the Standard General Parties, provided that the consent of the Lender Committee Parties shall be required for any such settlement of the WCCC Causes of Action for a recovery by the Post-Confirmation Debtors of less than \$1.5 million, and (B) from and after June 12, 2019, the Lender Committee Parties.

*b.* Release From Reserves in Connection with the Lender Settlement

From and after the Effective Date, the Post-Confirmation Debtors shall continue to maintain the WCCC Litigation Costs Reserve and the SGP WCCC Guaranteed Amount Reserve (each as defined in the Lender Settlement), as required by the Lender Settlement and shall not be permitted to use any funds in such reserves for any purpose, other than as permitted by the Lender Settlement. Following resolution of all WCCC Causes of Action, any funds remaining in the WCCC Litigation Costs Reserve (other than funds required to pay any contingency fees incurred by the Post-Confirmation Debtors in recovering Workers' Compensation Cash Collateral) shall be deemed to be a Remaining Asset to be used by the Post-Confirmation Debtors and thereafter distributed as a Prepetition Term Loan Distribution that is not a distribution of WC Recovered Cash Collateral in accordance with the Plan.

Distributions of funds in the SGP WCCC Guaranteed Amount Reserve (as defined in the Lender Settlement) shall be released on a dollar-for-dollar basis as and when WC Recovered Cash Collateral is distributed to the Standard General Parties in accordance with the Lender Settlement, and the released amounts shall be distributed as Prepetition Term Loan Distributions. On June 12, 2019, any remaining amounts in the SGP WCCC Guaranteed Amount Reserve shall be released and distributed (i) first, to the Standard General Parties as WC Recovered Cash Collateral to the extent the distributions from the Debtors and Post-Confirmation Debtors to the Standard General Parties from the proceeds of the WCCC Causes of Action have not (prior to such distribution from the reserve) equaled \$1.5 million and (ii) second, as a Prepetition Term Loan Distribution that is not a distribution of WC Recovered Cash Collateral.

For the sake of clarity, a "Prepetition Term Loan Distribution that is not a distribution of WC Recovered Cash Collateral" or language of a similar import refers to a Prepetition Term Loan Distribution, the aggregate amount of which is allocated 90% to the Lender Committee Parties and 10% to the Standard General Parties.

## **10. No Substantive Consolidation**

The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of the Bankruptcy Court. The Plan constitutes a separate chapter 11 plan for each Debtor and, unless otherwise set forth herein, the classification and treatment of Claims and Interests apply to each individual Debtor. The portion of the Creditors' Fund Trust Net Class 4 Distributable Cash allocable to a Debtor shall be equal to the proportion that the Allowed Claims and Disputed Claims asserted against a Debtor bears to the aggregate amount of Allowed Claims and Disputed Claims asserted against all Debtors, as of such time of calculation.

## **11. Records**

*a.* Continued Recordkeeping

Following the Effective Date, the Post-Confirmation Debtors will maintain the books and records of the Debtors for matters related to the Post-Confirmation Debtor Functions and the Creditors' Fund Trust Functions, subject to the destruction, transfer and access rights set forth in

this Section III(K) of the Plan. Nothing in the Plan shall obligate the Post-Confirmation Debtors to maintain any Specified Books and Records (as defined in the Litigation Trust Agreement), for a period longer than indicated in Section 1.7(b) of the Litigation Trust Agreement.

*b.* Selected Records for Immediate Destruction

Upon the Effective Date, the Post-Confirmation Debtors shall be authorized to destroy those documents and records of the Debtors described in Exhibit III.K to the Plan without further notice or approval of the Bankruptcy Court.

*c.* Storage and Disposal on Behalf of Debtors

The Post-Confirmation Debtors may, from time to time, and without further notice or authorization of the Bankruptcy Court, transfer documents and records of the Debtors to a storage agent for the purpose of preserving and ultimately disposing of such documents and records as permitted by the Plan. The Post-Confirmation Debtors may make arrangements to pay or pre-pay for such storage services, for an appropriate term, as part of the Post-Confirmation Debtor Functions. The Creditors' Fund Trust and the Litigation Trustee will have access to stored records in accordance with the terms of Section III.K of the Plan and Section III.O of the Plan.

*d.* Post-Confirmation Records Transfer

Following the Effective Date, the Post-Confirmation Debtors may, from time to time upon request, transfer documents and records of the Debtors to (a) the Creditors' Fund Trustee, to meet the Creditor's Fund Trust Functions, the (b) the Litigation Trustee, to meet the obligations under the UCC-LT Settlement or the Litigation Trust Agreement, or (c) the Standard General Parties to the extent relevant to any pending litigation involving such parties. The Post-Confirmation Debtors shall provide 21 days' prior notice of such proposed transfer to (a) the Litigation Trustee, (b) the Creditors' Fund Trustee, (c) the Standard General Parties and (d) the Lender Committee Parties. The reasonable costs and expenses for the transfer and subsequent storage of any documents and records (including associated payroll related expenses, third party fees and expenses, storage device costs, copying fees, and the fees and expenses of counsel if a legal dispute arises that may require a privilege review) shall be satisfied by the party requesting such transfer, and the Post-Confirmation Debtors reserve the right to reject a transfer request that does not provide for payment of such costs and expenses in a manner satisfactory to the Post-Confirmation Debtors. If a notified party objects to a transfer and is unable to reach a resolution with the Post-Confirmation Debtors, such party shall, within 21 days of the date of the notice (or such longer other period as to which such party and the Post-Confirmation Debtors may agree) File an objection with the Bankruptcy Court.

The transferee of documents and records of the Debtors shall (x) be deemed to be a custodian of such information (within the meaning of the Federal Rules of Civil Procedure) on behalf of the Post-Confirmation Debtors, and (y) comply with the access rights of the Litigation Trustee under Section III.O(2) of the Plan (see below Section IV.E(15)(b)). The transfer of any documents and records of the Debtor shall not waive any privileges or protections (including the attorney-client privilege) with respect to such documents and records, nor shall such transfer preclude any other Entity from seeking production of such documents and records in accordance

with applicable law. Upon request by the Post-Confirmation Debtors, the transferee shall return such documents and records to the Post-Confirmation Debtors (at the transferee's own cost and expense), or, at the option of the Post-Confirmation Debtors, provide access to such documents and records.

At such time as a transferee of documents and records does not require further use of the documents and records, it shall provide written notice to the Post-Confirmation Debtors. Upon receipt of such notice, the Post-Confirmation Debtors may request that the transferee return such documents and records to the Post-Confirmation Debtors (at the transferee's cost and expense) or request the transferee to destroy such documents and records either (a) following compliance with the notice procedures under Section III.K (5) of the Plan (see below Section IV.E.11(e) or (b) if otherwise permitted under Section III.K(6) of the Plan (see below Section IV.E.11(f)).

*e.* Post-Confirmation Records Retention

Following the Effective Date, the Post-Confirmation Debtors may, from time to time upon notice to the parties identified in Section X.K (other than the Creditors' Committee and the U.S. Trustee) and to the Creditors' Fund Trustee and the Litigation Trustee, and without approval of the Bankruptcy Court, destroy any documents and records of the Debtors that it believes are no longer required to effectuate the terms and conditions of the Plan or the Settlements. The notice shall provide a reasonable description of the documents and records proposed to be destroyed. In the event a notified party objects to the destruction, it shall either request the transfer of such records pursuant to Section III.K(4) of the Plan (see above Section IV.E.11(d)) or reimburse the Post-Confirmation Debtors for all costs and expenses (including payroll related expenses, third party fees and expenses, storage device costs, copying fees, and the fees and expenses of counsel) associated with the continued maintenance of such documents and records by Post-Confirmation Debtors until transferred, destroyed, or otherwise disposed of.

*f.* Final Destruction

Upon and following seven years after the Effective Date, the Post-Confirmation Debtors shall be authorized, without further notice or approval of the Bankruptcy Court, to destroy any documents and records that it believes are no longer required to effectuate the terms and conditions of the Plan or the Settlements.

## **12. Insurance Policies**

*a.* Insurance Policies Remain In Force

(i) All Insurance Policies shall remain in full force and effect according to their terms and the coverage obligations of the insurers and third party administrators under such Insurance Policies shall continue following the Effective Date (including any obligations to pay, defend and process insured claims). Nothing in the Plan shall affect the right of any insurer or third party administrator under an Insurance Policy to File a Claim, consistent with the Claims Bar Date, for amounts due by the Debtors under such policy.

(ii) Any objection by an insurer or third party administrator to an Insurance Policy to the continued effectiveness of its Insurance Policy following the Effective Date, or any claim by an

insurer or third party administrator that its Insurance Policy constitutes an Executory Contract that must be assumed pursuant to section 365(a) of the Bankruptcy Code as a condition to the continued effectiveness of such policy following the Effective Date, must be Filed, served, and actually received by the Debtors at least seven days prior to the Confirmation Hearing. Any insurer or third party administrator to an Insurance Policy that fails to timely object to the continued effectiveness of its Insurance Policy, or to claim that such policy must be assumed as a condition to its continued effectiveness, will be deemed to have assented to the continuation of its Insurance Policy following the Effective Date according to its terms.

*b.* Alternative Treatment of Executory Insurance Policies, If Any

In the event that, following a timely objection pursuant to Section III.L(1) of the Plan (see Section IV.E.12(a) above), the Bankruptcy Court determines that an Insurance Policy constitutes an Executory Contract, such Insurance Policy shall be treated as follows: (i) to the extent that the assumption of such Insurance Policy shall not require the cure, payment or satisfaction of any deductible, self-insured retention or other obligation, such Insurance Policy shall be assumed by the applicable Debtor(s), or (ii) to the extent that assumption of such Insurance Policy shall require the cure, payment or satisfaction of any such deductible, retention or other obligation, such Insurance Policy shall be rejected by the applicable Debtor(s). Notwithstanding the foregoing, the Debtors reserve the right, to the extent assumption of an Insurance Policy that constitutes an Executory Contract requires the Debtors or the Post-Confirmation Debtors to cure, pay or satisfy any deductible, self-insured retention or other obligation, to list such policy on Exhibit III.L for assumption pursuant to Section IV.A of the Plan.

The Plan shall constitute a motion to assume or reject, as applicable, any Insurance Policy that the Bankruptcy Court has determined constitutes an Executory Contract. Subject to the occurrence of the Effective Date, entry of the Confirmation Order will constitute approval of such assumption or rejection, as applicable, pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that such assumption or rejection, as applicable, is in the best interests of the Debtors, their respective estates and other parties in interest.

Any objection by an insurer or third party administrator under an Insurance Policy that constitutes an Executory Contract (or which the applicable insurer or third party administrator asserts is an Executory Contract) to (i) the proposed assumption or rejection of such policy, or (ii) any cure amount or requirement under such policy, must be Filed, served, and actually received by the Debtors at least seven days prior to the Confirmation Hearing (or, if such policy is listed on Exhibit III.L to the Plan, within seven days after such exhibit is Filed). Any insurer or third party administrator under an Insurance Policy that constitutes an Executory Contract that fails to object timely to the proposed treatment of such policy under the Plan will be deemed to have assented to such treatment.

*c.* Workers Compensation Policies

Nothing in this Plan shall affect or impair the rights of the holders of workers' compensation claims covered under any Insurance Policies issued by the WC Insurers to proceed with their claims against the WC Insurers under applicable law. The WC Insurers may administer, handle, defend, settle, and/or pay in the ordinary course of business the claims of the

workers' compensation claimants asserted against the WC Insurers and costs related to such claims. The WC Insurers, with the consent of the Post-Confirmation Debtors, Standard General Parties and Lender Committee Parties, are authorized to draw against any or all collateral provided by or on behalf of the Debtors at any time and to hold the proceeds thereof as security for the obligations of the Debtors under the Insurance Policies issued by the WC Insurers, provided that, the Arch Settlement shall govern the treatment of any collateral and proceeds thereof held by Arch Insurance Company. The WC Insurers may apply such amounts in a manner (i) as agreed to by the Post-Confirmation Debtors, Standard General Parties and Lender Committee Parties, (ii) as provided by the Arch Settlement, or (iii) as otherwise ordered by the Bankruptcy Court.

*d.* Director and Officer Policies; Employment Practice Liability Policies; Similar Policies

Nothing contained in the Plan shall affect or impair the rights of any non-Debtor insured persons covered under any directors and officers, employment practices or similar liability Insurance Policies (including, without limitation, policies for the benefit of the Debtors' directors, officers, employees, members, managers, or similar persons who served in such capacity either before or after the Petition Date).

*e.* Reservation of Rights

Nothing contained in the Plan shall be deemed or construed as an admission that any Insurance Policy is an Executory Contract within the meaning of section 365 of the Bankruptcy Code.

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

On the Effective Date, the Creditors' Committee shall be dissolved and the members of the Creditors' Committee shall be released and discharged from any further authority, duties, responsibilities, and obligations related to, or arising from, the Chapter 11 Cases, except that the Creditors' Committee shall continue in existence and have standing and capacity to prepare and prosecute applications for the payment of fees and reimbursement of expenses incurred by the Creditors' Committee or its respective Professionals.

### **14. Final Decree**

At any time following the Effective Date, the Post-Confirmation Debtors shall be authorized to file one or more motions for the entry of a final decree closing some or all of the Chapter 11 Cases pursuant to section 350 of the Bankruptcy Code; *provided that*, following the Effective Date, the Post-Confirmation Debtors may seek to close certain of the Chapter 11 Cases that have been fully administered notwithstanding the fact that the reconciliation of Claims is ongoing and that funds in the Creditors' Fund Trust have not yet been distributed or that certain Causes of Action that have vested in APP Winddown pursuant to Section III.F of the Plan were commenced by or on behalf of a Debtor that has been dissolved and for which the Post-Confirmation Debtors are seeking a final decree.

## 15. Litigation Trust Relationship

### a. Compliance with Prior Case Obligations

Section III.O of the Plan shall set forth the post-Confirmation obligations of the Post-Confirmation Debtors under the UCC-LT Settlement Order, the Litigation Trust Agreement and the *Order Compelling Performance of Reorganized Debtors under the Litigation Trust Agreement and Plan* entered by the Bankruptcy Court in the Prior Cases on July 26, 2017. Except as set forth herein, neither the Debtors nor the Post-Confirmation Debtors shall have any other or further obligations following the Effective Date to the Litigation Trustee.

### b. Access to Records

The Post-Confirmation Debtors will provide access to documents and records or electronically stored information relating to the LTCA upon reasonable request by the Litigation Trustee; provided, however, that the Litigation Trustee shall, as a condition to such access, provide the Post-Confirmation Debtors with funds to meet the Post-Confirmation Debtors' associated reasonable costs (including associated payroll related expenses, third party fees and expenses, storage device costs, copying fees, and the fees and expenses of counsel if a legal dispute arises that may require a privilege review). The provision of access under Section III.O(2) of the Plan shall not transfer to the Litigation Trustee any privileges or protections (including attorney-client privilege) and shall not waive any such privilege of the Debtors or the Post-Confirmation Debtors; provided, however, that the foregoing shall not disturb the vesting of any privileges of the Debtors (as of February 5, 2016) pursuant to Section 1.2(ii) the Litigation Trust Agreement with respect to the LTCA.

### c. Transfer of Records

The Litigation Trustee may request the transfer of documents and records of the Debtors under Section III.K of the Plan (see above Section IV.E.11).

### d. Estate Representative

The Litigation Trustee shall be the representative of the Estates appointed pursuant to Bankruptcy Code section 1123(b)(3) with respect to the Charney Arbitration insofar as it may entail the allowance of a Prior Case Unsecured Claim.

### e. Existing Confidentiality Restrictions

If the Litigation Trustee requests access to or the transfer of documents and records that are subject to any applicable protective orders or confidentiality agreements, the Post-Confirmation Debtors may condition the provision of such documents and records upon compliance by the Litigation Trustee with the terms of any such order or agreement, or upon the Litigation Trustee having obtained relief therefrom. In determining whether the Litigation Trustee must comply with such orders and agreements, the Post-Confirmation Debtors will consider whether the Debtors' existing privileges (as of February 5, 2016) were previously vested with the Litigation Trustee pursuant to Section 1.2(ii) the Litigation Trust Agreement with

respect to the LTCA. Any documents and records produced or provided to the Litigation Trustee shall be subject to the terms and conditions of Exhibit III.O to the Plan.

*f.* Common Interest

The Post-Confirmation Debtors and the Litigation Trust share a common interest with regard to information related to the LTCA and the resolution of Prior Case General Unsecured Claim and the Charney Arbitration. The sharing of information is not intended to, and shall not, waive any evidentiary privileges, protections, or immunities, including without limitation the attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or information whether oral or written. The access, transfer or other provision of any documents and records to the Litigation Trustee that contains (x) privileged information of the Debtors not related to the LTCA, the Prior Case Unsecured Claims, or the Charney Arbitration, (y) privileged information of any other party, or (z) information that any party (including, without limitation, the Debtors) claim should not have been produced because of a privilege to which the Litigation Trust does not share a common interest with respect thereto pursuant to Section III.O of the Plan or the Litigation Trust Agreement, shall not constitute a waiver of, or estoppel as to, any such claim of privilege. If any such holder of privileged information notifies the Litigation Trustee that it believes the Litigation Trustee has received such information, the Litigation Trustee shall comply with Federal Rule of Civil Procedure 26(b)(5)(B) with respect to such information.

**F. CONDITIONS TO THE CONFIRMATION DATE AND EFFECTIVE DATE**

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

It shall be a condition to Confirmation hereof that the following provisions, terms and conditions shall have been satisfied or waived pursuant to Section VII.C of the Plan:

- The Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the Debtors, Standard General Parties, Lender Committee Parties and Prepetition Agent, approving the Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.
- The Plan and documents in the Plan Supplement shall be in form and substance reasonably acceptable to the Debtors, Standard General Parties and Lender Committee Parties.
- The Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the Debtors, the Standard General Parties, Lender Committee Parties and Prepetition Agent, confirming the Plan pursuant to section 1129 of the Bankruptcy Code.



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

It shall be a condition to the Effective Date that the following provisions, terms and conditions shall have been satisfied or waived pursuant to Section VII.C of the Plan:

- All of the schedules, documents, supplements and exhibits to the Plan shall have been filed in form and substance reasonably acceptable to the Debtors, the Standard General Parties and Lender Committee Parties.
- All authorizations, consents and regulatory approvals required, if any, in connection with the Plan's effectiveness shall have been obtained.
- No order of a court shall have been entered and remain in effect restraining the Debtors from consummating the Plan and the transactions contemplated therein, and the Confirmation Order shall be in full force and effect.
- All actions, documents, certificates and agreements necessary to implement the Plan and the Creditors' Fund Trust shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws, and are in form and substance, acceptable to the Debtors.

## **3. Waiver of Conditions to Confirmation or the Effective Date**

Other than Section VII.A.3 of the Plan, the conditions to Confirmation of the Plan and to the occurrence of the Effective Date set forth in Article VII of the Plan may be waived at any time by the Debtors, with the consent of the Standard General Parties and Lender Committee Parties.

## **4. Effect of Failure of Conditions**

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any claims by or Claims against the Debtors; (ii) prejudice in any manner the rights of the Debtors, any Holders of a Claim or Interest or any other Entity; or (iii) constitute an admission, acknowledgment, offer or undertaking by the Debtors, the Creditors' Committee, any Creditors or Interest Holders or any other Entity in any respect.

## **G. Other Provisions of the Plan**

### **1. Modification and Amendments**

Except as otherwise specifically provided herein, the Debtors reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and Bankruptcy Rules and, as appropriate, not re-solicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights to alter, amend or modify materially the Plan with respect to any or all Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate

proceedings in the Bankruptcy Court to so alter, amend or modify the Plan or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan; provided, however, that any alterations, amendments or modifications to the Plan, the Disclosure Statement and Confirmation Order must be consistent in all respects with the Settlements. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article VIII of the Plan and with the consent of the Standard General Parties and Lender Committee Parties.

In addition, prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan, without further order or approval of the Bankruptcy Court; provided, however, that such technical adjustments and modifications do not adversely affect in a material way the treatment of Holders of Allowed Claims or Interests.

## **2. Effect of Confirmation on Modifications**

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the commencement of the solicitation of votes on the Plan are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

## **3. Revocation or Withdrawal of the Plan**

The Debtors reserve the right to revoke or withdraw the Plan before the Effective Date. If the Debtors revoke or withdraw the Plan, or if the Confirmation Date or the Effective Date does not occur, then: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of any Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (iii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims or Interests or Claims by any Debtor against any other Entity; (b) prejudice in any manner the rights of such Debtor, the Creditors' Committee, the Holder of any Claim or Interest or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by such Debtor, the Creditors' Committee or any other Entity.

## **H. Retention of Jurisdiction by the Bankruptcy Court**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over the Chapter 11 Cases and all matters, arising out of or related to, the Chapter 11 Cases and the Plan including jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount or allowance of Claims;

- decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
- resolve any matters related to (i) the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine and, if necessary, liquidate, any Claims arising therefrom, including Rejection Claims or any other matter related to such Executory Contract or Unexpired Lease (including the assumption thereof); (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (iii) any dispute regarding whether a contract or lease is or was executory or expired;
- ensure that Distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan and the Creditors' Fund Trust Agreement;
- adjudicate, decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;
- adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy code;
- enter and enforce any order for the sale of property pursuant to section 363, 1123 or 1146(a) of the Bankruptcy Code;
- resolve any Avoidance Action, WCCC Cause of Action, Cause of Action, or dispute regarding the subordination of any Claim or Interest;
- resolve any cases, claims, controversies, suits, disputes or causes of action that may arise in connection with the consummation, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
- hear and determine any cases, claims, controversies, suits, disputes or causes of action that may arise in connection with the consummation, interpretation or enforcement of the Settlements or any Entity's rights or obligations under the Settlements;
- 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 consummation or enforcement of the Plan;
- resolve any cases, controversies, suits, disputes or causes of action with respect to the releases, injunctions, exculpations, indemnifications and other provisions contained in Article VI of the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions and other provisions;

- enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;
- determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Disclosure Statement;
- adjudicate any and all disputes arising from or relating to Distributions made under the Plan or the Creditors' Fund Trust Agreement;
- consider any modifications of the Plan, cure any defect or omission or reconcile any inconsistency in the Plan or any Bankruptcy Court order, including the Confirmation Order;
- determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;
- hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with the Plan;
- hear and determine disputes arising in connection with the Creditors' Fund Trust or Post-Confirmation Debtors, including in connection with the interpretation, implementation and enforcement of the Creditors' Fund Trust Agreement;
- hear and determine matters concerning state, local and federal taxes in accordance with section 346, 505 or 1146 of the Bankruptcy Code;
- hear and determine disputes concerning the application or enforcement of any exemption provided under section 1145 of the Bankruptcy Code;
- hear and determine all disputes involving the existence, nature or scope of any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;
- enforce all orders previously entered by the Bankruptcy Court;
- hear any other matter not inconsistent with the Bankruptcy Code; and
- enter an order dismissing or closing the Chapter 11 Cases.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter, including the matters set forth in Article IX of the Plan, the provisions of Article IX of the Plan shall have no effect upon and shall not control,

prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **I. MISCELLANEOUS PROVISIONS**

### **1. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h) and 7062 and/or any other Bankruptcy Rule, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Post-Confirmation Debtors, the Creditors' Fund Trust, any and all Holders of Claims and Interests (irrespective of whether such Claims or Interests are Allowed or Disallowed or were voted to accept or reject the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

### **2. Section 1146 Exemption**

Pursuant to section 1146(a) of the Bankruptcy Code, the transfer of any property under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by, the Plan or the revesting, transfer or sale of any real or personal property of the Debtors pursuant to, in implementation of, or as contemplated by, the Plan shall not be taxed under any state or local law imposing a stamp tax, transfer tax, or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax or similar tax.

### **3. U.S. Trustee Fees and Post-Confirmation Reports**

After the Effective Date, the Post-Confirmation Debtors and the Creditors' Fund Trust shall be jointly and severally liable for all statutory fees due for the post-Effective Date period pursuant to 28 U.S.C. § 1930(a)(6) allocable to the Post-Confirmation Debtors and/or the Creditors' Fund Trust, *provided, however*, that if the Post-Confirmation Debtors have Filed the Post-Confirmation Debtor Functions Completion Notice before the Creditors' Fund Trust has completed the Creditors' Fund Trust Functions, such fees shall be paid entirely by the Creditors' Fund Trust until entry of a final decree or an order converting or dismissing the Chapter 11 Cases. Until the Post-Confirmation Debtor Functions Completion Notice has been filed with the Bankruptcy Court, such statutory fees shall be allocated among the Post-Confirmation Debtors and the Creditors' Fund Trust in proportion to the distributions made by the Post-Confirmation Debtors and the Creditors' Fund Trust; *provided that*, with respect to any Debtor that has dissolved, all such fees shall be paid by the Creditors' Fund Trust. After the Effective Date, the Post-Confirmation Debtors and the Creditors' Fund Trust will file separate post-confirmation reports on a quarterly basis that shall include all of their respective disbursements for that quarter up to the entry of a final decree closing the Chapter 11 Cases or an order dismissing or converting the Chapter 11 Cases; *provided that* the Post-Confirmation Debtors shall have no

obligation to file such status reports following Filing of the Post-Confirmation Debtor Functions Completion Notice.

After the Effective Date, the Post-Confirmation Debtors and the Litigation Trust shall be jointly and severally liable for all statutory fees due for the post-Effective Date period pursuant to 28 U.S.C. § 1930(a)(6) allocable to the Post-Confirmation Debtors and/or the Litigation Trust, provided, however, that if the Post-Confirmation Debtors have Filed the Post-Confirmation Debtor Functions Completion Notice before the Litigation Trust has terminated in accordance with the Litigation Trust Agreement, such fees shall be paid entirely by the Litigation Trust until entry of a final decree or an order converting or dismissing the Prior Cases. Until Post-Confirmation Debtor Functions Completion Notice has been filed with the Bankruptcy Court, such statutory fees shall be allocated among the Post-Confirmation Debtors and the Litigation Trust in proportion to the distributions made by the Post-Confirmation Debtors and the Litigation Trust; provided that, with respect to any Debtor that has dissolved, all such fees shall be paid by the Litigation Trust. After the Effective Date, the Post-Confirmation Debtors and the Litigation Trust will file separate post-confirmation reports on a quarterly basis that shall include all of their respective disbursements for that quarter up to the entry of a final decree closing the Chapter 11 Prior Cases or an order dismissing or converting the Prior Cases; provided that the Post-Confirmation Debtors shall have no obligation to file such status reports following Filing of the Post-Confirmation Debtor Functions Completion Notice.

#### **4. Non-Voting Equity Securities**

If and to the extent applicable, the Debtors shall comply with the provisions of section 1123(a)(6) of the Bankruptcy Code.

#### **5. Additional Documents**

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Creditors' Committee, the Post-Confirmation Debtors, the Creditors' Fund Trust, and all Holders of Claims or Interests receiving Distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### **6. Successors and Assigns**

The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, affiliate, officer, director, manager, agent, representative, attorney, beneficiaries or guardian, if any, of such Entity.

#### **7. Severability of Plan Provisions**

If, before Confirmation of the Plan, any term or provision of the Plan is held by the Bankruptcy Court or any other court exercising jurisdiction to be invalid, void or unenforceable, the Bankruptcy Court or other court exercising jurisdiction shall have the power to alter and

interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted so long as such term or provision is acceptable to the Debtors. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (i) valid and enforceable pursuant to its terms; (ii) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (iii) nonseverable and mutually dependent.

## **8. Exhibits**

The Creditors' Fund Trust Agreement and all exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan, to the extent not inconsistent with the Plan. The Debtors reserve the right to amend the Exhibits to the Plan any time prior to Confirmation.

## **9. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code and any applicable non-bankruptcy law, and pursuant to section 1125(e), the Debtors, the Creditors' Committee and their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code, including, if applicable, in the offer, issuance, sale and purchase of any Plan securities (if any) provided under the Plan, and, therefore, will have no liability for the violation of any applicable law, rule or regulation governing the solicitation of votes on the Plan.

## **10. Conflicts**

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibit, schedule, appendix, supplement or amendment to any of the foregoing), conflicts or is in any way inconsistent with any provision of the Plan, the Plan shall govern and control. If there is a conflict between the Plan and a Plan Supplement document, the Plan Supplement document, as applicable, shall govern and control. If any provision of the Plan conflicts with or is in any way inconsistent with any provision of the Confirmation Order, the Confirmation Order shall govern and control.

For the avoidance of doubt, except as set forth in Section III.C of the Plan, nothing contained in the Plan shall affect or be deemed to affect the LTCA or any other assets under the Litigation Trust in the Prior Cases, including, without limitation, any rights of the Litigation Trustee in connection with Case No. BC443763 pending in the Superior Court of the State of California for the County of Los Angeles and Grigoriev v. Charney, Case No. 12-57055 pending in the United States Court of Appeals for the Ninth Circuit. Nothing in the Plan shall affect the

rights under the rights of the Litigation Trustee under the Trust Agreement in the Prior Cases to pursue the LTCA.

Notwithstanding anything to the contrary contained in the Plan other than Section III.C, the Litigation Trust's obligations are those set forth in the Litigation Trust Agreement.

Nothing in the Plan or Confirmation Order shall affect the ability of the Litigation Trustee, upon consultation with the Litigation Trust Board, to alter the compensation terms for the Litigation Trustee and its professionals under the Litigation Trust Agreement.

## **V. VOTING REQUIREMENTS**

The Disclosure Statement Order entered by the Bankruptcy Court approved certain procedures for the Debtors' solicitation of votes to approve the Plan, including setting the deadline for voting, which Holders of Claims or Interests are eligible to receive Ballots to vote on the Plan, and certain other voting procedures.

THE DISCLOSURE STATEMENT ORDER IS HEREBY INCORPORATED BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN. YOU SHOULD READ THE DISCLOSURE STATEMENT ORDER, THE CONFIRMATION HEARING NOTICE, AND THE INSTRUCTIONS ATTACHED TO YOUR BALLOT IN CONNECTION WITH THIS SECTION, AS THEY SET FORTH IN DETAIL, AMONG OTHER THINGS, PROCEDURES GOVERNING VOTING DEADLINES AND OBJECTION DEADLINES.

If you have any questions about the procedure for voting your Claim or the Solicitation Package you received, or if you wish to obtain a paper copy of the Plan, this Disclosure Statement or any exhibits to such documents, please contact Prime Clerk, the Voting Agent, (A) by telephone (1) for U.S. and Canadian callers toll-free at 844-596-2261 and (2) for international callers at 914-266-8242 or (B) in writing at APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022, or by email at [aaballots@primeclerk.com](mailto:aaballots@primeclerk.com).

U.S. and Canadian callers toll-free at 844-596-2261 and (b) for international callers at [914-266-8242, (2) by e-mail at [aaballots@primeclerk.com](mailto:aaballots@primeclerk.com), or (3) in writing at APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022.

### **A. Voting Deadline**

This Disclosure Statement and the appropriate Ballot(s) are being distributed to all Holders of Claims that are entitled to vote on the Plan. In order to facilitate vote tabulation, there is a separate Ballot designated for each impaired voting Class; however, all Ballots are substantially similar in form and substance, and the term "Ballot" is used without intended reference to the Ballot of any specific Class of Claims.

IN ACCORDANCE WITH THE DISCLOSURE STATEMENT ORDER, IN ORDER TO BE CONSIDERED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN, ALL BALLOTS MUST BE RECEIVED BY THE VOTING AGENT NO LATER THAN **5:00 P.M. (PREVAILING EASTERN TIME) ON [\_\_\_\_\_], 2018**, WHICH IS THE VOTING



DEADLINE. ONLY THOSE BALLOTS ACTUALLY RECEIVED BY THE VOTING AGENT IN COMPLIANCE WITH THE VOTING PROCEDURES BEFORE THE VOTING DEADLINE WILL BE COUNTED AS EITHER ACCEPTING OR REJECTING THE PLAN. EXCEPT WITH RESPECT TO BALLOTS SUBMITTED THROUGH THE VOTING AGENT'S ONLINE BALLOTING PORTAL, NO BALLOTS MAY BE SUBMITTED BY ELECTRONIC MAIL OR OTHER MEANS OF ELECTRONIC SUBMISSION.

FOR DETAILED VOTING INSTRUCTIONS, SEE THE DISCLOSURE STATEMENT ORDER.

**B. Holders of Claims or Interests Entitled to Vote**

Under section 1124 of the Bankruptcy Code, a class of claims or equity interests is deemed to be "impaired" under a plan unless (1) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or equity interest entitles the holder thereof; or (2) notwithstanding any legal right to an accelerated payment of such claim or equity interest, the plan (a) cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy), (b) reinstates the maturity of such claim or equity interest as it existed before the default, (c) compensates the holder of such claim or equity interest for any damages resulting from such holder's reasonable reliance on such legal right to an accelerated payment and (d) does not otherwise alter the legal, equitable or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

In general, a holder of a claim or equity interest may vote to accept or reject a plan if (1) the claim or equity interest is "allowed," which means generally that it is not disputed, contingent or unliquidated, and (2) the claim or equity interest is impaired by a plan. However, if the holder of an impaired claim or equity interest will not receive any distribution under the plan on account of such claim or equity interest, the Bankruptcy Code deems such holder to have rejected the plan and provides that the holder of such claim or equity interest is not entitled to vote on the plan. If the claim or equity interest is not impaired, the Bankruptcy Code conclusively presumes that the holder of such claim or equity interest has accepted the plan and provides that the holder is not entitled to vote on the plan.

Except as otherwise provided in the Disclosure Statement Order, the Holder of a Claim against one or more Debtors that is "impaired" under the Plan is entitled to vote to accept or reject the Plan if (1) the Plan provides a distribution in respect of such Claim; (2) the Claim has been scheduled by the appropriate Debtor (and is not scheduled as disputed, contingent, or unliquidated), the Holder of such Claim has timely Filed a Proof of Claim or a Proof of Claim was deemed timely Filed by an order of the Bankruptcy Court prior to the Voting Deadline; or (3) the Claim has not already been otherwise expunged or disallowed.

As set forth in the Tabulation Rules (as defined in the Disclosure Statement Order) and Disclosure Statement Order, Holders of Claims that are wholly disputed, wholly contingent or wholly unliquidated Claims, and for which a Proof of Claim has been Filed, will have such Claims temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00 (if a Holder of a Claim that has been scheduled as contingent, unliquidated, or disputed did not timely a Proof of Claim, a Holder of such a Claim will not be entitled to vote with respect to that Claim unless the Bankruptcy Court orders otherwise). Any Holder seeking

to challenge the allowance of its Claim for voting purposes in accordance with the Tabulation Rules must file a motion, pursuant to Bankruptcy Rule 3018(a), in accordance with the Disclosure Statement Order. Any Ballot submitted by a creditor that files such a motion will be counted solely in accordance with the Debtors' Tabulation Rules and the other applicable procedures contained in the Disclosure Statement Order unless and until the underlying Claim is temporarily allowed by the Bankruptcy Court for voting purposes in a different amount, after notice and a hearing.

A vote on the Plan may be disregarded if the Bankruptcy Court determines, pursuant to section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. The Disclosure Statement Order also sets forth assumptions and procedures for determining the amount of Claims that each creditor is entitled to vote in these Chapter 11 Cases and how votes will be counted under various scenarios.

### **C. Vote Required for Acceptance by a Class**

A Class of Claims will have accepted the Plan if it is accepted by at least two-thirds ( $\frac{2}{3}$ ) in amount and more than one-half ( $\frac{1}{2}$ ) in number of the Allowed Claims in such Class that have voted on the Plan in accordance with the Disclosure Statement Order.

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

The Bankruptcy Code requires the Bankruptcy Court, after notice, to conduct a hearing at which it will hear objections (if any) and determine whether to confirm the Plan. At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code described below are met.

The Confirmation Hearing has been scheduled to begin on [\_\_\_\_], 2018 at [\_\_]:[\_\_] [\_\_].m., prevailing Eastern time before the Honorable Chief Judge Brendan L. Shannon, Chief United States Bankruptcy Judge for the District of Delaware, in Courtroom No. 1, Sixth Floor, at the United States Bankruptcy Court for the District of Delaware, located at 824 North Market Street, Wilmington, Delaware 19801. 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.

### **A. Deadline to Object to Confirmation**

Objections, if any, to the Confirmation of the Plan must: (1) be in writing; (2) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (3) state with particularity the basis and nature of any objection; and (4) be Filed with the Bankruptcy Court, and served on the following parties so that they are received no later than [\_\_]:[\_\_] [\_\_].m., prevailing Eastern time, on [\_\_\_\_], 2018:

- the Debtors, Bradley E. Scher, c/o Ocean Ridge Capital Advisors, LLC, 56 Harrison Street, Suite 203 A, New Rochelle, New York 10801;
- counsel to the Debtors, Jones Day, 250 Vesey Street, New York, New York 10281, Attn: Scott J. Greenberg, Esq., Michael J. Cohen, Esq and Genna L. Ghaul, Esq.; and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street,

17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones, Esq., James O'Neill, Esq., Victoria Newmark, Esq. and Joseph Mulvihill, Esq.;

- the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: Jane Leamy, Esq.;
- counsel to the Creditors' Committee, Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: Cathy Herschopf and Seth Van Aalten, and Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801, Attn: Justin R. Alberto;
- counsel to the Prepetition Agent, Covington & Burling LLP, 620 Eighth Avenue, New York, New York, 10018, Attn: Ronald A. Hewitt; and Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, P.O. Box 1709, Wilmington, Delaware 19899, Attn: David Fournier
- counsel to the Committee of Lead Lenders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Ave., New York, New York 10005, Attn: Gerald Uzzi, Esq. and Eric Stodola, Esq.; and Fox Rothschild LLP, 919 N. Market street, Suite 300, Wilmington, Delaware 19801, Attn: Jeffrey M. Schlerf, Esq.;
- counsel to Standard General, L.P. and its affiliates, Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York, 10022, Attn: M. Natasha Labovitz, Esq. and Craig A. Bruens, Esq.; and Young Conaway Stargatt & Taylor, LLP, One Rodney Square, 1000 N. King St., Wilmington, Delaware, 19801, Attn: Edmon L. Morton, Esq.; and
- such other parties that the Bankruptcy Court may order.

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

Among the requirements for Confirmation of the Plan are that the Plan (1) is accepted by all impaired Classes of Claims and Interests or, if rejected by an impaired Class, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Class; (2) is feasible; and (3) is in the “best interests” of creditors and stockholders that are impaired under the Plan.

### **1. Requirements of Section 1129(a) of the Bankruptcy Code**

Section 1129(a) of the Bankruptcy Code contains several requirements for confirmation of a plan. Among those requirements are that a plan be in the best interests of creditors and that a plan be feasible, as set forth in further detail below. The Debtors believe that the Plan meets all the applicable requirements of section 1129(a) of the Bankruptcy Code other than those pertaining to voting, which has not yet taken place.

#### *a. Best Interests of Creditors*

Section 1129(a)(7) of the Bankruptcy Code requires that any holder of an impaired claim or interest that does not vote to accept a proposed chapter 11 plan must be provided in the plan with a value, as of the effective date of the plan, at least equal to the value that the holder would

receive if the debtor's assets were liquidated under chapter 7 of the Bankruptcy Code on the effective date of such plan.

The Debtors believe the Plan satisfies the best interest test because, among other things, the recoveries expected to be available to Holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in a chapter 7 liquidation.

In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets and to make distributions to creditors in accordance with the priorities established in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of their collateral. If any estate assets remain in the bankruptcy estate after satisfaction of secured creditors' claim from their collateral, administrative expenses are next to be paid. Following the payment of all administrative claims in full, unsecured creditors share pro rata in remaining proceeds in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by unsecured creditors with the same priority. Finally, interest holders receive the balance that remains, if any, after all administrative expense claims, and secured and unsecured creditors are paid in full on their allowed claims.

As of the Effective Date, substantially all of the Debtors' assets will have been liquidated. The Final DIP Order, the Final Cash Collateral Order and various settlements that were entered into amongst parties in interest and approved by the Court have confirmed that the Prepetition Lenders have liens on the Debtors' remaining cash and assets, except with respect to the Settlement Escrow and the Section 503(b)(9) Escrow (the balance of the Section 503(b)(9) Escrow, after paying claims with administrative expense status pursuant to section 503(b)(9) of the Bankruptcy Code, revert to the Debtors). Although the Plan effects the continued liquidation of the Debtors' assets and contemplates distributions to creditors, the Debtors believe that the Plan provides a recovery to Holders of Allowed General Unsecured Claims that would be no less than such creditors would receive in a chapter 7 liquidation. First, pursuant to the Lender Settlement, funds are available to pay administrative and priority claims (other than Unbudgeted Administrative Claims). In a chapter 7 liquidation, those claims likely would need to be paid from funds the Settlement Escrow, thus reducing the potential recovery to Holders of Allowed General Unsecured Claims. In addition, the fees and expenses in a chapter 7 case may be greater because of the fees and expenses associated with a new bar date (*see* Bankruptcy Rules 1019(2) and 3002(c)). It is also possible that, because of the need for a chapter 7 trustee to familiarize itself with the cases and its statutory commission, the fees and expenses of the trustee and its professionals may exceed the equivalent costs under the chapter 11 plan where the Post-Confirmation Debtors' employees and professionals are already familiar with the winding down of the estates (for these purposes, the Debtors assume that the costs of the Creditors' Fund Trustee would be no more than the costs of a chapter 7 trustee with respect to the functions of the Creditors' Fund Trust and Creditors' Fund Trustee).

#### *b. Feasibility*

Section 1129(a)(11) of the Bankruptcy Code requires that, in order to confirm a plan, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor(s) unless contemplated by the plan. The Plan provides for the liquidation and distribution of the Debtors' assets. The

Debtors believe that that sufficient funds will exist to make all payments required by the Plan. Accordingly, the Debtors believe that the Plan meets the feasibility requirement.

## 2. Requirements of Section 1129(b) of the Bankruptcy Code

The Bankruptcy Code permits confirmation of a plan even if it is not accepted by all impaired classes, as long as (a) the plan otherwise satisfies the requirements for confirmation, (b) at least one impaired class of claims has accepted the plan without taking into consideration the votes of any insiders in such class and (c) the plan is “fair and equitable” and does not “discriminate unfairly” as to any impaired class that has not accepted the plan. These so-called “cramdown” provisions are set forth in section 1129(b) of the Bankruptcy Code.

### a. “Fair and Equitable”

The Bankruptcy Code establishes different “cramdown” tests for determining whether a plan is “fair and equitable” to dissenting impaired classes of secured creditors, unsecured creditors and equity interest holders as follows:

- Secured Creditors. A plan is fair and equitable to a class of secured claims that rejects the plan if the plan provides: (a) that each holder of a secured claim included in the rejecting class (i) retains the liens securing its claim to the extent of the allowed amount of such claim, whether the property subject to those liens is retained by the debtor or transferred to another entity, and (ii) receives on account of its secured claim deferred cash payments having a present value, as of the effective date of the plan, at least equal to such holder’s interest in the estate’s interest in such property; (b) that each holder of a secured claim included in the rejecting class realizes the “indubitable equivalent” of its allowed secured claim; or (c) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing the claims included in the rejecting class, free and clear of such liens with such liens to attach to the proceeds of the sale, and the treatment of such liens on proceeds in accordance with clause (i) or (ii) of this paragraph.
- Unsecured Creditors. A plan is fair and equitable as to a class of unsecured claims that rejects the plan if the plan provides that: (a) each holder of a claim included in the rejecting class receives or retains under the plan property of a value, as of the effective date of the plan, equal to the amount of its allowed claim; or (b) the holders of claims and interests that are junior to the claims of the rejecting class will not receive or retain any property under the plan on account of such junior claims or interests.
- Holders of Interests. A plan is fair and equitable as to a class of interests that rejects the plan if the plan provides that: (a) each holder of an equity interest included in the rejecting class receives or retains under the plan property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of (i) any fixed liquidation preference to which such holder is entitled, (ii) any fixed redemption price to which such holder is entitled or (iii) the value of the interest; or (b) the holder of any interest that is junior to the interests of the

rejecting class will not receive or retain any property under the plan on account of such junior interest.

The Debtors believe the Plan is fair and equitable as to unsecured creditors and Holders of Interests because no Holders of Claims or Interests junior to such parties are receiving any distributions under the Plan on account of such claims or interests. In light of the Lender Settlement, the Debtors do not believe they will be required to seek non-consensual Confirmation of the Plan as to secured creditors.

*b. “Unfair Discrimination”*

A chapter 11 plan does not “discriminate unfairly” if a dissenting class is treated substantially equally with respect to other classes similarly situated, and no class receives more than it is legally entitled to receive for its claims or interests. The Debtors do not believe that the Plan discriminates unfairly against any impaired Class of Claims or Interests.

The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for “cramdown,” or non-consensual Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code.

**C. Provisional Opt Out for Certain Releases And Applicable Standards**

Section VI of the Plan provides for releases for certain claims against non-debtors in consideration of services provided to the Debtors and the contributions made by the Released Parties to the Chapter 11 Cases. The “Released Parties,” with potential certain limitations, are, collectively and individually, (i) the Debtors, (ii) the Creditors’ Committee, (iii) the Prepetition Agent, (iv) the Committee of Lead Lenders, (v) the Lender Committee Parties, (vi) Standard General Parties, and (vii) the Representatives of each of the parties enumerated in the preceding clauses (i)–(vi) solely in their capacities as Representatives of such parties. As set forth in the Plan, the releases are given by (i) the Debtors; (ii) their Estates; and (iii) to the greatest extent permitted under applicable law, all Holders of Claims against and Interests in the Debtors.

As a party receiving this Disclosure Statement, you should read Section VI of the Plan carefully as it affects your rights by releasing claims that you may hold against the Released Parties (such release, the “Third Party Release”). The Third Party Release may be permissible under applicable law even without the consent of the releasing parties. However, as parties in interest may object to the Third Party Release, and as the Bankruptcy Court may find that the Third Party Release can only be granted with the consent of the releasing parties under the facts and circumstances of these Chapter 11 Cases, the Ballots contain a “Third Party Release Election.” The Third Party Release Election is intended to be used, and will only be considered, in the event the Bankruptcy Court finds that the consent of a Releasing Party is required for the Third Party Release to be effective against such party. By voting in favor of the Plan, creditors in Classes 3 and 4 will be deemed to have consented to the Third Party Release. Further, to the extent consent is required, the Debtors anticipate taking the position that every creditor in Class 3 or Class 4 that did not affirmatively opt out of Third Party Releases (to the extent consent is required for the Third Party Release to be effective against a party) will be deemed to have consented to the Third Party Release.

#### **D. Standards Applicable to Certain Releases**

Section VI of the Plan provides for releases for certain claims against non-debtors in consideration of services provided to the Debtors and the contributions made by the Released Parties to the Chapter 11 Cases. The Debtors believe that the releases set forth in the Plan are appropriate because, among other things, the releases are narrowly tailored, and each of the Released Parties has provided value to the Debtors and aided in the chapter 11 process, including, with respect to certain Released Parties, by their support of the Plan and funding the winding down of the Debtors. Here, the Debtors believe that certain of the non-Debtor Released Parties has (a) expended significant time and/or resources analyzing and negotiating the issues during the Debtors' chapter 11 cases and/or (b) contributed significantly to the maximization of value of the Debtors' estates. Finally, certain of the non-Debtor Released Parties have played and will continue to play a substantial role in prosecution of the Plan and the winding down of the Debtors. Accordingly, the Debtors contend that the circumstances of the Chapter 11 Cases satisfy the requirements for such releases.

### **VII. PLAN-RELATED RISK FACTORS**

The implementation of the Plan is subject to a number of material risks, including those described below. Prior to voting on the Plan, each party entitled to vote should carefully consider these risks, as well as all of the information contained in this Disclosure Statement, including the exhibits hereto.

#### **A. Certain Bankruptcy Considerations**

##### **1. The Plan is subject to conditions precedent and the Plan may not consummated if the conditions to Effectiveness of the Plan are not satisfied**

Sections VII.A and B of the Plan provide for certain conditions that must be satisfied (or waived) prior to the Confirmation Date and for certain other conditions that must be satisfied (or waived) prior to the Effective Date.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan. While the Debtors believe the Plan meets the requirements of section 1129 of the Bankruptcy Code (even if a class of creditors does not vote to accept the Plan such that cramdown provisions described in Section VI.B.2 are applicable), there can be no assurance that the Bankruptcy Court will confirm the Plan.

Certain of the conditions are outside of the control of the Debtors and therefore there can be no guarantee that every condition precedent will be met. In such circumstances, there can be no assurance that the Chapter 11 Cases would not be converted to chapter 7 liquidation cases or that any new chapter 11 plan would be as favorable to Holders of Claims as the current Plan. Either outcome may materially reduce distributions to Holders of Claims.

**2. If the Plan is not confirmed or consummated, distributions to Holders of Allowed Claims could be materially reduced or delayed**

If the Plan is not confirmed or consummated, there can be no assurance that the Chapter 11 Cases will continue rather than be converted to chapter 7 liquidation cases, or that any alternative chapter 11 plan would be more favorable to Holders of Claims as the terms of the Plan. If a liquidation under chapter 7 of the Bankruptcy Code were to occur, the distributions to Holders of Allowed Claims may be reduced. In particular, the Debtors believe that administrative expenses of a chapter 7 trustee and the trustee's attorneys, accountants and other professionals could reduce the funds available for distribution to the Debtors' creditors. Further, in a case under chapter 7, of the Bankruptcy Code it might be determined that certain administrative and priority claims may be paid from funds otherwise available to distribute on account of general unsecured claims (i.e., the Settlement Escrow).

**3. Unbudgeted Administrative Claims may materially reduce the distribution available for Holders of General Unsecured Claims**

The Plan provides that the Creditors' Fund Trust is responsible for the payment of Allowed Unbudgeted Administrative Claims. Holders of General Unsecured Claims may receive a distribution from the Creditors' Fund Trust only after satisfaction from the Creditors' Fund Trust of any Allowed Unbudgeted Administrative Claims and Creditors' Fund Trust Expenses. The Plan provides that the Creditors' Fund Trust would be funded with \$2.25 million (of which \$300,000 would be immediately payable on account of the portion of the Arch Allowed Administrative Claim that is an Unbudgeted Administrative Claim)..

The Plan provides that the other Administrative Claims set forth on Exhibit 1.142 of the Plan are also Unbudgeted Administrative Claims if such Claims are Allowed. Further, the Plan contemplates that additional claims may be designated as Unbudgeted Administrative Claims (with such designation being subject to review and objection by the Creditors' Fund Trustee). To the extent any Unbudgeted Administrative Claims are ultimately Allowed, distributions to Holders of General Unsecured Claims may be materially reduced or eliminated. As noted above, as of the date hereof, the amount of asserted Administrative Claims that are Unbudgeted Administrative Claims under the Plan exceeds the amount of funds to be initially provided to the Creditors' Fund Trust.

**4. Allowed Claims may exceed estimates making recoveries uncertain and possibly reducing the Settlement Escrow**

The estimates of Allowed General Unsecured Claims and the projected recoveries on account of such Allowed Claims in this Disclosure Statement is a preliminary estimate based on the filed General Unsecured Claims. Neither the Debtors nor the Creditors' Committee have undertaken a detailed analysis of the filed General Unsecured Claims. In addition, upon the passage of all applicable Claims bar dates (including, without limitation, for executory contracts and unexpired leases rejected pursuant to the Plan), the completion of further analyses of the Proofs of Claim, and the completion of Claims litigation and related matters, the total amount of Claims that ultimately become Allowed Claims in the Chapter 11 Cases may differ from the Debtors' estimates, and such difference could be material. If estimates of such Claims are



inaccurate, it may materially and adversely affect distributions to be made to Holders of General Unsecured Claims.

The Debtors' estimate of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Other Secured Claims based on the Debtors' good faith review of their books and records. In addition, upon the passage of all applicable Claims bar dates, the completion of further analyses of the Proofs of Claim, and the completion of Claims litigation and related matters, the total amount of Claims that ultimately become Allowed Claims in the Chapter 11 Cases may differ from the Debtors' estimates, and such difference could be material. If estimates of such Claims are inaccurate, it may materially and adversely affect distributions to be made to Holders of Prepetition Term Loan Secured Claims and (to the extent the Administrative claims are Unbudgeted Administrative Claims, to Holders of General Unsecured Claims).

**5. The financial information provided in the Disclosure Statement is unaudited and may be inaccurate.**

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

**6. The Debtors are not required to update the information in this Disclosure Statement.**

The statements contained in this Disclosure Statement are made by the Debtors as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtors have no duty to update this Disclosure Statement.

**B. Certain U.S. Federal Tax Considerations**

**1. Availability of Debtors' NOLs and other tax attributes may be limited for future use.**

As of December 31, 2016, the APP Winddown US Tax Group (as defined in Section VIII) reported a consolidated federal net operating loss ("NOL") carryforward of approximately \$265 million, and the Debtors anticipate that the APP Winddown US Tax Group will report an additional consolidated federal NOL carryforward of approximately \$75 million incurred in 2017. It is possible that the APP Winddown Global US Tax Group will incur further NOL carryforwards in the current tax year.

The APP Winddown US Tax Group has undergone an ownership change for purposes of the NOL change of ownership rules under section 382 of the Internal Revenue Code of 1986, as amended (the "Tax Code") on February 5, 2016, the effective date of the chapter 11 plan in the

Prior Cases. As a result, its NOL carryforwards incurred prior to February 5, 2016 are subject to significant limitations on their use, under the rules described below in Section VIII.A.2.b. It is uncertain whether the APP Winddown US Tax Group has experienced further ownership changes to date or will experience an ownership change prior to the Effective Date. If the APP Winddown US Tax Group experienced further ownership changes to date or experiences an ownership change prior to the Effective Date, then its NOL carryforwards as of such date may already be subject to substantial limitations with respect to their availability to offset future taxable income or gain of the APP Winddown US Tax Group resulting from the implementation of the Plan (as discussed in this Section VII.A.1).

Furthermore, it is uncertain whether implementation of the Plan will result in an ownership change under section 382 of the Code. The Debtors intend that the Plan be treated as a plan of liquidation for U.S. federal income tax purposes, and therefore, the Debtors do not intend to treat the Plan as resulting in an ownership change of APP Winddown US Tax Group (as discussed in this Section VII.A.1). However, there is no assurance that the IRS will agree with such a characterization of the Plan for U.S. federal income tax purposes, and, due to the lack of direct authoritative guidance in the context of a liquidating Chapter 11 plan, there is no assurance that the IRS would not successfully assert a contrary position (including with respect to the treatment for U.S. federal income tax purposes of the Holders of Claims as continuing creditors and not as effective equity holders of APP throughout the liquidation process). Notwithstanding the Debtors' position, if the IRS successfully asserts that an ownership change occurs on the Effective Date of the Plan, the Post-Confirmation Debtors could incur a material amount of U.S. federal income tax liability as a result of the liquidation of the Post-Confirmation Debtors' remaining assets. Any such tax liability would reduce amounts available for distribution.

## **2. The Debtors' NOLs and other tax attributes may be subject to further reduction.**

The Debtors intend that the Plan be treated as a plan of liquidation for U.S. federal income tax purposes with the result that no COD income should be incurred by a Debtor as a result of the implementation of the Plan prior to the disposition by such Debtor of all or substantially all of its assets. However, there can be no assurance that the IRS will agree with this position due to, among other things, a lack of direct authoritative guidance as to when COD income occurs in the context of a liquidating chapter 11 plan and thus, there can be no assurance that COD income will not be incurred earlier. If the IRS successfully challenges the Debtors' position, then the NOLs and other tax attributes of the APP Winddown US Tax Group (as defined in Section VIII) may be substantially reduced as a result of the COD income realized from the implementation of the Plan (as discussed in Section VIII.A.2.a).

## **VIII. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES**

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to certain Holders of Allowed Claims that are U.S. Holders (as defined below). The following summary is based on the Tax Code, Treasury Regulations promulgated thereunder (the "Regulations"), judicial decisions, administrative rules and pronouncements as in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the federal income tax

consequences described below. This summary does not address the federal income tax consequences to the Debtors, to Holders of Interests or to Holders whose Claims are not Impaired under the Plan (i.e., Allowed Administrative Claims, Allowed Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Tax Claims, and Allowed Other Secured Claims). The federal income tax consequences of the Plan are complex and are subject to significant uncertainties.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder of an Allowed Claim in light of its particular facts and circumstances. In addition, this summary addresses only U.S. federal income taxes. Thus, the following discussion does not address foreign, state or local tax consequences, or any estate, gift or other non-income tax consequences, of the Plan, nor does it purport to address the federal income tax consequences of the Plan to Holders of Allowed Claims that are subject to special treatment under the Tax Code (such as Persons who are related to the Debtors within the meaning of the Tax Code, Holders liable for the alternative minimum tax, Holders whose functional currency is not the U.S. dollar, Holders that received their Claims as compensation, S corporations, broker dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax exempt organizations, governmental entities, pass-through entities such as partnerships and Holders of Claims who are themselves in bankruptcy). Accordingly, this summary should not be relied upon for purposes of determining the specific tax consequences of the Plan with respect to a particular Holder of a Claim.

If a partnership holds an Allowed Claim, the tax treatment of a partner of such partnership will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding an Allowed Claim, you should consult your tax advisors.

For purposes of this discussion, a “U.S. Holder” is a Holder that is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (4) a trust (a) if a court within the United States is able to exercise primary jurisdiction over the trust’s administration and one or more United States persons have authority to control all substantial decisions of the trust or (b) that has a valid election in effect under applicable Regulations to be treated as a United States person.

The following discussion assumes that the Plan will be implemented as described herein and does not address the tax consequences if the Plan is not carried out. Furthermore, this discussion assumes that Holders of Allowed Claims only hold Claims in a single Class. This discussion further assumes that the various debt and other arrangements to which the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form. In addition, a substantial amount of time may elapse between the confirmation date and the receipt of a final distribution under the Plan. Events subsequent to the date of this Disclosure Statement, such as additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder.

This summary of the U.S. federal income tax consequences of the Plan is not binding on the Internal Revenue Service (the “IRS”), and no ruling will be sought or has been sought from the IRS with respect to any of the tax aspects of the Plan, no opinion of counsel has been obtained or will be obtained by the Debtors with respect thereto, and no tax opinion is given by this Disclosure Statement. The U.S. federal income tax consequences of certain aspects of the Plan may therefore be uncertain due to the lack of applicable legal authority and may be subject to administrative or judicial interpretations that differ from the discussion below.

The following discussion is not exhaustive. The discussion is not a substitute for careful tax planning and professional tax advice based upon the individual circumstances of each Holder of an Allowed Claim. Accordingly, each Holder of an Allowed Claim is strongly urged to consult with its own tax advisor regarding the U.S. federal, state, local, and foreign income and other tax consequences of the Plan.

## **A. Consequences to Debtors**

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

Those Debtors that are U.S. corporations for U.S. federal income tax purposes (the “APP Winddown US Tax Group”) file a U.S. federal income tax return on a consolidated basis. As of December 31, 2016, the APP Winddown US Tax Group reported a consolidated federal NOL carryforward of approximately \$265 million. The APP Winddown US Tax Group has not yet filed its federal income tax return for the tax year ended December 31, 2017. However, the Debtors anticipate that the APP Winddown US Tax Group will report an additional consolidated federal NOLs of approximately \$75 million incurred for 2017 (though the amount actually reported when the 2017 tax return is filed may differ from the estimate). It is possible that the APP Winddown Global US Tax Group will incur further NOL carryforwards in the current tax year.

The APP Winddown US Tax Group has undergone an ownership change for purposes of the NOL change of ownership rules under section 382 of the Tax Code on February 5, 2016, the effective date of the chapter 11 plan in the Prior Cases. As a result, NOL carryforwards incurred prior to February 5, 2016 are subject to significant limitations on their use, under the rules described below in Section VIII.A.2.b. It is uncertain whether the APP Winddown US Tax Group has undergone further ownership changes or will undergo an ownership change prior to the Effective Date. Further, the amount and use of any NOLs, as well as the application of any limitations, remain subject to review and adjustment by the IRS. The tax impact of the Plan on the NOLs and other tax attributes of the APP Winddown Global US Tax Group is discussed in Section VIII.A.2 below.

### **2. Tax Impact of the Plan on the Debtors**

#### *a.* Cancellation of Debt

The Tax Code provides that a debtor in a bankruptcy case must reduce certain of its tax attributes -- such as current year NOLs, NOL carryforwards, tax credits, capital losses and tax basis in assets -- by the amount of any cancellation of debt (“COD”) income that occurs by reason of the discharge of the debtor’s indebtedness pursuant to the bankruptcy. Under

applicable Treasury Regulations, the reduction in certain tax attributes (such as NOL carryforwards) occurs under consolidated return principles, as in the case of the Debtors who are members of the APP Winddown US Tax Group. COD income is the amount by which the adjusted issue price of indebtedness discharged exceeds the sum of the amount of cash, the issue price of any debt instrument and the fair market value of any other property given in exchange therefor, subject to certain statutory or judicial exceptions that can apply to limit the amount of COD income (such as where the payment of the cancelled debt would have given rise to a tax deduction). Settlement of a guarantee claim should not give rise to COD income. Any reduction in tax attributes under the COD rules does not occur until the end of the tax year after such attributes have been applied to determine the tax in the year of discharge or, in the case of asset basis reduction, the first day of the taxable year following the tax year in which the exclusion of COD income occurs.

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

*b.* Limitation of NOL Carryforwards and Other Tax Attributes

1. Section 382 Limitations – General

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

In general, the amount of this annual limitation is equal to the product of (i) the fair market value of the stock of the corporation (or, in the case of a consolidated group, the common parent) immediately before the ownership change (with certain adjustments) multiplied by (ii) the “long-term tax-exempt rate” in effect for the month in which the ownership change occurs (for example, 2.31% for ownership changes occurring in June 2018). For a corporation (or consolidated group) in bankruptcy that undergoes the ownership change pursuant to a confirmed bankruptcy plan, the stock value generally is determined immediately after (rather than before) the ownership change by taking into account the surrender or cancellation of creditors' claims, also with certain adjustments. The annual limitation can potentially be increased by the amount of certain recognized built-in gains, as discussed below. Notwithstanding the general rule, if the corporation (or the consolidated group) does not continue its historic business or use a significant

portion of its historic assets in a new business for two years after the ownership change, the annual limitation resulting from the ownership change is zero, thereby precluding any utilization of the corporation's pre-change losses (absent any increases due to any recognized built-in gains).

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

## 2. Section 382 Limitations -- Possible Application to the APP Winddown US Tax Group

The Post-Confirmation Debtors ability to utilize certain APP Winddown US Tax Group NOLs (and carryforwards thereof) and certain other tax attributes following the Effective Date of the Plan would be potentially subject to limitation if the Debtors undergo an "ownership change" within the meaning of section 382 of the Tax Code by reason of the implementation of the Plan. Additionally, as indicated above, the APP Winddown US Tax Group has undergone a prior ownership change on February 5, 2016, the effective date of the chapter 11 plan in the Prior Cases. It is uncertain whether further ownership changes under section 382 have occurred to date, or will occur prior to the Effective Date, that could significantly limit the availability of the tax attributes of the APP Winddown US Tax Group to offset post-Effective Date taxable income. Pursuant to the Plan, the Holders of Interests will maintain their economic interests in any residual assets of the Debtors after the satisfaction of all Allowed Claims not cancelled pursuant to the Plan, which economic interests generally will be nontransferable as provided by the operating agreement of APP. Accordingly, consistent with the intended treatment of the Plan as a plan of liquidation for U.S. federal income tax purposes, the Debtors do not intend to treat the Plan as resulting in an ownership change of the APP Winddown US Tax Group. There is no assurance that the IRS will agree with this position and thus, due to a lack of direct authoritative guidance in the context of a liquidating chapter 11 plan, there is no assurance that the IRS will not successfully assert a contrary position (including with respect to the treatment for U.S. federal income tax purposes of the Holders of Claims as continuing creditors and not as effective equity holders of APP throughout the liquidation process). If, notwithstanding the Debtors' intent, an ownership change were considered to occur in connection with the implementation of the Plan, the Post-Confirmation Debtors could incur a material amount of U.S. federal income

tax as a result of the liquidation of the Post-Confirmation Debtors' remaining assets. Any such tax liability would reduce amounts available for distribution.

c. Non-U.S. Income Tax Matters

Historically, the Debtors conducted their business activities on a global basis, with locations located throughout the world. At present, the APP Winddown US Tax Group continues to maintain material debt and equity positions in many of these non-U.S. entities, notwithstanding the fact that most of such Affiliates are currently under separate legal administration or receivership and collectability is, consequently, uncertain. Importantly, however, given the current U.S. tax profile of the APP Winddown US Tax Group, any future remittance received from any such separate administration or receivership in satisfaction of historic debt and/or equity positions may be subject to host country, non-U.S. withholding taxes, thereby reducing the amounts available for distribution to creditors by each of the Debtors' estates.

**B. U.S. Federal Income Tax Consequences to U.S. Holders of Allowed Prepetition Term Loan Secured Claims and Allowed General Unsecured Claims**

**1. Federal Income Tax Consequences of Receipt of Distribution**

In accordance with the Plan, each Holder of an Allowed General Unsecured Claim shall be entitled to receive his, her or its Pro Rata share of the Creditors' Fund Trust Net Class 4 Distributable Cash, which payments will be made from the Creditors' Fund Trust out of the Creditors' Fund Claims Reserve.

The Debtors intend that the Creditors' Fund Trust Claims Reserve will be treated for U.S. federal income tax purposes as a disputed ownership fund within the meaning of Treasury Regulations § 1.468B-9(b)(1) (with net income and gain on Creditors' Fund Trust Assets taxed at the separate entity level). The remainder of this discussion assumes that this treatment is correct. It is possible that the IRS could require an alternative characterization of the Creditors' Fund Claims Reserve, which could result in different (and possibly adverse) tax consequences to the Creditors' Fund Trust and/or Holders of Allowed General Unsecured Claims. For the avoidance of doubt, Holders of Allowed General Unsecured Claims are not intended to be treated for federal income tax purposes as receiving Creditors' Fund Trust Assets that are contributed to the Creditors' Fund Trust until such time as the Creditors' Fund Trust makes distributions, in which case (and at which time) the Holders of Allowed General Unsecured Claims are intended to be treated as receiving the distributions actually received from the Creditors' Fund Trust, if any.

In accordance with the Plan, each Holder of an Allowed Prepetition Term Secured Loan Claim (unless otherwise agreed and subject to the terms of the Lender Settlement) shall be entitled to receive his or her respective share of each Prepetition Term Loan Distribution, which distributions will likely occur over a period of time, and may extend beyond the year in which the Effective Date occurs.

Generally, where a U.S. Holder receives only Cash in respect of Allowed Claims, such U.S. Holder would recognize taxable gain or loss in an amount equal to the difference between the amount of the Cash received and such U.S. Holder's adjusted tax basis in its Allowed Claim. As noted above, the Debtors intend that the Plan be treated as a plan of liquidation for U.S. federal income tax purposes and that the Allowed Prepetition Term Secured Loan Claims and Allowed General Unsecured Claims not be treated as cancelled on the Effective Date. If that treatment is respected, a U.S. Holder of an Allowed Prepetition Secured Loan Claim or Allowed General Unsecured Claim may not be able to claim a loss until all of the Distributions to such U.S. Holder are received. It is also not clear how or when such a U.S. Holder would report any gain with respect to such a Claim. A U.S. Holder of an Allowed Prepetition Term Secured Loan Claim or Allowed General Unsecured Claim may be able to defer gain until the aggregate distributions received by the U.S. Holder exceed the U.S. Holder's tax basis in such Claim, although it is possible that such a holder could be treated as recognizing gain prior to such time. Any gain or loss recognized would be capital or ordinary, depending on the status of the Allowed Claim in the U.S. Holder's hands, including whether the Allowed Claim constitutes a market discount bond in the Holder's hands. Generally, any gain or loss recognized by such a Holder of an Allowed Claim would be a long-term capital gain or loss if the Allowed Claim is a capital asset in the hands of the Holder and the Holder has held such Allowed Claim for more than one year, unless the Holder had previously claimed a bad debt deduction or the Holder had accrued market discount with respect to such Allowed Claim. See the discussion below under the heading "—Market Discount." The deductibility of capital losses is subject to limitations. To the extent any portion of a U.S. Holder's recovery is allocable to interest on the U.S. Holder's Allowed Claim that was not previously included in the U.S. Holder's income, such portion would be treated as interest income to such Holder. See the discussion below under the heading "—Accrued Interest."

The federal income tax consequences to Holders of Allowed Claims will differ and will depend on factors specific to each such Holder, including, but not limited to: (i) whether the Holder's Allowed Claim (or a portion thereof) constitutes a claim for principal or interest, (ii) the origin of the Holder's Allowed Claim, (iii) whether the Holder reports income on the accrual or cash basis method, (iv) whether the Holder receives distributions under the Plan in more than one taxable year, (v) whether the Holder has previously included in income any accrued but unpaid interest with respect to the surrendered Allowed Claim and (vi) whether the Holder has taken a bad debt deduction or otherwise recognized a loss with respect to the Allowed Claim.

## **2. Accrued Interest**

U.S. Holders of Allowed Claims will recognize ordinary income to the extent that they receive Cash or property that is allocable to accrued but unpaid interest that the Holder has not yet included in its income. The Plan provides that all distributions to a U.S. Holder of an Allowed Claim will apply first to the principal amount of such Claim until such principal amount is paid in full and then to any interest accrued on such Claim prior to the Petition Date, and the remaining portion of such distributions, if any, shall apply to any interest accrued on such Claim after the Petition Date. There is no assurance, however, that the IRS will respect this treatment and will not determine that all or a portion of amounts distributed to such U.S. Holder and attributable to principal under the Plan is properly allocable to interest. U.S. Holders of Allowed Claims are urged to consult their own tax advisors in this regard. If the Plan consideration



allocable to interest with respect to an Allowed Claim is less than the amount that the U.S. Holder has previously included as interest income, the previously included but unpaid interest may be deducted, generally as a loss.

### **3. Market Discount**

If a U.S. Holder of an Allowed Claim purchased the Claim for an amount that is less than its stated redemption price at maturity, the amount of the difference may be treated as “market discount” for U.S. federal income tax purposes, unless the difference is less than a specified *de minimis* amount. Under the market discount rules, the U.S. Holder is required to treat any gain on the sale, exchange, retirement or other disposition of, the Allowed Claim as ordinary income to the extent of the market discount that the U.S. Holder has not previously included in income and which is treated as having accrued on the Allowed Claim at the time of its payment or disposition.

### **4. Medicare Surtax**

Subject to certain limitations and exceptions, U.S. Holders who are individuals, estates or trusts may be required to pay a 3.8% Medicare surtax on all or part of that U.S. Holder’s “net investment income,” which includes, among other items, dividends on stock and interest (including original issue discount) on debt, and capital gains from the sale or other taxable disposition of stock or debt. U.S. Holders should consult their own tax advisors regarding the effect, if any, of this surtax on their receipt of distributions pursuant to the Plan.

### **5. Backup Withholding and Information Reporting**

Generally, information reporting requirements will apply to all payments or distributions under the Plan and by the Creditors’ Fund Trust, unless you are an exempt recipient. Additionally, a U.S. Holder may be subject to backup withholding at applicable rates, unless the U.S. Holder (i) is a person exempt from backup withholding and, when required, demonstrates this or (ii) provides a correct taxpayer identification number (“TIN”) on IRS Form W-9 (or a suitable substitute form) and timely provides the other information and makes the representations required by such form and complies with the other requirements of the backup withholding rules. A U.S. Holder may become subject to backup withholding if, among other things, the U.S. Holder (i) fails to properly report interest and dividends for U.S. federal income tax purposes or (ii) in certain circumstances, fails to certify, under penalty of perjury, that it has furnished a correct TIN. A U.S. Holder that does not timely provide a correct TIN also may be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your United States federal income tax liability provided the required information is properly furnished to the IRS.

### **C. Importance of Obtaining Professional Tax Assistance**

**THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX**

**CONSEQUENCES OF THE PLAN ARE COMPLEX AND IN SOME CASES UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF AN ALLOWED CLAIM. ACCORDINGLY, EACH HOLDER OF AN ALLOWED CLAIM IS STRONGLY URGED TO CONSULT WITH HIS, HER OR ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

**IX. RECOMMENDATION AND CONCLUSION**

The Debtors believe that the confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors urge all parties entitled to vote to accept the Plan and to evidence their acceptance by duly completing and returning their Ballots so that they will be received on or before the Voting Deadline.

Dated: September 7, 2018

Respectfully submitted,

APP Winddown, LLC (f/k/a American Apparel, LLC). (on its own behalf and on behalf of each affiliate Debtor)

By: \_\_\_\_\_  
Name: Bradley E. Scher  
Title: Chief Wind-Down Officer

**EXHIBIT 1**

**Joint Plan of Liquidation of  
the Debtors and Debtors in Possession**

*[Intentionally Omitted]*

**Exhibit B**

**Blackline**



**IMPORTANT INFORMATION FOR YOU TO READ**

**THE DEADLINE TO VOTE ON THE PLAN IS [\_\_\_\_], 2018  
AT 5:00 P.M. PREVAILING EASTERN TIME, UNLESS EXTENDED BY THE  
DEBTORS (THE “VOTING DEADLINE”).**

**FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE *ACTUALLY  
RECEIVED* BY THE VOTING AGENT BEFORE THE VOTING DEADLINE.**

**PLEASE BE ADVISED THAT ARTICLE VI OF THE PLAN CONTAINS RELEASE,  
EXCULPATION, AND INJUNCTION PROVISIONS. YOU SHOULD REVIEW AND  
CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MAY BE  
AFFECTED THEREUNDER.**

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APP Winddown, LLC (f/k/a American Apparel, LLC) (“APP”), APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC), APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.), APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.), APP Knitting Winddown LLC (f/k/a KCL Knitting, LLC), and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.) (“Shipping”), as debtors and debtors in possession (collectively, the “Debtors” and, together with their affiliates and subsidiaries, the “Company”), are providing you with the information in this Disclosure Statement (as amended, supplemented and modified from time to time, the “Disclosure Statement”) because you may be a creditor entitled to vote on the Plan.<sup>2</sup>

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The Debtors believe that the Plan is in the best interests of their creditors and other stakeholders. All creditors entitled to vote thereon are urged to vote in favor of the Plan. A summary of the voting instructions is set forth herein, beginning on page [\_\_\_\_] of this Disclosure Statement, and in the Disclosure Statement Order. More detailed instructions are contained on the Ballots distributed to the creditors entitled to vote on the Plan. To be counted, your Ballot must be duly completed, executed and actually received by the Voting Agent by 5:00 p.m., prevailing Eastern time, on \_\_\_\_\_, 2018, unless extended by the Debtors.

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The effectiveness of the proposed Plan is subject to material conditions precedent, some of which may not be satisfied or waived. See Section IV.F. There is no assurance that these conditions will be satisfied or waived.

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This Disclosure Statement is the only document to be used in connection with the solicitation of votes on the Plan. Subject to the statutory obligations of a statutory creditors’ committee to provide access to information to creditors, no person is authorized by any of the

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<sup>2</sup> Except as otherwise provided herein, capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Amended Joint Plan of Liquidation of the Debtors and Debtors in Possession (as amended, supplemented and modified from time to time, the “Plan”), attached hereto as Exhibit 1.

Debtors in connection with the Plan or the solicitation of acceptances of the Plan to give any information or to make any representation other than as contained in this Disclosure Statement and the exhibits attached hereto or incorporated by reference or referred to herein. If given or made, such information or representation may not be relied upon as having been authorized by any of the Debtors. Although the Debtors will make available to creditors entitled to vote on the Plan such additional information as may be required by applicable law prior to the Voting Deadline, the delivery of this Disclosure Statement will not under any circumstances imply that the information herein is correct as of any time after the date hereof.

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**ALL CREDITORS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ AND CAREFULLY CONSIDER THIS ENTIRE DISCLOSURE STATEMENT, INCLUDING THE PLAN ATTACHED AS EXHIBIT 1 AND THE RISK FACTORS DESCRIBED UNDER SECTION X, PRIOR TO SUBMITTING BALLOTS IN RESPONSE TO THIS SOLICITATION.**

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The summaries of the Plan and other documents contained in this Disclosure Statement are qualified in their entirety by reference to the Plan itself, the exhibits thereto (the “Confirmation Exhibits”) and documents described therein as Filed prior to approval of this Disclosure Statement or subsequently as Plan Supplement materials. In the event that any inconsistency or conflict exists between this Disclosure Statement and the Plan, the terms of the Plan will control. Except as otherwise indicated, the Debtors will File all Confirmation Exhibits with the Bankruptcy Court and make them available for review at the Debtors’ document website located online at <http://cases.primeclerk.com/americanapparel> (the “Document Website”) no later than seven days before the Voting Deadline (or such later date as may be approved by the Bankruptcy Court).

This Disclosure Statement contains, among other things, descriptions and summaries of provisions of the Plan being proposed by the Debtors. The Debtors reserve the right to modify the Plan consistent with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019.

The statements contained in this Disclosure Statement are made only as of the date of this Disclosure Statement, and there can be no assurance that the statements contained herein will be correct at any time after this date. The information contained in this Disclosure Statement, including the information regarding the history, businesses and operations of the Debtors, and the other financial information regarding the Debtors, is included for purposes of soliciting acceptances of the Plan, but is not to be construed as admissions or stipulations, but rather as statements made in settlement negotiations as part of the Debtors’ attempt to settle and resolve their Liabilities pursuant to the Plan. Except where specifically noted, the financial information contained in this Disclosure Statement and in its exhibits has not been audited by a certified public accountant and has not been prepared in accordance with generally accepted accounting principles in the United States.

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## FORWARD-LOOKING STATEMENTS

This Disclosure Statement contains certain forward-looking statements prepared by the Debtors, all of which are based on various estimates and assumptions. The words “believe,” “may,” “estimate,” “continue,” “anticipate,” “intend,” “expect” and similar expressions identify these forward-looking statements. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described below under the caption “Plan-Related Risk Factors” in Section X. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this Disclosure Statement may not occur, and actual results could differ materially from those anticipated in the forward-looking statements. The Debtors do not undertake any obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

**This Disclosure Statement has been prepared in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016 and not necessarily in accordance with federal or state securities laws or other non-bankruptcy laws. This Disclosure Statement has not been approved or disapproved by the United States Securities and Exchange Commission (the “SEC”), any state securities commission or any securities exchange or association nor has the SEC, any state securities commission or any securities exchange or association passed upon the accuracy or adequacy of the statements contained herein.**

<b>QUESTIONS AND ADDITIONAL INFORMATION</b>
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**If you would like to obtain copies of this Disclosure Statement, the Plan or any of the documents attached hereto or referenced herein, or have questions about the solicitation and voting process or the Debtors’ Chapter 11 Cases generally, please contact Prime Clerk LLC, the Voting Agent, by (i) visiting the Document Website at <http://cases.primeclerk.com/americanapparel>, (ii) emailing to [aaballots@primeclerk.com](mailto:aaballots@primeclerk.com), (iii) calling 844-596-2261 (U.S. and Canada only) or 914-266-82421 (International), or writing APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022.**

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**TABLE OF EXHIBITS**

EXHIBIT 1 Joint Plan of Liquidation of the Debtors and Debtors in Possession

## I. INTRODUCTION

APP Winddown, LLC (f/k/a American Apparel, LLC), APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC), APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.), APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.), APP Knitting Winddown LLC (f/k/a KCL Knitting, LLC), and APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.), as debtors and debtors in possession (collectively, the “Debtors”), submit this Disclosure Statement pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”) in connection with the solicitation of acceptances of the Plan. A copy of the Plan is attached as Exhibit 1.

This Disclosure Statement sets forth certain information regarding the prepetition operating and financial history of the Debtors, the events leading up to the commencement of the Chapter 11 Cases, events that have occurred during the Chapter 11 Cases and the anticipated liquidation of the Debtors’ remaining assets and distributions to holders of claims on or after the Effective Date if the Plan is confirmed and becomes effective. This Disclosure Statement also describes terms and provisions of the Plan, including certain effects of Confirmation of the Plan, certain risk factors, certain alternatives to the Plan and the manner in which distributions will be made under the Plan. The Confirmation process and the voting procedures that Holders of Claims entitled to vote on the Plan must follow for their votes to be counted are also discussed herein.

The Debtors believe that the Plan is the best means to efficiently and effectively implement the continued liquidation of their assets, as well as to effectuate distributions to creditors.

Except as otherwise provided herein, capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan. Except as otherwise stated herein, all dollar amounts provided in this Disclosure Statement and in the Plan are given in United States dollars.

On \_\_\_\_\_, 2018, the Bankruptcy Court entered an order approving this Disclosure Statement as containing “adequate information,” i.e., information of a kind and in sufficient detail to enable a hypothetical reasonable investor typical of the Holders of Claims or Interests to make an informed judgment about the Plan. THE BANKRUPTCY COURT’S APPROVAL OF THIS DISCLOSURE STATEMENT CONSTITUTES NEITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN NOR AN ENDORSEMENT OF THE MERITS OF THE PLAN BY THE BANKRUPTCY COURT.

THE DEBTORS BELIEVE THAT THE IMPLEMENTATION OF THE PLAN IS IN THE BEST INTERESTS OF EACH OF THE DEBTORS AND ITS STAKEHOLDERS. FOR ALL OF THE REASONS DESCRIBED IN THIS DISCLOSURE STATEMENT, THE DEBTORS URGE YOU TO RETURN YOUR BALLOT ACCEPTING THE PLAN BY THE VOTING DEADLINE (I.E., THE DATE BY WHICH YOUR BALLOT MUST BE ACTUALLY RECEIVED), WHICH IS \_\_\_\_\_, 2018 AT 5:00 P.M. PREVAILING EASTERN TIME.



### A. General Summary of the Plan

As discussed in more detail in Section IV below, the Plan contemplates the further liquidation of the Debtors' assets, the dissolution of the Debtors, distributions to creditors, the rejection of substantially all of the Debtors' remaining Executory Contracts and Unexpired Leases, and the release and exculpation of certain parties to by the Debtors and, to the maximum extent permitted by law, Holders of Claims and Interests.

Under the Plan, the Debtors' remaining assets, predominately causes of action, interests in foreign subsidiaries, and recoveries of collateral, will be liquidated for the benefit of Holders of Claims in Class 3 (Prepetition Term Loan Secured Claims). In addition, the Plan contemplates that all of the Debtors other than APP and Shipping will be deemed dissolved on or promptly after the Effective Date of the Plan. APP and Shipping will subsequently dissolve once the Post-Confirmation Debtor Functions have been completed or otherwise satisfied. The Plan also provides for the resolution of claims against the Debtors' estates, either by the Post-Confirmation Debtors (with respect to all claims except General Unsecured Claims and the Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims), and by the Creditors' Fund Trustee (with respect to General Unsecured Claims and Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims). The Plan also provides for distributions to be made to Holders of Allowed Claims.

### B. Summary of Classes and Treatment of Claims and Interest

For administrative purposes, the Plan assigns a letter to each Debtor (as set forth in the table below) and a number to each of the Classes of Claims against or Interests in the Debtors. For consistency, similarly designated Classes of Claims and Interests are assigned the same number across each of the Debtors.

Letter	Debtor
A	APP Winddown, LLC (f/k/a American Apparel, LLC)
B	APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC)
C	APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.)
D	APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.)
E	APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC)
F	APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.)

The following summarizes the treatment of the Classes of Claims and Interests, whether such Classes are impaired or unimpaired, whether such Classes entitled to vote on the Plan, and the estimated Allowed amount and the estimated recovery for each of the separate Classes of Claims provided for in the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Fee Claims) and Priority Tax Claims have not been classified.

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<b>Class</b>	<b>Treatment</b>	<b>Status/ Entitlement to Vote</b>	<b>Estimated Allowed Amount<sup>3</sup></b>	<b>Estimated Recovery Rate<sup>4</sup></b>
Class 1A-1F  Other Priority Claims	On the later of (a) the Effective Date, and (b) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, or as soon as reasonably practicable thereafter, unless otherwise agreed to the Holder of an Allowed Other Priority Claim and by the Debtors or the <del>Reorganized</del> <u>Post-Confirmation</u> Debtors, in either case with the consent of the Required Lenders, each Holder of an Allowed Other Priority Claim against a Debtor shall receive on account and in full and complete settlement and release of such Claim, Cash in the amount of such Allowed Other Priority Claim in accordance with section 1129(a)(9) of the Bankruptcy Code.	Unimpaired  Deemed to Accept the Plan  Not Entitled to Vote	\$50,000- \$135,000 <sup>5</sup>	100%
Class 2A-2F  Other Secured Claims	On the later of (a) the Effective Date and (b) the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, or as soon as reasonably practicable thereafter, unless otherwise agreed by the Holder of an Allowed Other Secured Claim and by the Debtors or the Post-Confirmation Debtors, in either case with the consent of the Required Lenders, each Holder of an Allowed Other Secured Claim shall receive the following treatment	Unimpaired  Deemed to Accept the Plan  Not Entitled to Vote	\$130,000- \$140,000 <sup>6</sup>	100%

<sup>3</sup> The Estimated Allowed Amounts are estimates only and actual amounts may be materially greater or less than those set forth herein.

<sup>4</sup> The Estimated Recovery Rates are estimates only and actual recoveries may be materially greater or less than those set forth herein based on, among other things, Allowed Claims arising from the rejection of Executory Contracts or Unexpired Leases and resolution of disputed or unliquidated Claims.

<sup>5</sup> This amount does not include Priority Tax Claims, which are estimated to be approximately \$250,000-\$275,000.

<sup>6</sup> The estimated amount of Other Secured Claims is net of deposits or cash collateral (including cash equivalents) securing such obligations. The Debtors have posted more than \$35 million in cash collateral.

	at the option of the Debtors, with the consent of the Required Lenders: (i) payment in full (in Cash) of any such Allowed Other Secured Claim; (ii) satisfaction of any such Allowed Other Secured Claim by delivering the collateral securing any such Allowed Other Secured Claim and paying any interest required to be paid under section 506(b) of the Bankruptcy Code; or (iii) such other recovery necessary to satisfy section 1129 of the Bankruptcy Code to render such claim unimpaired.			
Class 3A-3F Prepetition Term Loan Secured Claims	Unless otherwise agreed by the Holder of an Allowed Prepetition Term Secured Loan Claim and the Debtors or the Post-Confirmation Debtors, each Holder of an Allowed Prepetition Term Loan Secured Claim, subject to the terms of the Lender Settlement, in full and final satisfaction, settlement and release of, and in exchange for, such Claim, shall receive its respective share of each Prepetition Term Loan Distribution. In accordance with the Lender Settlement, each Prepetition Term Loan Distribution shall be allocated, <u>after the payment of the reasonable fees and expenses of the Prepetition Agent (including the reasonable fees and expenses of counsel),</u> among the Standard General Parties, on the one hand, and the Lender Committee Parties, on the other hand, as follows: (a) the Standard General Parties shall receive, in the aggregate, (i) 10% of	Impaired  Entitled to Vote	\$[ ] million- \$[ ] million (after the interim distribution) <sup>7</sup>	Less than 100%

<sup>7</sup> As of the Petition Date, the outstanding obligations under the Prepetition Loan Documents was \$216.91 million. After giving effect to the interim distribution pursuant to the Lender Settlement of \$95.8 million, the Debtors anticipate making additional distributions on account of the Prepetition Term Loan Secured Claims of approximately [ ] to [ ] million. The estimated amount of the Allowed Prepetition Term Loan Secured Claims is net of the interim distribution and represents that anticipated additional distributions by the Post-Confirmation Debtors.

	such Prepetition Term Loan Distribution (other than <a href="#">WC</a> Recovered Cash Collateral) and (ii) (A) the first \$2.5 million of <a href="#">WC</a> Recovered Cash Collateral and (B) 10% of all <a href="#">WC</a> Recovered Cash Collateral in excess of such \$2.5 million; and (b) the Lender Committee Parties shall receive, in the aggregate, (i) 90% of such Prepetition Term Loan Distribution (other than <a href="#">WC</a> Recovered Cash Collateral) and (ii) all <a href="#">WC</a> Recovered Cash Collateral not distributed to the Standard General Parties pursuant to Section II.C.3.c of the Plan.			
Class 4A-4F General Unsecured Claims	Each Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such General Unsecured Claim, its Pro Rata Share of the <a href="#">Creditors' Fund Trust</a> Net Class 4 Distributable <del>Creditors' Fund</del> Cash, up to the Allowed amount of said Holder's General Unsecured Claim; <i>provided, however,</i> that pursuant to the UCC-LT Settlement, members of the Committee of Lead Lenders that are Holders of Prepetition Term Loan Deficiency Claims shall not receive a distribution on account of such Prepetition Term Loan Deficiency Claims, and any such Prepetition Term Loan Deficiency Claims <del>held by members of the Committee of Lead Lenders shall not count as General Unsecured Claims for distribution purposes</del> <a href="#">shall not be used in the calculation of Pro Rata Share.</a>	Impaired Entitled to Vote	<del>\$120</del> <a href="#">126</a> million - \$200 million	0-2%
Class 5A-5F Intercompany Claims	Intercompany Claims shall be cancelled, reinstated or modified, in the discretion of the <del>Reorganized</del> <a href="#">Post-Confirmation</a> Debtors, and no	Impaired Deemed to Reject	Intercompany Claims of approximately \$300 million	0%

	distribution shall be made on account of such Claims.	Not Entitled to Vote	are set forth on the Debtors' Schedules as disputed.	
Class 6A-6F Interests	Interests in a Debtor shall be cancelled if and when such Debtor is dissolved in accordance with Section III.A.1 of the Plan, <a href="#">which shall be on the Effective Date for Debtors other than for the Post-Confirmation Debtors (the Post-Confirmation Debtors are APP Winddown and APP Shipping Winddown)</a> . Each holder of an Allowed Interest shall receive in full satisfaction, settlement, and release of, and in exchange for, such Interest its Pro Rata Share of the Class 6 Distribution.	Impaired  Deemed to Reject  Not Entitled to Vote	N/A	\$0

### C. Parties Entitled to Vote on the Plan

Under the provisions of the Bankruptcy Code, not all parties in interest are entitled to vote on a chapter 11 plan. Creditors or equity interest holders whose claims or interests are not impaired by a plan are deemed to accept the plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote. In addition, creditors or equity interest holders whose claims or interests are impaired by the plan and will receive no distribution under the plan are also not entitled to vote because they are deemed to have rejected the plan under section 1126(g) of the Bankruptcy Code. For a discussion of these matters, see Section VI.B below.

Holders of Claims in Classes 3 (Prepetition Term Loan Secured Claims) and 4 (General Unsecured Claims) are impaired by the Plan and may receive a distribution under the Plan. These Classes are entitled to vote. Holders of Claims in Classes 1 (Other Priority Claims) and 2 (Other Secured Claims) are unimpaired under the Plan and are deemed to have accepted the Plan, and are not entitled to vote. Holders of Claims in Class 5 (Intercompany Claims) and Interests in Class 6 (Interests) will not receive or retain any property under the Plan following dissolution of the Debtors, are deemed to have rejected the Plan, and are not entitled to vote.

The Bankruptcy Code section 1126 defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims actually voted to accept or reject the plan. Your vote on the Plan is important. The Bankruptcy Code requires as a condition to confirmation of a chapter 11 plan that each class that is impaired and entitled to vote under a plan votes to accept such plan, unless the plan is being confirmed under the “cramdown” provisions of section 1129(b) of the

Bankruptcy Code. Section 1129(b) permits confirmation of a chapter 11 plan, notwithstanding the non-acceptance of the plan by one or more impaired classes of claims or equity interests, so long as at least one impaired class of claims votes to accept a proposed plan. Under that section, a plan may be confirmed by a bankruptcy court if it does not “discriminate unfairly” and is “fair and equitable” with respect to each non-accepting class.

For a detailed description of the Classes of Claims and Interests and their treatment under the Plan, see Section V.B.

#### **D. Solicitation Package**

The package of materials (the “Solicitation Package”) to be sent to Holders of Claims and Interests will contain:

1. a cover letter describing (A) the contents of the Solicitation Package; (B) ~~information about how to obtain access, free of charge, to~~ copies of the Plan, the Disclosure Statement, and the Disclosure Statement Order in electronic format (e.g., either CDs, together with the exhibits thereto DVDs, on- or USB drives in the Debtors’ ease administration website discretion); and (C) information about how to obtain, free of charge, paper copies of any of the documents included in the Solicitation Package, and, if so determined by the Debtors, setting forth the Debtors’ recommendations with respect to the Plan;
2. a notice of the Confirmation Hearing (the “Confirmation Hearing Notice”);
- ~~3. the Disclosure Statement Order (excluding the exhibits thereto);~~
- ~~4.~~ 3. for Holders of Claims in voting Classes (i.e., Holders of Claims in Classes 3A through 3F (Prepetition Term Loan Secured Claims) and 4A through 4F (General Unsecured Claims), an appropriate form of Ballot, instructions on how to complete the Ballot and a pre-paid, pre-addressed Ballot return envelope and such other materials as the Bankruptcy Court may direct; and
- ~~5.~~ 4. ~~a any Plan support letter from prepared by the Creditors’ Committee addressed to all general unsecured creditors recommending that they vote in favor of the Plan (the “Committee Letter”)]—~~

In addition to the service procedures outlined above (and to accommodate creditors who wish to review exhibits not included in the Solicitation Packages in the event of paper service): (1) the Plan, the Disclosure Statement and, once they are filed, all exhibits to both documents will be made available online at no charge at the Document Website (<http://cases.primeclerk.acom/americanapparel>); and (2) the Debtors will provide parties in interest (at no charge) with hard copies of the Plan and/or Disclosure Statement upon written request to Prime Clerk LLC at APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022.

### **E. Voting Procedures, Ballots and Voting Deadline**

If you are entitled to vote to accept or reject the Plan, a Ballot(s) has been enclosed in your Solicitation Package for the purpose of voting on the Plan. Please vote and return your Ballot(s) to Prime Clerk, LLC (the "Voting Agent") at APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022, or by overnight delivery or by hand courier.

After carefully reviewing (1) the Plan, (2) this Disclosure Statement, (3) the order entered by the Bankruptcy Court (the "Disclosure Statement Order") that, among other things, established the voting procedures, scheduled a Confirmation Hearing and set the voting deadline and the deadline for objecting to Confirmation of the Plan and (4) the detailed instructions accompanying your Ballot, please indicate on your Ballot your vote to accept or reject the Plan. These documents contain important information concerning how Claims are classified for voting purposes and how votes will be tabulated. Holders of Claims entitled to vote are also encouraged to review the relevant provisions of the Bankruptcy Code and Bankruptcy Rules and/or consult their own attorney.

In addition to accepting Ballots via first class mail, overnight courier, and hand delivery, the Voting Agent will accept Ballots via electronic, online transmissions, solely through a customized online balloting portal on the Document Website (<http://cases.primeclerk.com/americanapparel>). Parties entitled to vote may cast an electronic Ballot and electronically sign and submit the Ballot instantly by utilizing the online balloting portal (which allows a Holder eligible to vote to submit an electronic signature). Instructions for electronic, online transmission of Ballots are set forth on the forms of Ballots. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective. Except with respect to Ballots timely submitted via the Voting Agent's online balloting portal, no Ballots may be submitted electronically to the Voting Agent, including by electronic mail. Any Ballots submitted by electronic mail will not be accepted by the Voting Agent.

Ballots should not be sent directly to the Debtors, the Creditors' Committee, or their agents (other than the Voting Agent).

In order to be counted, Ballots must be properly completed in accordance with the voting instructions on the Ballot and **actually received** no later than the Voting Deadline (i.e., [\_\_\_\_], 2018 at 5:00 p.m. (prevailing Eastern time)). However, the Debtors reserve the right, in their sole discretion, to accept Ballots submitted by a means other than those outlined above or submitted after the Voting Deadline.

Each Ballot has been coded to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan by a means other than the online voting portal, you must use only the coded Ballot or Ballots sent to you with this Disclosure Statement. If you (1) hold Claims in more than one voting Class, or (2) hold multiple Claims within one Class, you may receive more than one Ballot.



If a Holder of a Claim delivers to the Voting Agent more than one timely, properly completed Ballot with respect to such Claim prior to the Voting Deadline, the latest dated properly executed Ballot received before the Voting Deadline will be deemed to reflect the voter's intent and, thus, will supersede any prior Ballots.

If you are a Holder of a Claim who is entitled to vote on the Plan as set forth in the Disclosure Statement Order and did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the Disclosure Statement, the Plan, the Ballot or the procedures for voting on the Plan, please contact the Voting Agent (1) by telephone (a) for U.S. and Canadian callers toll-free at 844-596-2261 and (b) for international callers at [914-266-8242, (2) by e-mail at [aaballots@primeclerk.com](mailto:aaballots@primeclerk.com), or (3) in writing at APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022.

FOR FURTHER INFORMATION AND INSTRUCTIONS ON VOTING TO ACCEPT OR REJECT THE PLAN, SEE SECTION V BELOW.

#### **F. Confirmation Exhibits**

The Debtors will separately file copies of all Confirmation Exhibits with the Bankruptcy Court no later than seven days before the Voting Deadline (or such later date as may be approved by the Bankruptcy Court). All Confirmation Exhibits will be made available on the Document Website once they are Filed. The Debtors reserve the right, in accordance with the terms of the Plan, to modify, amend, supplement, restate or withdraw any of the Confirmation Exhibits after they are Filed and will promptly make such changes available on the Document Website.

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

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on whether the Debtors have fulfilled the confirmation requirements of section 1129 of the Bankruptcy Code. The Confirmation Hearing has been scheduled for [ \_\_\_\_ ], 2018 at [\_\_]:00 [\_\_].m., prevailing Eastern time, before the Honorable Chief Judge Brendan L. Shannon, United States Bankruptcy Judge for the District of Delaware, in Courtroom No. 1, Sixth Floor, at the United States Bankruptcy Court for the District of Delaware, located at 824 North Market Street, Wilmington, Delaware 19801. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice.

Any objection to Confirmation must (1) be in writing, (2) state the name and address of the objecting party and the nature of the Claim or Interest of such party and (3) state with particularity the basis and nature of such objection. Any such objections must be Filed and served upon the persons designated in the Confirmation Hearing Notice in the manner and by the deadline described therein.



## II. THE DEBTORS' BUSINESS AND CORPORATE STRUCTURE<sup>8</sup>

### A. Overview of the Debtors' Business and Corporate Structure

APP, the direct or indirect parent of each of the Debtors and their non-Debtor foreign subsidiaries, is a Delaware limited liability company. Each of the other Debtors is organized under the laws of California. The Debtors' foreign subsidiaries are organized under the laws of various foreign countries. A corporate organization chart depicting the ownership structure of the Debtors and the foreign direct and indirect subsidiaries as of the Petition Date is attached as Exhibit A to the *Declaration of Mark Weinstein in Support of First Day Pleadings* [Docket No. 24] (the "First Day Declaration") on the Document Website.

Prior to the sale of certain of the Debtors' assets to Gildan Activewear SRL ("Gildan"), the cessation of their manufacturing and distribution operations, and the closing of the Debtors' retail locations, the Debtors and their non-Debtor foreign subsidiaries operated a vertically integrated manufacturing, distribution and retail business focused on branded fashion-basic apparel. The Debtors operated through three domestic business segments — manufacturing, retail, and wholesale.

As of the Petition Date, (i) the Debtors' manufacturing business segment operated three manufacturing facilities in and around the downtown Los Angeles area and one distribution center located in La Mirada, California; (ii) the Debtors' retail business segment operated approximately 110 retail and outlet stores located in 28 states and the District of Columbia, as well as an online store; and (iii) the Debtors' wholesale business sold undecorated apparel products to distributors and third party screen printers. Prior to commencing the winding down of their operations shortly before the Petition Date, the Debtors' non-Debtor foreign subsidiaries operated approximately 80 retail stores across 18 other countries.

### B. The Prior Chapter 11 Cases

On October 5, 2015, the Debtors commenced the Prior Cases in order to pursue and effectuate a pre-arranged chapter 11 plan of reorganization. From the outset, the Debtors' proposed pre-arranged plan of reorganization had the overwhelming support of its secured lenders. And during the course of the Prior Chapter 11 Cases, the Company worked cooperatively with representatives of its remaining creditor constituencies to garner their support, which ultimately resulted in a plan of reorganization that was supported by all of the Debtors' key creditor constituencies. This plan of reorganization (the "Prior Plan") was unanimously approved by all classes of creditors, and was confirmed by the Court on January 27, 2016. The Prior Plan was substantially consummated and became effective on February 5, 2016.

More detail regarding the Prior Cases and the events that preceded the Prior Cases may be found in the *Declaration of Mark Weinstein in Support of First Day Pleadings*, filed in the Prior Cases [Docket No. 3], and the *Disclosure Statement for Joint Plan of Reorganization Proposed by the Debtors and Debtors in Possession*, dated November 20, 2015, filed in the Prior Cases [Docket No. 369].

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<sup>8</sup> Certain figures and percentages reflected in this Section II have been approximated.

### C. Non-Debtor Foreign Operations

In the days leading up to the filing of these chapter 11 Cases, non-Debtor foreign subsidiaries in the United Kingdom, Ireland, Germany, Spain, Canada, Japan and Australia commenced proceedings to wind down their operations in their local jurisdictions. Following the Petition Date, the Debtors' remaining non-Debtor subsidiaries likewise commenced wind down proceedings or otherwise ceased operations. The Debtors believe there is limited or no value attributable to the Debtors' equity interests in their foreign subsidiaries, with the possible exception of the Debtors' equity interests in non-Debtor foreign subsidiaries located in China, and Canada, ~~and perhaps Israel~~.<sup>9</sup>

### D. The Debtors' Prepetition Organizational and Capital Structure

As of the Petition Date, the Debtors had outstanding long-term debt in the aggregate principal amount of approximately \$217 million under the Prepetition Credit Agreement (defined below). Additionally, APP has guaranteed the obligations of American Apparel (Carnaby) Limited ("AA Carnaby") under a \$15 million unsecured loan due October 15, 2020.

#### 1. Secured Debt

##### a. Prepetition Credit Agreement

During the Prior Cases, the Company had access to approximately \$90.1 million in debtor-in-possession credit financing (the "Prior DIP Facility"). Upon the effective date of the Prior Plan, loans outstanding under the Prior DIP Facility were converted (the "Converted Loans") to loans under that certain Credit Agreement dated as of February 5, 2016, by and among certain of the Debtors as Borrowers, the Prepetition Term Loan Lenders and Wilmington Trust, National Association, as Administrative Agent (the "Prepetition Credit Agreement"). In addition to the Converted Loans, the Prepetition Credit Agreement also provided the Company with an additional \$30 million in funds upon emergence (such loans, together with the Converted Loans, the "Exit Loans"). Subsequent amendments on April 5, May 11, July 5, July 12, August 5, September 6, September 20, September 28 and October 21 of 2016 amended the agreement and added an additional principal amount of approximately \$82 million in the aggregate to the Prepetition Credit Agreement. The Debtors' obligations under the Prepetition Credit Agreement are secured by a first-priority lien over substantially all of the Debtors' assets. As of the Petition Date, approximately \$217 million was outstanding under the Prepetition Credit Facility.

##### b. Funded Unsecured Guaranty Obligations

On March 25, 2015, one of the Debtors' foreign subsidiaries, American Apparel (Carnaby), Limited, entered into a credit agreement to borrow \$15 million from Standard General L.P., with interest accruing at 14% per annum (the "UK Loan"). APP guaranteed this loan, and reinstated that guarantee during the Prior Cases.

As of the Petition Date, an aggregate principal balance of approximately \$15 million was outstanding under the UK Loan.

<sup>9</sup> As noted below, the Debtors sold their equity interests in their South Korean subsidiary [See Docket No. 1576]. In addition, the Debtors received funds relating to their interest in their Japanese subsidiary [See Docket No. 801].

*c.* Trade Debt

The Debtors owe material amounts, on an unsecured basis, to various vendors and landlords.

*d.* Foreign Subsidiary Claims

Various foreign, non-Debtor subsidiaries filed proofs of claim against the Debtors. As of November 1, 2017, the unresolved filed claims by the Debtors' foreign subsidiaries (or their representatives) aggregate to approximately \$45.8 million.

**E. Events Leading to the Commencement of the Chapter 11 Cases**

From their inception in 1998 through 2009, the Debtors, together with their non-Debtor foreign subsidiaries, opened more than 280 stores in 19 countries, opened five manufacturing facilities in Southern California and increased its net sales revenue to \$663 million. The Debtors financed their growth—as well as their general operations—largely with a combination of borrowings from related and unrelated parties, bank and other debt, lease financing and proceeds from the exercise of purchase rights and issuance of common stock. As a result, the Debtors were for years burdened with a high level of indebtedness, forcing them to dedicate a substantial portion of their cash flow to pay interest and principal on their debt. In turn, the Debtors were plagued with reduced liquidity, increased vulnerability to downturns in the business, industry or the general economy, and limited flexibility in planning for or reacting to changes or disruptions in the business and the retail industry.

By the end of 2015, the Debtors' nearly \$300 million in indebtedness (which came at a cost of nearly \$40 million annually) had become unsustainable, and they filed the Prior Cases to consummate a financial restructuring. The Prior Cases successfully reduced the Debtors' indebtedness and provided the Debtors with \$40 million of fresh liquidity (as well as the contemplated Additional New Capital (as defined in the First Day Declaration), along with the Converted Loans, in order to execute the then-CEO's turnaround plan. The turnaround plan contemplated an overhaul of the Debtors' operational systems and processes to improve quality and reduce losses, while at the same time increasing sales through the design and sale of new apparel and developing e-commerce.

Unfortunately, the turnaround plan was not successful and the anticipated stabilization and gains in revenue were not fully realized. In addition to a challenging macroeconomic environment in retail generally, certain key elements of the turnaround plan were not implemented. This led to a further decline in revenue. In the face of mounting losses, members of the Debtors' senior management began to leave, including Hassan Natha, the Debtors' CFO and Ms. Schneider, the CEO.

In the months leading up to the filing of these Chapter 11 Cases, the Debtors were borrowing more than \$2 million each week just to keep afloat. This was not sustainable. As a result, the Debtors began to explore strategic options, including a sale of some or all of their assets. The Debtors hired Houlihan Lokey Capital, Inc. ("Houlihan") and conducted a lengthy and robust marketing process for the Debtors' assets. Houlihan explored all reasonable alternatives, including selling the Debtors as a whole and by the Debtors' individual business

lines, as well as combining bids to create strategic partnerships. After a lengthy prepetition process, the Debtors determined that filing for chapter 11 relief in order to conduct an auction for substantially all of their assets with Gildan's bid as the stalking horse bid for the Debtors' intellectual property and certain of their wholesale assets while self-liquidating retail operations represented the best way to maximize the value of the Debtors' estates for the benefit of their creditors and stakeholders.

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

#### **A. Voluntary Petitions**

On November 14, 2016 (defined in the Plan as the "Petition Date"), the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. All of the Chapter 11 Cases have been consolidated for procedural purposes only and are being administered jointly.

The Debtors have continued, and will continue until the Effective Date, to manage their properties as debtors-in-possession, subject to the supervision of the Bankruptcy Court and in accordance with the provisions of the Bankruptcy Code. An immediate effect of the filing of the Chapter 11 Cases was the imposition of the automatic stay under section 362 of the Bankruptcy Code, which, with limited exceptions, enjoined the commencement or continuation of: (1) all collection efforts by creditors; (2) enforcement of liens against any assets of the Debtors; and (3) litigation against the Debtors.

#### **B. First Day Relief**

On the Petition Date, the Debtors filed a number of motions and other pleadings (the "First Day Motions"), the most significant of which are described below, to be considered at the hearing before the Bankruptcy Court on November 15, 2016 (the "First Day Hearing") and for a subsequent hearing to be held in early December 2016. The purpose of these motions was to stabilize the Debtors' business in the initial days of these Bankruptcy Cases and to ensure a smooth transition into chapter 11 with minimal disruption to the Debtors' business.

In particular, the First Day Motions sought authority to, among other things: (1) administer the Bankruptcy Cases jointly for procedural purposes; (2) maintain certain customer programs and honor related prepetition obligations to the Debtors' customers; (3) pay certain prepetition employee wages, benefits and related items; (4) continue use of the Debtors' cash management system; (5) pay certain prepetition claims held by the Debtors' shippers and processors; (6) confirm certain protections of the Bankruptcy Code; (7) pay certain prepetition taxes; (8) establish notice and objection procedures for transfer of equity of the Debtors and establish a record date for notice and sell down procedures for trading in claims against the Debtors' estates; (9) establish adequate assurance procedures with respect to the Debtors' utility providers; (10) continue the Debtors' insurance programs and pay related obligations; (11) obtain post-petition financing (the "DIP Motion," as described in further detail below); (12) shorten time and schedule a hearing regarding approval of bidding procedures for the sale of substantially all of their assets and authorization to enter into the stalking horse purchase agreement with Gildan (as described in further detail below); (13) appoint a claims noticing agent; and (14) file a consolidated list of creditors.

In addition to the First Day Motions, on the Petition Date, the Debtors also filed motions seeking authority to, among other things, (1) establish procedures for the rejection of executory contracts and unexpired leases, and to abandon owned personal property remaining at any rejected leased premises (the “Rejection Procedures”); (2) reject certain executory contracts and unexpired leases; and (3) extend the deadline to file their Schedules and statements of financial information.

On November 15 and November 17, 2016, the First Day Motions were granted, including a subset of them on an interim basis. On December 9, 2016 and December 12, 2016, final orders were entered with respect to all First Day Motions not previously approved on a final basis.

### **C. Debtor-in-Possession Credit Facility**

On the Petition Date, the Debtors filed the DIP Motion, seeking authority to obtain postpetition financing (the “DIP Credit Facility”) in the aggregate principal amount of \$30 million with Encina Business Credit, LLC, as administrative and collateral agent, and the lenders thereunder (the “DIP Lenders”) and to utilize cash collateral. Prepetition, the Debtors had engaged in a competitive marketing process designed to secure postpetition financing on the best available terms. The Debtors and Houlihan sought proposals from potential financing sources, including 18 third party lenders and the Debtors’ existing secured lenders. Of the 18 third party lenders that were contacted, seven executed non-disclosure agreements and received access to an electronic data room containing due diligence information related to the Debtors and their financing needs. Ultimately, the Debtors received six proposals for possible debtor-in-possession financing. The Debtors determined that the DIP Credit Facility was the most favorable proposal.

On November 17, 2016, the Bankruptcy Court entered an interim order authorizing certain relief requested in the DIP Motion. The Final DIP Order was entered on December 12, 2016 [Docket No. 299]. The Debtors did not borrow, and are no longer able to borrow, any amounts under the DIP Credit Facility.

### **D. The Creditors’ Committee**

On November 22, 2016, the U.S. Trustee appointed the Creditors’ Committee in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, and on April 25, 2017, the U.S. Trustee amended its notice of appointment of the Creditors’ Committee.

The Creditors’ Committee currently consists of the following members: (1) E & C Fashion, Inc.; (2) Simon Property Group; (3) Flintfox Consulting Group, Inc.; (4) Andari Fashion Inc.; (5) Mediamath, Inc.; and (6) Garden City Group, LLC. Atalaya Asset Income Fund I LP was appointed to the Creditors’ Committee upon its formation, but resigned as of April 24, 2017. Counsel to the Creditors’ Committee are Cooley LLP and Bayard, P.A. The Creditors’ Committee’s financial advisor is Emerald Capital Advisors.

The Creditors’ Committee supports the Plan.

**E. Sale**

On January 9, 2017, the Debtors conducted an auction for substantially all of their assets pursuant to the terms of the Bidding Procedures Order. In addition to a \$66 million bid submitted by Gildan, the Debtors received a qualifying offer from S&E Apparel, for the sale of the Debtors' intellectual property rights, the right to purchase certain wholesale work orders and the option to assume certain of the Debtors' industrial leases. After multiple rounds of bidding, including bids submitted by certain retail liquidators for the Debtors' inventory, the Debtors designated Gildan's \$88 million bid as the winning bidding for the Debtors' intellectual property rights, certain equipment (subject to a carve-out for the Atalaya Equipment, among other equipment), plus the aforementioned wholesale purchase orders. *See Supplemental Declaration of Saul E. Burian in Support of Debtors Sale and Bidding Procedures Motion and Entry of One or More Sale Orders* [Docket No. 485]. The sale to Gildan (the "Sale") closed on February 8, 2017.

**F. Further Motions and Related Events in the Existing Chapter 11 Cases**

Since the Petition Date, the Debtors have sought and obtained approval for a number of additional motions to aid in the efficient administration of the Chapter 11 Cases as evidenced on the docket for these Cases. Some of the more substantive relief sought by the Debtors is detailed in Sections III.F.1 through ~~III.F.7~~ III.F.8.

**1. Claims Process and Bar Date**

On January 11, 2017, the Debtors filed their Schedules identifying the assets and liabilities of their Estates. Debtor APP Retail Winddown, Inc. filed amended Schedule E/F on February 23, 2017. In addition, pursuant to an order entered on February 21, 2017 [Docket No. 588] (the "Bar Date Order"), the Bankruptcy Court established the following bar dates for filing Proofs of Claim in the Chapter 11 Cases:

- ☐ the general bar date (the "General Bar Date") for all Claims, except as noted below, of April 11, 2017;
- ☐ a bar date for government units holding Claims against the Debtors of May 15, 2017;
- ☐ a bar date for Claims amended or supplemented by the Debtors' amended Schedules by the later of (a) the General Bar Date; and (b) the date that is thirty (30) days after the date that notice of the applicable amendment to the Schedules is served on the claimant; and
- ☐ a bar date for any claims arising from or relating to the rejection of executory contracts or unexpired leases, in accordance with section 365 of the Bankruptcy Code pursuant to a rejection notice as authorized by the Order approving the Rejection Procedures [Docket No. 310] or any other an order of the Bankruptcy Court, the later of (a) the General Bar Date, (b) the date that is thirty (30) days after the entry of the Rejection Date or the Objection Deadline (as defined in the



rejection notice in accordance with the Rejection Procedures), and (c) any other date as set by an Order of the Court.

In addition, the Bar Date Order established April 11, 2017 as the date by which any person or entity (including governmental units) asserting an administrative expense claim incurred on or after the Petition Date through and including March 15, 2017 were required to file such proofs of claim (the “Administrative Bar Date”), including claims under sections 365(d)(3), 365(d) (5) or 503(b)(1) through (8) of the Bankruptcy Code (but excluding (1) claims for stub rent, to the extent that a holder of a claim for stub rent did not dispute the payment it received from the Stub Rent Escrow (as defined in the Bar Date Order), and (2) claims under section 503(b)(9) of the Bankruptcy Code, which proofs of claim were required to be filed by the General Bar Date).

The Debtors provided notice of the bar dates above as required by the Bar Date Order.

As of [~~June 8~~September 5], 2018, approximately [~~3,415~~3,418] proofs of claim and requests for payment of administrative claims were filed. The aggregate liquidated amount of filed and scheduled claims exceeds \$[~~22,036,763,882~~][22,036,801,942]. To date, the Debtors have filed 10 omnibus objections to claims, seeking to expunge, reclassify or reduce approximately [1,535] claims.

The Debtors estimate that their non-priority, unsecured claims, in the aggregate, will total approximately \$[120] to \$[200] million.

## **2. KEIP/KERP**

On December 14, 2016, the Debtors sought approval of a Key Executive Incentive Plan (the “KEIP”) and Key Employee Retention Plan (the “KERP,” and together with the KEIP, the “KEIP/KERP”) for seven (7) of the Debtors’ non-insider employees and four (4) of the Debtors’ senior executives, all of whom were critical to running the Debtors’ operations, marketing their assets and ultimately winding up the Debtors’ affairs following a sale or other transaction [Docket No. 327] (the “KEIP/KERP Motion”). On January 4, 2017, the court entered an order approving the KEIP/KERP [Docket No. 422].

Briefly summarized, the KERP had two components, a retention component and a transaction component. The timing of the payments varied based on when the closing of a sale of substantially all of the Debtors’ assets occurred, and if there were any transition services required of the Debtors after the closing of any such sale. With a pre-June 30, 2017 closing of a sale, which was the case here with the sale of certain of the Debtors’ assets to Gildan, 50 percent of the retention component was payable on closing of the sale transaction and the remaining 50 percent of the retention component was payable on the first business day that was 60 days after such closing, provided that the employee remained employed by the Debtors, was employed or retained by the purchaser, or was terminated by the Debtors without cause. In addition, certain employees were entitled to a transaction component payable upon closing of a sale transaction. The KERP also had a discretionary bonus pool for non-insider employees not already included in the KERP. The maximum total cost of the KERP was expected to be \$867,500. The Debtors have fulfilled their obligations to the seven named participants.

The amounts payable under the KEIP were based on Distributable Proceeds (as defined in the KEIP/KERP Motion). Based on the Sale proceeds, the Debtors determined that they were, immediately upon closing of the Sale, in a position to distribute the maximum threshold of Distributable Proceeds under the KEIP (as projected Distributable Proceeds exceeded \$100 million, and the full KEIP (plus a 10 percent kicker) was payable if Distributable Proceeds exceeded \$88 million). In their discretion, however, the Debtors held back 10 percent of each executive's allotted payment pending their dismissal from the Debtors. Senior executives have now been released and KEIP payments have been made.

### **3. Store Closing Procedures**

On December 7, 2016, the Debtors sought approval, among other things, to conduct store closing sales at nine (9) of their "American Apparel" stores and to put in place procedures to conduct additional store closing sales, as necessary, [Docket No. 235] (the "Store Closure Motion") in accordance with the terms of the Sale Guidelines (as defined in the Store Closure Motion). As part of the Store Closing Motion, the Debtors also sought authorization to enter into a Liquidation Consulting Agreement with a joint venture comprised of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, LLC. On December 19, 2016, the Court entered an order approving the Store Closure Motion [Docket No. 357].

Pursuant to the order approving the Store Closure Motion, on February 2, 2017, the Debtors filed a notice stating that they intended to close an additional ninety-five (95) stores pursuant to the Sale Guidelines. Ultimately, all of the Debtors' retail stores were closed and the related leases rejected or terminated.

### **4. Settlement with the Litigation Trustee and Creditors' Committee**

On January 4, 2017, the Debtors and the Creditors' Committee filed a joint motion seeking approval of a settlement (the "UCC-LT Settlement") among the Debtors, the Creditors' Committee, the Litigation Trustee appointed in the Prior Cases and the Committee of Lead Lenders [Docket No 428]. On January 12, 2017, the Bankruptcy Court approved the UCC-LT Settlement [Docket No. 493].

The UCC-LT Settlement resolved certain objections by the Creditors' Committee to the DIP Motion, as set forth in the Creditors' Committee's objection filed on December 7, 2016 [Docket No. 238]. In addition, the UCC-LT Settlement resolved the Litigation Trustee's motion to dismiss the Chapter 11 Cases, filed on December 8, 2016 [Docket No. 274].

Pursuant to the UCC-LT Settlement, the Debtors were authorized to, among other things, establish the following Escrows from the proceeds generated by the Sale: (a) a fund in an amount sufficient to pay the Debtors' unpaid November 2016 rent obligations (the "Stub Rent Escrow"); (b) a fund in an amount sufficient to pay the Debtors' obligations to holders of allowed claims arising under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Escrow"); and (c) a fund in the amount of \$2.5 million for the benefit of the Debtors' general unsecured creditors and the beneficiaries of the litigation trust established in the Prior Cases (with the cost and expense of such funding and the costs and professional fees of these chapter 11 Cases to be allocated among all of the Debtors' assets pursuant to a further order of the Court) (the



“Settlement Escrow”). The Committee of Lead Lenders waived their right to participate in distributions from the Settlement Escrow.

In addition, the UCC-LT Settlement, among other things, provided that (a) the Creditors’ Committee and the Litigation Trustee consented to the entry of a final cash collateral order; (b) the Litigation Trustee’s motion to dismiss would be deemed dismissed with prejudice; (c) the Creditors’ Committee’s objection to the DIP Motion would be deemed withdrawn; (d) the parties would not object to the KEIP/KERP Motion; (e) the ongoing fees of the Creditors’ Committee’s professionals would be capped at \$500,000 post-settlement; (f) the Creditors’ Committee and the Litigation Trustee would not object to mechanisms to conclude the Chapter 11 Cases that were not materially inconsistent with the UCC-LT Settlement; and (g) the Litigation Trustee (and not the Debtors) would resolve general unsecured claims in the Prior Cases, subject to certain conditions.

The Debtors complied with the Settlement Order, and created segregated escrow accounts upon the closing of the Gildan Sale. While distributions of the Stub Rent Escrow were made within seven days of the UCC-LT Settlement’s effective date, as required under the Settlement Order, distributions from the 503(b)(9) Escrow and the Settlement Escrow have not been made and may not be made without a further order of the Court. To that end, the Plan provides for distributions to be made from the 503(b)(9) Escrow and the Settlement Escrow upon the Effective Date of the Plan and in accordance with the terms therein.

## 5. The Lender Settlement

On November 22, 2017, the Debtors filed a motion seeking approval of a settlement (the “Lender Settlement”) with the Lender Committee Parties, the Standard General Parties, and the Prepetition Agent. On December 12, 2017, the Bankruptcy Court approved the Lender Settlement [Docket No. 1415].

The Lender Settlement resolved two disputes that the UCC-LT Settlement did not resolve. First, shortly after the Committee Settlement was approved, the Standard General Parties initiated an adversary proceeding against the Lender Committee Parties and the Prepetition Agent alleging certain causes of action relating to amendments to the Prepetition Credit Agreement. *See Standard General L.P. v. Monarch Master Funding, Ltd.*, Adv. Pro. 17-50014 (BLS) (January 23, 2017) (the “Adversary Proceeding”). The Lender Committee Parties moved to dismiss the adversary proceeding in its entirety, and the Court heard arguments on May 31, 2017, though no ruling had been rendered at the time of the Lender Settlement. Second, the UCC-LT Settlement left unresolved the issue of how to allocate expenses incurred by the Debtors’ estates during the course of the Chapter 11 Cases and sale proceeds realized by the Debtors during the Chapter 11 Cases as among the collateral securing the debt under the Prepetition Credit Agreement.

After months of hard-fought negotiations, the parties agreed to the terms of the Lender Settlement. The Lender Settlement provided for, among other things, (i) the allowance of the Prepetition Term Loan Claims of the non-Debtor parties as set forth in the Final DIP Order, (ii) the allocation of distributions to the Prepetition Term Loan Lenders as described below, (iii) certain provisions regarding recoveries on account of collateral posted to secure the Debtors’

workers compensation policies, (iv) releases among the Parties; (v) an interim distribution to the Prepetition Term Loan Lenders in the amount of approximately \$95.8 million; (vi) that funds remaining in the Debtors' estates after the interim distribution would be available for actual, reasonable and necessary expenses incurred in connection with seeking confirmation of, and funding certain distributions under, the Plan and for winding down the Debtors' affairs; (vii) that the parties would negotiate in good faith documentation for, and support (and subject to receipt of the Disclosure Statement, vote for) the Plan, to the extent consistent with the Lender Settlement; (ix) subject to the terms of the Lender Settlement, that the Prepetition Term Loan Lenders would not assign their Prepetition Term Loan Claims or commence litigation against each other; and (ix) that the Plan would provide for the releases included in the Plan .

Pursuant to the Lender Settlement, distributions to the Prepetition Term Loan Lenders are to be allocated as follows:

- The Standard General Parties are to receive, in the aggregate, (i) \$400,000 (which amount was distributed as part of the interim distribution) on account of certain fees and expenses; (ii) 10% of each Prepetition Term Loan Distribution (other than [WC](#) Recovered Cash Collateral) and (iii) (x) the first \$2.5 million of [WC](#) Recovered Cash Collateral and (y) 10% of all [WC](#) Recovered Cash Collateral in excess of such \$2.5 million;
- The Lender Committee Parties are to receive, in the aggregate, (i) \$400,000 (which amount was distributed as part of the interim distribution), (ii) 90% of each Prepetition Term Loan Distribution (other than [WC](#) Recovered Cash Collateral) and (iii) all [WC](#) Recovered Cash Collateral not distributed to the Standard General Parties pursuant to Section II.C.3.c of the Plan (described in clause (iii) of the above paragraph).

Further, the Lender Settlement provided that the Standard General Parties would have exclusive authority to direct or authorize settlements of Causes of Action for turnover of the cash collateral or cash equivalents securing the Debtors' worker' compensation deductible obligations for 18 months after the effective date of the Lender Settlement (subject to the consent of the Lender Committee Parties if the amounts recovered were less than \$1.5 million), and thereafter, such authority would reside with the Lender Committee Parties. In addition, \$1.6 million was to be (and was reserved) from the interim distribution as follows: (i) \$100,000 was reserved for certain costs incurred in prosecuting Causes of Action relating to such workers' compensation collateral, and (ii) \$1.5 million was reserved for distribution to the Standard General Parties, which \$1.5 million reserve would be reduced, on a dollar-for-dollar basis, by distributions of [WC](#) Recovered Cash Collateral paid to the Standard General Parties (no such distributions have been made as of the date hereof). Any amounts remaining in that reserve shall be distributed to the Standard General Parties 18 months after the effective date of the Lender Settlement.

The Debtors made the initial distribution of approximately \$95.8 million to the Prepetition Agent. Separately, the Debtors reserved \$1.6 million under the terms of the Lender Settlement relating to the WCCC Causes of Action.

## 6. Other Asset Sales and Remaining Assets

In addition to the Gildan Sale, the Debtors monetized or sold certain other assets. Following the auction, the Debtors entered into lease termination transactions with three different landlords (although one did not close when the cure costs asserted by the landlord rendered the transaction uneconomical). The Debtors also entered into a purchase agreement with Bronc's, Inc. to sell certain equipment (the "Atalaya Equipment") that was subject to litigation in *American Apparel, LLC v. Atalaya Asset Income Fund I LP*, Case No. 30-2016-00866694 (Cal. Sup. Ct.), and to assume and assign the lease to the Debtors' facility located in Garden Grove California. The transaction with Bronc's closed in April 2017.

The Debtors also received Bankruptcy Court approval to sell certain emission reduction trading credits, authority to sell additional assets in connection with the Store Closure Motion, and authority to sell additional assets pursuant to a de minimis asset sale motion [Docket No. 774] ("De Minimis Sale Order"). Among other assets sold pursuant to the De Minimis Sale Order were merchandise, certain equipment located at their La Mirada, California facility and certain IT equipment.

On January 8, 2018, the Debtors filed a motion to sell their interests in their non-Debtor Korean subsidiary American Apparel Korea Co., Ltd. ("AA Korea") to Mr. Bong Jae Huh, a director of AA Korea, for KRW 850 million. On January 24, 2018 the Bankruptcy Court entered an order authorizing, among other things, the sale of AA Korea. The transaction closed in February 2018, resulting in net proceeds of approximately \$785,000.

The Debtors' principal remaining assets that may be monetized include interests in certain foreign subsidiaries, Causes of Action (including those arising under chapter 5 of the Bankruptcy Code), and certain deposits or collateral posted by the Debtors.

- With respect to Causes of Action under chapter 5 of the Bankruptcy Code, the Debtors sent demand letters to approximately 470 entities that received transfers within 90 days of the Prior Cases and/or these Chapter 11 Cases. Thereafter, the Debtors commenced over 300 adversary proceedings to recover such transfers. As of ~~June 12~~ August 23, 2018], approximately ~~180~~ 175 adversary proceedings are currently active.

~~Prior to and during the Chapter 11 Cases, the Debtors posted over \$36 million to insurance companies to secure the Debtors' workers' compensation obligations.~~

- With respect to deposits or collateral, National Union Fire Insurance Company of Pittsburgh, Pa. on behalf of itself and its affiliates (such entities are referred to herein as "AIG"), which provided insurance coverage to the Debtors, affiliates, or predecessors, has indicated to the Debtors that, in the view of AIG, the deposits or collateral held by AIG on account of the workers' compensation policies issued by AIG have been, or will be, completely depleted by the claims already asserted against such policies, and accordingly, there will not be any excess deposits or collateral returned to the Debtors. AIG and the Debtors reserve all of their rights with respect to any such deposits or collateral.

The above-described assets are being monetized for the benefit of the Prepetition Term Lenders in accordance with the UCC-LT Settlement and the Lender Settlement.

## **7. Executory Contracts and Unexpired Leases**

On December 13, 2016, the Bankruptcy Court entered an order establishing procedures for the rejection of executory contracts and unexpired leases. Together with leases rejected pursuant to a December 9, 2017 Order of the Bankruptcy Court, the Debtors rejected all of their real estate leases that were not terminated or assigned as noted in [Section III.F.5] above, including leases for their retail stores, headquarters, manufacturing facilities, and distribution center.

After the shutting down of manufacturing operations and the closing of their stores, the Debtors no longer required the goods or services to be provided under most of their executory contracts. During these cases, the Debtors have rejected certain executory contracts pursuant to the rejection procedures. Certain other contracts related to Oracle were assigned to Gildan. All of the Debtors' remaining contracts will be rejected pursuant to the Plan, except to the extent previously assumed or rejected or, as of the Confirmation Date, the subject of a pending motion to assume or reject.

## **8. Miscellaneous Motions and Applications**

During the Chapter 11 Cases, the Debtors received Bankruptcy Court approval to enter into various stipulations and settlements. The Debtors also received authority to abandon certain records that were not needed for the winding down of their estates.

The Bankruptcy Court also granted relief typical in large chapter 11 cases, including authorizing the Debtors to employ various professionals and extending certain deadlines set forth in the Bankruptcy Code.

### **G. Workers' Compensation Policies Collateral and Claims**

Prior to and during the Chapter 11 Cases, the Debtors posted over \$36 million to insurance companies to secure the Debtors' workers' compensation obligations, of which over \$30 million was provided to AIG and over \$6 million was provided to Arch. Arch and AIG have informed the Debtors that, in the view of Arch and AIG, the respective funds, deposits or collateral posted to Arch and AIG will be insufficient to cover the workers' compensation claims under the insurance programs administered by Arch and AIG, respectively, and that the funds in their possession have been, or will be, exhausted and thus will not be available for return to the Debtors.

#### **1. AIG's Claims**

AIG has filed proofs of claim in excess of \$40 million, of which over \$10 million was asserted as an unsecured claim and the balance as a secured claim (up to the value of its collateral). AIG has indicated to the Debtors that it believes its unsecured claim may be significantly in excess of the filed amount. The Debtors have not made any determination as to the validity, nature, or extent of these claims, and nothing herein or in the Plan shall be construed

as an acknowledgement of the validity, priority, or amount of any claim asserted (or that may be asserted) by AIG.

## **2. Arch's Prepetition Claims**

Arch filed two proofs of claim (Claim Nos. 809 and 810) asserting a secured claim of not less than \$4.7 million (up to the value of its collateral) and an unsecured claim in an undetermined amount. The Arch claims contain no information or supporting documentation related to the underlying workers' compensation claims filed by the Debtors' former employees, or the other charges and amounts allegedly comprising the Arch claims. The Debtors dispute that Arch has provided sufficient evidence to support its claims.

As described below, the Debtors and Arch have agreed to a comprehensive settlement resolving Arch's claims in these Chapter 11 Cases. The Debtors anticipate filing a motion to approve their settlement with Arch, and expect to receive approval of such motion prior to the confirmation of the Plan. To the extent such settlement is not approved prior to Plan confirmation, nothing herein or in the Plan shall be construed as an acknowledgement of the validity, priority, or amount of any claim asserted (or that may be asserted) by Arch.

## **3. Arch's Administrative Claim**

On July 11, 2018, Arch filed a motion seeking payment of an asserted administrative expense claim (Docket 1789). According to Arch, since the Petition Date, Arch has paid more than \$8.9 million in losses and more than \$1.1 million to a third party claims administrator, an aggregate amount that exceeds the collateral by almost \$3.9 million. In its motion, Arch seeks allowance and payment of an administrative expense for \$3.9 million and estimates that it will incur an additional approximately \$12 million in losses going forward.

As described below, the Debtors and Arch have agreed to a comprehensive settlement resolving Arch's claims in these Chapter 11 Cases. The Debtors anticipate filing a motion to approve their settlement with Arch, and expect to receive approval of such motion prior to the confirmation of the Plan. To the extent such settlement is not approved prior to Plan confirmation, nothing herein or in the Plan shall be construed as an acknowledgement of the validity, priority, or amount of any claim asserted (or that may be asserted) by Arch.

## **4. The Settlement of Arch's Claims**

The Debtors dispute Arch's prepetition claims and administrative claim. However, to avoid (a) the risk of payment of the full amount of Arch's claims and (b) protracted litigation that would delay confirmation of the Plan and payment of other claims, the Debtors have entered into an agreement in principle with Arch resolving all claims between the parties, subject to definitive documentation and approval by the Court. The essential terms of the agreement are as follows:

- Arch will receive an Allowed Administrative Claim of \$600,000 and will be entitled to the treatment specified by Section II.A.1 of the Plan;
- Arch will retain the deposit posted as collateral under its WC Policies;

- All of Arch's remaining or other claims in these cases will be disallowed; and
- Arch and the Debtors mutually release one another from all possible claims, demands or causes of actions, *provided, however,* that Arch will continue to honor the terms of the Insurance Policies issued by Arch to the Debtors (and such policies shall remain in full force and effect as provided by Section III.L of the Plan).

The Standard General Parties and the Creditors' Committee support the settlement with Arch.

A portion of the Arch Allowed Administrative Claim, in the amount of \$300,000, shall be an Allowed Unbudgeted Administrative Claim.

The Debtors anticipate filing a motion to approve the settlement with Arch pursuant to Bankruptcy Rule 9019, and expect to receive approval of such motion prior to the confirmation of the Plan. To the extent such settlement is not approved prior to Plan confirmation, nothing herein or in the Plan shall be construed as an acknowledgement of the validity, priority, or amount of any claim asserted (or that may be asserted) by Arch.

#### **IV. THE PLAN**

THE FOLLOWING SUMMARY HIGHLIGHTS CERTAIN OF THE SUBSTANTIVE PROVISIONS OF THE PLAN, AND IS NOT, NOR IS IT INTENDED TO BE, A COMPLETE DESCRIPTION OR A SUBSTITUTE FOR A FULL AND COMPLETE REVIEW OF THE PLAN. THE DEBTORS URGE ALL HOLDERS OF CLAIMS AND INTERESTS TO READ AND STUDY CAREFULLY THE PLAN, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT 1.

Section 1123 of the Bankruptcy Code provides that, except for Administrative Claims and Priority Tax Claims, a chapter 11 plan must categorize claims against and equity interests in a debtor into individual classes. Although the Bankruptcy Code gives a debtor significant flexibility in classifying claims and interests, section 1122 of the Bankruptcy Code dictates that a chapter 11 plan may only classify a claim or an equity interest with claims or equity interests, respectively, that are substantially similar.

The Plan creates 5 Classes of Claims and 1 Class of Interests. These Classes take into account the differing nature and priority of Claims against and Interests in the Debtors. Administrative Claims and Priority Tax Claims are not classified for purposes of voting or receiving distributions under the Plan (as is permitted by section 1123(a)(1) of the Bankruptcy Code) but are treated separately as unclassified Claims.

The Plan provides specific treatment for each Class of Claims and Interests. Only Holders of Claims that are impaired under the Plan and who will receive distributions under the Plan are entitled to vote on the Plan.

The following discussion sets forth the classification and treatment of all Claims against, or Interests in, the Debtors. It is qualified in its entirety by the terms of the Plan, which is



attached hereto as Exhibit 1, and which you should read carefully before deciding whether to vote to accept or reject the Plan.

## **A. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described in Section II.A of the Plan, are not classified in the Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes.

If the Plan is confirmed by the Bankruptcy Court, unless a Holder of an Allowed Claim consents to different treatment, each Allowed Claim in a particular Class will receive the same treatment as the other Allowed Claims in such Class, whether or not the Holder of such Claim voted to accept the Plan. Such treatment will be in exchange for and in full satisfaction, release and discharge of, the Holder's respective Claims against a Debtor, except as otherwise provided in the Plan. Moreover, upon Confirmation, the Plan will be binding on (A) all Holders of Claims regardless of whether such Holders voted to accept the Plan and (B) all Holders of Interests.

### **1. Unclassified Claims**

#### *a.* Administrative Claims

##### **1. Administrative Claims in General**

Except as specified in Section II.A.1 of the Plan, and subject to the bar date provisions herein and set forth in the Bar Date Order, unless otherwise agreed by (i) the Holder of an Administrative Claim, (ii)(a) the Debtors (prior to the Effective Date) or (b) the Post-Confirmation Debtors (on or after the Effective Date), (iii) the Required Lenders, and (iv) solely with respect to Unbudgeted, ~~Non-Ordinary-Course~~ Administrative Claims, the Post-Confirmation Debtors and the Creditors' Fund Trustee (unless an order of the Bankruptcy Court or agreement of the Post-Confirmation Debtors and Creditors' Fund Trustee provides otherwise), each Holder of an Allowed Administrative Claim shall receive, in full satisfaction of its Administrative Claim, Cash equal to the Allowed amount of such Administrative Claim on either (1) if the Administrative Claim is Allowed on the Effective Date, the Effective Date (or as soon thereafter as practicable) or (2) if the Administrative Claim is not Allowed on the Effective Date, within 60 days after the date on which such Administrative Claim becomes an Allowed Administrative Claim. Payment of Allowed Administrative Claims that are not Allowed Unbudgeted, ~~Non-Ordinary-Course~~ Administrative Claims shall be made by the Post-Confirmation Debtors only from the Administrative/Priority/Tax Claims Reserve and the proceeds of the Remaining Assets. Payment of Allowed Unbudgeted, ~~Non-Ordinary-Course~~ Administrative Claims shall be made by the Creditors' Fund Trustee from the Creditors' Fund Trust Assets. For the avoidance of doubt, the Post-Confirmation Debtors shall have no liability or responsibility to pay any Allowed Unbudgeted, ~~Non-Ordinary-Course Administrative Claims~~ Administrative Claims. The Arch Allowed

Administrative Claim shall be paid as follows: (a) \$300,000 shall be paid by the Post-Confirmation Debtors on the Effective Date (or as soon thereafter as practicable) from the Administrative/Priority/Tax Claims Reserve, and (b) \$300,000 shall be paid by the Creditors' Fund Trustee on the Effective Date (or as soon thereafter as practicable) from the Creditors' Fund Trust.

## 2. Bar Dates for Administrative Claims

Unless previously Filed or except as required to have been filed by the First Administrative Expense Bar Date pursuant to the Bar Date Order or as governed in another order of the Bankruptcy Court, requests for payment of Administrative Claims must be Filed and served on the parties identified in Section X.K of the Plan (other than the Creditors Committee) and the Creditors' Fund Trustee pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Second Administrative Expense Bar Date. Any Holder of an Administrative Claim who was not required to File proof of such Administrative Claim or a request for payment thereof pursuant to the Bar Date Order shall be required to file a request for payment of such Administrative Claim by the Second Administrative Expense Bar Date. Any Holders of Administrative Claims that were or are required to File and serve a request for payment of Administrative Claims and that did not or do not File and serve such a request by the applicable bar date will be forever barred from asserting such Administrative Claims against the Debtors, or their respective property, and such Administrative Claims will be deemed Disallowed as of the Effective Date and not entitled to payment under the Plan. Objections to the requests for payment of Administrative Claims must be Filed and served on the parties identified in Section X.K.1 of the Plan, the Creditors Fund Trustee, and the requesting party no later than the latest of (i) 120 days after the Effective Date, (ii) 60 days after such request is Filed, and (iii) such date as may be agreed between the Post-Confirmation Debtors and the Holder of an Administrative Claim, in each case, as the same may be extended, for cause, by the Bankruptcy Court upon request of the Post-Confirmation Debtor. Nothing in Section II.A.1.b of the Plan shall waive, extend or lengthen the applicable Claims Bar Date for the Holder of any prepetition Claim or Administrative Claim subject to a Claims Bar Date established by any Bankruptcy Court order

## 3. Professional Compensation

### (a) Final Fee Applications

Professionals or other entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the parties identified in Section X.K of the Plan and such other entities who are designated by the Bankruptcy Rules, the Fee Order, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Fee Claim no later than 30 days after the Effective Date; *provided, however*, that any Professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date pursuant to the Ordinary Course Professionals Order without further Bankruptcy Court review or approval (except as provided in the Ordinary Course Professionals Order). Except as otherwise agreed to by the Holder of a Fee Claim, objections to any Fee Claim must be Filed and served on the parties identified in Section X.K of



the Plan and the requesting party by 75 days after the Effective Date or such other period of limitation as may be specifically fixed by a Final Order for objecting to such Fee Claims. To the extent necessary, the Confirmation Order will supersede any previously entered order of the Bankruptcy Court regarding the payment of Fee Claims.

(b) Post-Effective Date Professionals' Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and (i) the Post-Confirmation Debtors may employ and pay the actual, reasonable, and necessary fees and expenses of any Professional from the funds in the Administrative/Priority/Tax Claims Reserve and the Remaining Assets (and, with respect to Professionals retained on a contingency basis, from the proceeds of the Causes of Action for which such Professionals were retained) for services rendered or expenses incurred after the Effective Date in the ordinary course of business without any further notice to any party or action, order or approval of the Bankruptcy Court, and (ii) the Creditors' Fund Trustee may employ and pay any Professional from the Creditors' Fund Trust Assets for services rendered or expenses incurred after the Effective Date without any further notice to any party or action, order or approval of the Bankruptcy Court.

4. Statutory Fees

On or before the Effective Date, Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930 will be paid by the applicable Debtors in Cash equal to the amount of such Administrative Claims. Fees payable pursuant to 28 U.S.C. § 1930 for each Debtor's Estate after the Effective Date will be by the Post-Confirmation Debtors until the closing of the applicable Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

b. Payment of Priority Tax Claims

1. Priority Tax Claims

Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the Holder of a Priority Tax Claim and the Debtors, each Holder of an Allowed Priority Tax Claim shall receive, at the option of the Debtors, in full satisfaction of its Allowed Priority Tax Claim that is due and payable on or before the Effective Date, on account of and in full and complete settlement and release of such Claim, (i) Cash in an amount equal to the amount of such Allowed Priority Tax Claim or (ii) Cash in an aggregate amount of such Allowed Priority Tax Claim payable in installment payments over a period of time not to exceed five years after the Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; *provided, however*, that all Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business by the Post-Confirmation Debtors as they become due, except as otherwise agreed by the Post-Confirmation Debtors; *provided, further*, that, in the event an Allowed Priority Tax Claim is also a Secured Tax Claim, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full.

## 2. Other Provisions Concerning Treatment of Priority Tax Claims

Notwithstanding Section II.A.4.a of the Plan, any Claim on account of any penalty arising with respect to or in connection with an Allowed Priority Tax Claim that does not compensate the Holder for actual pecuniary loss shall be treated as a General Unsecured Claim, and the Holder (other than as the Holder of a General Unsecured Claim) may not assess or attempt to collect such penalty from the Debtors, the Post-Confirmation Debtors, or their respective property. For the avoidance of doubt, the Post-Confirmation Debtors, and not the Creditors' Fund Trustee, shall be responsible for objecting to the classification of any Claim on account of any penalty arising with respect to or in connection with a Priority Tax Claim.

## 2. Classified Claims and Interests

### a. General

Pursuant to sections 1122 and 1123 of the Bankruptcy Code, Claims and Interests are classified for voting and distribution pursuant to the Plan, as set forth herein. A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such other Class. Except as otherwise specifically provided for herein, the Confirmation Order or other order of the Bankruptcy Court, or required by applicable bankruptcy law, in no event shall the aggregate value of all property received or retained under the Plan on account of an Allowed Claim exceed 100% of the underlying Allowed Claim.

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for the purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims; provided, however, that in the event no Holder of a Claim with respect to a specific Class timely submits a Ballot in compliance with the Disclosure Statement Order indicating acceptance or rejection of the Plan, such Class will be deemed to have accepted the Plan. The Debtors may seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests.

To the extent a Holder has Claims arising from the same transaction or occurrence that may be asserted against more than one Debtor, the vote of such Holder in connection with such Claims will be counted as a vote of each such Claim against each applicable Debtor against which such Holder has a Claim. The Plan assigns a letter to each Debtor and a number to each of the Classes of Claims against or Interests in the Debtors. For consistency, similarly designated Classes of Claims and Interests are assigned the same number across each of the Debtors.

<b>Letter</b>	<b>Debtor</b>
A	APP Winddown, LLC (f/k/a American Apparel, LLC)
B	APP USA Winddown, LLC (f/k/a American Apparel (USA), LLC)
C	APP Retail Winddown, Inc. (f/k/a American Apparel Retail, Inc.)
D	APP D&F Winddown, Inc. (f/k/a American Apparel Dyeing & Finishing, Inc.)

E	APP Knitting Winddown, LLC (f/k/a KCL Knitting, LLC)
F	APP Shipping Winddown, Inc. (f/k/a Fresh Air Freight, Inc.)

*b.* Identification of Classes of Claims Against and Interests in the Debtors

The following table designates the Classes of Claims against and Interests in the Debtors and specifies which Classes are (a) Impaired or Unimpaired by the Plan, (b) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code or (c) deemed to accept or reject the Plan.

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
1A-1F	Other Priority Claims	Unimpaired	Deemed to Accept
2A-2F	Other Secured Claims	Unimpaired	Deemed to Accept
3A-3F	Prepetition Term Loan Secured Claims	Impaired	Entitled to Vote
4A-4F	General Unsecured Claims	Impaired	Entitled to Vote
5A-5F	Intercompany Claims	Impaired	Deemed to Reject
6A-6F	Interests	Impaired	Deemed to Reject

*c.* Treatment of Claims

1. Other Priority Claims (Class 1)

Other Priority Claims are Claims that are entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code and that are not Administrative Claims or Priority Tax Claims.

On the later of (a) the Effective Date, and (b) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, or as soon as reasonably practicable thereafter, unless otherwise agreed to the Holder of an Allowed Other Priority Claim and by the Debtors or the ~~Reorganized~~ Post-Confirmation Debtors, in either case with the consent of the Required Lenders, each Holder of an Allowed Other Priority Claim against a Debtor shall receive on account and in full and complete settlement and release of such Claim, Cash in the amount of such Allowed Other Priority Claim in accordance with section 1129(a)(9) of the Bankruptcy Code

Claims in Class 1 are Unimpaired. Each Holder of an Allowed Claim in Classes 1A through 1F is conclusively presumed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code and is, therefore, not entitled to vote.

2. Other Secured Claims (Class 2)

Other Secured Claims are Claims, including Secured Tax Claims but excluding Prepetition Term Loan Secured Claims, that are secured by a lien on property in which an Estate has an interest or that are subject to a valid right of setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder's interest in such Estate's interest in such property or to the extent of the amount subject to such valid right of setoff, as applicable, as determined pursuant to section 506 of the Bankruptcy Code.

On the later of (a) the Effective Date and (b) the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, or as soon as reasonably practicable thereafter, unless otherwise agreed by the Holder of an Allowed Other Secured Claim and by the Debtors or the Post-Confirmation Debtors, in either case with the consent of the Required Lenders, each Holder of an Allowed Other Secured Claim shall receive the following treatment at the option of the Debtors, with the consent of the Required Lenders: (i) payment in full (in Cash) of any such Allowed Other Secured Claim; (ii) satisfaction of any such Allowed Other Secured Claim by delivering the collateral securing any such Allowed Other Secured Claim and paying any interest required to be paid under section 506(b) of the Bankruptcy Code; or (iii) such other recovery necessary to satisfy section 1129 of the Bankruptcy Code to render such claim unimpaired.

Claims in Class 2 are Unimpaired. Each Holder of an Allowed Claim in Classes 2A through 2F is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and is, therefore, not entitled to vote.

### 3. Prepetition Term Loan Secured Claims (*Class 3*)

Prepetition Term Loan Secured Claims are Secured Claims against any of the Debtors arising under, related to or evidenced by the Prepetition Loan Documents, including, without limitation, any guaranty obligations with respect to any of the foregoing.

Unless otherwise agreed by the Holder of an Allowed Prepetition Term Loan Secured Claim and the Debtors or the Post-Confirmation Debtors, each Holder of an Allowed Prepetition Term Loan Secured Claim, subject to the terms of the Lender Settlement, in full and final satisfaction, settlement and release of, and in exchange for, such Claim, shall receive its respective share of each Prepetition Term Loan Distribution. In accordance with the Lender Settlement, each Prepetition Term Loan Distribution shall be allocated ~~to~~ after the payment of the reasonable fees and expenses of the Prepetition Agent (including the reasonable fees and expenses of counsel), among the Standard General Parties, on the one hand, and the Lender Committee Parties, on the other hand, as follows: (a) the Standard General Parties shall receive, in the aggregate, (i) 10% of such Prepetition Term Loan Distribution (other than WC Recovered Cash Collateral) and (ii) (A) the first \$2.5 million of WC Recovered Cash Collateral and (B) 10% of all WC Recovered Cash Collateral in excess of such \$2.5 million; and (b) the Lender Committee Parties shall receive, in the aggregate, (i) 90% of such Prepetition Term Loan Distribution (other than WC Recovered Cash Collateral) and (ii) all WC Recovered Cash Collateral not distributed to the Standard General Parties pursuant to Section II.C.3.c of the Plan. If the amount of Cash available for a Prepetition Term Loan Distribution exceeds the Allowed Prepetition Term Loan Secured Claims, then the Holders of Prepetition Term Loan Secured Claims shall be entitled, to one or more Prepetition Term Loan Distributions in an amount equal to Prepetition Term Loan Interest Claim, which additional ~~to~~ distribution shall be allocated 90% to the Lender Committee Parties and 10% to the Standard General Parties, until either Prepetition Term Loan Interest Claims of either the Lender Committee Parties or the Standard General Parties are paid in full, and thereafter to the Prepetition Term Loan Lenders whose Prepetition Term Loan Interest Claims have not been satisfied in full.

Claims in Class 3 are impaired. Each Holder of an Allowed Claim in Class 3 is entitled to vote.

#### 4. General Unsecured Claims (Class 4)

General Unsecured Claims are all Claims that are not an Administrative Claim, Priority Tax Claim, Other Priority Claim, Other Secured Claim, Intercompany Claims, or Prepetition Term Loan Secured Claim, and includes Prepetition Term Loan Deficiency Claims to the extent not waived in connection with the UCC-LT Settlement.

Each Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such General Unsecured Claim, its Pro Rata Share of the Creditors' Fund Trust Net Class 4 Distributable ~~Creditors' Fund~~ Cash, up to the Allowed amount of said Holder's General Unsecured Claim; *provided, however*, that pursuant to the UCC-LT Settlement, members of the Committee of Lead Lenders that are Holders of Prepetition Term Loan Deficiency Claims shall not receive a distribution on account of such Prepetition Term Loan Deficiency Claims, and any such Prepetition Term Loan Deficiency Claims ~~held by members of the Committee of Lead Lenders shall not count as General Unsecured Claims for distribution purposes~~ shall not be used in the calculation of Pro Rata Share.

Claims in Class 4 are impaired. Each Holder of an Allowed Claim in Class 4 is entitled to vote.

#### 5. Intercompany Claims (Class 5)

Intercompany Claims are any Claims held by a Debtor against a Debtor.

Intercompany Claims shall be cancelled, reinstated or modified, in the discretion of the Post-Confirmation Debtors, and no distribution shall be made on account of such Claims.

Claims in Class 5 are impaired. Each Holder of a Claim in Class 5 is ~~conclusively presumed deemed~~ to have ~~rejected-not accepted~~ the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote.

#### 6. Interests (Class 6)

Class 6 consists of all Interests in any of the Debtors. Interest means the rights of the Holders of the common stock, membership interests or partnership interests issued by a Debtor and outstanding immediately prior to the Petition Date, and any options, warrants or other rights with respect thereto, or any other instruments evidencing an ownership interest in a Debtor and the rights of any Entity to purchase or demand the issuance of any of the foregoing, including: (a) redemption, conversion, exchange, voting, participation and dividend rights (including any rights in respect of accrued and unpaid dividends); (b) liquidation preferences; and (c) stock options and warrants. Interests include the membership interests in APP Winddown. Interests will be Allowed in the amounts set forth on the respective Schedule of Equity Security Holders of each of the Debtors, and with respect to Interests in APP Winddown, LLC, in the operating agreement set forth in the Plan Supplement

Interests in a Debtor that is not a Post-Confirmation Debtor shall be cancelled ~~if and when as of the Effective Date, which is the date on which~~ such Debtor is dissolved in accordance with Section III.A.1 of the Plan. Each Holder of an Allowed Interest in such a Debtor shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Interest, its Pro Rata Share of the Class 6 Distribution.

Interests in a Debtor that is a Post-Confirmation Debtor shall be cancelled if and when such Debtor is dissolved in accordance with Section III.A.1 of the Plan. Each Holder of an Allowed Interest in such a Debtor shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Interest, its Pro Rata Share of the Class 6 Distribution.

Interests in Class 6 are impaired. Each Holder of an Allowed Interest in Class 6 is ~~conclusively presumed~~ deemed to have ~~rejected~~ not accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote.

### **3. Reservation of Rights Regarding Claims**

Except as otherwise provided in the Plan, nothing shall affect the Debtors', the Post-Confirmation Debtors' or Creditors' Fund Trustee's rights and defenses, whether legal or equitable, with respect to any Claims, including, without limitation, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

### **4. Insurance**

Notwithstanding anything to the contrary in the Plan, if any Allowed Claim is covered by an ~~insurance policy~~ Insurance Policy, such Claim shall first be paid from proceeds of such ~~insurance policy~~ Insurance Policy to the extent such proceeds are available, with the balance, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim. ~~If there is a self-insured retention or a deductible, insurance proceeds shall be deemed to be unavailable for that portion of an Allowed Claim corresponding to the remaining amount of a deductible or self-insured retention~~

## **B. Treatment of Executory Contracts and Unexpired Leases**

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

Except for any ~~executory contracts or unexpired leases~~ Executory Contracts or Unexpired Leases of the Debtors: (i) that previously were assumed or rejected by an order of the Bankruptcy Court, pursuant to section 365 of the Bankruptcy Code; (ii) as to which a motion for approval of the assumption or rejection of such contract or lease has been filed and served prior to, and remains pending as of, Confirmation; or (iii) set forth on Exhibit ~~IV.A of the Plan; or (iv) that constitute contracts of insurance in favor of, or that benefit, the Debtors, their Representatives, or the Estates, each executory contract and unexpired lease~~ III.L of the Plan, each Executory Contract and Unexpired Lease entered into by the Debtors prior to the Petition Date that has not previously expired or terminated pursuant to its own terms shall be deemed rejected pursuant to section 365 of the Bankruptcy Code as of the Effective Date. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejection, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. Nothing herein in the Plan is intended to affect the validity of ~~executory contracts and unexpired leases~~ entered into by the Debtors on or after the Petition Date, or the



rights of the Debtors thereunder, which shall remain in full force and effect after the Effective Date in accordance with their terms.

## **2. Bar Date for Rejection Damages**

If the rejection of an ~~executory contract or unexpired lease~~ Executory Contract or Unexpired Lease pursuant to the Plan or otherwise gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors, Estates, Creditors' Fund Trust and Post-Confirmation Debtors unless a Proof of Claim is filed with the Bankruptcy Court by no later than 30 days after the Effective Date.

## **3. Pre-Existing Obligations to the Debtors Under Executory Contracts and Unexpired Leases**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors under such Executory Contracts or Unexpired Leases. Notwithstanding any applicable non-bankruptcy law to the contrary, the Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnifications or continued maintenance obligations on goods or services previously purchased by the contracting Debtors from counterparties to rejected Executory Contracts or Unexpired Leases.

## **C. Provisions Governing Distributions**

### **1. Distributions Under the Plan**

The Post-Confirmation Debtors shall administer all Claims and Interests other than General Unsecured Claims and Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claim. The Post-Confirmation Debtors shall make Distributions to Holders of Allowed Administrative Claims (other than Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims), Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims, which Distributions shall reduce the Administrative/Priority/Tax Claims Reserve, to Holders of Allowed Class 3 Claims, and to Holders of Allowed Class 6 Interests. The Creditors' Fund Trustee shall administer and make Distributions in respect of Allowed Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims and Allowed General Unsecured Claims (to the extent there is Creditors' Fund Trust Net Class 4 Distributable ~~Creditors' Fund~~ Cash available). Distributions to be made by the Post-Confirmation Debtors and Creditors' Fund Trustee may be made by any Person(s) designated or retained to serve as the Disbursing Agent(s) without the need for any further order of the Bankruptcy Court. Each Disbursing Agent may serve without bond, and any Disbursing Agent may employ or contract with other entities to assist in or make the distributions required by the Plan if approved by (a) the Post-Confirmation Debtors with respect to Distributions to Holders of Allowed Administrative Claims (other than Allowed Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims), Allowed Priority Tax Claims, Allowed Other Secured Claims, Allowed Other Priority Claims, Allowed Class 3 Claims, and Allowed Interests and (b) the Creditors' Fund Trustee with respect to Distributions to Holders of Allowed Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims and Allowed General Unsecured Claims.

## **2. Disbursing Agents; No Liability**

### *a.* Powers of the Disbursing Agents

The Disbursing Agents shall be empowered to: (a) effect all actions and execute all agreements, instruments and other documents necessary to perform their duties under the Plan; (b) make all distributions contemplated hereby; and (c) exercise such other powers as may be vested in the Disbursing Agents by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agents to be necessary and proper to implement the provision of the Plan.

### *b.* Expenses Incurred on or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and out-of-pocket expenses incurred by the Disbursing Agents on or after the Effective Date and any reasonable compensation to the Disbursing Agents for services rendered shall be paid in Cash by (a) the Post-Confirmation Debtors for Disbursing Agents designated or retained by the Post-Confirmation Debtors or (b) the Creditors' Fund Trust for Disbursing Agents designated or retained by the Creditors' Fund Trust.

### *c.* No Liability

The Debtors, the Post-Confirmation Debtors, the Creditors' Fund Trustee, and the Disbursing Agents, as applicable, shall only be required to act and make distributions in accordance with the terms of the Plan. Except on account of gross negligence, fraud, illegality or willful misconduct, such parties shall have no (i) liability to any party for actions taken in accordance with the Plan or in reasonable reliance upon information provided to it in accordance with the Plan or (ii) obligation or liability for distributions under the Plan to any party who does not hold a Claim against the Debtors as of the Distribution Record Date or any other date on which a distribution is made or who does not otherwise comply with the terms of the Plan.

## **3. Estimation**

In order to establish appropriate reserves under the Plan and avoid undue delay in the administration of the Chapter 11 Cases, the Post-Confirmation Debtors shall have the right to seek orders of the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code, estimating the amounts of the Administrative Claims, Priority Tax Claims, Other Secured Claims, Other Priority Claims, and Class 3 Claims. The Creditors' Fund Trustee shall have the right to seek orders of the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code, estimating the amounts of Unbudgeted, ~~Non-Ordinary-Course~~ Administrative Claims and General Unsecured Claims in order to establish appropriate reserves under the Creditors' Fund Trust Agreement and avoid undue delay in the administration of the Chapter 11 Cases.

## **4. Distributions on Account of Disputed Claims**

Except as otherwise provided in a Final Order or as agreed by the relevant parties, Distributions on account of Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Other Secured Claims, and Disputed Other Priority Claims, if any, shall be made by the



Post-Confirmation Debtors at such periodic intervals as the Post-Confirmation Debtors determine to be reasonably prudent. Except as otherwise provided in a Final Order or as agreed by the relevant parties, Distributions on account of Disputed General Unsecured Claims and Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims that become Allowed after the Effective Date shall be made by the Creditors' Fund Trust at such periodic intervals as the Creditors' Fund Trustee determines to be reasonably prudent.

## **5. No Distributions Pending Allowance**

Notwithstanding anything herein to the contrary: (a) no Distribution shall be made with respect to any Disputed Claim until such Claim becomes an Allowed Claim (as applicable), and (b) (i) unless determined otherwise by the Post-Confirmation Debtors with respect to Administrative Claims (other than Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims), Priority Tax Claims, Other Secured Claims, and Other Priority Claims, no Distribution shall be made to any Person that holds both an Allowed Claim and a Disputed Claim until such Person's Disputed Claims have been resolved by settlement or Final Order; and (ii) unless determined otherwise by the Creditors' Fund Trustee with respect to General Unsecured Claims and Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims, no Distribution shall be made to any Person that holds both an Allowed Claim and a Disputed Claim until such Person's Disputed Claims have been resolved by settlement or Final Order.

## **6. Objection Deadline**

The Creditors' Fund Trustee and Post-Confirmation Debtors (subject to the Creditors' Fund Trust Functions and Post-Confirmation Debtor Functions, respectively) shall file all objections to Disputed Claims or Interests, and shall file all motions to estimate Claims under section 502(c) of the Bankruptcy Code, on or before the Claims Objection Deadline or the Administrative Claims Objection Deadline, as applicable, *provided, however*, that the Post-Confirmation Debtors may request that the Bankruptcy Court extend the Claims Objection Deadline and/or the Administrative Claims Objection Deadline, and the Creditors' Fund Trustee may request that the Bankruptcy Court extend the Claims Objection Deadline and/or the Administrative Claims Objection Deadline with respect to Class 4 Claims and Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims.

## **7. Creditors' Fund Trust Reserves and Determination of Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims**

### *a.* Creditors' Fund Trust Expense Reserve

On and after the Effective Date, the Creditors' Fund Trustee shall maintain in reserve such Cash from the Creditors' Fund Trust Assets as the Creditors' Fund Trustee estimates to be reasonably necessary to satisfy the Creditors' Fund Trust Expenses, which are entitled to first payment under the Creditors' Fund Trust Agreement.

### *b.* Creditors' Fund Trust Claims Reserve

On and after the Effective Date, the Creditors' Fund Trustee shall establish a reserve from the Creditors' Fund Trust Assets for (i) all Unbudgeted, ~~Non-Ordinary Course~~ Administrative

Claims and (ii) only after all Allowed Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims are paid in full, all Disputed General Unsecured Claims. ~~The Except for that portion of the Arch~~ Allowed Administrative Claim that is an Unbudgeted Administrative Claim, the Creditors' Fund Trustee shall treat the Creditors' Fund Trust Claims Reserve as a 'disputed ownership fund' governed by Treasury Regulation section 1.468B-9 (and make any appropriate elections consistent with such tax treatment) and shall report for United States federal, state, and local income tax purposes consistently with the foregoing. The Creditors' Fund Trustee shall be the administrator of the Creditors' Fund Trust Claims Reserve within the meaning of Treasury Regulation section 1.468B-9(b)(2) and shall be responsible for all tax reporting and withholding required by the Creditors' Fund Trust Claims Reserve or with respect to the Creditors' Fund Trust Assets. Notwithstanding anything to the contrary contained herein, the entire amount of the Creditors' Fund Trust Assets, less the amount reserved for payment of Creditors' Fund Trust Expenses, shall initially be reserved for payment of Allowed Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims.

The Creditors' Fund Trustee shall not make any distributions to General Unsecured Creditors prior to 60 days after the Second Administrative Claims Bar Date; *provided, however*, that if there is a dispute between the Post-Confirmation Debtors and the Creditors' Fund Trustee as to whether an Administrative Claim is an Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claim, no distributions to General Unsecured Creditors shall be made until such disputes are resolved or the Creditors' Fund Trustee has fully reserved for the Administrative Claims subject to such dispute.

c. Determination of Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims

The Post-Confirmation Debtors will review Filed Administrative Claims and, within 60 days of the Second Administrative Bar Date, the Post-Confirmation Debtors will provide to the Creditors' Fund Trustee one or more lists of Administrative Claims that the Post-Confirmation Debtors have designated as Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims, which list or lists shall each be acceptable to the Required Lenders. The Debtors will also provide to the Holder of such Claim (other than those set forth on Exhibit 1.142) notice of such designation. The Post-Confirmation Debtors shall not be permitted to designate any Administrative Claim Filed on or prior to the Second Administrative Bar Date as an Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claim more than 60 days after the Second Administrative Bar Date (*provided, however*, that the Post-Confirmation Debtors may designate further Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims that were Filed or amended after the Second Administrative Bar Date). The Creditors' Fund Trustee will promptly review and shall inform the Post-Confirmation Debtors within 21 days of receipt of any such list (~~including, without limitation, Schedule 1.137 of the Plan, which shall be deemed~~ delivered on or after the Effective Date), whether it disputes the designation of any Administrative Claim on such list and its basis for disputing such characterization, and any holder of such a designated Administrative Claim shall File an objection to such designation within 21 days of receipt of such designation; provided, however, that any asserted Administrative Claims set forth on Exhibit 1.142 of the Plan shall be deemed to be Unbudgeted Administrative Claims and the designation as such shall not be subject to dispute. For those Administrative Claims that the Creditors' Fund Trustee does not believe are Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims, the Creditors' Fund Trustee shall treat

such Administrative Claims as Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims for purposes of reserves until the earlier of (a) the Post-Confirmation Debtors' agreement, in writing and with the consent of the Required Lenders, that such Administrative Claims are not Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims and (b) a determination, by Final Order, that such Administrative Claims are not Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims.

## **8. Settling Disputed Claims**

The Post-Confirmation Debtors shall be authorized to, with the consent of the Required Lenders, settle, or withdraw any objections to any Disputed Claims that are Administrative Claims, Priority Tax Claims, Other Secured Claims, or Other Priority Claims following the Effective Date, without need for approval of the Bankruptcy Court, Creditors' Fund Trustee (except with respect to any settlement of an Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claim), or any other Entity (other than the Required Lenders). The Creditors' Fund Trustee shall be authorized to settle or withdraw any objections to any General Unsecured Claims or Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims following the Effective Date without need for approval of the Bankruptcy Court, the Post-Confirmation Debtors, or any other Entity. No settlement of any Claims by the Post-Confirmation Debtors or the Creditors' Fund Trustee shall impair any of the LTCA without the consent of the Litigation Trustee.

## **9. Distributions in Cash**

Any required Cash payments to the Holders of Allowed Claims or Interests shall be made by the Post-Confirmation Debtors or Creditors' Fund Trustee, as applicable: (a) in U.S. dollars by check, draft or warrant, drawn on a domestic bank, or by wire transfer from a domestic bank, and (b) by first-class mail (or by other equivalent or superior means as determined by the Post-Confirmation Debtors or Creditors' Fund Trustee, as the case may be).

## **10. Unclaimed Distributions**

Any entity which fails to claim any Cash within 90 days from the date upon which a distribution is first made to such entity shall forfeit all rights to any Distribution under the Plan, and the Post-Confirmation Debtors and Creditors' Fund Trustee (as applicable) shall be authorized to cancel any Distribution that is not timely claimed. Pursuant to section 347(b) of the Bankruptcy Code, upon forfeiture, such Cash (including interest thereon, if any) shall revert to the Entity that paid such distribution (i.e., the Post-Confirmation Debtors or Creditors' Fund Trust) free of any restrictions under the Plan, the Bankruptcy Code or the Bankruptcy Rules, in each case other than restrictions in favor of the Prepetition Term Loan Lenders. Upon forfeiture, the claim of any Creditor or Interest Holder with respect to such funds shall be ~~discharged~~ irrevocably waived and forever barred against the Creditors' Fund Trust, the Debtors, the Post-Confirmation Debtors and the Estates, notwithstanding any federal or state escheat laws to the contrary, and such Creditor or Interest Holder shall have no claim whatsoever against the Creditors' Fund Trust, the Debtors, the Post-Confirmation Debtors, the Estates, or any Holder of an Allowed Claim or Interest to whom distributions are made by the Creditors' Fund Trust or the Post-Confirmation Debtors. Such forfeited funds shall, (a) if a Distribution on account of a General Unsecured Claim or Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claim, be re-allocated to other claimants entitled to distribution from the Creditors' Fund Trust, and (b) if a Distribution on account of an Allowed Claim other than a General Unsecured Claim or

Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claim revert to the Post-Confirmation Debtors and be deemed a Remaining Asset.

# **11. Delivery of Distributions and Undeliverable Distributions to Holders of Claims**

## *a.* Address for Delivery of Distributions

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims (other than Holders of Prepetition Term Loan Claims) and Allowed Interests shall be made to holders of record as of the Distribution Record Date by the Debtors, the Post-Confirmation Debtors (for all Allowed Claims other than Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims (to the extent less than the Creditors' Fund Assets) and Class 4 Claims), or the Creditors' Fund Trustee (for Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims (to the extent of the Creditors' Fund Assets) and Class 4 Claims), as applicable, as set forth on the latest date of the following documents: (a) to the address of payment set forth on any of the Proofs of Claim Filed by such Holder or other representative identified therein (or at the last known addresses of such holder if no Proof of Claim is Filed; (b) at the addresses set forth in any written notices of address changes delivered to the Debtors after the date of any related Proof of Claim and prior to the Effective Date; (c) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Debtors have not received a written notice of a change of address prior to the Effective Date; (d) solely with respect to General Unsecured Claims or Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims (to the extent of Creditors' Fund Assets), at the address provided to the Creditors' Fund Trustee on or after the Effective Date; (e) solely with respect to Interests, the most current address on file with the Post-Confirmation Debtors, or (f) solely with respect to Claims other than General Unsecured Claims, at the address provided to the Post-Confirmation Debtors on or after the Effective Date. Subject to Article V of the Plan, and unless the applicable Disbursing Agent otherwise determines with respect to a distribution on account of a Claim, distributions under the Plan on account of Allowed Claims or Interests shall not be subject to levy, garnishment, attachment, or like legal process, so that each holder of an Allowed Claim or Interest shall have and receive the benefit of the distributions in the manner set forth in the Plan. As set forth in Section V.B.3 of the Plan, the Debtors, the Post-Confirmation Debtors, the Creditors' Fund Trustee, and the Disbursing Agents shall not incur any liability whatsoever on account of any distributions under the Plan.

## *b.* Undeliverable Distributions

The Disbursing Agents shall make one attempt to make the distributions contemplated hereunder in accordance with the procedures set forth herein. Each Disbursing Agent in its sole discretion may, but shall have no obligation to, attempt to locate Holders of undeliverable distributions. Any distributions returned to the Disbursing Agent as undeliverable or otherwise shall remain in the possession of the Disbursing Agent making such Distribution (i.e., Post-Confirmation Debtors or Creditors' Fund Trustee), until such time as a distribution becomes deliverable, and no further distributions shall be made to such Holder unless such Holder notifies the applicable Disbursing Agent of its then current address. Any Holder of an Allowed Claim or Interest entitled to a distribution of property under the Plan that does not assert a claim pursuant to the Plan for an undeliverable distribution, or notify the applicable Disbursing Agent of such

Holder's then current address, within 90 days of such distribution shall have its claim for such undeliverable distribution ~~discharged~~ irrevocably waived and shall be forever barred from asserting any such claim against the Debtors or their respective property, and such distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and (a) if a Distribution on account of a General Unsecured Claim or an Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claim, be re-allocated to other claimants entitled to distribution from the Creditors' Fund Trust, and (b) if a Distribution on account of an Allowed Claim other than a General Unsecured Claim or an Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claim, revert to the Post-Confirmation Debtors and be deemed a Remaining Asset, in each case, notwithstanding any federal or state escheat laws to the contrary

## **12. Distribution Record Date**

As of 5:00 p.m. (prevailing Eastern time) on the Distribution Record Date, the transfer registers for Claims shall be closed. The Disbursing Agents shall have no obligation to recognize the transfer or sale of any Claim that occurs after such time on the Distribution Record Date and shall be entitled for all purposes herein to recognize and make distributions only to those Holders who are Holders of Claims as of 5:00 p.m. (prevailing Eastern time) on the Distribution Record Date.

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to 5:00 p.m. (prevailing Eastern time) on the Distribution Record Date shall be treated as the Holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date.

## **13. Defenses and Setoff**

Nothing contained in the Plan shall constitute a waiver or release by the Post-Confirmation Debtors or the Creditors' Fund Trustee of any right rights in respect of legal and equitable objections, defenses, setoffs, or recoupment the Estates, the Post-Confirmation Debtors, or the Creditors' Fund Trustee may have against any Creditor or Interest Holder. To the extent permitted by applicable law, the Post-Confirmation Debtors or Creditors' Fund Trustee, as applicable, may, but shall not be required to, set off or recoup against any Claim or Interest and the payments or other distributions to be made under the Plan in respect of such Claim or Interest, claims of any nature whatsoever that arose before the Petition Date that the Estates, the Post-Confirmation Debtors, or the Creditors' Fund Trustee may have against the Holder of such Claim or Interest. Notwithstanding the foregoing, the Creditors' Fund Trustee may not offset, recoup, raise any objections, or assert any objections that would impair any Causes of Action of the Post-Confirmation Debtors or the LTCA of the Litigation Trust.

## **14. Compliance with Tax Requirements**

Notwithstanding anything to the contrary in the Plan, any applicable Disbursing Agent shall be entitled to deduct any federal, state or local withholding taxes from any Distributions made with respect to Allowed Claims or Interests, as appropriate. A Disbursing Agent shall be authorized to take all actions necessary to comply with applicable withholding and reporting requirements, including, without limitation, applying a portion of any Distribution of Cash to be



made under the Plan to pay applicable withholding Taxes. Any amounts withheld pursuant to the immediately preceding sentence will be deemed to have been distributed and received by the applicable recipient for all purposes of the Plan. Notwithstanding any other provision of the Plan, each Holder of an Allowed Claim or Interest that has received a Distribution under the Plan shall have sole and exclusive responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding and other tax obligation, on account of such Distribution. A Disbursing Agent shall have the right, but not the obligation, to not make a Distribution until the applicable recipient has made arrangements satisfactory to the disbursing party for the payment of any Tax obligations. For tax purposes, Distributions received in respect of Allowed Claims (including, for the avoidance of doubt, Distributions made in accordance with the Lender Settlement) will be allocated first to the principal amount of such Claims until such principal amount is paid in full and then to any interest accrued on such Claim prior to the Petition Date, and the remaining portion of such Distributions, if any, will apply to any interest on such Claim after the Petition Date.

Any applicable Disbursing Agent shall be authorized to require each Holder of a Claim or Interest set forth in Section II.C of the Plan (or any transferee thereof) to provide it with an executed Form W-9, Form W-8, or any other tax form, documentation or certification as may be requested by the Disbursing Agent as a condition precedent to being sent a Distribution. If a Holder of an Allowed Claim does not provide the applicable Disbursing Agent with an executed Form W-9, Form W-8 or other requested tax form within 90 days after the date of the Disbursing Agent's initial request, the Disbursing Agent may, at its sole discretion (a) make such Distribution net of applicable withholding or (b) reserve such Distribution, in which case (i) such Holder shall be deemed to have forfeited the right to receive any Distribution under the Plan, (ii) any such Distribution shall revert to the Post-Confirmation Debtors or the Creditors' Fund Trust, as applicable, for distribution on account of other Allowed Claims and (iii) the Claim of the Holder originally entitled to such Distribution shall be irrevocably waived, ~~discharged~~, and forever barred without further order of the Bankruptcy Court. The Post-Confirmation Debtors reserve the right to delay any distribution under Section II.C of the Plan until they have been provided executed tax forms acceptable to the Post-Confirmation Debtors in their sole and absolute discretion.

Each Disbursing Agent reserves the right to allocate and distribute all Distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, Liens and similar encumbrances.

## **15. De Minimis Distributions**

If any interim Distribution under the Plan to the Holder of an Allowed Claim or Interest would be less than \$100.00, the Creditors' Fund Trustee and Post-Confirmation Debtors (as applicable) may withhold such Distribution until a final Distribution is made to such Holder. If any final Distribution under the Plan to the Holder of an Allowed Claim or Interest would be less than \$25.00, the Creditors' Fund Trustee and Post-Confirmation Debtors (as applicable) may cancel such Distribution. Any unclaimed Distributions pursuant to Section V.O of the Plan shall be treated as unclaimed property under Section V.J of the Plan. To the extent that the Post-Confirmation Debtors or Creditors' Fund Trust, respectively, have assets remaining that do not exceed \$25,000 in value, the respective Post-Confirmation Debtors or Creditors' Fund Trustee,

in their discretion, can donate such assets to a charitable organization of its choice.

**16. Distribution to the Prepetition Term Loan Lenders to be Made to the Prepetition Agent**

Notwithstanding anything to the contrary in Section V.K of the Plan, distributions to Holders of Allowed Class 3 Claims shall be made to the Prepetition Agent by the Post-Confirmation Debtors, for further distribution to Holders of Allowed Prepetition Term Loan Secured Claims in accordance with the Lender Settlement. Beginning on the Effective Date and on not less than a quarterly basis thereafter (i.e., every three (3) months), Prepetition Term Loan Distributions to the Prepetition Agent for the benefit of such Holders shall be made on a quarterly basis (i.e., every three (3) months) unless the Post-Confirmation Debtors determine, in consultation with the Required Lenders, that the Cash available at such time does not exceed the Administrative/Priority/Tax Claims Reserve and the anticipated expenses of the Post-Confirmation Debtors, *provided, however*, that except for the final distribution, the Post-Confirmation Debtors shall not be required to make such a distribution if the aggregate amount to be distributed is less than \$1 million.

**17. ~~Supplemental~~ Creditors' Fund Trust Supplemental Distribution and Distribution to Interests**

Beginning on the first business day of the first calendar quarter after payment in full of all Prepetition Term Loan Secured Claims and Prepetition Term Loan Interest Claims, and on the first business day of each subsequent calendar quarter, the Post-Confirmation Debtors shall make distributions to the Creditors' Fund Trustee of the amount of Cash constituting the ~~Supplemental~~ Creditors' Fund Trust Supplemental Distribution; *provided, however*, that except for the final distribution, the Post-Confirmation Debtors shall not be required to make such a distribution if the aggregate amount to be distributed is less than \$1 million.

Beginning on the first business day of the first calendar quarter after payment in full of all Allowed General Unsecured Claims and General Unsecured Interest Claims, and on the first business day of each subsequent calendar quarter, the Post-Confirmation Debtors shall make distributions to the Holders of Allowed Interests the amount of Cash constituting the Class 6 Distribution; *provided, however*, that except for the final distribution, the Post-Confirmation Debtors shall not be required to make such a distribution if the aggregate amount to be distributed is less than \$1 million.

**D. Settlement, Releases, Injunction And Related Provisions**

**1. Compromise and Settlement of Claims, Interests and Controversies**

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests and controversies relating to the contractual, legal and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any Distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims,

Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates and Holders of Claims and Interests and is fair, equitable and reasonable and the product of good faith arms' length negotiations. In accordance with the provisions of the Plan, the Post-Confirmation Debtors and Creditors' Fund Trustee (as applicable) may compromise and settle Claims and Interests and Causes of Action against other Entities after the Effective Date without any further notice to or action, order or approval of the Bankruptcy Court

## 2. Releases by Debtors

**As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties<sup>10</sup> in facilitating the administration of the Chapter 11 Cases and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, the Released Parties are deemed forever released and discharged by the Debtors and Estates from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Estates or their Affiliates 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 in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan, the Disclosure Statement, the Prepetition Loan Documents, or related agreements, instruments or other documents, other than Claims or liabilities to the extent arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, actual fraud or willful misconduct, as determined by a Final Order.**

## 3. Releases by Holders of Claims and Interests

**As of the Effective Date, for good and valuable consideration, including the contributions of the Debtors and Released Parties in facilitating the administration of the Chapter 11 Cases and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, to the fullest extent permitted by applicable law, each of the Releasing Parties<sup>11</sup>**

<sup>10</sup> "Released Parties" is defined in the Plan to mean collectively and individually, (i) the Debtors, (ii) the Creditors' Committee, (iii) the Prepetition Agent, (iv) the Committee of Lead Lenders, (v) the Lender Committee Parties, (vi) Standard General Parties, and (vii) the Representatives of each of the parties enumerated in the preceding clauses (i)–(vi) solely in their capacities as Representatives of such parties; *provided that* each any Entity that objects to Confirmation of, or votes to reject, the Plan ~~(except the Creditors' Committee, solely in its capacity of such)~~, and any of their respective Representatives, in each case, shall not be a Released Party; *provided, further*, that none of the Excluded Parties shall be a Released Party

<sup>11</sup> "Releasing Parties" is defined in the Plan to mean, collectively, (a) all holders of Claims and Interests; or (b) solely if the Bankruptcy Court finds that the Third Party Release may only be approved with the consent of the applicable holder of a Claim or Interest, all holders of Claims or Interests who, with respect to such Claims or Interests, (i) vote to accept the Plan, (ii) vote to reject the Plan but who do not elect to opt out of the Third Party Release, (iii) receive a ballot providing them with the potential right to opt out of the Third Party Release but abstain from voting on the Plan and do not opt out of the Third Party Release, or (iv) are not entitled to vote on the Plan but



shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released ~~and discharged~~ the Debtors, and the Post-Confirmation Debtors, and released and discharged the Creditors' Fund Trust, and the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative claims or claims asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan, the Disclosure Statement, the Prepetition Loan Documents, or related agreements, instruments or other documents, other than claims, claims or liabilities to the extent arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, actual fraud or willful misconduct, as determined by a Final Order; *provided, however*, that nothing herein shall be deemed a waiver or release of any right of any such Releasing Parties to receive a Distribution pursuant to the terms of the Plan. For the avoidance of doubt, notwithstanding anything to the contrary herein, the foregoing release by the Releasing Parties is not and shall not be deemed to be in exchange for a waiver of the Debtors' rights or claims against the Releasing Parties, including to the Debtors' rights to assert setoffs, recoupments or counterclaims, or to object or assert defenses to any Claim or Interest, and all such rights and claims are expressly reserved. Notwithstanding any of the foregoing, nothing in Section VI.C of the Plan is intended to limit or otherwise modify any releases or waivers that are separately provided for in the Settlements, Final DIP Order, Final Cash Collateral Order and the Settlement Orders. Notwithstanding any language to the contrary contained in the Plan or Confirmation Order, no provision of this Plan or the Confirmation Order shall (i) preclude the SEC from enforcing its police or regulatory powers; or (ii) enjoin the SEC from commencing or continuing any claims, causes of action, proceeding or investigations against any non-Debtor Entities in any forum or release any claims of the SEC against such non-Debtor Entities.

#### 4. Exculpation

No Exculpated Party shall have or incur any liability to any Entity for any act taken or omission made in connection with, relating to or arising out of the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation or filing of the Disclosure Statement, Plan, or any contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of any Plan securities, or the Distribution of property under the Plan or any other related agreements; provided, however, that the foregoing shall not apply to the extent of any act or omission that is determined in a Final Order to have constituted gross negligence, actual fraud or

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(continued...)

receive a notice advising them of their potential right to elect to opt out of the Third Party Release and do not elect to opt out of the Third Party Release

**willful misconduct, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. Notwithstanding any of the foregoing, nothing in Section VI.D of the Plan is intended to expand, limit, or otherwise modify any releases or waivers that are separately provided for in the Settlements, Final DIP Order, Final Cash Collateral Order and the Settlement Orders.**

**The Exculpated Parties have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distributions pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.**

#### **5. Post-Effective Date Personnel**

In addition to (i) the exculpation provided in Section VI.D of the Plan and (ii) the limitations of liability for the Creditors' Fund Trustee provided in Section III.B.6 of the Plan, the directors, officers, managers, and employees of the Post-Confirmation Debtors serving after the Effective Date shall incur no personal liability to any Entity for any act or commission in connection with, arising out of, or relating to, their administration of the Plan and distributions under the Plan, any reserves created under the Plan, or in connection with the affairs of the Post-Confirmation Debtors (including, without limitation, any of the Post-Confirmation Debtor Functions), unless related to an action or omission that is determined in a Final Order to have constituted gross negligence, fraud, illegality or willful misconduct. The Post-Confirmation Debtors shall indemnify such directors, officers, managers and employees serving after the Effective Date for any losses, claims, costs, damages or liabilities resulting from such person's service in such a capacity at any time from and after the Petition Date, unless related to an action or omission that is determined in a Final Order to have constituted gross negligence, fraud, illegality or willful misconduct. The Bankruptcy Court shall retain exclusive jurisdiction over any action or proceeding in connection with, arising out of, or related to their service as directors, officers, or employees of the Post-Confirmation Debtors (from and after the Effective Date). No action or proceeding may be commenced against the directors, officers, or employees of the Post-Confirmation Debtors serving from and after the Effective Date in connection with, arising out of, or relating to their service as directors, officers, or employees from and after the Effective Date without approval of the Bankruptcy Court.

#### **6. Injunction**

**FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.**

**FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN SECTIONS VI.C, VI.D AND VI.F OF THE PLAN, THE APPLICABLE RELEASING PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE**

RELEASED PARTIES AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO ARTICLE VI OF THE PLAN.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT, RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED PURSUANT TO SECTION VI.C OR VI.F OF THE PLAN, OR THAT ARE SUBJECT TO THE EXCULPATORY PROVISIONS OF SECTION VI.D OF THE PLAN, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (I) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (II) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (III) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATE OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (IV) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, OR SETTLED PURSUANT TO THE PLAN; AND (V) ACTING OR PROCEEDING IN ANY MANNER, IN ANY PLACE WHATSOEVER, THAT DOES NOT CONFORM WITH THE PROVISIONS OF THE PLAN TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THEIR ASSETS, PROPERTY OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED, AND ALL SUCH CLAIMS AND INTERESTS SHALL BE DEEMED SURRENDERED AND EXTINGUISHED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED, AND ALL INTERESTS SHALL BE DEEMED SURRENDERED OR EXTINGUISHED, AS THE CASE MAY BE, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.

ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS OR ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

**7. No Consent to Change of Control Required**

To the fullest extent permitted by applicable law, except as otherwise expressly provided by order of the Bankruptcy Court, none of (a) the facts or circumstances giving rise to the commencement of, or occurring in connection with, the Chapter 11 Cases, (b) consummation of any other transaction pursuant to the Plan shall constitute a "change in ownership" or "change of control" (or a change in working control) of, or in connection with, any Debtor requiring the consent of any person other than the Debtors or the Bankruptcy Court.

**8. Releases Implemented by the Settlement**

For the avoidance of doubt, nothing herein is intended to limit or otherwise modify any releases, waivers and/or limitations on liability set forth in and implemented by the Settlements.

**E. MEANS OF IMPLEMENTATION OF THE PLAN**

**1. Post-Confirmation Debtors;**

**a. Corporate Action; Winding-Up of Affairs**

On the Effective Date and automatically and without further action, all matters provided under the Plan shall be deemed to be authorized and approved without further approval from the Bankruptcy Court.

All Debtors other than the Post-Confirmation Debtors shall be deemed dissolved for all purposes as of the Effective Date, without need of further Court order, notice or action and their business operations withdrawn for all purposes without any necessity of filing any document, taking any further action or making any payment to any governmental authority in connection therewith; provided, however, without the need of any further approval, the Post-Confirmation Debtors, in their discretion, may execute and file documents and take all other actions as they deem appropriate relating to the dissolution of the Debtors under applicable state laws, and in such event, all applicable regulatory or governmental agencies shall take all steps necessary to allow and effect the prompt dissolution of the subject Debtor as provided herein, without the payment of any fee, franchise or similar tax, or charge and without need for the filing of reports or certificates.

All existing Interests in the Debtors other than the Post-Confirmation Debtors shall be deemed extinguished and cancelled as of the Effective Date. The Post-Confirmation Debtors shall be deemed dissolved, and their business operations withdrawn and all existing interests extinguished and cancelled, upon the Filing by the Post-Confirmation Debtors of a notice that the Post-Confirmation Debtor Functions have been completed or otherwise satisfied; provided,

however, without the need for further approval, the Post-Confirmation Debtors, in their discretion, may execute and file documents and take all other actions as they deem appropriate relating to their dissolution under applicable state laws, and in such event, all applicable regulatory or governmental agencies shall take all steps necessary to allow and effect the prompt dissolution of the Post-Confirmation Debtors as provided herein, without the payment of any fee, franchise or similar tax, or charge and without the need for filing of reports or certificates.

The Post-Confirmation Debtors shall continue and remain in existence on and after the Effective Date solely for implementation of the Post-Confirmation Debtor Functions. The form of operating agreement governing APP Winddown shall be filed as part of the Plan Supplement and shall be in form and substance reasonably acceptable to, and subject to the prior written approval of, the Required Lenders (it being understood that such operating agreement will contain restrictions on transfer of interests in ~~AAP~~ APP Winddown, such that economic interests of APP Winddown generally will be nontransferable).

*b. Authority*

On and after the Effective Date, the Post-Confirmation Debtors shall carry out the Post-Confirmation Debtor Functions. Subject to the foregoing, on and after the Effective Date, the Post-Confirmation Debtors may take such actions without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed by the Plan or Confirmation Order.

Notwithstanding any other provision herein, the Post-Confirmation Debtors shall be solely responsible for making Distributions to Holders of (i) Allowed Administrative Claims (including Fee Claims), except that the Creditors' Fund Trustee shall be responsible for Distributions to Holders of Allowed Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims, (ii) Allowed Priority Tax Claims, (iii) Allowed Other Priority Claims, and (iv) Allowed Other Secured Claims, pursuant to Article II of the Plan, and payments of any Taxes owed by the Post-Confirmation Debtors as part of the Post-Confirmation Debtor Functions, using the funds in the Administrative/Priority/Tax Claims Reserve and the Remaining Assets. The Creditors' Fund Trustee shall be solely responsible for making Distributions to Holders of (i) Allowed Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims, (ii) Allowed General Unsecured Claims (to the extent there is Creditors' Fund Trust Net Class 4 Distributable ~~Creditors' Fund~~ Cash), and (iii) Allowed General Unsecured Interest Claims (to the extent there is Creditors' Fund Trust Net Class 4 Distributable ~~Creditors' Fund~~ Cash). After all asserted Administrative Claims, Priority Tax Claims, Other Priority Claims, and Other Secured Claims have been Allowed, Disallowed or otherwise resolved, and all Tax obligations of the Post-Confirmation Debtors have been resolved or otherwise addressed by the Post-Confirmation Debtors, any Cash allocated to the Administrative/Priority/Tax Claims Reserve and the Remaining Assets shall be used to pay any outstanding or remaining expenses of the Post-Confirmation Debtors (including in connection with their dissolution) and thereafter distributed to the Prepetition Term Loan Lenders in accordance with the Plan.

*c. Management of Post-Confirmation Debtors*

The Post-Confirmation Debtors shall be APP Winddown and APP Shipping Winddown. The board of directors of each Post-Confirmation Debtor shall consist initially of one member,

Bradley E. Scher. The sole ~~officer~~officers of each Post-Confirmation Debtor shall initially be Bradley E. Scher, in the capacities he served prior to the Effective Date. The compensation to be paid to each officer and director of a Post-Confirmation Debtor shall be determined by the Required Lenders. The Required Lenders (a) may remove any officer or director of a Post-Confirmation Debtor from such office and (b) upon the removal, resignation or death of any officer or director of a Post-Confirmation Debtor, the Required Lenders may appoint a replacement director or officer, as applicable.

## 2. Creditors' Fund Trust

### a. Establishment and Governance of the Creditors' Fund Trust

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

### b. Purpose of the Creditors Fund Trust

The Creditors' Fund Trust shall be established for the purpose of, among other things, carrying out the Creditors' Fund Trust Functions, including making Distributions pursuant to the Plan and the Creditors' Fund Trust Agreement in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

### c. The Creditors' Fund Trustee and Creditors' Fund Trust Agreement

1. The Creditors' Fund Trust Agreement generally will provide for, among other things: (i) the payment of the Creditors' Fund Trust Expenses; (ii) the filing, prosecution, settlement and/or other disposition of any and all objections to Class 4 Claims and Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims; and (iii) the distribution of the proceeds of the Creditors' Fund Trust Assets (after payment of or reserve for all Creditors' Fund Trust Expenses) to the Creditors' Fund Trust beneficiaries pursuant to the Creditors' Fund Trust Agreement



2. The Creditors' Fund Trust Expenses shall be payable solely from the Creditors' Fund Trust Assets in accordance with the Plan and Creditors' Fund Trust Agreement. The Creditors' Fund Trustee may, but shall not be obligated to, physically segregate and maintain separate accounts or sub-accounts for Creditors' Fund Trust Expenses. Reserves may be merely bookkeeping entries or accounting methodologies, which may be revised from time to time, to enable the Creditors' Fund Trustee to determine reserves and amounts to be paid in accordance with the Creditors' Fund Trust Agreement and the Plan.

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

4. The Creditors' Fund Trust Agreement may include reasonable and customary provisions that allow for indemnification by the Creditors' Fund Trust in favor of the Creditors' Fund Trustee and his or her agents, employees, or representatives. Any such indemnification shall be the sole responsibility of the Creditors' Fund Trust and payable solely from the Creditors' Fund Trust Assets.

*d.* Cooperation and Preservation of Privileges and Defenses

On and after the Effective Date, the Creditors' Fund Trustee shall have all of the Debtors' and the Estates' rights under Bankruptcy Code section 558 with respect to all Class 4 Claims and Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims; provided, however, that if the Post-Confirmation Debtors have asserted, or may assert, Causes of Action against the Holders of such Claims, the Creditors' Fund Trustee's rights shall be subject to the Debtors' right to prosecute or settle the Causes of Action on any terms acceptable to the Post-Confirmation Debtors in their sole and absolute discretion. For the sake of clarity, the Creditors' Fund Trustee may not assert any objection under section 502(d) of the Bankruptcy Code if the Post-Confirmation Debtors are prosecuting, or may prosecute, an Avoidance Action against the Holder of an unsecured claim.

Notwithstanding any Debtors or Post-Confirmation Debtors providing any privileged information to the Creditors' Fund Trustee, the Creditors' Fund Trust or any party or person associated with the Creditors' Fund Trust, such privileged information shall be without waiver in recognition of the joint and/or successor interest in prosecuting objections to Claims, as applicable, and shall remain privileged.

The Post-Confirmation Debtors shall use commercially reasonable efforts to cooperate with the Creditors' Fund Trustee in connection with investigating and prosecuting objections to Class 4 Claims and Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims, including with respect to promptly providing evidence and information as requested by the Creditors' Fund Trustee (including, but not limited to, reasonable access to the Debtors' and Post-Confirmation Debtors' books and records); provided, however, that the Post-Confirmation Debtors shall not be required to incur any cost or expense in connection with such cooperation unless Creditors' Fund

Trustee pays such costs or expenses in advance or on terms and conditions otherwise acceptable to the Post-Confirmation Debtors.

*e.* Compensation and Duties of Creditors' Fund Trustee

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

*f.* Limitations of Liability

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

### **3. Distributions From Escrows Under the UCC-LT Settlement**

On the Effective Date, or as soon thereafter as is practicable, the Post-Confirmation Debtors shall: (i) transfer from the Settlement Escrow to the Litigation Trust the amount of the Litigation Trust Payment; (ii) transfer from the Settlement Escrow to the Creditors' Fund Trust the amount of the Creditors' Fund Trust Initial Assets; and (iii) transfer all funds from the 503(b)(9) Escrow (as defined in the UCC-LT Settlement) to the Post-Confirmation Debtors.

The Litigation Trustee and Creditors' Committee have agreed to the allocation of the Settlement Escrow as set forth in clauses (i) and (ii) of Section III.C of the Plan. Except for the transfer set forth in clause (i) of Section III.C. of the Plan, neither the Litigation Trust nor the Litigation Trustee shall receive any distribution on account of its Claims in these Chapter 11 Cases, including those asserted in Proofs of Claim Nos. 1740, 1741, 1747, 1756, 1783, 1960 and 3052, and Scheduled Claim Nos. 493780 and 494111



#### 4. Causes of Action

Unless any Causes of Action are expressly waived, relinquished, released, compromised, or settled in the Plan, the Settlements, or any Final Order (including, without limitation, the Confirmation Order, Final DIP Order, Final Cash Collateral Order and the Settlement Orders), the Debtors and Post-Confirmation Debtors expressly reserve all such Causes of Action for later adjudication. The reservation set forth in Section III.D of the Plan shall include, without limitation, a reservation by the Debtors and Post-Confirmation Debtors of any Causes of Action not specifically identified in the Plan or Disclosure Statement, or of which the Debtors may presently be unaware, or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), or laches will apply to such Causes of Action upon or after the Confirmation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such claims and/or defenses have been expressly waived, relinquished, released, compromised, or settled in the Plan or Settlements or by Final Order. Following the Effective Date, with the consent of the Required Lenders or, in the case of WCC Causes of Action, subject to Section III.I of the Plan, the Post-Confirmation Debtors may assert, compromise or dispose of the Causes of Action without further notice to Creditors or Interest Holders or authorization of the Bankruptcy Court, except as otherwise expressly provided herein.

#### 5. Release of Liens

Except as otherwise provided in the Plan (including in Section III.F of the Plan) or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens against the property of any Estate will be fully released ~~and discharged~~, and all of the right, title and interest of any holder of such Liens, including any rights to any collateral thereunder, shall attach to and be enforceable solely against any net proceeds of sales of such assets, except to the extent the Claim secured by such Lien is reinstated. For the avoidance of doubt, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released ~~and discharged~~ on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code.

#### 6. Vesting and Sale or Other Disposition of Assets; Representative of the Estate

Except as otherwise provided in the Plan, on the Effective Date, all property of the Debtors' Estates, including, without limitation, the Remaining Assets, shall vest in ~~the APP~~ Winddown as a Post-Confirmation Debtor (or, solely with respect to any post-petition contracts entered into by APP Shipping Winddown's Estate, in APP Shipping Winddown as a Post-Confirmation Debtor), in each case, free and clear of all Claims, liens, charges, other encumbrances, Interests or other interests. Notwithstanding anything in the Plan or the

Prepetition Loan Documents to the contrary, all Liens and similar encumbrances of the Prepetition Term Loan Lenders shall remain in full force and effect on all of the Prepetition Collateral until all of the Prepetition Term Loan Secured Claims are paid in Cash in full. On and after the Effective Date, the Post-Confirmation Debtors may use, acquire and dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions imposed by the Plan, the Confirmation Order or the Lender Settlement.

The Post-Confirmation Debtors, on and after the Effective Date, may, with the consent of the Required Lenders, conduct any sales or liquidations of assets on any terms they deem reasonable, without further order of the Bankruptcy Court, except as otherwise provided in the Plan or the Confirmation Order.

APP Winddown, as a Post-Confirmation Debtor, shall be the successor to and representative of the Estate of each of the Debtors appointed for purposes of section 1123(b)(3)(B) of the Bankruptcy Code, including, without limitation, with respect to Avoidance Actions, WCCC Causes of Action, and any other Cause of Action. Except as provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, APP Winddown, as a Post-Confirmation Debtor, will retain and may enforce any claims, demands, rights and Causes of Action (including Avoidance Actions and WCCC Causes of Action) that any Estate may hold against any Person to the extent not released under the Plan. A nonexclusive schedule of currently pending actions and claims brought by one or more Debtors is ~~attached as~~ set forth on Exhibit III.F to the Plan. In accordance with and subject to any applicable law, the Debtors' inclusion or failure to include any right of action or claim on Exhibit III.F to the Plan shall not be deemed an admission, denial limitation or waiver of any claims, demands, rights or causes of action that any Debtor or Estate may hold against any entity. The Debtors intend to preserve all such claims, demands, rights or Causes of Action as Avoidance Actions (except to the extent any such claim is specifically waived or released under the Plan, including pursuant to Article VI of the Plan).

## **7. Effectuating Documents; Further Transactions**

On and after the Effective Date, the Post-Confirmation Debtors, and the officers and members of the boards of directors thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan and the transactions contemplated thereby, in each case, in the name of and on behalf of the Debtors, without the need for any approvals, authorization or consents except those expressly required pursuant to the Plan.

## **8. Substitution in Pending Legal Actions**

On the Effective Date, the Post-Confirmation Debtors, shall be deemed to be substituted as the party to any litigation in which any of the Debtors are a party, including (i) pending contested matters or adversary proceedings in the Bankruptcy Court, (ii) any appeals of orders of the Bankruptcy Court and (iii) ~~any state court or~~ federal or state legal or administrative proceedings pending as of the Petition Date (provided that any Claims arising out of any such proceeding

shall be deemed asserted against the Estate of the applicable Debtor(s) prior to the substitution of the Post-Confirmation Debtors); provided, however, that ~~(a) the Litigation Trustee shall be deemed to be substituted as the party in the pending arbitration with Dov Charney, and any other such litigation in which any of the Debtors are a defendant and not a counter-claimant or third-party plaintiff that may give rise to a claim against the Litigation Trust in the Prior Cases, and (b) the Creditors' Fund Trustee, solely in his or her capacity as the trustee for the Creditors' Fund Trust, shall be deemed to be substituted as the party to any such litigation in which the Debtors are a defendant and not a counter-claimant or third-party plaintiff that may give rise solely to a General Unsecured Claim. The Post-Confirmation Debtors, the Litigation Trustee, and the Creditors' Fund Trustee and their respective professionals, as applicable, are not required to, but may take such steps as are appropriate to provide notice of such substitution.~~

## **9. Certain Workers Compensation Matters Relating to the Lender Settlement**

### *a.* Authorization of Settlements of WCCC Causes of Action

Pursuant to the Lender Settlement, exclusive authority to direct or authorize the settlement of, as the case may be, the WCCC Causes of Action shall reside with (A) from and after December 12, 2017 until the 18-month anniversary thereof, the Standard General Parties, provided that the consent of the Lender Committee Parties shall be required for any such settlement of the WCCC Causes of Action for a recovery by the Post-Confirmation Debtors of less than \$1.5 million, and (B) from and after June 12, 2019, the Lender Committee Parties.

### *b.* Release From Reserves in Connection with the Lender Settlement

From and after the Effective Date, the Post-Confirmation Debtors shall continue to maintain the WCCC Litigation Costs Reserve and the SGP WCCC Guaranteed Amount Reserve (each as defined in the Lender Settlement), as required by the Lender Settlement and shall not be permitted to use any funds in such reserves for any purpose, other than as permitted by the Lender Settlement. Following resolution of all WCCC Causes of Action, any funds remaining in the WCCC Litigation Costs Reserve (other than funds required to pay any contingency fees incurred by the Post-Confirmation Debtors in recovering Workers' Compensation Cash Collateral) shall be deemed to be a Remaining Asset to be used by the Post-Confirmation Debtors and thereafter distributed as a Prepetition Term Loan Distribution that is not a distribution of WC Recovered Cash Collateral in accordance with the Plan.

Distributions of funds in the SGP WCCC Guaranteed Amount Reserve (as defined in the Lender Settlement) shall be released on a dollar-for-dollar basis as and when WC Recovered Cash Collateral is distributed to the Standard General Parties in accordance with the Lender Settlement, and the released amounts shall be distributed as Prepetition Term Loan Distributions. On June 12, 2019, any remaining amounts in the SGP WCCC Guaranteed Amount Reserve shall be released and distributed (i) first, to the Standard General Parties as WC Recovered Cash Collateral to the extent the distributions from the Debtors and Post-Confirmation Debtors to the Standard General Parties from the proceeds of the WCCC Causes of Action have not (prior to such distribution from the reserve) equaled \$1.5 million and (ii) second, as a Prepetition Term Loan Distribution that is not a distribution of WC Recovered Cash Collateral.

For the sake of clarity, a “Prepetition Term Loan Distribution that is not a distribution of WC Recovered Cash Collateral” or language of a similar import refers to a Prepetition Term Loan Distribution, the aggregate amount of which is allocated 90% to the Lender Committee Parties and 10% to the Standard General Parties.

## **10. No Substantive Consolidation**

The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of the Bankruptcy Court. The Plan constitutes a separate chapter 11 plan for each Debtor and, unless otherwise set forth herein, the classification and treatment of Claims and Interests apply to each individual Debtor. The portion of the Creditors’ Fund Trust Net Class 4 Distributable ~~Creditors’ Fund~~ Cash allocable to a Debtor shall be equal to the proportion that the Allowed Claims and Disputed Claims asserted against a Debtor bears to the aggregate amount of Allowed Claims and Disputed Claims asserted against all Debtors, as of such time of calculation.

## **11. Records**

### a. Continued Recordkeeping

Following the Effective Date, the Post-Confirmation Debtors will maintain the books and records of the Debtors for matters related to the Post-Confirmation Debtor Functions and the Creditors' Fund Trust Functions, subject to the destruction, transfer and access rights set forth in this Section III(K) of the Plan. Nothing in the Plan shall obligate the Post-Confirmation Debtors to maintain any Specified Books and Records (as defined in the Litigation Trust Agreement), for a period longer than indicated in Section 1.7(b) of the Litigation Trust Agreement.

### b. Selected Records for Immediate Destruction

Upon the Effective Date, the Post-Confirmation Debtors shall be authorized to destroy those documents and records of the Debtors described in Exhibit III.K to the Plan without further notice or approval of the Bankruptcy Court.

### c. Storage and Disposal on Behalf of Debtors

The Post-Confirmation Debtors may, from time to time, and without further notice or authorization of the Bankruptcy Court, transfer documents and records of the Debtors to a storage agent for the purpose of preserving and ultimately disposing of such documents and records as permitted by the Plan. The Post-Confirmation Debtors may make arrangements to pay or pre-pay for such storage services, for an appropriate term, as part of the Post-Confirmation Debtor Functions. The Creditors’ Fund Trust and the Litigation Trustee will have access to stored records in accordance with the terms of Section III.K of the Plan and Section III.O of the Plan.

### d. Post-Confirmation Records Transfer

~~The Post-Confirmation Debtors and Creditors’ Fund Trustee shall maintain reasonably good and sufficient books and records in respect to matters related to the Post Confirmation Debtor Functions and Creditors’ Fund Trust Functions, respectively. The Post-Confirmation Debtors and Creditors’ Fund Trustee may, upon notice to the~~

~~parties identified in Section X.K of the Plan (other than the Creditors' Committee and the U.S. Trustee) and without Bankruptcy Court approval, destroy any documents that each believes are no longer required to effectuate the terms and conditions of the Plan or the Settlements. Upon completion of the Post Confirmation Debtor Functions, the Post Confirmation Debtors may destroy or otherwise dispose of all records maintained by it. The Creditors' Fund Trustee may destroy or otherwise dispose of all records maintained by it upon completion of the Creditors' Fund Trust Functions, in accordance with the Creditors' Fund Trust Agreement. Without limiting the foregoing, the Debtors and Post Confirmation Debtors are authorized to destroy all records described in Exhibit III.K to the Plan. In addition, and without limiting the foregoing~~ Following the Effective Date, the Post-Confirmation Debtors may, ~~in their sole discretion, transfer such records to (a) from time to time upon request, transfer documents and records of the Debtors to (a) the Creditors' Fund Trustee, to meet the Creditor's Fund Trust Functions, the (b) the Litigation Trustee, (b) the Creditors' Fund Trustee to meet the obligations under the UCC-LT Settlement or the Litigation Trust Agreement, or (c) the Standard General Parties, or (d) a third party for the purpose of preserving and ultimately destroying or otherwise disposing of such records; provided that the Debtors shall first provide at least 21 days' prior notice to the extent relevant to any pending litigation involving such parties. The Post-Confirmation Debtors shall provide 21 days' prior notice of such proposed transfer to (a) the Litigation Trustee, (b) the Creditors' Fund Trustee, and (c) the Standard General Parties of such transfer. If one of those parties objects to such~~ and (d) the Lender Committee Parties. The reasonable costs and expenses for the transfer and subsequent storage of any documents and records (including associated payroll related expenses, third party fees and expenses, storage device costs, copying fees, and the fees and expenses of counsel if a legal dispute arises that may require a privilege review) shall be satisfied by the party requesting such transfer, and the Post-Confirmation Debtors reserve the right to reject a transfer request that does not provide for payment of such costs and expenses in a manner satisfactory to the Post-Confirmation Debtors. If a notified party objects to a transfer and is unable to reach a resolution with the Post-Confirmation Debtors, such party shall, within 14-21 days of receipt of such the date of the notice (or such longer other period as to which such Party-party and the Post-Confirmation Debtors may agree) File an objection with the Bankruptcy Court. The Post-Confirmation Debtors shall take reasonable efforts not to destroy or otherwise dispose of such records pending the hearing on the Objection if the objecting parties provides the Post-Confirmation Debtors with funds equal to the cost of maintaining such records.

## **~~12. Insurance Policies~~**

The transferee of documents and records of the Debtors shall (x) be deemed to be a custodian of such information (within the meaning of the Federal Rules of Civil Procedure) on behalf of the Post-Confirmation Debtors, and (y) comply with the access rights of the Litigation Trustee under Section III.O(2) of the Plan (see below Section IV.E(15)(b)). The transfer of any documents and records of the Debtor shall not waive any privileges or protections (including the attorney-client privilege) with respect to such documents and records, nor shall such transfer preclude any other Entity from seeking production of such documents and records in accordance with applicable law. Upon request by the Post-Confirmation Debtors, the transferee shall return such documents and records to the Post-Confirmation Debtors (at the transferee's own cost and expense), or, at the option of the Post-Confirmation Debtors, provide access to such documents and records.

At such time as a transferee of documents and records does not require further use of the documents and records, it shall provide written notice to the Post-Confirmation Debtors. Upon receipt of such notice, the Post-Confirmation Debtors may request that the transferee return such documents and records to the Post-Confirmation Debtors (at the transferee's cost and expense) or

request the transferee to destroy such documents and records either (a) following compliance with the notice procedures under Section III.K (5) of the Plan (see below Section IV.E.11(e) or (b) if otherwise permitted under Section III.K(6) of the Plan (see below Section IV.E.11(f)).

e. Post-Confirmation Records Retention

Following the Effective Date, the Post-Confirmation Debtors may, from time to time upon notice to the parties identified in Section X.K (other than the Creditors' Committee and the U.S. Trustee) and to the Creditors' Fund Trustee and the Litigation Trustee, and without approval of the Bankruptcy Court, destroy any documents and records of the Debtors that it believes are no longer required to effectuate the terms and conditions of the Plan or the Settlements. The notice shall provide a reasonable description of the documents and records proposed to be destroyed. In the event a notified party objects to the destruction, it shall either request the transfer of such records pursuant to Section III.K(4) of the Plan (see above Section IV.E.11(d)) or reimburse the Post-Confirmation Debtors for all costs and expenses (including payroll related expenses, third party fees and expenses, storage device costs, copying fees, and the fees and expenses of counsel) associated with the continued maintenance of such documents and records by Post-Confirmation Debtors until transferred, destroyed, or otherwise disposed of.

f. Final Destruction

Upon and following seven years after the Effective Date, the Post-Confirmation Debtors shall be authorized, without further notice or approval of the Bankruptcy Court, to destroy any documents and records that it believes are no longer required to effectuate the terms and conditions of the Plan or the Settlements.

**12. Insurance Policies**

a. Insurance Policies Remain In Force

(i) All Insurance Policies shall remain in full force and effect according to their terms and the coverage obligations of the insurers and third party administrators under such Insurance Policies shall continue following the Effective Date (including any obligations to pay, defend and process insured claims). Nothing in the Plan shall affect the right of any insurer or third party administrator under an Insurance Policy to File a Claim, consistent with the Claims Bar Date, for amounts due by the Debtors under such policy.

(ii) Any objection by an insurer or third party administrator to an Insurance Policy to the continued effectiveness of its Insurance Policy following the Effective Date, or any claim by an insurer or third party administrator that its Insurance Policy constitutes an Executory Contract that must be assumed pursuant to section 365(a) of the Bankruptcy Code as a condition to the continued effectiveness of such policy following the Effective Date, must be Filed, served, and actually received by the Debtors at least seven days prior to the Confirmation Hearing. Any insurer or third party administrator to an Insurance Policy that fails to timely object to the continued effectiveness of its Insurance Policy, or to claim that such policy must be assumed as a condition to its continued effectiveness, will be deemed to have assented to the continuation of its Insurance Policy following the Effective Date according to its terms.



b. Alternative Treatment of Executory Insurance Policies, If Any

In the event that, following a timely objection pursuant to Section III.L(1) of the Plan (see Section IV.E.12(a) above), the Bankruptcy Court determines that an Insurance Policy constitutes an Executory Contract, such Insurance Policy shall be treated as follows: (i) to the extent that the assumption of such Insurance Policy shall not require the cure, payment or satisfaction of any deductible, self-insured retention or other obligation, such Insurance Policy shall be assumed by the applicable Debtor(s), or (ii) to the extent that assumption of such Insurance Policy shall require the cure, payment or satisfaction of any such deductible, retention or other obligation, such Insurance Policy shall be rejected by the applicable Debtor(s). Notwithstanding the foregoing, the Debtors reserve the right, to the extent assumption of an Insurance Policy that constitutes an Executory Contract requires the Debtors or the Post-Confirmation Debtors to cure, pay or satisfy any deductible, self-insured retention or other obligation, to list such policy on Exhibit III.L for assumption pursuant to Section IV.A of the Plan.

The Plan shall constitute a motion to assume or reject, as applicable, any Insurance Policy that the Bankruptcy Court has determined constitutes an Executory Contract. Subject to the occurrence of the Effective Date, entry of the Confirmation Order will constitute approval of such assumption or rejection, as applicable, pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that such assumption or rejection, as applicable, is in the best interests of the Debtors, their respective estates and other parties in interest.

Any objection by an insurer or third party administrator under an Insurance Policy that constitutes an Executory Contract (or which the applicable insurer or third party administrator asserts is an Executory Contract) to (i) the proposed assumption or rejection of such policy, or (ii) any cure amount or requirement under such policy, must be Filed, served, and actually received by the Debtors at least seven days prior to the Confirmation Hearing (or, if such policy is listed on Exhibit III.L to the Plan, within seven days after such exhibit is Filed). Any insurer or third party administrator under an Insurance Policy that constitutes an Executory Contract that fails to object timely to the proposed treatment of such policy under the Plan will be deemed to have assented to such treatment.

c. Workers Compensation Policies

Nothing in this Plan shall affect or impair the rights of the holders of workers' compensation claims covered under any Insurance Policies issued by the WC Insurers to proceed with their claims against the WC Insurers under applicable law. The WC Insurers may administer, handle, defend, settle, and/or pay in the ordinary course of business the claims of the workers' compensation claimants asserted against the WC Insurers and costs related to such claims. The WC Insurers, with the consent of the Post-Confirmation Debtors, Standard General Parties and Lender Committee Parties, are authorized to draw against any or all collateral provided by or on behalf of the Debtors at any time and to hold the proceeds thereof as security for the obligations of the Debtors under the Insurance Policies issued by the WC Insurers, provided that, the Arch Settlement shall govern the treatment of any collateral and proceeds thereof held by Arch Insurance Company. The WC Insurers may apply such amounts in a manner (i) as agreed to by the Post-Confirmation Debtors, Standard General Parties and Lender

Committee Parties, (ii) as provided by the Arch Settlement, or (iii) as otherwise ordered by the Bankruptcy Court.

d. Director and Officer Policies; Employment Practice Liability Policies; Similar Policies

~~Any insurance policy acquired for the benefit of the Debtors (or any Representatives thereof or successors thereto) before or after the Effective Date shall remain in full force and effect for the benefit of the Debtors and their Representatives without requiring payment by the Post-Confirmation Debtors, the Debtors or their Estates of to pay any additional amounts as an Administrative Claim or otherwise on account of any prior, current or future obligations asserted to be due by the respective insurer. Notwithstanding anything to the contrary contained in the Plan or in the Confirmation Order, Confirmation of the Plan shall not impair, diminish or otherwise adversely modify any coverage (or the enforceability thereof) under any of the Debtors' insurance policies.~~ Nothing contained in the Plan shall affect or impair the rights of any non-Debtor insured persons covered under any directors and officers, employment practices or similar liability Insurance Policies (including, without limitation, policies for the benefit of the Debtors' directors, officers, employees, members, ~~or managers,~~ or similar persons who ~~served~~ served in such capacity ~~as of or any time either before or~~ after the Petition Date) ~~and any "tail coverage" relating thereto.~~

e. Reservation of Rights

Nothing contained in the Plan shall be deemed or construed as an admission that any Insurance Policy is an Executory Contract within the meaning of section 365 of the Bankruptcy Code.

**13. Dissolution of Creditors' Committee**

On the Effective Date, the Creditors' Committee shall be dissolved and the members of the Creditors' Committee shall be released and discharged from any further authority, duties, responsibilities, and obligations related to, or arising from, the Chapter 11 Cases, except that the Creditors' Committee shall continue in existence and have standing and capacity to prepare and prosecute applications for the payment of fees and reimbursement of expenses incurred by the Creditors' Committee or its respective Professionals.

**14. Final Decree**

At any time following the Effective Date, the Post-Confirmation Debtors shall be authorized to file one or more motions for the entry of a final decree closing some or all of the Chapter 11 Cases pursuant to section 350 of the Bankruptcy Code; provided that, following the Effective Date, the Post-Confirmation Debtors may seek to close certain of the Chapter 11 Cases that have been fully administered notwithstanding the fact that the reconciliation of Claims is ongoing and that funds in the Creditors' Fund Trust have not yet been distributed or that certain Causes of Action that have vested in APP Winddown pursuant to Section III.F of the Plan were commenced by or on behalf of a Debtor that has been dissolved and for which the Post-Confirmation Debtors are seeking a final decree.



## 15. Litigation Trust Relationship

### a. Compliance with Prior Case Obligations

Section III.O of the Plan shall set forth the post-Confirmation obligations of the Post-Confirmation Debtors under the UCC-LT Settlement Order, the Litigation Trust Agreement and the Order Compelling Performance of Reorganized Debtors under the Litigation Trust Agreement and Plan entered by the Bankruptcy Court in the Prior Cases on July 26, 2017. Except as set forth herein, neither the Debtors nor the Post-Confirmation Debtors shall have any other or further obligations following the Effective Date to the Litigation Trustee.

### b. Access to Records

The Post-Confirmation Debtors will provide access to documents and records or electronically stored information relating to the LTCA upon reasonable request by the Litigation Trustee; provided, however, that the Litigation Trustee shall, as a condition to such access, provide the Post-Confirmation Debtors with funds to meet the Post-Confirmation Debtors' associated reasonable costs (including associated payroll related expenses, third party fees and expenses, storage device costs, copying fees, and the fees and expenses of counsel if a legal dispute arises that may require a privilege review). The provision of access under Section III.O(2) of the Plan shall not transfer to the Litigation Trustee any privileges or protections (including attorney-client privilege) and shall not waive any such privilege of the Debtors or the Post-Confirmation Debtors; provided, however, that the foregoing shall not disturb the vesting of any privileges of the Debtors (as of February 5, 2016) pursuant to Section 1.2(ii) the Litigation Trust Agreement with respect to the LTCA.

### c. Transfer of Records

The Litigation Trustee may request the transfer of documents and records of the Debtors under Section III.K of the Plan (see above Section IV.E.11).

### d. Estate Representative

The Litigation Trustee shall be the representative of the Estates appointed pursuant to Bankruptcy Code section 1123(b)(3) with respect to the Charney Arbitration insofar as it may entail the allowance of a Prior Case Unsecured Claim.

### e. Existing Confidentiality Restrictions

If the Litigation Trustee requests access to or the transfer of documents and records that are subject to any applicable protective orders or confidentiality agreements, the Post-Confirmation Debtors may condition the provision of such documents and records upon compliance by the Litigation Trustee with the terms of any such order or agreement, or upon the Litigation Trustee having obtained relief therefrom. In determining whether the Litigation Trustee must comply with such orders and agreements, the Post-Confirmation Debtors will consider whether the Debtors' existing privileges (as of February 5, 2016) were previously vested with the Litigation Trustee pursuant to Section 1.2(ii) the Litigation Trust Agreement with

respect to the LTCA. Any documents and records produced or provided to the Litigation Trustee shall be subject to the terms and conditions of Exhibit III.O to the Plan.

f. Common Interest

The Post-Confirmation Debtors and the Litigation Trust share a common interest with regard to information related to the LTCA and the resolution of Prior Case General Unsecured Claim and the Charney Arbitration. The sharing of information is not intended to, and shall not, waive any evidentiary privileges, protections, or immunities, including without limitation the attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or information whether oral or written. The access, transfer or other provision of any documents and records to the Litigation Trustee that contains (x) privileged information of the Debtors not related to the LTCA, the Prior Case Unsecured Claims, or the Charney Arbitration, (y) privileged information of any other party, or (z) information that any party (including, without limitation, the Debtors) claim should not have been produced because of a privilege to which the Litigation Trust does not share a common interest with respect thereto pursuant to Section III.O of the Plan or the Litigation Trust Agreement, shall not constitute a waiver of, or estoppel as to, any such claim of privilege. If any such holder of privileged information notifies the Litigation Trustee that it believes the Litigation Trustee has received such information, the Litigation Trustee shall comply with Federal Rule of Civil Procedure 26(b)(5)(B) with respect to such information.

**F. CONDITIONS TO THE CONFIRMATION DATE AND EFFECTIVE DATE**

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

It shall be a condition to Confirmation hereof that the following provisions, terms and conditions shall have been satisfied or waived pursuant to Section VII.C of the Plan:

- The Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the Debtors, Standard General Parties, Lender Committee Parties and Prepetition Agent, approving the Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.
- The Plan and documents in the Plan Supplement shall be in form and substance reasonably acceptable to the Debtors, Standard General Parties and Lender Committee Parties.
- The Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the Debtors, the Standard General Parties, Lender Committee Parties and Prepetition Agent, confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

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

It shall be a condition to the Effective Date that the following provisions, terms and conditions shall have been satisfied or waived pursuant to Section VII.C of the Plan:

- All of the schedules, documents, supplements and exhibits to the Plan shall have been filed in form and substance reasonably acceptable to the Debtors, the Standard General Parties and Lender Committee Parties.
- All authorizations, consents and regulatory approvals required, if any, in connection with the Plan's effectiveness shall have been obtained.
- No order of a court shall have been entered and remain in effect restraining the Debtors from consummating the Plan and the transactions contemplated therein, and the Confirmation Order shall be in full force and effect.
- All actions, documents, certificates and agreements necessary to implement the Plan and the Creditors' Fund Trust shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws, and are in form and substance, acceptable to the Debtors.

## **3. Waiver of Conditions to Confirmation or the Effective Date**

Other than Section VII.A.3 of the Plan, the conditions to Confirmation of the Plan and to the occurrence of the Effective Date set forth in Article VII of the Plan may be waived at any time by the Debtors, with the consent of the Standard General Parties and Lender Committee Parties.

## **4. Effect of Failure of Conditions**

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any claims by or Claims against the Debtors; (ii) prejudice in any manner the rights of the Debtors, any Holders of a Claim or Interest or any other Entity; or (iii) constitute an admission, acknowledgment, offer or undertaking by the Debtors, the Creditors' Committee, any Creditors or Interest Holders or any other Entity in any respect.

## **G. Other Provisions of the Plan**

### **1. Modification and Amendments**

Except as otherwise specifically provided herein, the Debtors reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and Bankruptcy Rules and, as appropriate, not re-solicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights to alter, amend or modify materially the Plan with respect to any or all Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate

proceedings in the Bankruptcy Court to so alter, amend or modify the Plan or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan; provided, however, that any alterations, amendments or modifications to the Plan, the Disclosure Statement and Confirmation Order must be consistent in all respects with the Settlements. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article VIII of the Plan and with the consent of the Standard General Parties and Lender Committee Parties.

In addition, prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan, without further order or approval of the Bankruptcy Court; provided, however, that such technical adjustments and modifications do not adversely affect in a material way the treatment of Holders of Allowed Claims or Interests.

## **2. Effect of Confirmation on Modifications**

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the commencement of the solicitation of votes on the Plan are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

## **3. Revocation or Withdrawal of the Plan**

The Debtors reserve the right to revoke or withdraw the Plan before the Effective Date. If the Debtors revoke or withdraw the Plan, or if the Confirmation Date or the Effective Date does not occur, then: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of any Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (iii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims or Interests or Claims by any Debtor against any other Entity; (b) prejudice in any manner the rights of such Debtor, the Creditors' Committee, the Holder of any Claim or Interest or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by such Debtor, the Creditors' Committee or any other Entity.

## **H. Retention of Jurisdiction by the Bankruptcy Court**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain ~~such~~ exclusive jurisdiction over the Chapter 11 Cases and all matters, arising out of or related to, the Chapter 11 Cases and the Plan including jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount or allowance of Claims;

- decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
- resolve any matters related to (i) the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine and, if necessary, liquidate, any Claims arising therefrom, including Rejection Claims or any other matter related to such Executory Contract or Unexpired Lease (including the assumption thereof); (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (iii) any dispute regarding whether a contract or lease is or was executory or expired;
- ensure that Distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan and the Creditors' Fund Trust Agreement;
- adjudicate, decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;
- adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy code;
- enter and enforce any order for the sale of property pursuant to section 363, 1123 or 1146(a) of the Bankruptcy Code;
- resolve any Avoidance Action, WCCC Cause of Action, Cause of Action, or dispute regarding the subordination of any Claim or Interest;
- resolve any cases, claims, controversies, suits, disputes or causes of action that may arise in connection with the consummation, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
- hear and determine any cases, claims, controversies, suits, disputes or causes of action that may arise in connection with the consummation, interpretation or enforcement of the Settlements or any Entity's rights or obligations under the Settlements;
- 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 consummation or enforcement of the Plan;
- resolve any cases, controversies, suits, disputes or causes of action with respect to the releases, injunctions, exculpations, indemnifications and other provisions contained in Article VI of the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions and other provisions;

- enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;
- determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Disclosure Statement;
- adjudicate any and all disputes arising from or relating to Distributions made under the Plan or the Creditors' Fund Trust Agreement;
- consider any modifications of the Plan, cure any defect or omission or reconcile any inconsistency in the Plan or any Bankruptcy Court order, including the Confirmation Order;
- determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;
- hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with the Plan;
- hear and determine disputes arising in connection with the Creditors' Fund Trust or Post-Confirmation Debtors, including in connection with the interpretation, implementation and enforcement of the Creditors' Fund Trust Agreement;
- hear and determine matters concerning state, local and federal taxes in accordance with section 346, 505 or 1146 of the Bankruptcy Code;
- hear and determine disputes concerning the application or enforcement of any exemption provided under section 1145 of the Bankruptcy Code;
- hear and determine all disputes involving the existence, nature or scope of any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;
- enforce all orders previously entered by the Bankruptcy Court;
- hear any other matter not inconsistent with the Bankruptcy Code; and
- enter an order dismissing or closing the Chapter 11 Cases.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter, including the matters set forth in Article IX of the Plan, the provisions of Article IX of the Plan shall have no effect upon and shall not control,

prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

## **I. MISCELLANEOUS PROVISIONS**

### **1. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h) and 7062 and/or any other Bankruptcy Rule, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Post-Confirmation Debtors, the Creditors' Fund Trust, any and all Holders of Claims and Interests (irrespective of whether such Claims or Interests are Allowed or Disallowed or were voted to accept or reject the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

### **2. Section 1146 Exemption**

Pursuant to section 1146(a) of the Bankruptcy Code, the transfer of any property under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by, the Plan or the revesting, transfer or sale of any real or personal property of the Debtors pursuant to, in implementation of, or as contemplated by, the Plan shall not be taxed under any state or local law imposing a stamp tax, transfer tax, or similar tax or fee. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax or similar tax.

### **3. U.S. Trustee Fees and Post-Confirmation Reports**

After the Effective Date, the Post-Confirmation Debtors and the Creditors' Fund Trust shall ~~pay any~~ be jointly and severally liable for all statutory fees due for the post-Effective Date period pursuant to 28 U.S.C. § 1930(a)(6) allocable to the Post-Confirmation Debtors and/or the Creditors' Fund Trust, *provided, however*, that if the Post-Confirmation Debtors have Filed the Post-Confirmation Debtor Functions Completion Notice before the Creditors' Fund Trust has completed the Creditors' Fund Trust Functions, such fees shall be paid entirely by the Creditors' Fund Trust until entry of a final decree or an order converting or dismissing the Chapter 11 Cases. Until the Post-Confirmation Debtor Functions Completion Notice has been filed with the Bankruptcy Court, such statutory fees shall be allocated among the Post-Confirmation Debtors and the Creditors' Fund Trust in proportion to the distributions made by the Post-Confirmation Debtors and the Creditors' Fund Trust; *provided that*, with respect to any Debtor that has dissolved, all such fees shall be paid by the Creditors' Fund Trust. After the Effective Date, the Post-Confirmation Debtors and the Creditors' Fund Trust will file separate post-confirmation ~~status~~-reports on a quarterly basis that shall include all of their respective disbursements for that quarter up to the entry of a final decree closing the Chapter 11 Cases or ~~as otherwise ordered by the Bankruptcy Court~~ an order dismissing or converting the Chapter 11 Cases; *provided that* the Post-



Confirmation Debtors shall have no obligation to file such status reports following Filing of the Post-Confirmation Debtor Functions Completion Notice.

After the Effective Date, the Post-Confirmation Debtors and the Litigation Trust shall ~~pay any be jointly and severally liable for all~~ statutory fees due for the post-Effective Date period pursuant to 28 U.S.C. § 1930(a)(6) allocable to the Post-Confirmation Debtors and/or the Litigation Trust, provided, however, that if the Post-Confirmation Debtors have Filed the Post-Confirmation Debtor Functions Completion Notice before the Litigation Trust has terminated in accordance with the Litigation Trust Agreement, such fees shall be paid entirely by the Litigation Trust until entry of a final decree or an order converting or dismissing the Prior Cases. Until Post-Confirmation Debtor Functions Completion Notice has been filed with the Bankruptcy Court, such statutory fees shall be allocated among the Post-Confirmation Debtors and the Litigation Trust in proportion to the distributions made by the Post-Confirmation Debtors and the Litigation Trust; provided that, with respect to any Debtor that has dissolved, all such fees shall be paid by the Litigation Trust. After the Effective Date, the Post-Confirmation Debtors and the Litigation Trust will file separate post-confirmation ~~status~~-reports on a quarterly basis that shall include all of their respective disbursements for that quarter up to the entry of a final decree closing the Chapter 11 Prior Cases or ~~as otherwise ordered by the Bankruptcy Court~~ an order dismissing or converting the Prior Cases; provided that the Post-Confirmation Debtors shall have no obligation to file such status reports following Filing of the Post-Confirmation Debtor Functions Completion Notice

#### **4. Non-Voting Equity Securities**

If and to the extent applicable, the Debtors shall comply with the provisions of section 1123(a)(6) of the Bankruptcy Code.

#### **5. Additional Documents**

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors, the Creditors' Committee, the Post-Confirmation Debtors, the Creditors' Fund Trust, and all Holders of Claims or Interests receiving Distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### **6. Successors and Assigns**

The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, affiliate, officer, director, manager, agent, representative, attorney, beneficiaries or guardian, if any, of such Entity.

#### **7. Severability of Plan Provisions**

If, before Confirmation of the Plan, any term or provision of the Plan is held by the Bankruptcy Court or any other court exercising jurisdiction to be invalid, void or unenforceable,



the Bankruptcy Court or other court exercising jurisdiction shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted so long as such term or provision is acceptable to the Debtors. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (i) valid and enforceable pursuant to its terms; (ii) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (iii) nonseverable and mutually dependent.

## **8. Exhibits**

The Creditors' Fund Trust Agreement and all exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan, to the extent not inconsistent with the Plan. [The Debtors reserve the right to amend the Exhibits to the Plan any time prior to Confirmation.](#)

## **9. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code and any applicable non-bankruptcy law, and pursuant to section 1125(e), the Debtors, the Creditors' Committee and their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code, including, if applicable, in the offer, issuance, sale and purchase of any Plan securities (if any) provided under the Plan, and, therefore, will have no liability for the violation of any applicable law, rule or regulation governing the solicitation of votes on the Plan.

## **10. Conflicts**

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibit, schedule, appendix, supplement or amendment to any of the foregoing), conflicts or is in any way inconsistent with any provision of the Plan, the Plan shall govern and control. If there is a conflict between the Plan and a Plan Supplement document, the Plan Supplement document, as applicable, shall govern and control. If any provision of the Plan conflicts with or is in any way inconsistent with any provision of the Confirmation Order, the Confirmation Order shall govern and control.

For the avoidance of doubt, except as set forth in Section III.C of the Plan, nothing contained in the Plan shall affect or be deemed to affect the LTCA or any other assets under the Litigation Trust in the Prior Cases, including, without limitation, any rights of the Litigation Trustee in connection with Case No. BC443763 pending in the Superior Court of the State of California for the County of Los Angeles and Grigoriev v. Charney, Case No. 12-57055 pending

in the United States Court of Appeals for the Ninth Circuit. Nothing in the Plan shall affect the rights under the rights of the Litigation Trustee under the Trust Agreement in the Prior Cases to pursue the LTCA.

Notwithstanding anything to the contrary contained in the Plan other than Section III.C, the Litigation Trust's obligations are those set forth in the Litigation Trust Agreement.

Nothing in the Plan or Confirmation Order shall affect the ability of the Litigation Trustee, upon consultation with the Litigation Trust Board, to alter the compensation terms for the Litigation Trustee and its professionals under the Litigation Trust Agreement.

## **V. VOTING REQUIREMENTS**

The Disclosure Statement Order entered by the Bankruptcy Court approved certain procedures for the Debtors' solicitation of votes to approve the Plan, including setting the deadline for voting, which Holders of Claims or Interests are eligible to receive Ballots to vote on the Plan, and certain other voting procedures.

THE DISCLOSURE STATEMENT ORDER IS HEREBY INCORPORATED BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN. YOU SHOULD READ THE DISCLOSURE STATEMENT ORDER, THE CONFIRMATION HEARING NOTICE, AND THE INSTRUCTIONS ATTACHED TO YOUR BALLOT IN CONNECTION WITH THIS SECTION, AS THEY SET FORTH IN DETAIL, AMONG OTHER THINGS, PROCEDURES GOVERNING VOTING DEADLINES AND OBJECTION DEADLINES.

If you have any questions about the procedure for voting your Claim or the Solicitation Package you received, or if you wish to obtain a paper copy of the Plan, this Disclosure Statement or any exhibits to such documents, please contact Prime Clerk, the Voting Agent, (A) by telephone (1) for U.S. and Canadian callers toll-free at 844-596-2261 and (2) for international callers at 914-266-8242 or (B) in writing at APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022, or by email at [aaballots@primeclerk.com](mailto:aaballots@primeclerk.com).

U.S. and Canadian callers toll-free at 844-596-2261 and (b) for international callers at [914-266-8242, (2) by e-mail at [aaballots@primeclerk.com](mailto:aaballots@primeclerk.com), or (3) in writing at APP Winddown, LLC Ballot Processing, c/o Prime Clerk, LLC, 830 Third Avenue, 3rd Floor, New York, NY 10022.

### **A. Voting Deadline**

This Disclosure Statement and the appropriate Ballot(s) are being distributed to all Holders of Claims that are entitled to vote on the Plan. In order to facilitate vote tabulation, there is a separate Ballot designated for each impaired voting Class; however, all Ballots are substantially similar in form and substance, and the term "Ballot" is used without intended reference to the Ballot of any specific Class of Claims.

IN ACCORDANCE WITH THE DISCLOSURE STATEMENT ORDER, IN ORDER TO BE CONSIDERED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN, ALL BALLOTS MUST BE RECEIVED BY THE VOTING AGENT NO LATER THAN **5:00 P.M.**

**(PREVAILING EASTERN TIME) ON [\_\_\_\_], 2018, WHICH IS THE VOTING DEADLINE. ONLY THOSE BALLOTS ACTUALLY RECEIVED BY THE VOTING AGENT IN COMPLIANCE WITH THE VOTING PROCEDURES BEFORE THE VOTING DEADLINE WILL BE COUNTED AS EITHER ACCEPTING OR REJECTING THE PLAN. EXCEPT WITH RESPECT TO BALLOTS SUBMITTED THROUGH THE VOTING AGENT'S ONLINE BALLOTING PORTAL, NO BALLOTS MAY BE SUBMITTED BY ELECTRONIC MAIL OR OTHER MEANS OF ELECTRONIC SUBMISSION.**

FOR DETAILED VOTING INSTRUCTIONS, SEE THE DISCLOSURE STATEMENT ORDER.

**B. Holders of Claims or Interests Entitled to Vote**

Under section 1124 of the Bankruptcy Code, a class of claims or equity interests is deemed to be “impaired” under a plan unless (1) the plan leaves unaltered the legal, equitable and contractual rights to which such claim or equity interest entitles the holder thereof; or (2) notwithstanding any legal right to an accelerated payment of such claim or equity interest, the plan (a) cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy), (b) reinstates the maturity of such claim or equity interest as it existed before the default, (c) compensates the holder of such claim or equity interest for any damages resulting from such holder’s reasonable reliance on such legal right to an accelerated payment and (d) does not otherwise alter the legal, equitable or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

In general, a holder of a claim or equity interest may vote to accept or reject a plan if (1) the claim or equity interest is “allowed,” which means generally that it is not disputed, contingent or unliquidated, and (2) the claim or equity interest is impaired by a plan. However, if the holder of an impaired claim or equity interest will not receive any distribution under the plan on account of such claim or equity interest, the Bankruptcy Code deems such holder to have rejected the plan and provides that the holder of such claim or equity interest is not entitled to vote on the plan. If the claim or equity interest is not impaired, the Bankruptcy Code conclusively presumes that the holder of such claim or equity interest has accepted the plan and provides that the holder is not entitled to vote on the plan.

Except as otherwise provided in the Disclosure Statement Order, the Holder of a Claim against one or more Debtors that is “impaired” under the Plan is entitled to vote to accept or reject the Plan if (1) the Plan provides a distribution in respect of such Claim; (2) the Claim has been scheduled by the appropriate Debtor (and is not scheduled as disputed, contingent, or unliquidated), the Holder of such Claim has timely Filed a Proof of Claim or a Proof of Claim was deemed timely Filed by an order of the Bankruptcy Court prior to the Voting Deadline; or (3) the Claim has not already been otherwise expunged or disallowed.

As set forth in the Tabulation Rules (as defined in the Disclosure Statement Order) and Disclosure Statement Order, Holders of Claims that are wholly disputed, wholly contingent or wholly unliquidated Claims, and for which a Proof of Claim has been Filed, will have such Claims temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00 (if a Holder of a Claim that has been scheduled as contingent, unliquidated, or disputed did not timely a Proof of Claim, a Holder of such a Claim will not be entitled to vote

with respect to that Claim unless the Bankruptcy Court orders otherwise). Any Holder seeking to challenge the allowance of its Claim for voting purposes in accordance with the Tabulation Rules must file a motion, pursuant to Bankruptcy Rule 3018(a), in accordance with the Disclosure Statement Order. Any Ballot submitted by a creditor that files such a motion will be counted solely in accordance with the Debtors' Tabulation Rules and the other applicable procedures contained in the Disclosure Statement Order unless and until the underlying Claim is temporarily allowed by the Bankruptcy Court for voting purposes in a different amount, after notice and a hearing.

A vote on the Plan may be disregarded if the Bankruptcy Court determines, pursuant to section 1126(e) of the Bankruptcy Code, that it was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. The Disclosure Statement Order also sets forth assumptions and procedures for determining the amount of Claims that each creditor is entitled to vote in these Chapter 11 Cases and how votes will be counted under various scenarios.

### **C. Vote Required for Acceptance by a Class**

A Class of Claims will have accepted the Plan if it is accepted by at least two-thirds ( $\frac{2}{3}$ ) in amount and more than one-half ( $\frac{1}{2}$ ) in number of the Allowed Claims in such Class that have voted on the Plan in accordance with the Disclosure Statement Order.

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

The Bankruptcy Code requires the Bankruptcy Court, after notice, to conduct a hearing at which it will hear objections (if any) and determine whether to confirm the Plan. At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code described below are met.

The Confirmation Hearing has been scheduled to begin on [\_\_\_\_], 2018 at [\_\_]:[\_\_] [\_\_].m., prevailing Eastern time before the Honorable Chief Judge Brendan L. Shannon, Chief United States Bankruptcy Judge for the District of Delaware, in Courtroom No. 1, Sixth Floor, at the United States Bankruptcy Court for the District of Delaware, located at 824 North Market Street, Wilmington, Delaware 19801. 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.

### **A. Deadline to Object to Confirmation**

Objections, if any, to the Confirmation of the Plan must: (1) be in writing; (2) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (3) state with particularity the basis and nature of any objection; and (4) be Filed with the Bankruptcy Court, and served on the following parties so that they are received no later than [\_\_]:[\_\_] [\_\_].m., prevailing Eastern time, on [\_\_\_\_], 2018:

- the Debtors, Bradley E. Scher, c/o Ocean Ridge Capital Advisors, LLC, 56 Harrison Street, Suite 203 A, New Rochelle, New York 10801;
- counsel to the Debtors, Jones Day, 250 Vesey Street, New York, New York 10281, Attn: Scott J. Greenberg, Esq., Michael J. Cohen, Esq and Genna L.

Ghaul, Esq.; and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, Delaware 19801, Attn: Laura Davis Jones, Esq., James O'Neill, Esq., Victoria Newmark, Esq. and Joseph Mulvihill, Esq.;

- the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: Jane Leamy, Esq.;
- counsel to the Creditors' Committee, Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: Cathy Hershcopf and Seth Van Aalten, and Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801, Attn: Justin R. Alberto;
- counsel to the Prepetition Agent, Covington & Burling LLP, 620 Eighth Avenue, New York, New York, 10018, Attn: Ronald A. Hewitt; and Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, P.O. Box 1709, Wilmington, Delaware 19899, Attn: David Fournier
- counsel to the Committee of Lead Lenders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Ave., New York, New York 10005, Attn: Gerald Uzzi, Esq. and Eric Stodola, Esq.; and Fox Rothschild LLP, 919 N. Market street, Suite 300, Wilmington, Delaware 19801, Attn: Jeffrey M. Schlerf, Esq.;
- counsel to Standard General, L.P. and its affiliates, Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York, 10022, Attn: M. Natasha Labovitz, Esq. and Craig A. Bruens, Esq.; and Young Conaway Stargatt & Taylor, LLP, One Rodney Square, 1000 N. King St., Wilmington, Delaware, 19801, Attn: Edmon L. Morton, Esq.; and
- such other parties that the Bankruptcy Court may order.

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

Among the requirements for Confirmation of the Plan are that the Plan (1) is accepted by all impaired Classes of Claims and Interests or, if rejected by an impaired Class, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Class; (2) is feasible; and (3) is in the “best interests” of creditors and stockholders that are impaired under the Plan.

### **1. Requirements of Section 1129(a) of the Bankruptcy Code**

Section 1129(a) of the Bankruptcy Code contains several requirements for confirmation of a plan. Among those requirements are that a plan be in the best interests of creditors and that a plan be feasible, as set forth in further detail below. The Debtors believe that the Plan meets all the applicable requirements of section 1129(a) of the Bankruptcy Code other than those pertaining to voting, which has not yet taken place.

#### *a. Best Interests of Creditors*

Section 1129(a)(7) of the Bankruptcy Code requires that any holder of an impaired claim or interest that does not vote to accept a proposed chapter 11 plan must be provided in the plan

with a value, as of the effective date of the plan, at least equal to the value that the holder would receive if the debtor's assets were liquidated under chapter 7 of the Bankruptcy Code on the effective date of such plan.

The Debtors believe the Plan satisfies the best interest test because, among other things, the recoveries expected to be available to Holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in a chapter 7 liquidation.

In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets and to make distributions to creditors in accordance with the priorities established in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of their collateral. If any estate assets remain in the bankruptcy estate after satisfaction of secured creditors' claim from their collateral, administrative expenses are next to be paid. Following the payment of all administrative claims in full, unsecured creditors share pro rata in remaining proceeds in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by unsecured creditors with the same priority. Finally, interest holders receive the balance that remains, if any, after all administrative expense claims, and secured and unsecured creditors are paid in full on their allowed claims.

As of the Effective Date, substantially all of the Debtors' assets will have been liquidated. The Final DIP Order, the Final Cash Collateral Order and various settlements that were entered into amongst parties in interest and approved by the Court have confirmed that the Prepetition Lenders have liens on the Debtors' remaining cash and assets, except with respect to the Settlement Escrow and the Section 503(b)(9) Escrow (the balance of the Section 503(b)(9) Escrow, after paying claims with administrative expense status pursuant to section 503(b)(9) of the Bankruptcy Code, revert to the Debtors). Although the Plan effects the continued liquidation of the Debtors' assets and contemplates distributions to creditors, the Debtors believe that the Plan provides a recovery to Holders of Allowed General Unsecured Claims that would be no less than such creditors would receive in a chapter 7 liquidation. First, pursuant to the Lender Settlement, funds are available to pay administrative and priority claims (other than Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims). In a chapter 7 liquidation, those claims likely would need to be paid from funds the Settlement Escrow, thus reducing the potential recovery to Holders of Allowed General Unsecured Claims. In addition, the fees and expenses in a chapter 7 case may be greater because of the fees and expenses associated with a new bar date (*see* Bankruptcy Rules 1019(2) and 3002(c)). It is also possible that, because of the need for a chapter 7 trustee to familiarize itself with the cases and its statutory commission, the fees and expenses of the trustee and its professionals may exceed the equivalent costs under the chapter 11 plan where the Post-Confirmation Debtors' employees and professionals are already familiar with the winding down of the estates (for these purposes, the Debtors assume that the costs of the Creditors' Fund Trustee would be no more than the costs of a chapter 7 trustee with respect to the functions of the Creditors' Fund Trust and Creditors' Fund Trustee).

#### *b. Feasibility*

Section 1129(a)(11) of the Bankruptcy Code requires that, in order to confirm a plan, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor(s) unless contemplated by the plan. The Plan provides for the liquidation and distribution of the Debtors' assets. The



Debtors believe that that sufficient funds will exist to make all payments required by the Plan. Accordingly, the Debtors believe that the Plan meets the feasibility requirement.

## 2. Requirements of Section 1129(b) of the Bankruptcy Code

The Bankruptcy Code permits confirmation of a plan even if it is not accepted by all impaired classes, as long as (a) the plan otherwise satisfies the requirements for confirmation, (b) at least one impaired class of claims has accepted the plan without taking into consideration the votes of any insiders in such class and (c) the plan is “fair and equitable” and does not “discriminate unfairly” as to any impaired class that has not accepted the plan. These so-called “cramdown” provisions are set forth in section 1129(b) of the Bankruptcy Code.

### a. *“Fair and Equitable”*

The Bankruptcy Code establishes different “cramdown” tests for determining whether a plan is “fair and equitable” to dissenting impaired classes of secured creditors, unsecured creditors and equity interest holders as follows:

- Secured Creditors. A plan is fair and equitable to a class of secured claims that rejects the plan if the plan provides: (a) that each holder of a secured claim included in the rejecting class (i) retains the liens securing its claim to the extent of the allowed amount of such claim, whether the property subject to those liens is retained by the debtor or transferred to another entity, and (ii) receives on account of its secured claim deferred cash payments having a present value, as of the effective date of the plan, at least equal to such holder’s interest in the estate’s interest in such property; (b) that each holder of a secured claim included in the rejecting class realizes the “indubitable equivalent” of its allowed secured claim; or (c) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing the claims included in the rejecting class, free and clear of such liens with such liens to attach to the proceeds of the sale, and the treatment of such liens on proceeds in accordance with clause (i) or (ii) of this paragraph.
- Unsecured Creditors. A plan is fair and equitable as to a class of unsecured claims that rejects the plan if the plan provides that: (a) each holder of a claim included in the rejecting class receives or retains under the plan property of a value, as of the effective date of the plan, equal to the amount of its allowed claim; or (b) the holders of claims and interests that are junior to the claims of the rejecting class will not receive or retain any property under the plan on account of such junior claims or interests.
- Holders of Interests. A plan is fair and equitable as to a class of interests that rejects the plan if the plan provides that: (a) each holder of an equity interest included in the rejecting class receives or retains under the plan property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of (i) any fixed liquidation preference to which such holder is entitled, (ii) any fixed redemption price to which such holder is entitled or (iii) the value of the interest; or (b) the holder of any interest that is junior to the interests of the

rejecting class will not receive or retain any property under the plan on account of such junior interest.

The Debtors believe the Plan is fair and equitable as to unsecured creditors and Holders of Interests because no Holders of Claims or Interests junior to such parties are receiving any distributions under the Plan on account of such claims or interests. In light of the Lender Settlement, the Debtors do not believe they will be required to seek non-consensual Confirmation of the Plan as to secured creditors.

*b. “Unfair Discrimination”*

A chapter 11 plan does not “discriminate unfairly” if a dissenting class is treated substantially equally with respect to other classes similarly situated, and no class receives more than it is legally entitled to receive for its claims or interests. The Debtors do not believe that the Plan discriminates unfairly against any impaired Class of Claims or Interests.

The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for “cramdown,” or non-consensual Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code.

**C. Provisional Opt Out for Certain Releases And Applicable Standards**

Section VI of the Plan provides for releases for certain claims against non-debtors in consideration of services provided to the Debtors and the contributions made by the Released Parties to the Chapter 11 Cases. The “Released Parties,” with potential certain limitations, are, collectively and individually, (i) the Debtors, (ii) the Creditors’ Committee, (iii) the Prepetition Agent, (iv) the Committee of Lead Lenders, (v) the Lender Committee Parties, (vi) Standard General Parties, and (vii) the Representatives of each of the parties enumerated in the preceding clauses (i)–(vi) solely in their capacities as Representatives of such parties. As set forth in the Plan, the releases are given by (i) the Debtors; (ii) their Estates; and (iii) to the greatest extent permitted under applicable law, all Holders of Claims against and Interests in the Debtors.

As a party receiving this Disclosure Statement, you should read Section VI of the Plan carefully as it affects your rights by releasing claims that you may hold against the Released Parties (such release, the “Third Party Release”). The Third Party Release may be permissible under applicable law even without the consent of the releasing parties. However, as parties in interest may object to the Third Party Release, and as the Bankruptcy Court may find that the Third Party Release can only be granted with the consent of the releasing parties under the facts and circumstances of these Chapter 11 Cases, the Ballots contain a “Third Party Release Election.” The Third Party Release Election is intended to be used, and will only be considered, in the event the Bankruptcy Court finds that the consent of a Releasing Party is required for the Third Party Release to be effective against such party. By voting in favor of the Plan, creditors in Classes 3 and 4 will be deemed to have consented to the Third Party Release. Further, to the extent consent is required, the Debtors anticipate taking the position that every creditor in Class 3 or Class 4 that did not affirmatively opt out of Third Party Releases (to the extent consent is required for the Third Party Release to be effective against a party) will be deemed to have consented to the Third Party Release.



## **D. Standards Applicable to Certain Releases**

Section VI of the Plan provides for releases for certain claims against non-debtors in consideration of services provided to the Debtors and the contributions made by the Released Parties to the Chapter 11 Cases. The Debtors believe that the releases set forth in the Plan are appropriate because, among other things, the releases are narrowly tailored, and each of the Released Parties has provided value to the Debtors and aided in the chapter 11 process, including, with respect to certain Released Parties, by their support of the Plan and funding the winding down of the Debtors. Here, the Debtors believe that certain of the non-Debtor Released Parties has (a) expended significant time and/or resources analyzing and negotiating the issues during the Debtors' chapter 11 cases and/or (b) contributed significantly to the maximization of value of the Debtors' estates. Finally, certain of the non-Debtor Released Parties have played and will continue to play a substantial role in prosecution of the Plan and the winding down of the Debtors. Accordingly, the Debtors contend that the circumstances of the Chapter 11 Cases satisfy the requirements for such releases.

## **VII. PLAN-RELATED RISK FACTORS**

The implementation of the Plan is subject to a number of material risks, including those described below. Prior to voting on the Plan, each party entitled to vote should carefully consider these risks, as well as all of the information contained in this Disclosure Statement, including the exhibits hereto.

### **A. Certain Bankruptcy Considerations**

#### **1. The Plan is subject to conditions precedent and the Plan may not consummated if the conditions to Effectiveness of the Plan are not satisfied**

Sections VII.A and B of the Plan provide for certain conditions that must be satisfied (or waived) prior to the Confirmation Date and for certain other conditions that must be satisfied (or waived) prior to the Effective Date.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan. While the Debtors believe the Plan meets the requirements of section 1129 of the Bankruptcy Code (even if a class of creditors does not vote to accept the Plan such that cramdown provisions described in Section VI.B.2 are applicable), there can be no assurance that the Bankruptcy Court will confirm the Plan.

Certain of the conditions are outside of the control of the Debtors and therefore there can be no guarantee that every condition precedent will be met. In such circumstances, there can be no assurance that the Chapter 11 Cases would not be converted to chapter 7 liquidation cases or that any new chapter 11 plan would be as favorable to Holders of Claims as the current Plan. Either outcome may materially reduce distributions to Holders of Claims.

**2. If the Plan is not confirmed or consummated, distributions to Holders of Allowed Claims could be materially reduced or delayed**

If the Plan is not confirmed or consummated, there can be no assurance that the Chapter 11 Cases will continue rather than be converted to chapter 7 liquidation cases, or that any alternative chapter 11 plan would be more favorable to Holders of Claims as the terms of the Plan. If a liquidation under chapter 7 of the Bankruptcy Code were to occur, the distributions to Holders of Allowed Claims may be reduced. In particular, the Debtors believe that administrative expenses of a chapter 7 trustee and the trustee's attorneys, accountants and other professionals could reduce the funds available for distribution to the Debtors' creditors. Further, in a case under chapter 7, of the Bankruptcy Code it might be determined that certain administrative and priority claims may be paid from funds otherwise available to distribute on account of general unsecured claims (i.e., the Settlement Escrow).

**3. Unbudgeted Administrative Claims may ~~exceed estimates reducing~~ materially reduce the distribution available for Holders of General Unsecured Claims**

~~The Debtors' estimate of Unbudgeted, Non-Ordinary Course Administrative Claims is based on the Debtors' good faith review of their books and records. Upon the passage of all applicable Claims bar dates, the completion of further analyses of the Proofs of Claim, and the completion of Claims litigation and related matters, the total amount of Claims that ultimately are deemed Unbudgeted, Non-Ordinary Course Administrative Claims in the Chapter 11 Cases may differ from the Debtors' estimates, and such difference could be material. If estimates of such Claims are inaccurate, it may materially and adversely affect distributions to Holders of General Unsecured Claims from the Creditors' Fund.~~

The Plan provides that the Creditors' Fund Trust is responsible for the payment of Allowed Unbudgeted Administrative Claims. Holders of General Unsecured Claims may receive a distribution from the Creditors' Fund Trust only after satisfaction from the Creditors' Fund Trust of any Allowed Unbudgeted Administrative Claims and Creditors' Fund Trust Expenses. The Plan provides that the Creditors' Fund Trust would be funded with \$2.25 million (of which \$300,000 would be immediately payable on account of the portion of the Arch Allowed Administrative Claim that is an Unbudgeted Administrative Claim).

The Plan provides that the other Administrative Claims set forth on Exhibit 1.142 of the Plan are also Unbudgeted Administrative Claims if such Claims are Allowed. Further, the Plan contemplates that additional claims may be designated as Unbudgeted Administrative Claims (with such designation being subject to review and objection by the Creditors' Fund Trustee). To the extent any Unbudgeted Administrative Claims are ultimately Allowed, distributions to Holders of General Unsecured Claims may be materially reduced or eliminated. As noted above, as of the date hereof, the amount of asserted Administrative Claims that are Unbudgeted Administrative Claims under the Plan exceeds the amount of funds to be initially provided to the Creditors' Fund Trust.

**4. Allowed Claims may exceed estimates making recoveries uncertain and possibly reducing the Settlement Escrow**

The estimates of Allowed General Unsecured Claims and the projected recoveries on account of such Allowed Claims in this Disclosure Statement is a preliminary estimate based on

the filed General Unsecured Claims. Neither the Debtors nor the Creditors' Committee have undertaken a detailed analysis of the filed General Unsecured Claims. In addition, upon the passage of all applicable Claims bar dates (including, without limitation, for executory contracts and unexpired leases rejected pursuant to the Plan), the completion of further analyses of the Proofs of Claim, and the completion of Claims litigation and related matters, the total amount of Claims that ultimately become Allowed Claims in the Chapter 11 Cases may differ from the Debtors' estimates, and such difference could be material. If estimates of such Claims are inaccurate, it may materially and adversely affect distributions to be made to Holders of General Unsecured Claims.

The Debtors' estimate of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Other Secured Claims based on the Debtors' good faith review of their books and records. In addition, upon the passage of all applicable Claims bar dates, the completion of further analyses of the Proofs of Claim, and the completion of Claims litigation and related matters, the total amount of Claims that ultimately become Allowed Claims in the Chapter 11 Cases may differ from the Debtors' estimates, and such difference could be material. If estimates of such Claims are inaccurate, it may materially and adversely affect distributions to be made to Holders of Prepetition Term Loan Secured Claims and (to the extent the Administrative claims are Unbudgeted, ~~Non-Ordinary Course~~ Administrative Claims, to Holders of General Unsecured Claims).

**5. The financial information provided in the Disclosure Statement is unaudited and may be inaccurate.**

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

**6. The Debtors are not required to update the information in this Disclosure Statement.**

The statements contained in this Disclosure Statement are made by the Debtors as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Debtors have no duty to update this Disclosure Statement.

**B. Certain U.S. Federal Tax Considerations**

**1. Availability of Debtors' NOLs and other tax attributes may be limited for future use.**

As of December 31, 2016, the APP Winddown US Tax Group (as defined in Section VIII) reported a consolidated federal net operating loss ("NOL") carryforward of approximately \$265 million, and the Debtors anticipate that the APP Winddown US Tax Group will report an

additional consolidated federal NOL carryforward of approximately \$75 million incurred in 2017. It is possible that the APP Winddown Global US Tax Group will incur further NOL carryforwards in the current tax year.

The APP Winddown US Tax Group has undergone an ownership change for purposes of the NOL change of ownership rules under section 382 of the Internal Revenue Code of 1986, as amended (the “Tax Code”) on February 5, 2016, the effective date of the chapter 11 plan in the Prior Cases. As a result, its NOL carryforwards incurred prior to February 5, 2016 are subject to significant limitations on their use, under the rules described below in Section VIII.A.2.b. It is uncertain whether the APP Winddown US Tax Group has experienced further ownership changes to date or will experience an ownership change prior to the Effective Date. If the APP Winddown US Tax Group experienced further ownership changes to date or experiences an ownership change prior to the Effective Date, then its NOL carryforwards as of such date may already be subject to substantial limitations with respect to their availability to offset future taxable income or gain of the APP Winddown US Tax Group resulting from the implementation of the Plan (as discussed in this Section VII.A.1).

Furthermore, it is uncertain whether implementation of the Plan will result in an ownership change under section 382 of the Code. The Debtors intend that the Plan be treated as a plan of liquidation for U.S. federal income tax purposes, and therefore, the Debtors do not intend to treat the Plan as resulting in an ownership change of APP Winddown US Tax Group (as discussed in this Section VII.A.1). However, there is no assurance that the IRS will agree with such a characterization of the Plan for U.S. federal income tax purposes, and, due to the lack of direct authoritative guidance in the context of a liquidating Chapter 11 plan, there is no assurance that the IRS would not successfully assert a contrary position (including with respect to the treatment for U.S. federal income tax purposes of the Holders of Claims as continuing creditors and not as effective equity holders of APP throughout the liquidation process). Notwithstanding the Debtors’ position, if the IRS successfully asserts that an ownership change occurs on the Effective Date of the Plan, the Post-Confirmation Debtors could incur a material amount of U.S. federal income tax liability as a result of the liquidation of the Post-Confirmation Debtors’ remaining assets. Any such tax liability would reduce amounts available for distribution.

## **2. The Debtors’ NOLs and other tax attributes may be subject to further reduction.**

The Debtors intend that the Plan be treated as a plan of liquidation for U.S. federal income tax purposes with the result that no COD income should be incurred by a Debtor as a result of the implementation of the Plan prior to the disposition by such Debtor of all or substantially all of its assets. However, there can be no assurance that the IRS will agree with this position due to, among other things, a lack of direct authoritative guidance as to when COD income occurs in the context of a liquidating chapter 11 plan and thus, there can be no assurance that COD income will not be incurred earlier. If the IRS successfully challenges the Debtors’ position, then the NOLs and other tax attributes of the APP Winddown US Tax Group (as defined in Section VIII) may be substantially reduced as a result of the COD income realized from the implementation of the Plan (as discussed in Section VIII.A.2.a).

### VIII. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to certain Holders of Allowed Claims that are U.S. Holders (as defined below). The following summary is based on the Tax Code, Treasury Regulations promulgated thereunder (the “Regulations”), judicial decisions, administrative rules and pronouncements as in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the federal income tax consequences described below. This summary does not address the federal income tax consequences to the Debtors, to Holders of Interests or to Holders whose Claims are not Impaired under the Plan (i.e., Allowed Administrative Claims, Allowed Fee Claims, Allowed Priority Tax Claims, Allowed Other Priority Tax Claims, and Allowed Other Secured Claims). The federal income tax consequences of the Plan are complex and are subject to significant uncertainties.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder of an Allowed Claim in light of its particular facts and circumstances. In addition, this summary addresses only U.S. federal income taxes. Thus, the following discussion does not address foreign, state or local tax consequences, or any estate, gift or other non-income tax consequences, of the Plan, nor does it purport to address the federal income tax consequences of the Plan to Holders of Allowed Claims that are subject to special treatment under the Tax Code (such as Persons who are related to the Debtors within the meaning of the Tax Code, Holders liable for the alternative minimum tax, Holders whose functional currency is not the U.S. dollar, Holders that received their Claims as compensation, S corporations, broker dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax exempt organizations, governmental entities, pass-through entities such as partnerships and Holders of Claims who are themselves in bankruptcy). Accordingly, this summary should not be relied upon for purposes of determining the specific tax consequences of the Plan with respect to a particular Holder of a Claim.

If a partnership holds an Allowed Claim, the tax treatment of a partner of such partnership will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding an Allowed Claim, you should consult your tax advisors.

For purposes of this discussion, a “U.S. Holder” is a Holder that is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (4) a trust (a) if a court within the United States is able to exercise primary jurisdiction over the trust’s administration and one or more United States persons have authority to control all substantial decisions of the trust or (b) that has a valid election in effect under applicable Regulations to be treated as a United States person.

The following discussion assumes that the Plan will be implemented as described herein and does not address the tax consequences if the Plan is not carried out. Furthermore, this

discussion assumes that Holders of Allowed Claims only hold Claims in a single Class. This discussion further assumes that the various debt and other arrangements to which the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form. In addition, a substantial amount of time may elapse between the confirmation date and the receipt of a final distribution under the Plan. Events subsequent to the date of this Disclosure Statement, such as additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder.

This summary of the U.S. federal income tax consequences of the Plan is not binding on the Internal Revenue Service (the “IRS”), and no ruling will be sought or has been sought from the IRS with respect to any of the tax aspects of the Plan, no opinion of counsel has been obtained or will be obtained by the Debtors with respect thereto, and no tax opinion is given by this Disclosure Statement. The U.S. federal income tax consequences of certain aspects of the Plan may therefore be uncertain due to the lack of applicable legal authority and may be subject to administrative or judicial interpretations that differ from the discussion below.

The following discussion is not exhaustive. The discussion is not a substitute for careful tax planning and professional tax advice based upon the individual circumstances of each Holder of an Allowed Claim. Accordingly, each Holder of an Allowed Claim is strongly urged to consult with its own tax advisor regarding the U.S. federal, state, local, and foreign income and other tax consequences of the Plan.

## **A. Consequences to Debtors**

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

Those Debtors that are U.S. corporations for U.S. federal income tax purposes (the “APP Winddown US Tax Group”) file a U.S. federal income tax return on a consolidated basis. As of December 31, 2016, the APP Winddown US Tax Group reported a consolidated federal NOL carryforward of approximately \$265 million. The APP Winddown US Tax Group has not yet filed its federal income tax return for the tax year ended December 31, 2017. However, the Debtors anticipate that the APP Winddown US Tax Group will report an additional consolidated federal NOLs of approximately \$75 million incurred for 2017 (though the amount actually reported when the 2017 tax return is filed may differ from the estimate). It is possible that the APP Winddown Global US Tax Group will incur further NOL carryforwards in the current tax year.

The APP Winddown US Tax Group has undergone an ownership change for purposes of the NOL change of ownership rules under section 382 of the Tax Code on February 5, 2016, the effective date of the chapter 11 plan in the Prior Cases. As a result, NOL carryforwards incurred prior to February 5, 2016 are subject to significant limitations on their use, under the rules described below in Section VIII.A.2.b. It is uncertain whether the APP Winddown US Tax Group has undergone further ownership changes or will undergo an ownership change prior to the Effective Date. Further, the amount and use of any NOLs, as well as the application of any limitations, remain subject to review and adjustment by the IRS. The tax impact of the Plan on the NOLs and other tax attributes of the APP Winddown Global US Tax Group is discussed in Section VIII.A.2 below.



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

### a. Cancellation of Debt

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

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

### b. Limitation of NOL Carryforwards and Other Tax Attributes

#### 1. Section 382 Limitations – General

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

In general, the amount of this annual limitation is equal to the product of (i) the fair market value of the stock of the corporation (or, in the case of a consolidated group, the common parent) immediately before the ownership change (with certain adjustments) multiplied by (ii)

the “long-term tax-exempt rate” in effect for the month in which the ownership change occurs (for example, 2.31% for ownership changes occurring in June 2018). For a corporation (or consolidated group) in bankruptcy that undergoes the ownership change pursuant to a confirmed bankruptcy plan, the stock value generally is determined immediately after (rather than before) the ownership change by taking into account the surrender or cancellation of creditors’ claims, also with certain adjustments. The annual limitation can potentially be increased by the amount of certain recognized built-in gains, as discussed below. Notwithstanding the general rule, if the corporation (or the consolidated group) does not continue its historic business or use a significant portion of its historic assets in a new business for two years after the ownership change, the annual limitation resulting from the ownership change is zero, thereby precluding any utilization of the corporation’s pre-change losses (absent any increases due to any recognized built-in gains).

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

## 2. Section 382 Limitations -- Possible Application to the APP Winddown US Tax Group

The Post-Confirmation Debtors ability to utilize certain APP Winddown US Tax Group NOLs (and carryforwards thereof) and certain other tax attributes following the Effective Date of the Plan would be potentially subject to limitation if the Debtors undergo an “ownership change” within the meaning of section 382 of the Tax Code by reason of the implementation of the Plan. Additionally, as indicated above, the APP Winddown US Tax Group has undergone a prior ownership change on February 5, 2016, the effective date of the chapter 11 plan in the Prior Cases. It is uncertain whether further ownership changes under section 382 have occurred to date, or will occur prior to the Effective Date, that could significantly limit the availability of the tax attributes of the APP Winddown US Tax Group to offset post-Effective Date taxable income. Pursuant to the Plan, the Holders of Interests will maintain their economic interests in any residual assets of the Debtors after the satisfaction of all Allowed Claims not cancelled pursuant to the Plan, which economic interests generally will be nontransferable as provided by the operating agreement of APP. Accordingly, consistent with the intended treatment of the Plan as a plan of liquidation for U.S. federal income tax purposes, the Debtors do not intend to treat the Plan as resulting in an ownership change of the APP Winddown US Tax Group. There is no



assurance that the IRS will agree with this position and thus, due to a lack of direct authoritative guidance in the context of a liquidating chapter 11 plan, there is no assurance that the IRS will not successfully assert a contrary position (including with respect to the treatment for U.S. federal income tax purposes of the Holders of Claims as continuing creditors and not as effective equity holders of APP throughout the liquidation process). If, notwithstanding the Debtors' intent, an ownership change were considered to occur in connection with the implementation of the Plan, the Post-Confirmation Debtors could incur a material amount of U.S. federal income tax as a result of the liquidation of the Post-Confirmation Debtors' remaining assets. Any such tax liability would reduce amounts available for distribution.

*c.* Non-U.S. Income Tax Matters

Historically, the Debtors conducted their business activities on a global basis, with locations located throughout the world. At present, the APP Winddown US Tax Group continues to maintain material debt and equity positions in many of these non-U.S. entities, notwithstanding the fact that most of such Affiliates are currently under separate legal administration or receivership and collectability is, consequently, uncertain. Importantly, however, given the current U.S. tax profile of the APP Winddown US Tax Group, any future remittance received from any such separate administration or receivership in satisfaction of historic debt and/or equity positions may be subject to host country, non-U.S. withholding taxes, thereby reducing the amounts available for distribution to creditors by each of the Debtors' estates.

**B. U.S. Federal Income Tax Consequences to U.S. Holders of Allowed Prepetition Term Loan Secured Claims and Allowed General Unsecured Claims**

**1. Federal Income Tax Consequences of Receipt of Distribution**

In accordance with the Plan, each Holder of an Allowed General Unsecured Claim shall be entitled to receive his, her or its Pro Rata share of the Creditors' Fund Trust Net Class 4 Distributable ~~Creditors' Fund~~ Cash, which payments will be made from the Creditors' Fund Trust out of the Creditors' Fund Claims Reserve.

The Debtors intend that the Creditors' Fund Trust Claims Reserve will be treated for U.S. federal income tax purposes as a disputed ownership fund within the meaning of Treasury Regulations § 1.468B-9(b)(1) (with net income and gain on Creditors' Fund Trust Assets taxed at the separate entity level). The remainder of this discussion assumes that this treatment is correct. It is possible that the IRS could require an alternative characterization of the Creditors' Fund Claims Reserve, which could result in different (and possibly adverse) tax consequences to the Creditors' Fund Trust and/or Holders of Allowed General Unsecured Claims. For the avoidance of doubt, Holders of Allowed General Unsecured Claims are not intended to be treated for federal income tax purposes as receiving Creditors' Fund Trust Assets that are contributed to the Creditors' Fund Trust until such time as the Creditors' Fund Trust makes distributions, in which case (and at which time) the Holders of Allowed General Unsecured Claims are intended to be treated as receiving the distributions actually received from the Creditors' Fund Trust, if any.

In accordance with the Plan, each Holder of an Allowed Prepetition Term Secured Loan Claim (unless otherwise agreed and subject to the terms of the Lender Settlement) shall be entitled to receive his or her respective share of each Prepetition Term Loan Distribution, which distributions will likely occur over a period of time, and may extend beyond the year in which the Effective Date occurs.

Generally, where a U.S. Holder receives only Cash in respect of Allowed Claims, such U.S. Holder would recognize taxable gain or loss in an amount equal to the difference between the amount of the Cash received and such U.S. Holder's adjusted tax basis in its Allowed Claim. As noted above, the Debtors intend that the Plan be treated as a plan of liquidation for U.S. federal income tax purposes and that the Allowed Prepetition Term Secured Loan Claims and Allowed General Unsecured Claims not be treated as cancelled on the Effective Date. If that treatment is respected, a U.S. Holder of an Allowed Prepetition Secured Loan Claim or Allowed General Unsecured Claim may not be able to claim a loss until all of the Distributions to such U.S. Holder are received. It is also not clear how or when such a U.S. Holder would report any gain with respect to such a Claim. A U.S. Holder of an Allowed Prepetition Term Secured Loan Claim or Allowed General Unsecured Claim may be able to defer gain until the aggregate distributions received by the U.S. Holder exceed the U.S. Holder's tax basis in such Claim, although it is possible that such a holder could be treated as recognizing gain prior to such time. Any gain or loss recognized would be capital or ordinary, depending on the status of the Allowed Claim in the U.S. Holder's hands, including whether the Allowed Claim constitutes a market discount bond in the Holder's hands. Generally, any gain or loss recognized by such a Holder of an Allowed Claim would be a long-term capital gain or loss if the Allowed Claim is a capital asset in the hands of the Holder and the Holder has held such Allowed Claim for more than one year, unless the Holder had previously claimed a bad debt deduction or the Holder had accrued market discount with respect to such Allowed Claim. See the discussion below under the heading "—Market Discount." The deductibility of capital losses is subject to limitations. To the extent any portion of a U.S. Holder's recovery is allocable to interest on the U.S. Holder's Allowed Claim that was not previously included in the U.S. Holder's income, such portion would be treated as interest income to such Holder. See the discussion below under the heading "—Accrued Interest."

The federal income tax consequences to Holders of Allowed Claims will differ and will depend on factors specific to each such Holder, including, but not limited to: (i) whether the Holder's Allowed Claim (or a portion thereof) constitutes a claim for principal or interest, (ii) the origin of the Holder's Allowed Claim, (iii) whether the Holder reports income on the accrual or cash basis method, (iv) whether the Holder receives distributions under the Plan in more than one taxable year, (v) whether the Holder has previously included in income any accrued but unpaid interest with respect to the surrendered Allowed Claim and (vi) whether the Holder has taken a bad debt deduction or otherwise recognized a loss with respect to the Allowed Claim.

## **2. Accrued Interest**

U.S. Holders of Allowed Claims will recognize ordinary income to the extent that they receive Cash or property that is allocable to accrued but unpaid interest that the Holder has not yet included in its income. The Plan provides that all distributions to a U.S. Holder of an Allowed Claim will apply first to the principal amount of such Claim until such principal amount

is paid in full and then to any interest accrued on such Claim prior to the Petition Date, and the remaining portion of such distributions, if any, shall apply to any interest accrued on such Claim after the Petition Date. There is no assurance, however, that the IRS will respect this treatment and will not determine that all or a portion of amounts distributed to such U.S. Holder and attributable to principal under the Plan is properly allocable to interest. U.S. Holders of Allowed Claims are urged to consult their own tax advisors in this regard. If the Plan consideration allocable to interest with respect to an Allowed Claim is less than the amount that the U.S. Holder has previously included as interest income, the previously included but unpaid interest may be deducted, generally as a loss.

### **3. Market Discount**

If a U.S. Holder of an Allowed Claim purchased the Claim for an amount that is less than its stated redemption price at maturity, the amount of the difference may be treated as “market discount” for U.S. federal income tax purposes, unless the difference is less than a specified *de minimis* amount. Under the market discount rules, the U.S. Holder is required to treat any gain on the sale, exchange, retirement or other disposition of, the Allowed Claim as ordinary income to the extent of the market discount that the U.S. Holder has not previously included in income and which is treated as having accrued on the Allowed Claim at the time of its payment or disposition.

### **4. Medicare Surtax**

Subject to certain limitations and exceptions, U.S. Holders who are individuals, estates or trusts may be required to pay a 3.8% Medicare surtax on all or part of that U.S. Holder’s “net investment income,” which includes, among other items, dividends on stock and interest (including original issue discount) on debt, and capital gains from the sale or other taxable disposition of stock or debt. U.S. Holders should consult their own tax advisors regarding the effect, if any, of this surtax on their receipt of distributions pursuant to the Plan.

### **5. Backup Withholding and Information Reporting**

Generally, information reporting requirements will apply to all payments or distributions under the Plan and by the Creditors’ Fund Trust, unless you are an exempt recipient. Additionally, a U.S. Holder may be subject to backup withholding at applicable rates, unless the U.S. Holder (i) is a person exempt from backup withholding and, when required, demonstrates this or (ii) provides a correct taxpayer identification number (“TIN”) on IRS Form W-9 (or a suitable substitute form) and timely provides the other information and makes the representations required by such form and complies with the other requirements of the backup withholding rules. A U.S. Holder may become subject to backup withholding if, among other things, the U.S. Holder (i) fails to properly report interest and dividends for U.S. federal income tax purposes or (ii) in certain circumstances, fails to certify, under penalty of perjury, that it has furnished a correct TIN. A U.S. Holder that does not timely provide a correct TIN also may be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your United States federal income tax liability provided the required information is properly furnished to the IRS.

**C. Importance of Obtaining Professional Tax Assistance**

**THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND IN SOME CASES UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF AN ALLOWED CLAIM. ACCORDINGLY, EACH HOLDER OF AN ALLOWED CLAIM IS STRONGLY URGED TO CONSULT WITH HIS, HER OR ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.**

**IX. RECOMMENDATION AND CONCLUSION**

The Debtors believe that the confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors urge all parties entitled to vote to accept the Plan and to evidence their acceptance by duly completing and returning their Ballots so that they will be received on or before the Voting Deadline.

Dated: ~~June 12~~September 7, 2018

Respectfully submitted,

APP Winddown, LLC (f/k/a American Apparel, LLC). (on its own behalf and on behalf of each affiliate Debtor)

By: \_\_\_\_\_  
Name: Bradley E. Scher  
Title: Chief Wind-Down Officer

**EXHIBIT 1**

**Joint Plan of Liquidation of  
the Debtors and Debtors in Possession**

*[Intentionally Omitted]*