

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

In re:

CSH WINDDOWN, INC., et al.,¹

Debtors.

Chapter 11

Case No. 18-11272 (LSS)

Jointly Administered

**COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF
LIQUIDATION PROPOSED BY THE DEBTORS**

September 20, 2018

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¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: CSH Winddown, Inc. (f/k/a Color Spot Holdings, Inc.) (7061); CSN Winddown, Inc. (f/k/a Color Spot Nurseries, Inc.) (3266); HG Winddown, Inc. (f/k/a Hines Growers, Inc.) (5946); and LSG Winddown, Inc. (f/k/a Lone Star Growers, Inc.) (4748). The Debtors' principal offices are located at 27368 Via Industria, Suite 201, Temecula, CA 92590.

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DISCLAIMER

THIS COMBINED DISCLOSURE STATEMENT AND PLAN WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

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

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF. HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE COMBINED DISCLOSURE STATEMENT AND PLAN AND THE TRANSACTIONS CONTEMPLATED HEREBY.

NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO THE COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY HAVE BEEN AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. ANY INFORMATION, REPRESENTATIONS OR INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THE COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM OR INTEREST. THIS COMBINED DISCLOSURE STATEMENT AND PLAN HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-APPLICABLE BANKRUPTCY LAWS. THIS COMBINED DISCLOSURE STATEMENT AND PLAN HAS NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE

COMMISSION (THE “SEC”), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

SEE ARTICLE V OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN, ENTITLED “CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING,” FOR A DISCUSSION OF CERTAIN CONSIDERATIONS IN CONNECTION WITH A DECISION BY A HOLDER OF AN IMPAIRED CLAIM TO ACCEPT THE COMBINED DISCLOSURE STATEMENT AND PLAN.

INTRODUCTION

CSH Winddown, Inc. (f/k/a Color Spot Holdings, Inc.); CSN Winddown, Inc. (f/k/a Color Spot Nurseries, Inc.); HG Winddown, Inc. (f/k/a Hines Growers, Inc.); and LSG Winddown, Inc. (f/k/a Lone Star Growers, Inc.), the debtors and debtors in possession in these Chapter 11 Cases, hereby jointly propose the following combined Disclosure Statement and Plan for the liquidation of the Debtors’ remaining assets and distribution of the proceeds of the Estates’ assets to the Holders of Allowed Claims against the Debtors as set forth herein. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

This combined Disclosure Statement and Plan contains, among other things, a discussion of the Debtors’ history, businesses, properties, operations, the Chapter 11 Cases, risk factors, summary and analysis of this Plan, and certain other related matters.

ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ARE ENCOURAGED TO READ THE COMBINED DISCLOSURE STATEMENT AND PLAN IN ITS ENTIRETY, AND TO CONSULT WITH AN ATTORNEY, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3019, AND IN THE PLAN, THE DEBTORS RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN, OR ANY PART THEREOF, PRIOR TO ITS SUBSTANTIAL CONSUMMATION.

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

Defined Terms

1.1 “503(b)(9) Claims” shall mean Claims arising under section 503(b)(9) of the Bankruptcy Code against a Debtor that were to be filed against the Debtors on or before the General Claims Bar Date.

1.2 “Administrative Claim” shall mean a Claim for costs and expenses of administration of the Chapter 11 Cases allowed under sections 503(b), 507(b) or, if applicable, 1114(e)(2) of the Bankruptcy Code, including but not limited to: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors (including, but not limited to, wages, salaries, commissions for services and payments for inventories, leased equipment and premises) and

Claims by Governmental Units for taxes (including Claims related to taxes which accrued after the Petition Date, but excluding Claims related to taxes which accrued on or before the Petition Date); (b) compensation for legal, financial, advisory, accounting and other services and reimbursement of expenses allowed by the Bankruptcy Court under sections 328, 330, 331, 363 or 503(b) of the Bankruptcy Code to the extent incurred on or prior to the Effective Date; (c) all fees and charges assessed against the Debtors' Estates under section 1930, chapter 123 of title 28 of the United States Code; (d) any 503(b)(9) Claims, and (e) any Claims that have been designated "Administrative Claims" by order of this Court.

1.3 "Affiliate" shall mean "affiliate" as defined in section 101(2) of the Bankruptcy Code.

1.4 "Allowed" shall mean all or a portion of a Claim against the Debtors or an Interest in the Debtors (a) that has been listed by the Debtors in their Schedules as liquidated in amount and not "disputed" or "contingent," and with respect to which no contrary Claim or proof of Interest has been filed, (b) as to which no objection or request for estimation has been Filed on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Bankruptcy Court, (c) as to which any objection has been settled, waived, withdrawn or denied by a Final Order, or (d) that is allowed (i) by a Final Order, (ii) by an agreement between the Holder of such Claim or Interest and the Debtors prior to the Effective Date, or the Wind-Down Administrator on or after the Effective Date or (iii) pursuant to the terms of this Plan. For purposes of computing Distributions under this Plan, a Claim or Interest that has been deemed "Allowed" shall not include interest, costs, fees or charges on such Claim or Interest from and after the Petition Date, except as provided in section 506(b) of the Bankruptcy Code or as otherwise expressly set forth in this Plan. For the avoidance of doubt, any Claim that relates to obligations that were assumed by the Purchaser pursuant to the Asset Purchase Agreement shall not be an Allowed Claim for purposes of this Plan.

1.5 "Asset Purchase Agreement" shall mean that certain asset purchase agreement by and between the Debtors and the Purchaser dated as of July 20, 2018 (as amended and restated effective as of August 3, 2018).

1.6 "Bankruptcy Code" shall mean title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, and as such title has been, or may be, amended from time to time, to the extent that any such amendment is applicable to these Chapter 11 Cases.

1.7 "Bankruptcy Court" shall mean the United States Bankruptcy Court for the District of Delaware.

1.8 "Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms or the Local Rules of the Bankruptcy Court, and as each has been, or may be, amended from time to time, to the extent that any such amendment is applicable to these Chapter 11 Cases.

1.9 “**Bar Date**” shall mean, with respect to any particular Claim, the specific date set by the Bankruptcy Court as the last day for Filing proofs of Claim or proofs of Interest against the Debtors in these Chapter 11 Cases for that specific Claim or Interest.

1.10 “**Bar Date Order**” shall mean the *Order (I) Establishing Bar Dates for Filing Proofs of Prepetition Claims, Including 503(b)(9) Claims and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 248].

1.11 “**BDCF**” shall mean Black Diamond Commercial Finance, L.L.C.

1.12 “**Business Day**” shall mean any day, other than a Saturday, Sunday or a legal holiday (as that term is defined in Bankruptcy Rule 9006(a)).

1.13 “**Cash**” shall mean money that is legal tender of the United States of America.

1.14 “**Cash Collateral Budget**” shall mean that certain budget attached to the Cash Collateral Order as Exhibit 1, as may be amended to the extent permitted by the Cash Collateral Order.

1.15 “**Cash Collateral Order**” shall mean the *Final Order (I) Authorizing Use of Cash Collateral and Affording Adequate Protection; (II) Modifying Automatic Stay; and (III) Granting Related Relief* [Docket No. 317], entered by the Bankruptcy Court on August 15, 2018, as may be subsequently amended as provided for therein or any subsequent order of the Bankruptcy Court.

1.16 “**Causes of Action**” shall mean all Claims, actions, causes of action, choses in action, suits, debts, dues, damages, defenses, judgments, third-party claims, counterclaims, and cross claims that are or may be pending or existing on the Effective Date against any Person or Entity, based in law or equity, including, but not limited to, under the Bankruptcy Code, whether direct, indirect, known or unknown, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order, and including the Unknown Causes of Action that have not been released by the Plan, the Sale Order, or any other order of the Bankruptcy Court. For the avoidance of doubt, “Causes of Action” does not include any right, claim, or cause of action of the Debtors arising under Chapter 5 of the Bankruptcy Code that were expressly released, waived and extinguished upon the closing of the Sale to the Purchaser and which the Purchaser agreed to not pursue, prosecute or assert in any way.

1.17 “**Chapter 11 Cases**” shall mean the chapter 11 cases commenced by the Debtors and jointly administered under case number 18-11272 (LSS) in the Bankruptcy Court.

1.18 “**Claim**” or “**Claims**” shall mean a claim or claims against any Debtor or Debtors, as such term is defined in section 101(5) of the Bankruptcy Code.

1.19 “**Claims Agent**” shall mean the Debtors’ claims agent, Epiq Bankruptcy Solutions, LLC.

1.20 “**Claims Objection Deadline**” shall mean one hundred twenty (120) days after the Effective Date, or such later date as may be ordered by the Bankruptcy Court, *provided however*, that the Wind-Down Administrator may seek extensions of this date from the Bankruptcy Court.

1.21 “**Class**” shall mean each category or group of Holders of Claims or Interests that has been designated as a class in Article II of this Plan.

1.22 “**Committee**” shall mean the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases.

1.23 “**Confirmation Date**” shall mean the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

1.24 “**Confirmation Hearing**” shall mean the hearing held by the Bankruptcy Court to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.25 “**Confirmation Order**” shall mean the order of the Bankruptcy Court confirming this Plan pursuant to, among others, section 1129 of the Bankruptcy Code.

1.26 “**Consummation**” shall mean the occurrence of the Effective Date.

1.27 “**Contingent**” shall mean, with reference to a Claim, a Claim that has not accrued or is not otherwise payable and the accrual of which, or the obligation to make payment on which, is dependent upon a future event that may or may not occur.

1.28 “**Creditor**” shall have the meaning ascribed to such term in section 101(10) of the Bankruptcy Code.

1.29 “**Debtors**” shall mean CSH Winddown, Inc. (f/k/a Color Spot Holdings, Inc.); CSN Winddown, Inc. (f/k/a Color Spot Nurseries, Inc.); HG Winddown, Inc. (f/k/a Hines Growers, Inc.); and LSG Winddown, Inc. (f/k/a Lone Star Growers, Inc.).

1.30 “**Disallowed**” shall mean with respect to any Claim or Interest or portion thereof, any Claim against or Interest in the Debtor which: (i) has been disallowed, in whole or part, by a Final Order; (ii) has been withdrawn by agreement of the Holder thereof and the Debtors or Wind-Down Administrator in whole or in part; (iii) has been withdrawn, in whole or in part, by the Holder thereof; (iv) if listed in the Schedules as zero or as Disputed, Contingent or unliquidated and in respect of which a proof of Claim or a proof of Interest, as applicable, has not been timely Filed or deemed timely Filed pursuant to the Plan, the Bankruptcy Code or any Final Order or other applicable law; (v) has been reclassified, expunged, subordinated or estimated to the extent that such reclassification, expungement, subordination or estimation results in a reduction in the Filed amount of any proof of Claim or proof of Interest; (vi) is evidenced by a proof of Claim or a proof of Interest which has been Filed, or which has been deemed to be Filed under applicable law or order of the Bankruptcy Court or which is required to be Filed by order of the Bankruptcy Court but as

to which such proof of Claim or proof of Interest was not timely or properly Filed; (vii) is unenforceable to the extent provided in section 502(b) of the Bankruptcy Code; and (viii) where the holder of a Claim is a Person or Entity from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, unless such Person, Entity or transferee has paid the amount, or turned over any such Property, for which such Person, Entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of the Bankruptcy Code. In each case a Disallowed Claim or a Disallowed Interest is disallowed only to the extent of disallowance, withdrawal, reclassification, expungement, subordination or estimation.

1.31 “**Disbursing Agent**” shall mean the Wind-Down Administrator or any third party designated by the Wind-Down Administrator to act as Disbursing Agent.

1.32 “**Disclosure Statement**” shall mean the disclosure statement, as amended, supplemented or modified from time to time, that is embodied within this combined Disclosure Statement and Plan and distributed in accordance with, among others, sections 1125, 1126(b) and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018 and other applicable law.

1.33 “**Disputed**” shall mean any Claim or Interest which has not yet been Allowed or Disallowed in accordance with the terms of this Plan.

1.34 “**Disputed Administrative, Priority Tax, Priority Non-Tax Claims, and Other Secured Claims Reserve**” shall mean the reserve established pursuant to Article X of this Plan, which reserve shall contain amounts relating to Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Other Secured Claims.

1.35 “**Distribution**” shall mean a delivery of Cash by the Disbursing Agent to the Holders of Allowed Claims or Allowed Interests pursuant to this Plan.

1.36 “**Distribution Date**” shall mean the date on which a Distribution is made pursuant to this Plan.

1.37 “**Distribution Record Date**” shall mean the date established for determining the Holders of Claims entitled to Distributions pursuant to the Plan, which shall be the Confirmation Date.

1.38 “**Effective Date**” shall mean the first Business Day after the later of the date on which (a) all conditions in Article XIII of this Plan have been satisfied or waived in accordance with that Article and (b) no stay of the Confirmation Order is in effect; provided, however, the Effective Date may occur on such other date agreed to in writing by the Debtors and Wells Fargo.

1.39 “**Entity**” shall have the meaning ascribed to such term in section 101(15) of the Bankruptcy Code.

1.40 “**Estate(s)**” shall mean the estates of each of the Debtors created by section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases on the Petition Date.

1.41 “**Excess Cash**” shall mean any excess Cash held by the Post-Effective Date Debtors after (i) satisfying all valid obligations provided for in the Cash Collateral Budget, (ii) the payment of all Allowed Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, and Other Secured Claims as called for in this Plan, and (iii) funding the amounts permitted to be paid by Section 10.19 of this Plan.

1.42 “**Executory Contract**” shall mean a contract to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

1.43 “**File,**” “**Filed,**” or “**Filing**” shall mean, respectively, file, filed, or filing with the Bankruptcy Court or its authorized designee in these Chapter 11 Cases.

1.44 “**Final Administrative Claim Bar Date**” means the date that is 30 days after the Effective Date, which shall be the deadline for filing requests for payment of Administrative Claims that arose after the date of entry of the Interim Administrative Bar Date Order.

1.45 “**Final Order**” shall mean an unstayed order, ruling or judgment of the Bankruptcy Court or any other court of competent jurisdiction as to which the time to appeal, petition for *certiorari*, or request for reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for reargument or rehearing shall then be pending, or as to which any right to appeal, petition for *certiorari*, reargument, or rehearing shall have been waived in writing in form and substance satisfactory to the Debtors and Wells Fargo (prior to the Effective Date) or the Wind-Down Administrator (on or after the Effective Date), or, in the event that an appeal, writ of *certiorari*, or reargument or rehearing thereof has been sought, such order of the Bankruptcy Court or other court of competent jurisdiction shall have been determined by the highest court to which such order was appealed, or *certiorari*, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari* or move for reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state court rules of civil procedure, may be Filed with respect to such order, shall not cause such order not to be a Final Order.

1.46 “**First Day Declaration**” shall mean the *Declaration of Paul W. Russo in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 14].

1.47 “**General Unsecured Claim**” shall mean a Claim against a Debtor, including any Rejection Claims and the Wells Deficiency Claim, but excluding any Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, Other Secured Claims, Intercompany Claims, and Interests.

1.48 “**General Claims Bar Date**” shall mean August 30, 2018 at 4:00 p.m. (Prevailing Eastern Time) for certain Claims arising before the Petition Date, including

503(b)(9) Claims, General Unsecured Claims, or Priority Non-Tax Claims as established by the Bar Date Order.

1.49 “**Governmental Unit**” shall have the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

1.50 “**Governmental Unit Bar Date**” shall mean November 27, 2018 at 4:00 p.m. (Prevailing Eastern Time) as established by the Bar Date Order.

1.51 “**Holder**” or “**Holders**” shall mean a Person or an Entity holding a Claim or Interest.

1.52 “**Impaired**” shall mean, when used in reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.53 “**Impaired Class**” shall mean a Class of Claims or Interests that is Impaired.

1.54 “**Insider**” shall have the meaning ascribed to such term in section 101(31) of the Bankruptcy Code.

1.55 “**Intercompany Claim**” shall mean any Claim by a Debtor against another Debtor.

1.56 “**Interests**” shall mean the legal interests, equitable interests, contractual interests, equity interests or ownership interests, or other rights of any Person in the Debtors including all capital stock, stock certificates, common stock, preferred stock, partnership interests, limited liability company or membership interests, rights, treasury stock, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtors, partnership interests in the Debtors’ stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights, subscription rights and liquidation preferences, puts, calls, awards or commitments of any character whatsoever relating to any such equity, common stock, preferred stock, ownership interests or other shares of capital stock of the Debtors or obligating the Debtors to issue, transfer or sell any shares of capital stock whether or not certificated, transferable, voting or denominated “stock” or a similar security.

1.57 “**Interim Administrative Claim Bar Date**” means the deadline for filing requests for payment of Administrative Claims that arose at any time on or after the Petition Date through and including the date of entry of the Interim Administrative Claim Bar Date Order.

1.58 “**Interim Administrative Claim Bar Date Order**” shall mean the *Order (I) Establishing Bar Dates for Filing Administrative Expense Claims, Other than 503(b)(9) Claims, and (II) Approving the Form and Manner of Notice Thereof* [Docket No. ____].

1.59 “**Interim Approval and Procedures Order**” shall mean that certain [*Order Approving the Disclosure Statement; Approving the Solicitation and Voting Procedures; Scheduling the Plan Confirmation Process, and Granting Related Relief*] [Docket No.____].

1.60 “**IRS**” shall mean the Internal Revenue Service.

1.61 “**Letters of Credit**” shall mean the issued and undrawn letters of credit, in the aggregate amount of \$7,900,000, issued pursuant to the Wells Credit Documents.

1.62 “**Local Rules**” shall mean the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

1.63 “**Objection(s)**” shall mean any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify, or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim).

1.64 “**Other Secured Claim**” shall mean any Secured Claim other than the Wells Claims.

1.65 “**Permissible Investments**” shall mean (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof, (c) demand deposits or certificates of deposit at any bank or trust company, which has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, or (d) such other investments as the Bankruptcy Court may approve from time to time.

1.66 “**Person**” shall have the meaning ascribed to such term in section 101(41) of the Bankruptcy Code.

1.67 “**Petition Date**” shall mean May 29, 2018, the date on which the Debtors commenced their Chapter 11 Cases in the Bankruptcy Court.

1.68 “**Plan**” shall mean this joint plan of liquidation under chapter 11 of the Bankruptcy Code, as it may be altered, amended, modified or supplemented from time to time including in accordance with any documents submitted in support hereof and the Bankruptcy Code or the Bankruptcy Rules.

1.69 “**Plan Participants**” shall mean the Debtors and Wells Fargo.

1.70 “**Plan Support Agreement**” shall mean that certain Plan Support Agreement, dated as of August 3, 2018, entered into by and among the Debtors and Wells Fargo.

1.71 “**Post-Effective Date Debtors**” means the Debtors, or any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date.

1.72 “**Priority Non-Tax Claim**” shall mean any and all Claims accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

1.73 “**Priority Tax Claim**” shall mean a Claim or a portion of a Claim for which priority is asserted under section 507(a)(8) of the Bankruptcy Code.

1.74 “**Professional**” or collectively “**Professionals,**” shall mean a Person or Entity employed pursuant to a Final Order in accordance with sections 327, 328, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Confirmation Date, pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code, or for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

1.75 “**Professional Fee Bar Date**” shall mean the deadline for Filing all applications for Professional Fee Claims, which shall be thirty (30) days after the Effective Date.

1.76 “**Professional Fee Claims**” shall mean all fees and expenses (including but not limited to, transaction fees and success fees) for services rendered by Professionals in connection with the Chapter 11 Cases from the Petition Date through and including the Effective Date.

1.77 “**Purchaser**” shall mean Wells Fargo as “Buyer” under the Asset Purchase Agreement, as well as TSH Opco, LLC, TreeSap Farms, LLC, SG Personnel, LLC and ATC Realty Nine, Inc., each as designees of Wells Fargo pursuant to Section 12.13.2 of the Asset Purchase Agreement.

1.78 “**Rejection Bar Date**” shall mean the deadline by which a counterparty to an Executory Contract or an unexpired lease of the Debtors rejected under this Plan must file a proof of Claim for a Rejection Claim, and shall be 30 days after the Effective Date.

1.79 “**Rejection Claim**” shall mean any Claim for amounts due as a result of the rejection by the Debtors of any Executory Contract or unexpired lease under section 365 of the Bankruptcy Code.

1.80 “**Related Parties**” shall mean all officers, directors, employees, investment bankers and attorneys of the Plan Participants who, in each case, served the Plan Participants at any point from and after the Petition Date, each in their capacity as such.

1.81 “**Released Claims**” shall mean any and all claims or causes of action, by or among the Released Parties, relating to any pre- or post-Petition Date acts or omissions, whether known or unknown, pertaining to the business activities and operations of the Debtors, the debts, liabilities, obligations and assets of the Debtors, the ownership, management, direction or control of the Debtors, the Sale, the negotiation of and entry into the Plan Support Agreement, the Plan, or any transactions or communications among the Released Parties with respect to any of the foregoing.

1.82 “Released Parties” shall mean (i) the Plan Participants and (ii) the Related Parties of the Plan Participants. For the avoidance of doubt and notwithstanding anything to the contrary set forth herein, the Released Parties shall not include (i) BDCF, (ii) any affiliate of BDCF, and (iii) any employee, officer or director of the foregoing, except for Paul Russo, to the extent he would be included in clauses (ii) and (iii).

1.83 “Reserves” shall mean, collectively, the Disputed Administrative, Priority Tax, Priority Non-Tax, and Other Secured Claims Reserve, the Wind-Down Expense Reserve, and any other reserves established by the Wind-Down Administrator pursuant to Article X of the Plan.

1.84 “Retained Assets” shall mean, collectively, any assets that remain property of the Debtors’ Estates after the closing of the Sale.

1.85 “Sale” shall mean the sale of substantially all of the Debtors’ assets to the Purchaser pursuant to the Asset Purchase Agreement and the Sale Order.

1.86 “Sale Motion” shall mean the *Debtors’ Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances, and the Assumption and Assignment of Certain Executory Contracts, and Unexpired Leases, (II) Approving Certain Bidding Procedures, Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof; and (III) Granting Related Relief, and (B) an Order (I) Approving the Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [Docket No. 64], Filed on June 4, 2018.

1.87 “Sale Order” shall mean the *Order (I) Approving Asset Purchase Agreement and Authorizing Sale of Certain Assets of the Debtors Outside the Ordinary Course of Business; (II) Authorizing the Sale of Assets Free and Clear of All Encumbrances; (III) Authorizing the Assumption, Sale and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* entered by the Bankruptcy Court on July 25, 2018 [Docket No. 243], as supplemented by the *Supplemental Order Approving Sale* entered by the Bankruptcy Court on August 3, 2018 [Docket No. 276] and *Second Supplemental Order Approving Sale* entered by the Bankruptcy Court on August 10, 2018 [Docket No. 290].

1.88 “Schedules” shall mean the schedules of assets and liabilities, schedules of Executory Contracts and unexpired leases and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified or supplemented from time to time.

1.89 “Secured Claim” shall mean, pursuant to section 506 of the Bankruptcy Code, that portion of a Claim that is (a) secured by a valid, perfected and enforceable security interest, lien, mortgage, or other encumbrance, that is not subject to avoidance under applicable bankruptcy or non-bankruptcy law, in or upon any right, title or interest of the

Debtors in and to property of the Estate, to the extent of the value of the holder's interest in such property as of the relevant determination date, or (b) Allowed as such pursuant to the terms of this Plan (subject to the Confirmation Order becoming a Final Order). The defined term Secured Claim includes any Claim that is (i) subject to an offset right under applicable law as of the Petition Date, and (ii) a secured claim against the Debtors pursuant to sections 506(a) and 553 of the Bankruptcy Code.

1.90 “**Tax**” or “**Taxes**” shall mean all income, gross receipts, sales, use, transfer, payroll, employment, franchise, profits, property, excise, or other similar taxes, estimated import duties, fees, stamp taxes, and duties, value added taxes, assessments, or charges of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, additions to tax, or additional amounts imposed by any taxing authority of a Governmental Unit with respect thereto.

1.91 “**Unclaimed Distributions**” shall mean any undeliverable or unclaimed Distributions.

1.92 “**Unimpaired**” shall mean, when used in reference to a Claim or Interest, any Claim or Interest that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

1.93 “**Unknown Causes of Action**” shall mean any other Causes of Action that currently exist or may subsequently arise and which have not been otherwise set forth herein because the facts upon which such Causes of Action are based are not currently or fully known by the Debtors.

1.94 “**U.S. Trustee Fees**” shall mean fees payable pursuant to 28 U.S.C. § 1930.

1.95 “**Voting Deadline**” shall mean November 8, 2018, at 4:00 p.m. (**Prevailing Eastern Time**), the date and time by which ballots to accept or reject the Plan must be received in order to be counted, as set forth by the Interim Approval and Procedures Order.

1.96 “**Wells Fargo**” shall mean Wells Fargo Bank, N.A..

1.97 “**Wells Claim**” shall mean Wells Fargo's sole remaining claim against the Debtors in the amount of **\$(INSERT)**, which includes the full amount outstanding under the Letters of Credit.

1.98 “**Wells Deficiency Claim**” shall mean the balance of the Wells Claim after distributions of Excess Cash or Retained Assets that may be assigned to Wells Fargo in accordance with this Plan and any reduction in the amount of undrawn Letters of Credit.

1.99 “**Wind-Down Administrator**” shall mean [_____] or another person or entity as agreed upon by and among the Debtors and Wells Fargo.

1.100 “**Wind-Down Expenses**” shall mean the reasonable fees, costs and expenses of the Wind-Down Administrator's retained professionals, as determined in the reasonable

discretion of the Wind-Down Administrator. For the avoidance of doubt, U.S. Trustee Fees shall be considered a Wind-Down Expense.

1.101 “Wind-Down Expense Reserve” shall mean the reserve established pursuant to Article X of this Plan for payment of (i) the costs and expenses of the Wind-Down Administrator (which shall not exceed \$100,000) *and* (ii) the Wind-Down Expenses, which may be replenished or adjusted from time to time for Cash held by the Post-Effective Date Debtors, other than funds in the other Reserves.

1.102 “Wind-Down Protected Parties” shall mean, collectively, the Post-Effective Date Debtors, the Wind-Down Administrator, each of their members, designees, agents, professionals, employees, managers, partners, actuaries, financial advisors, and attorneys.

Rules of Interpretation

1.103 For purposes of the Plan, except as expressly provided or unless the context otherwise requires, (a) any capitalized term used in this combined Disclosure Statement and Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable, (b) whenever the context requires, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter, (c) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (d) any reference in the Plan to an existing document or exhibit means such document or exhibit as it may be amended, modified, or supplemented from time to time, (e) unless otherwise specified, all references in the Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules, and exhibits of or to the Plan, (f) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan in its entirety rather than to any particular paragraph, subparagraph, or clause contained in the Plan, (g) captions and headings to articles and sections are inserted for convenience of reference only and shall not limit or otherwise affect the provisions hereof or the interpretation of the Plan, and (h) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

1.104 Any references herein to rights or actions of “the Debtors or the Wind-Down Administrator” shall refer to the Debtors up through and until the Effective Date of the Plan, and the Wind-Down Administrator upon or after the Effective Date of the Plan.

ARTICLE II.

CLASSIFICATION OF CLAIMS AND INTERESTS AND ESTIMATED RECOVERIES

THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND ARE THEREFORE SUBJECT TO CHANGE.

2.1 Classification. The Plan groups the Debtors together solely for the purposes of describing treatment under the Plan, confirmation of the Plan, and making distributions in accordance with the Plan in respect of Claims against and Interests in the Debtors under the Plan. Notwithstanding such groupings, the Plan constitutes a separate chapter 11 plan of liquidation for each Debtor. The Plan is not premised upon and will not cause the substantive consolidation of any of the Debtors. For brevity and convenience, the classification and treatment of Claims and Interests have been arranged into one chart. Such classification shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities or cause the transfer of any assets. Except as otherwise provided by or permitted under the Plan, all Debtors shall continue to exist as separate legal entities.

The information in the table below is provided in summary form for illustrative purposes only and is subject to material change based on certain contingencies, including related to the claims reconciliation process. Actual recoveries may widely vary within these ranges, and any changes to any of the assumptions underlying these amounts could result in material adjustments to recovery estimates provided herein and/or the actual distribution received by Creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors' estimates as of the date hereof only. In addition to the cautionary notes contained elsewhere in the combined Disclosure Statement and Plan, it is underscored that the Debtors make no representation as to the accuracy of these recovery estimates. The Debtors expressly disclaim any obligation to update any estimates or assumptions after the date hereof on any basis (including new or different information received and/or errors discovered).

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date.

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 herein, have not been classified, and the respective treatment of such unclassified Claims is set forth below in Article VI of the Plan. The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

<u>Class/ Designation</u>	<u>Plan Treatment</u>	<u>Status</u>	<u>Projected Recovery</u>
Class 1: Priority Non-Tax Claims	Each Holder of an Allowed Priority Non-Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 1 Claim: (A) Cash equal to the amount of such Allowed Priority Non-Tax Claim; or (B) such other treatment which the Debtors or the Wind-Down Administrator, as applicable, and the Holder of such Allowed Priority Non-Tax Claim have agreed upon in writing.	Unimpaired Not entitled to vote Deemed to accept Plan	100%
Class 2: Other Secured Claims	Each Holder of an Allowed Class 2 Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 2 Claim: (A) return of the collateral securing such Allowed Other Secured Claim; or (B) Cash equal to the amount of such Allowed Other Secured Claim; or (C) such other treatment which the Debtors or the Wind-Down Administrator, as applicable, and the Holder of such Allowed Other Secured Claim have agreed upon in writing.	Unimpaired Not entitled to vote Deemed to accept Plan	100%
Class 3: Wells Claims	Wells Fargo shall receive, in full satisfaction and discharge of the Wells Claims and its consent to the use of the Wind-Down Assets to pay Allowed Claims in accordance with the Plan, (1) treatment as a Released Party under the Plan, (2) Distributions of any Excess Cash after satisfaction in full of such Claims to be paid in accordance with the Plan, (3) the right to the return of any proceeds of the Letters of Credit, and (4) to treatment of the Wells Deficiency Claim as an Allowed General Unsecured Claim. Notwithstanding the above Wells Fargo retains its rights under the Wells Credit Documents and related liens (although its rights thereunder shall be subordinate to the obligations specified in the Plan including but not limited to the Distribution of the Estate Proceeds in accordance with the Waterfall set forth in Section 10.5 of this Plan).	Impaired Entitled to vote	[____]%
Class 4: General Unsecured Claims	Holders of General Unsecured Claims shall receive no Distribution on account of such General Unsecured Claims.	Impaired Not entitled to vote Deemed to reject Plan	\$0
Class 5: Intercompany Claims	Holders of Intercompany Claims shall receive no Distribution on account of their Intercompany Claims.	Impaired Not entitled to vote Deemed to	\$0

		reject Plan	
Class 6: Interests	On the Effective Date, all Interests shall be deemed canceled, extinguished and discharged and of no further force or effect, and the Holders of Interests shall not be entitled to receive or retain any property on account of such Interests.	Impaired Not entitled to vote Deemed to reject Plan	\$0

2.2 Unimpaired Classes of Claims.

Class 1: Priority Non-Tax Claims. Class 1 shall consist of Priority Non-Tax Claims against the Debtors. Class 1 Claims are Unimpaired by the Plan and the Holders of Allowed Class 1 Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan.

Class 2: Other Secured Claims. Class 2 shall consist of the Allowed Other Secured Claims against the Debtors. Class 2 Claims are Unimpaired by the Plan and the Holders of Allowed Class 2 Claims are deemed to accept the Plan and, therefore, are not entitled to vote on the Plan.

2.3 Impaired Classes of Claims.

Class 3: Wells Claims. Class 3 shall consist of the Wells Claims against the Debtors. The Class 3 Claim is Impaired by the Plan and entitled to vote on the Plan.

Class 4: General Unsecured Claims. Class 4 shall consist of all Allowed General Unsecured Claims against the Debtors. Because Holders of Class 4 General Unsecured Claims will receive no Distribution under the Plan, Holders of Class 4 General Unsecured Claims are deemed to reject the Plan and, therefore, not entitled to vote on the Plan.

Class 5: Intercompany Claims. Class 5 shall consist of all Intercompany Claims. Because Holders of Class 5 Intercompany Claims will receive no Distribution under the Plan, Holders of Class 5 Intercompany Claims are deemed to reject the Plan and, therefore, not entitled to vote on the Plan.

2.4 Impaired Class of Interests.

Class 6: Interests. Class 6 shall consist of all Interests. Because Holders of Class 6 Interests will receive no Distribution under the Plan, Holders of Class 6 Interests are deemed to reject the Plan and, therefore, not entitled to vote on the Plan.

ARTICLE III. BACKGROUND AND DISCLOSURES

3.1 General Background.²

(a) *The Debtors' Business.*

² Further information regarding the Debtors' business, assets, capital structure, and the circumstances leading to the filing of the Chapter 11 Cases is set forth in detail in the First Day Declaration, which is incorporated by reference herein.

Founded in 1983, the Debtors became a leading grower and distributor of quality live plants in the western and southwestern United States. The Debtors operated 9 large-scale nurseries—6 in California, 2 in Texas, and 1 in Oregon—that comprised over 83 million square feet of outdoor growing space, over 11 million square feet of greenhouse space, and over 6 million square feet of shadehouse space. The Debtors had about 1,600 year-round, full-time employees (over 1,300 of which are involved in production), which was augmented by another 610 seasonal employees, and a small number of year-round, part-time employees and independent contractors. The Debtors' products included bedding plants, such as annuals, perennials and poinsettias and other holiday plants, which made up over 70% of revenues, and flowering and ornamental shrubs, which made up almost 30% of revenues. In 2016 and 2017, the Debtors had sales of about \$268 million and \$248 million, respectively.

The Debtors' customers included home improvement retailers, such as The Home Depot and Lowe's, general merchandisers, such as Costco, Target and Walmart, supermarkets and pharmacies, and smaller independent garden centers and nurseries. The Debtors counted 9 of the 10 largest U.S. retailers as their customers, and the Debtors enjoyed great longevity with their customers—having an average of 33 years of experience serving their top 5 customers.

The Debtors' operations were divided into 4 divisions. The Color Spot West division distributed bedding products from four California-based nurseries, and its distribution ranged north to Oregon and Idaho, and as far east as Colorado and New Mexico. The Hines Growers division distributed shrubbery from two California-based nurseries and an Oregon-based nursery, and its distribution covered California, Oregon, Washington and six other states east of them. The Color Spot Southwest division distributed both bedding products and shrubbery from two Texas-based nurseries, and its distribution included the states immediately east and west of Texas plus Mississippi. These divisions were serviced by a fleet of trucks and trailers owned or leased by the Debtors and operated by up to 150 drivers at any time. About 75% of the Debtors' product distribution was handled by its internal fleet.

The Debtors' fourth division provided merchandising services on customer premises. In addition to growing their own plants, the Debtors had an approximately 375-person team that maintained an on-site presence at their customers' retail locations. The employees in the merchandising division ensured that the quality of the Debtors' products was maintained and preserved from the time they arrive at retail locations to the time consumers purchase the products. The merchandising team also complemented and provided support to their customers' workforce with their on-location presence. The responsibilities of the personnel in the merchandising team included arranging, receiving and unloading deliveries, maintaining floor space and positioning, caring for plants while they await sale, promotional and marketing initiatives, and communicating with the nursery divisions to ensure appropriate inventory at each retail location. The merchandising team also provided services to other vendors whose products are adjacent to those of the Debtors in retail locations, thereby providing additional revenue opportunities for the Debtors.

The Debtors' business experienced a high level of seasonality. The high season for sales of bedding plants occurs in the spring and early summer. This typically required increased expenditures in the early part of the year as the Debtors grew products to be sold in the spring-

summer period, and the Debtors saw higher collections in the spring and summer as this inventory was sold off and the proceeds collected. Historically, the Debtors' revolving credit facility balance reached its high point in early spring as a result of this seasonality. A similar seasonality manifested in connection with the Christmas season, when the Debtors focused on the cultivation of poinsettias. Poinsettia production typically began in the late summer to be ready for the Christmas season. Given the lead times associated with production and the resources that needed to be committed to it, the Debtors worked with their larger customers to negotiate for particular regions that the Debtors would service, and agreed on targets for plant mix and volumes well in advance of the start of the growing season to ensure that the customers' projected needs could be fulfilled.

(b) *The Debtors' Capital Structure.*

As of the Petition Date, the Debtors had approximately \$117.5 million in debt across three funded debt facilities, a subordinated promissory note related to a stock redemption in the approximate amount of \$2.65 million (excluding accrued interest), approximately \$20.7 million in unsecured trade debt and approximately \$7 million in capital lease obligations.

i. *Wells Credit Documents*

Debtors Color Spot Nurseries, Inc. and Hines Growers, Inc. (together, the "**Borrower Debtors**") are parties with Wells Fargo to that certain Ninth Amended and Restated Credit Agreement, dated as of May 25, 2017 (as amended from time to time prior to the Petition Date, the "**Wells 2017 Credit Agreement**" and, together with the other loan documents related thereto, the "**Wells 2017 Credit Documents**"). Debtors Color Spot Holdings, Inc. and Lone Star Growers, Inc. are guarantors as set forth in that certain Fifth Amended and Restated Master Guaranty dated as of May 3, 2013 in favor of Wells Fargo, which guarantees the Borrower Debtors' obligations under the Wells 2017 Credit Documents (the "**Guarantor Debtors**"). The Wells 2017 Credit Agreement had an initial maturity of April 30, 2018, but the maturity was extended to June 1, 2018.³ The Wells 2017 Credit Documents initially provided for a line of credit in the maximum principal amount of \$97.5 million, but such amounts were stepped-up and stepped-down, including based on the seasonality of the Debtors' business, and as of the Petition Date, the maximum availability was \$83,000,000.

The Wells 2017 Credit Agreement had an initial interest rate of LIBOR plus 8.25%, with LIBOR plus 6.25% paid in cash and 2.0% deferred; and from December 5, 2017 to December 31, 2017, the interest rate was increased from 8.25% to 12.25%, with the cash paid portion remaining at LIBOR plus 6.25% but the deferred portion increasing to 6.0%. In addition, beginning on December 5, 2017, the parties amended the Wells 2017 Credit Agreement a number of times to provide for an over-advance facility, which was initially \$2.7 million, increased to \$12 million at December 31, 2017, and stayed at approximately that level until

³ Among other things, the April 30, 2018 amendment to the Wells 2017 Credit Agreement included a \$500,000 extension fee that would be added to the outstanding amounts due under the Wells 2017 Credit Agreement as elected by Wells. This fee was fully earned as of that date, but this extension fee would be waived if certain milestones were met. As of the Petition Date, this extension fee had not been added to the outstanding borrowings.

March 17, 2018, when it began to decrease. As of the Petition Date, the overadvance amount is \$1.2 million. The amendments to the Wells 2017 Credit Agreement that took place from and after December 5, 2017, also included a number of milestones with respect to the Debtors' efforts to refinance the amounts owed to Wells Fargo, sell portions or all of the Debtors' business, or ultimately engage in a liquidation of the Debtors' assets without Court supervision.

The Borrower Debtors are also parties with Wells Fargo to that certain Credit Agreement, dated as of February 12, 2018 (as amended from time to time prior to the Petition Date, the "**Wells 2018 Credit Agreement**" and, together with the other loan documents related thereto, the "**Wells 2018 Credit Documents**") to provide the Debtors with temporary bridge financing. The Guarantor Debtors also guaranteed the obligations under the Wells 2018 Credit Documents. The Wells 2018 Credit Documents provided for a revolving line of credit, which was evidenced by a Revolving Line of Credit Note (the "**2018 Revolver Note**") in the initial maximum principal amount of \$2,774,212 with an initial maturity of April 30, 2018. Through a series of amendments, the maximum principal amount of the 2018 Revolver Note was modified from time to time, and the last amendment, on April 20, 2018, was to increase the note maximum balance to \$5,000,000. Also, on April 30, 2018, the maturity of the 2018 Revolver Note was extended to May 4, 2018. The 2018 Revolver Note was subject to cash-paid interest at a rate of LIBOR plus 12.25%. The 2018 Revolver Note (including all interest accrued thereon) was paid in full on May 4, 2018, in the amount of \$1,002,000. The Wells 2018 Credit Agreement additionally included a Term Note in the principal amount of \$300,000 (the "**2018 Fee Note**"), which was on account of a deferred commitment fee and has a maturity of June 1, 2018. As of the Petition Date, the obligations under the 2018 Fee Note remained outstanding.⁴

The Wells Credit Documents additionally provided for the issuance of the Letters of Credit to secure various obligations of the Debtors, including obligations on account of insurance agreements and workers' compensation claims.

As of May 29, 2018, Wells Fargo asserted that the Borrower Debtors were jointly and severally indebted and liable under the Wells 2017 Credit Documents and Wells 2018 Credit Documents (collectively, the "**Wells Credit Documents**") in an aggregate amount of approximately \$83,400,000 (collectively, the "**Wells Obligations**").

Wells Fargo asserts, and the Debtors stipulated in the Cash Collateral Order, that the Borrower Debtors' obligations under the Wells 2017 Credit Agreement and Wells 2018 Credit Agreement are (or were) secured under that certain Security Agreement dated as of May 3, 2013 (as amended from time to time prior to the Petition Date, the "**Wells Borrower Security Agreement**"), and the obligations of Color Spot Holdings, Inc. and Lone Star Growers, Inc. as guarantors are secured under that certain Master Guarantor Security Agreement dated as of May 3, 2013 (as amended from time to time prior to the Petition Date, the "**Wells Guarantor Security Agreement**"). Pursuant to the Wells Borrower Security Agreement and Wells Guarantor Security Agreement, among other things, each Borrower Debtor granted liens upon and security interests in the "Collateral," as defined in the Wells Borrower Security Agreement,

⁴ The amounts due under the 2018 Fee Note would be waived if, at certain points, all outstanding obligations owed to Wells Fargo had been satisfied or cash collateralized, and the Debtors were not subject to insolvency proceedings. Neither of those conditions were met prior to the Petition Date.

and the Guarantor Debtors granted liens upon and security interests in the “Guarantor Collateral,” as defined in the Wells Guarantor Security Agreement (such collateral is collectively referred to herein as the (“**Wells Collateral**”). The Debtors also granted to Wells Fargo certain fee mortgages and leasehold mortgages (and the subject fee simple interests and leasehold interest are intended to be included in the term “Wells Collateral” as defined herein). The Wells Collateral encompassed substantially all of the assets owned by the Debtors prior to the Sale (including cash collateral) and continues to attach to, among other things, all of the Debtors’ cash collateral following the Sale.

ii. CFC Credit Documents

The Borrower Debtors are parties with Capital Farm Credit, FLCA (“**CFC**”) to that certain Loan Agreement, dated as of December 23, 2014 (as amended from time to time prior to the Petition Date, the “**CFC Loan Agreement**” and, together with the other loan documents related thereto, the “**CFC Credit Documents**”). The CFC Credit Documents provide for a loan in the aggregate principal amount of \$28,700,000 (which includes an initial loan in the amount of \$25,000,000 (the “**Initial CFC Loan**”), plus an additional loan agreed to through an October 18, 2016 amendment to the CFC Loan Agreement in the aggregate principal amount of \$3,700,000 (the “**Additional CFC Loan**”). The Initial CFC Loan bore interest at the rate of one-month LIBOR plus 3.50% (payable quarterly) and is subject to full amortization over a ten year period beginning July 1, 2015, while the Additional CFC Loan bore interest at the rate of one-month LIBOR plus 3.75% (payable quarterly) and is subject to full amortization over a ten year period beginning January 1, 2017. Amortization payments were payable in 30 tri-annual payments on July 1, October 1 and January 1 of each year.

As of the Petition Date, the Borrower Debtors were indebted and liable to CFC under the CFC Credit Documents in an aggregate amount of approximately \$20,466,000, plus accrued interest and fees (collectively, the “**CFC Obligations**”). The Guarantor Debtors also guaranteed the CFC Obligations.

The Borrower Debtors’ obligations under the CFC Loan Agreement were secured under that certain Security Agreement dated as of December 23, 2014 (as amended from time to time prior to the Petition Date, the “**CFC Borrower Security Agreement**”). Pursuant to the CFC Security Agreement, among other things, each Borrower Debtor granted liens upon and security interests in the “Collateral,” as defined in the CFC Borrower Security Agreement.

As noted herein, the CFC Obligations were satisfied as part of the purchase price paid by the Purchaser in connection with the closing of the Sale.

iii. BD Credit Documents

Debtor Color Spot Nurseries, Inc. is party with BDCF to that certain Third Lien Term Loan Agreement, dated as of December 23, 2014 (as amended from time to time prior to the Petition Date, the “**BD Loan Agreement**” and, together with the other loan documents related thereto, the “**BD Credit Documents**”). Debtors Color Spot Holdings, Inc., Hines Growers, Inc., and Lone Star Growers, Inc. are guarantors as set forth in that certain Guaranty Agreement, dated

as of December 23, 2014, in favor of BDCF, which guarantees Color Spot Nurseries, Inc.'s obligations under the BD Credit Documents. The BD Credit Documents provide for a loan in the aggregate principal amount of \$10,000,000. The BD Loan Agreement bears interest at a rate of 14.5% per annum, which is paid in kind and added to the loan balance, and has a maturity of March 31, 2019.

As of the Petition Date, BDCF asserted that Color Spot Nurseries, Inc. was indebted and liable to BD under the BD Credit Documents in an aggregate amount of approximately \$14,881,000, plus accrued interest and fees.

BDCF asserts that Color Spot Nurseries, Inc.'s obligations under the BD Loan Agreement are secured under that certain Security Agreement dated as of December 23, 2014 (as amended from time to time prior to the Petition Date, the "**BD Borrower Security Agreement**") and the obligations of Color Spot Holdings, Inc., Hines Growers, Inc., and Lone Star Growers, Inc. as guarantors are secured under that certain Third Lien Security Agreement dated as of December 23, 2014 (as amended from time to time prior to the Petition Date, the "**BD Guarantor Security Agreement**"). BDCF asserts that, pursuant to the BD Borrower Security Agreement, among other things, Color Spot Nurseries, Inc. granted liens upon and security interests in the "Collateral," as defined in the BD Borrower Security Agreement. BDCF asserts that, pursuant to the BD Guarantor Security Agreement, Color Spot Holdings, Inc., Hines Growers, Inc., and Lone Star Growers, Inc. granted liens upon and security interests in the "Collateral," as defined in the BD Guarantor Security Agreement.

As discussed herein, pursuant to the Sale Order, the collateral under the BD Credit Documents was sold free and clear of BDCF's liens.

iv. Intercreditor Agreement

Wells Fargo, CFC, and BDCF (collectively, the "**Prepetition Secured Parties**"), along with the Borrower Debtors, are parties to that certain Intercreditor Agreement, dated as of December 23, 2014 (as amended from time to time prior to the Petition Date, the "**Intercreditor Agreement**"). The Intercreditor Agreement, among other things:

- (a) confirmed the senior priority of the security interests of Wells in the **personal property** collateral described on Schedule 1 to the Intercreditor Agreement over the second priority security interests of CFC as to that property, and over the third priority security interests of BD as to that property;
- (b) confirmed the senior priority of the security interests of CFC in the **real property collateral** described on Schedule 2 to the Intercreditor Agreement over the second priority security interests of Wells as to that property, and over the third priority security interests of BD as to that property;
- (c) confirmed the senior priority of the security interests of Wells in the **real property collateral (related to the Debtors' leasehold interests in property)** described on Schedule 3 to the Intercreditor Agreement over the second priority security interests of BD as to that property;

(d) provides for the senior right of repayment of the senior secured party with respect to any particular category of collateral prior to any repayment of the junior secured party as to that category of collateral;

(e) provides for the waiver by the junior secured party(ies) of any rights to (i) direct the senior secured party for any common collateral to exercise any right, remedy or power with respect to that common collateral or (ii) consent or object to the exercise by the senior secured party of any right, remedy or power with respect to common collateral or to the timing or manner in which any such right is exercised or not exercised; and

(f) provides certain other rights and obligations by and among the Prepetition Secured Parties relating to the relevant collateral, their respective enforcement rights in and access to the relevant collateral, and the application of proceeds of common collateral.

v. Unsecured Note

Debtor Color Spot Nurseries, Inc. is party with Karla D. Vukelich, Sole Surviving Co-Trustee of the Michael F. and Karla D. Vukelich Trust (the “Unsecured Note Trustee”), to that certain Subordinated Promissory Note, dated October 14, 2011 (the “Unsecured Note”). The counterparty to the Unsecured Note holds no security interest with respect to the unpaid obligations thereunder. The Unsecured Note Trustee asserts that as of the Petition Date, Color Spot Nurseries, Inc. was indebted and liable to the Unsecured Note Trustee in an aggregate amount of approximately \$2,655,000, plus accrued interest.

vi. Other Debt

As of the Petition Date, the Debtors’ books and records listed approximately \$20.7 million in outstanding trade liabilities. The Debtors estimate that the aggregate amount of outstanding capital lease-related expenses was approximately \$7 million.

3.2 Events Leading to Chapter 11.

The Debtors suffered from declining market share and revenues since 2014, which was the result of various contributing factors. First, a substantial part of the Debtors’ nurseries were located in California, and California suffered a six-year drought that only ended in the spring of 2017. That drought resulted in substantial water restrictions from 2014 through 2017 that impacted the Debtors’ operations. Second, Texas, where most of the Debtors’ remaining nurseries were located, experienced adverse weather events in 2015 and 2017, which negatively impacted the Debtors’ performance there. Third, the Debtors’ focus on customer service waned as the Debtors grew in size, which translated into losses of certain markets with key customers.

When the Debtors developed financial challenges in early 2017 and the Debtors’ remaining, surviving co-founder sought retirement, the Board recruited Paul W. Russo to lead the company through the Debtors’ leadership transition and to address the company’s current financial challenges. At that point, the most urgent issue was that the existing revolving credit facility had matured on January 31, 2017 and while the Debtors were operating pursuant to

interim financing from Wells Fargo, the Debtors had no plans underway to refinance the Debtors' indebtedness. The next most immediate priorities included right-sizing the Debtors' cost structure to their revenues and addressing the customer dissatisfaction that was contributing to the sales decline.

Starting in early to mid-2017, the Debtors embarked on an operational restructuring and turn-around of the business that included:

- Negotiating an amendment and restatement of the existing revolving credit facility with Wells Fargo, including an extended maturity of April 30, 2018;
- Soliciting customer support by meeting with the leadership of key customers to identify and address problem areas;
- Right-sizing production capacity to match revenues, including closing 4 of 13 nurseries in the first 9 months of Mr. Russo's tenure;
- Simplifying the product mix to improve production efficiency by (i) increasing inventory investment in best sellers and (ii) eliminating production of 40% of the genera grown which constituted less than 10% of sales; and
- Eliminating layers of management to improve responsiveness, which, along with facility closures, generated a 30% reduction in employee headcount in 9 months.

Overall, these initiatives resulted in about \$10 million in savings.

In May of 2017, Wells Fargo agreed to amend and restate the then-in-place revolving credit facility to provide the Debtors with an additional 11 months (*i.e.*, until April 30 2018) of borrowing availability (this became the Wells 2017 Credit Agreement described above). The intent of this amendment was to allow the Debtors time to implement their turnaround strategy and explore a potential sale transaction or refinancing. In late 2017 and continuing into early 2018, the Debtors engaged in negotiations with an interested party to acquire the Color Spot Southwest division, but the potential purchaser was ultimately unable to consummate a transaction. The Debtors also engaged a financial advisor to assist them in exploring a potential refinancing of the Wells 2017 Credit Agreement, but at the request of Wells Fargo, the Debtors agreed to explore a possible sale of the whole company. The Debtors engaged Raymond James & Associates ("**Raymond James**"), effective as of February 1, 2018, to conduct a marketing process for their assets.

In late April 2018, Raymond James began contacting parties to determine if they may be interested in an acquisition of the Debtors' business. In total, Raymond James contacted 80 parties, comprised of strategic and financial parties, and distributed a "teaser." Thirty-seven (37) parties executed a non-disclosure agreement and received a "confidential information memorandum" describing the Debtors' business and the potential investment opportunity. Given

the milestones under an April 30 amendment to the Wells 2017 Credit Agreement,⁵ Raymond James communicated to all parties that they should submit indications of interest for a transaction with the Debtors by May 23, 2018. By that date, Raymond James received two indications of interest for the Debtors' entire business as a going concern and a third offer for one of the Debtors' three production divisions.

3.3 The Chapter 11 Cases.

(a) *Generally.*

As set forth above, on the Petition Date the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The commencement of a chapter 11 case creates an estate that is composed of all of the legal and equitable interests of the debtor as of that date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession." Since the Petition Date, the Debtors have continued to operate their businesses and manage their properties as debtors and debtors in possession. By order entered on May 30, 2018 [Docket No. 29], the Chapter 11 Cases are being jointly administered for procedural purposes only. No trustee or examiner has been appointed in the Chapter 11 Cases. On June 5, 2018, the Office of the United States Trustee filed a statement with the Court providing that a statutory unsecured creditors committee has not been appointed in the Chapter 11 Cases.

The filing of the Debtors' bankruptcy petitions on the Petition Date triggered the immediate imposition of the automatic stay under section 362 of the Bankruptcy Code, which, with limited exceptions, enjoins all collection efforts and actions by creditors, the enforcement of Liens against property of the Debtors and both the commencement and the continuation of prepetition litigation against the Debtors. With certain limited exceptions and/or modifications as permitted by order of the Bankruptcy Court, the automatic stay will remain in effect from the Petition Date until the Effective Date of the Plan.

(b) *"First Day" Motions and Related Applications.*

On the Petition Date, the Debtors filed a number of "first-day" motions and applications designed to ease the Debtors' transition into chapter 11, maximize the value of the Debtors' assets and minimize the effects of the commencement of the Chapter 11 Cases. On May 30, 2018, the Bankruptcy Court entered orders providing various first-day relief, including interim or final orders approving:

- *Debtors' Motion for an Order, Pursuant to Bankruptcy Rule 1015 and Local Rule 1015-1, Authorizing the Joint Administration of the Debtors' Chapter 11 Cases;*

⁵ Starting at the end of 2017, the Wells 2017 Credit Agreement was amended a number of times to include and revise milestones with respect to a potential sale process and, for a time, a refinancing. On April 30, 2018, the Wells 2017 Credit Agreement was last amended, including to extend the maturity date to June 1, 2018 and implement milestones whereby the Debtors were required to obtain bids for a sale transaction and deliver such bids to Wells Fargo not later than 6:00 p.m. on May 25, 2018.

- *Debtors' Application for Entry of an Order Appointing Epiq Bankruptcy Solutions, LLC as Claims Agent Effective as of the Petition Date;*
- *Debtors' Motion for Interim and Final Orders Pursuant to Section 366 of the Bankruptcy Code (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Deeming Utility Companies Adequately Assured of Future Performance, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, and (IV) Setting a Final Hearing Related Thereto;*
- *Debtors' Motion for Order (I) Authorizing Payment of Certain Prepetition Taxes and (II) Authorizing Financial Institutions to Honor and Process All Related Checks and Electronic Payment Requests;*
- *Debtors' Motion for an Order (I) Authorizing the Debtors to (A) Continue Prepetition Insurance Policies, (B) Pay all Prepetition Obligations in Respect Thereof, and (C) Continue Insurance Premium Financing Program, and (II) Authorizing Banks to Honor and Process Related Checks and Transfers;*
- *Debtors' Motion for Entry of an Order Authorizing the Debtors to Honor Prepetition Customer Obligations;*
- *Debtors' Motion for an Order (I) Authorizing (A) Continued Use of the Debtors' Existing Cash Management System and Procedures, (B) Continuation of Intercompany Transactions, and (C) Maintenance and Use of Existing Bank Accounts and (II) Waiving the Requirements of Section 345(b) of the Bankruptcy Code on an Interim Basis;*
- *Debtors' Motion for an Order (I) Authorizing the Debtors to (A) Pay Prepetition Employee Obligations and (B) Maintain Employee Wages and Benefits Programs and Pay Related Obligations and (II) Authorizing the Banks to Honor and Process Related Checks and Electronic Transfers (the "**Employee Wage and Benefits Motion**" and the orders authorizing the relief set forth therein, the "**Employee Wage and Benefits Orders**";*
- *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to Continue Factoring their Receivables under Various Factoring Agreements and to Accelerate Receivables Consistent with Prepetition Practices;*
- *Debtors' Motion for Interim and Final Orders (I) Authorizing, but Not Directing, Payment of Prepetition Claims of Certain Critical Vendors and (II) Authorizing Banks To Honor and Process Related Checks and Transfers;*

- *Debtors' Motion for Interim and Final Orders (A) Authorizing Postpetition Use of Cash Collateral, (B) Granting Adequate Protection, (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b), and (D) Granting Related Relief; and*
 - *Debtors' Emergency Motion for Entry of an Order Authorizing Limited Use of Cash Collateral and Payment of Certain Prepetition Employee Obligations.*
- (c) *Retention of Professional Advisors.*

Pursuant to orders entered on June 22, 2018 and June 25, 2018, the Bankruptcy Court authorized the Debtors to retain and employ (a) Young Conaway Stargatt & Taylor, LLP as their bankruptcy counsel [Docket No. 118], (b) Raymond James as their investment banker [Docket No. 130] and (c) Epiq Bankruptcy Solutions, LLC as their administrative advisor [Docket No. 116]. The Bankruptcy Court also authorized the Debtors to retain and employ certain professionals utilized by the Debtors in the ordinary course of business prior to the Petition Date pursuant to an order entered on June 22, 2018 [Docket No. 114].

Pursuant to orders entered on July 13 2018, the Bankruptcy Court authorized the Committee to retain and employ (x) Kilpatrick Townsend & Stockton LLP as their lead bankruptcy counsel [Docket No. 189]; (b) Morris, Nichols, Arsht & Tunnell LLP as their Delaware co-counsel [Docket No. 188]; and (c) Berkeley Research Group, LLC as their financial advisor [Docket No. 190].

(d) *The Sale of Substantially All of the Debtors' Assets*

i. *The Bidding Procedures*

The Debtors filed the Chapter 11 Cases in order to pursue a sale of all or substantially all of their assets with the goal of maximizing the recovery for their estates and creditors. After the Petition Date, the Debtors and Raymond James continued the ongoing marketing process that Raymond James had begun in earnest prepetition, seeking to solicit and secure the highest and best offers to maximize recoveries for the stakeholders of the Estates. To that end, on June 4, 2018, the Debtors filed the Sale Motion, seeking entry of an order (i)(a) approving bidding procedures (the “**Bidding Procedures**”) relating to the sale of substantially all of the Debtors' assets, (b) scheduling an auction for, and a hearing to approve, the sale of the Debtors' assets, (c) approving the form and manner of notices for the sale, auction and sale hearing and (ii) (x) approving the sale of the Debtors' assets free and clear of liens, claims, interests and encumbrances, and (y) authorizing the assumption and assignment of executory contracts and unexpired leases.

On June 25, 2018, the Bankruptcy Court entered the Bidding Procedures Order approving the Bidding Procedures and the relief related thereto requested in the Motion. Among other things, the Bidding Procedures Order set July 16, 2018 as the deadline for Qualifying Bidders (as defined therein) to submit qualified bids, and July 18, 2018, as the date for an auction (an “**Auction**”) of the Debtors' assets pursuant to the procedures set forth therein.

ii. The Sale Process

The Debtors and their professionals marketed the Debtors' assets to potential purchasers in accordance with the Bidding Procedures Order. Immediately following the Petition Date, the Debtors solicited interest in the sale of the substantially all of the Debtors' assets from 121 potentially interested parties. Among those interested parties, in compliance with the Bidding Procedures, 26 parties executed confidentiality agreements post-petition, and 5 parties participated in management calls, meetings, and site visits. The Debtors also established a data room for interested buyers, which was launched on June 4, 2018 and included over 300 documents. During this period, Raymond James, the Debtors' other professionals and the Debtors' management responded to numerous due diligence and information requests from a number of interested parties.

Additionally, the Debtors and Raymond James hosted regular calls with Wells Fargo, the Committee, CFC, and their advisors to discuss the sale process. Raymond James separately facilitated a process with Wells Fargo to help negotiate NDAs and releases with potential bidders to receive real estate appraisals conducted by CBRE.

On July 16, 2018, the Debtors received four bids for some or all of the Debtors' assets. The bids included a bid for the whole company from CS Acquisition Holdings, LLC (the "**BD/Altman JV**"), a joint venture comprised of Black Diamond Capital Management, L.L.C., an affiliate of BDCF, and Altman Specialty Plants, Inc.; a bid for the Debtors' Hines division from TreeSap Farms, LLC, through a newly-created affiliated ("**TreeTown**"); a credit bid by John Deere on their equipment collateral; and a bid from Industrial Assets for certain machinery and fixed assets that was ultimately determined unqualified. In addition, Wells Fargo and CFC indicated their intent to potentially submit credit bids on assets for which they held security interests.

In accordance with the Bidding Procedures, the Debtors, in consultation with the Consultation Parties, engaged in lengthy, intensive negotiations among the parties to clarify and improve the preliminary bids, which discussions began at approximately 9:00 a.m. on July 18 and continued until approximately 7:00 p.m. on July 19, including well past midnight on July 18. Based on the foregoing, and in consultation with the Consultation Parties, the Debtors deemed the bids of the BD/Altman JV, TreeTown, and John Deere as "Qualified Bids" under the Bidding Procedures. Additionally, the Bidding Procedures provided that Wells Fargo and CFC were Qualified Bidders and were permitted to submit bids at the Auction. No other bids – qualified or otherwise – were received by the bid deadline or thereafter.

Consistent with the Bid Procedures, the Debtors formally went on the record at the Auction on July 19, 2018. For purposes of the Auction, representatives and/or professionals on behalf of Altman and Black Diamond, TreeTown, John Deere, Wells Fargo, and CFC assembled at Young Conaway's office. After multiple rounds of bidding and discussions among the parties, Wells Fargo placed a bid based valued at \$84 million on the terms set forth in the Asset Purchase Agreement (which was in effect from July 20, 2018 until it was amended and restated on August

3, 2018),⁶ which the Debtors determined to be the highest and best bid. The Bankruptcy Court entered the Sale Order on July 25, 2018, and a supplemental order authorizing the assumption and assignment of various Executory Contracts on August 3, 2018.

The Bankruptcy Court held further hearings in connection with the objection of Winters Nursery LLC, Forest Grove Nursery LLC, Winters Forest Grove LLC, Blooming Farm, Inc. and Fallbrook Nursery LLC (collectively, the “**NHHC II Landlords**”) to the Debtors’ assumption and assignment of certain leases of nonresidential real property. The Bankruptcy Court entered a second supplemental order, which authorized the assumption and assignment of the NHHC II Landlords’ leases, on August 10, 2018 [Docket No. 290] (the “**Second Supplemental Order**”).

On August 14, 2018, the NHHC II Landlords filed a Notice of Appeal of the Second Supplemental Order, and simultaneously moved for a stay of the Second Supplemental Order pending the appeal. The Bankruptcy Court denied this motion after a hearing held on August 15. The NHHC II Landlords then filed a similar motion for stay with the United States District Court for the District of Delaware (the “**District Court**”), which motion was similarly denied by order dated August 21, 2018.

The closing of the transactions contemplated by the Asset Purchase Agreement occurred on August 17, 2018 in accordance with the Sale Order. The NHHC II Landlords stipulated to the dismissal of this appeal on September 14.

The Asset Purchase Agreement provided for, among other things, the satisfaction of the CFC Obligations, a credit bid in the amount of \$52,000,000, and the satisfaction of various Assumed Liabilities (as defined in the Asset Purchase Agreement), as well as the exclusion of \$9,000,000 of a combination of cash and Retained Accounts Receivable (as defined in the Asset Purchase Agreement). In connection with the negotiation of an extension of the closing date for the Sale, Wells Fargo entered into the Plan Support Agreement, which provides for Wells Fargo’s support of the Plan.

(e) *Summary of Claims Process, Bar Dates and Claims Filed*

On July 6, 2018, the Debtors filed their schedules of assets and liabilities and statements of financial affairs [Docket Nos. 153-160] (the “**Schedules and SOFAs**”). Among other things, the Schedules and SOFAs set forth the Claims of known or putative Creditors against the Debtors as of the Petition Date, based upon the Debtors’ books and records.

On July 26, 2018, the Bankruptcy Court entered the Bar Date Order establishing procedures and setting deadlines for filing Proofs of Claim against the Debtors and approving the form and manner of the notice of the Bar Date Order. Pursuant to the Bar Date Order, the last date for certain persons and entities to file Proofs of Claim in the Debtors’ Chapter 11 Cases is

⁶ The August 3, 2018 amendment and restatement of the Asset Purchase Agreement was intended to maintain the economics of the bid Wells Fargo submitted at the Auction but to allow for a two-week delay in the closing of the Sale.

August 30, 2018, and the last date for governmental units to file Proofs of Claim in the Debtors' Chapter 11 Cases is November 27, 2018. Notice of the Bar Date Order was published in the USA Today, national edition on July 31, 2018, at least 21 days prior to the Bar Date, and a notice of the Bar Date and related procedures and a proof of claim form were served on all creditors and potential creditors appearing in the Debtors' creditor matrix and the Debtors current and former employees as of the Petition Date. The Debtors or Wind-Down Administrator and their professionals will investigate Claims filed against the Debtors to determine the validity of such Claims. The Debtors may file objections to Claims that are filed in improper amounts or classifications, or are otherwise subject to objection under the Bankruptcy Code or other applicable law.

As described in detail below, the Plan contemplates the establishment of a Final Administrative Claim Bar Date, pursuant to the Confirmation Order. The projected recoveries set forth in the Plan are based on certain assumptions, including the Debtors' estimates of the Claims that will eventually be Allowed in various Classes. There is no guarantee that the ultimate amount of each of such categories of Claims will correspond to the Debtors' estimates.

(f) *The Wind-down of the Estates*

Following the sale of substantially all of the Debtors' assets, the Debtors are focused principally on winding down their businesses and preserving cash held in the Estates. The Debtors' Retained Assets currently consist of, among other things, Cash, certain deposits, prepayments, credits and refunds, insurance policies or rights to proceeds thereof, and certain Causes of Action. This Plan provides for the Debtors' Retained Assets already liquidated or to be liquidated over time and the proceeds thereof to be distributed to holders of Allowed Claims in accordance with the terms of the Plan. The Wind-Down Administrator will effect such liquidation and distribution. The Debtors will be dissolved as soon as practicable after the Effective Date.

ARTICLE IV.
CONFIRMATION AND VOTING PROCEDURES

4.1 Confirmation Procedure. On _____, 2018, the Bankruptcy Court entered the Interim Approval and Procedures Order conditionally approving the combined Disclosure Statement and Plan for solicitation purposes only and authorizing the Debtors to solicit votes to accept or reject the Plan. The Confirmation Hearing has been scheduled for _____, 2018 at _____(prevailing Eastern Time) at the Bankruptcy Court, 824 North Market Street, 5th Floor, Courtroom 6, Wilmington, Delaware 19801 to consider (a) final approval of the combined Disclosure Statement and Plan as providing adequate information pursuant to section 1125 of the Bankruptcy Code and (b) confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code. The Confirmation Hearing may be adjourned from time to time by the Debtors without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by filing a notice with the Bankruptcy Court.

4.2 Procedure for Objections. Any objection to final approval of the combined Disclosure Statement and Plan as providing adequate information pursuant to section 1125 of the Bankruptcy Code and/or confirmation of the Plan must be made in writing and filed with the

Bankruptcy Court and served on (a) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP (Attn: M. Blake Cleary, Sean T. Greecher and Ryan M. Bartley); (b) counsel to Wells Fargo, Richards, Layton & Finger, P.A., 920 North King Street, One Rodney Square, Wilmington, Delaware 19801 (Attn: John H. Knight) and Pillsbury Winthrop Shaw Pittman LLP, Four Embarcadero Center, 22nd Floor, San Francisco, CA 94111-5998 (Attn: M. David Minnick); (c) counsel to the Committee, Kilpatrick Townsend & Stockton LLP, 1114 Ave. of the Americas, New York, New York 10036 (Attn: David M. Posner and Gianfranco Finizio), Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, Delaware 19899 (Attn: Derek C. Abbott); and (d) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane M. Leamy); in each case, by no later than _____, 2018 at _____ (prevailing Eastern Time). Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court at the Confirmation Hearing.

4.3 Requirements for Confirmation. The Bankruptcy Court will confirm the Plan only if it meets all the applicable requirements of section 1129 of the Bankruptcy Code. Among other requirements, the Plan (a) must be accepted by all Impaired Classes of Claims or Interests or, if rejected by an Impaired Class, the Plan must not “discriminate unfairly” against, and be “fair and equitable” with respect to, such Class; and (b) must be feasible. The Bankruptcy Court must also find that: (i) the Plan has classified Claims and Interests in a permissible manner; (ii) the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith.

4.4 Classification of Claims and Interests.

Section 1123 of the Bankruptcy Code provides that a plan must classify the claims and interests of a debtor’s creditors and equity interest holders. In accordance with section 1123 of the Bankruptcy Code, the Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than those claims which pursuant to section 1123(a)(1) of the Bankruptcy Code need not be and have not been classified). The Debtors also are required, under section 1122 of the Bankruptcy Code, to classify Claims and Interests into Classes that contain Claims or Interests that are substantially similar to the other Claims or Interests in such Class.

The Bankruptcy Code also requires that a plan provide the same treatment for each claim or interest of a particular class unless the claim holder or interest holder agrees to a less favorable treatment of its claim or interest. The Debtors believe that the Plan complies with such standard. If the Bankruptcy Court finds otherwise, however, it could deny confirmation of the Plan if the holders of Claims or Interests affected do not consent to the treatment afforded them under the Plan.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim also is placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

The Debtors believe that the Plan has classified all Claims and Interests in compliance with the provisions of section 1122 of the Bankruptcy Code and applicable case law. It is possible that a holder of a Claim or Interest may challenge the Debtors' classification of Claims or Interests and that the Bankruptcy Court may find that a different classification is required for the Plan to be confirmed. If such a situation develops, the Debtors intend, in accordance with the terms of the Plan, to make such permissible modifications to the Plan as may be necessary to permit its confirmation. Any such reclassification could adversely affect holders of Claims by changing the composition of one or more Classes and the vote required of such Class or Classes for approval of the Plan.

EXCEPT AS SET FORTH IN THE PLAN, UNLESS SUCH MODIFICATION OF CLASSIFICATION MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM AND REQUIRES RESOLICITATION, ACCEPTANCE OF THE PLAN BY ANY HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER ULTIMATELY IS DEEMED TO BE A MEMBER.

The amount of any Impaired Claim that ultimately is Allowed by the Bankruptcy Court may vary from any estimated Allowed amount of such Claim and, accordingly, the total Claims that are ultimately Allowed by the Bankruptcy Court with respect to each Impaired Class of Claims may also vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the actual recovery ultimately received by a particular holder of an Allowed Claim may be adversely or favorably affected by the aggregate amount of Claims Allowed in the applicable Class. Additionally, any changes to any of the assumptions underlying the estimated Allowed amounts could result in material adjustments to recovery estimates provided herein and/or the actual distribution received by Creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors' views as of the date hereof only.

The classification of Claims and Interests and the nature of distributions to members of each Class are summarized herein. The Debtors believe that the consideration, if any, provided under the Plan to holders of Claims reflects an appropriate resolution of their Claims taking into account the differing nature and priority (including applicable contractual subordination) of such Claims and Interests. The Bankruptcy Court must find, however, that a number of statutory tests are met before it may confirm the Plan. Many of these tests are designed to protect the interests of holders of Claims or Interests who are not entitled to vote on the Plan, or do not vote to accept the Plan, but who will be bound by the provisions of the Plan if it is confirmed by the Bankruptcy Court.

4.5 Impaired Claims or Interests.

Pursuant to the provisions of the Bankruptcy Code, only classes of claims or interests that are "impaired" (as defined in section 1124 of the Bankruptcy Code) under a plan may vote to accept or reject such plan. Generally, a claim or interest is impaired under a plan if the holder's legal, equitable or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an impaired class do not receive or retain any property under a plan on

account of such claims or interests, such impaired class is deemed to have rejected such plan under section 1126(g) of the Bankruptcy Code and, therefore, such holders are not entitled to vote on such plan.

Under the Plan, only holders of Claims in Class 3 are Impaired and are entitled to vote on the Plan. Under the Plan, holders of Claims or Interests in Classes 4-6 are Impaired and will not receive or retain any property under the Plan on account of such Claims or Interests and, therefore, are not entitled to vote on the Plan and deemed to reject the Plan. Under the Plan, holders of Claims in Classes 1 and 2 are Unimpaired and, therefore, not entitled to vote on the Plan and are deemed to accept the Plan.

ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASS 3.

4.6 Confirmation Without Necessary Acceptances; Cramdown

In the event that any impaired class of claims or interests does not accept a plan, a debtor nevertheless may move for confirmation of the plan. A plan may be confirmed, even if it is not accepted by all impaired classes, if the plan has been accepted by at least one impaired class of claims, and the plan meets the “cramdown” requirements set forth in section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code requires that a court find that a plan (a) “does not discriminate unfairly” and (b) is “fair and equitable,” with respect to each non-accepting impaired class of claims or interests. Here, because holders of Claims and Interests in Classes 4-6 are deemed to reject the Plan, the Debtors will seek confirmation of the Plan from the Bankruptcy Court by satisfying the “cramdown” requirements set forth in section 1129(b) of the Bankruptcy Code. The Debtors believe that such requirements are satisfied, as no holder of a Claim or Interest junior to those in Classes 4-6 will receive any property under the Plan.

A plan does not “discriminate unfairly” if (a) the legal rights of a nonaccepting class are treated in a manner that is consistent with the treatment of other classes whose legal rights are similar to those of the nonaccepting class and (b) no class receives payments in excess of that which it is legally entitled to receive for its claims or interests. The Debtors believe that, under the Plan, all Impaired Classes of Claims or Interests are treated in a manner that is consistent with the treatment of other Classes of Claims or Interests that are similarly situated, if any, and no Class of Claims or Interests will receive payments or property with an aggregate value greater than the aggregate value of the Allowed Claims or Allowed Interests in such Class. Accordingly, the Debtors believe that the Plan does not discriminate unfairly as to any Impaired Class of Claims or Interests.

The Bankruptcy Code provides a nonexclusive definition of the phrase “fair and equitable.” In order to determine whether a plan is “fair and equitable,” the Bankruptcy Code establishes “cram down” tests for secured creditors, unsecured creditors and equity holders, as follows:

- (a) Secured Creditors. Either (i) each impaired secured creditor retains its liens securing its secured claim and receives on account of its secured claim deferred Cash payments having a present value equal to the amount of its allowed secured claim, (ii) each

impaired secured creditor realizes the “indubitable equivalent” of its allowed secured claim or (iii) the property securing the claim is sold free and clear of liens with such liens to attach to the proceeds of the sale and the treatment of such liens on proceeds to be as provided in clause (i) or (ii) above.

(b) Unsecured Creditors. Either (i) each impaired unsecured creditor receives or retains under the plan property of a value equal to the amount of its allowed claim or (ii) the holders of claims and interests that are junior to the claims of the dissenting class will not receive any property under the plan.

(c) Equity Interests. Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greatest of the fixed liquidation preference to which such holder is entitled, the fixed redemption price to which such holder is entitled or the value of the interest or (ii) the holder of an interest that is junior to the nonaccepting class will not receive or retain any property under the plan.

As discussed above, the Debtors believe that the distributions provided under the Plan satisfy the absolute priority rule, where required.

4.7 Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors (unless such liquidation or reorganization is proposed in the Plan). Inasmuch as the Debtors’ assets have principally been liquidated and the Plan provides for the distribution of all of the Cash proceeds of the Debtors’ assets to holders of Claims that are Allowed as of the Effective Date in accordance with the Plan, for purposes of this test, the Debtors have analyzed the ability of the Wind-Down Administrator to meet its obligations under the Plan. Based on the Debtors’ analysis, the Wind-Down Administrator will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Debtors believe that the liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

4.8 Best Interests Test and Liquidation Analysis

Even if a plan is accepted by the holders of each class of claims and interests, the Bankruptcy Code requires a court to determine that such plan is in the best interests of all holders of claims or interests that are impaired by that plan and that have not accepted the plan. The “best interests” test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires a court to find either that all members of an impaired class of claims or interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to holders of each impaired class of claims and interests if the debtor was liquidated under chapter 7, a court must first determine the aggregate dollar amount that would be generated from a debtor’s assets if its chapter 11 cases were converted to chapter 7 cases under the Bankruptcy Code. To determine if a plan is in the best

interests of each impaired class, the present value of the distributions from the proceeds of a liquidation of the debtor's unencumbered assets and properties, after subtracting the amounts attributable to the costs, expenses and administrative claims associated with a chapter 7 liquidation, must be compared with the value offered to such impaired classes under the plan. If the hypothetical liquidation distribution to holders of claims or interests in any impaired class is greater than the distributions to be received by such parties under the plan, then such plan is not in the best interests of the holders of claims or interests in such impaired class.

Because the Plan is a liquidating plan, the "liquidation value" in the hypothetical chapter 7 liquidation analysis for purposes of the "best interests" test is substantially similar to the estimates of the results of the chapter 11 liquidation contemplated by the Plan. However, the Debtors believe that in a chapter 7 liquidation, there would be additional costs and expenses that the Estates would incur as a result of liquidating the Estates in a chapter 7 case.

As noted herein, Wells Fargo has a security interest in or lien on the Retained Assets, and would be entitled to the proceeds of the Retained Assets upon liquidation. Therefore, no other creditors would be entitled to a distribution in a Chapter 7 proceeding.

The costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as the costs of counsel and other professionals retained by the trustee. The Debtors believe such amount would exceed the amount of expenses that would be incurred in implementing the Plan and winding up the affairs of the Debtors. Conversion also would likely delay the liquidation process and ultimately distribution of the Retained Assets. The Estates would also be obligated to pay all unpaid expenses incurred by the Debtors during the Chapter 11 Cases (such as compensation for professionals) that are allowed in the chapter 7 cases. Ultimately, Wells Fargo would need to consent to the usage of its cash collateral to fund such a chapter 7 process, and there is no guarantee that it would do so. If such consent was not forthcoming, a conversion to chapter 7 would serve only to increase the amount of claims against the Debtors that would not be paid—both in terms of currently incurred and unpaid administrative and priority claims, as well as any costs incurred in administering the chapter 7 case.

Accordingly, the Debtors believe that holders of Allowed Claims would receive less than anticipated under the Plan if the Chapter 11 Cases were converted to chapter 7 cases, and therefore, the classification and treatment of Claims and Interests in the Plan complies with section 1129(a)(7) of the Bankruptcy Code.

4.9 Acceptance of the Plan

The rules and procedures governing eligibility to vote on the Plan, solicitation of votes, and submission of ballots are set forth in the Interim Approval and Procedures Order.

In order for the Plan to be accepted by an Impaired Class of Claims, a majority in number and two-thirds in dollar amount of the Claims voting in such Class must vote to accept the Plan. At least one Voting Class, excluding the votes of insiders, must actually vote to accept the Plan.

IF YOU ARE ENTITLED TO VOTE ON THE PLAN, YOU ARE URGED TO COMPLETE, DATE, SIGN AND PROMPTLY MAIL THE BALLOT YOU RECEIVE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY AND TO IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE HOLDER. IF YOU ARE A HOLDER OF A CLAIM ENTITLED TO VOTE ON THE PLAN AND YOU DID NOT RECEIVE A BALLOT, YOU RECEIVED A DAMAGED BALLOT OR YOU LOST YOUR BALLOT OR IF YOU HAVE ANY QUESTIONS CONCERNING THE PLAN OR PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE SOLICITATION AND CLAIMS AGENT AT (646) 282-2500. THE SOLICITATION AND CLAIMS AGENT IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

ARTICLE V.

CERTAIN RISK FACTORS TO BE CONSIDERED PRIOR TO VOTING

THE PLAN AND ITS IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET FORTH IN THE PLAN AND THE DOCUMENTS DELIVERED TOGETHER HERewith OR REFERRED TO OR INCORPORATED BY REFERENCE HEREIN, BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THESE FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

5.1 The Plan May Not Be Accepted.

The Debtors can make no assurances that the requisite acceptances to the Plan will be received, and the Debtors may need to obtain acceptances to an alternative plan of liquidation for the Debtors, or otherwise, that may not have the support of the Creditors and/or may be required to liquidate the Estates under chapter 7 of the Bankruptcy Code. There can be no assurance that the terms of any such alternative restructuring arrangement or plan would be similar to or as favorable to Creditors as those proposed in the Plan.

5.2 The Plan May Not Be Confirmed.

Even if the Debtors receive the requisite acceptances, there is no assurance that the Bankruptcy Court, which may exercise substantial discretion as a court of equity, will confirm the Plan. Even if the Bankruptcy Court determined that the combined Disclosure Statement and Plan and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for confirmation had not been met. Moreover, there can be no assurance that modifications to the combined Disclosure Statement and Plan will not be required for Confirmation or that such modifications would not necessitate the resolicitation of votes. If the Plan is not confirmed, it is unclear what distributions holders of Claims or Interests ultimately would receive with respect to their Claims or Interests in a subsequent plan of liquidation.

5.3 Distributions to Holders of Allowed Claims under the Plan May Be Inconsistent with Projections.

Projected distributions are based upon good faith estimates of the total amount of Claims ultimately Allowed and the funds available for distribution. There can be no assurance that the estimated Claim amounts set forth in the Plan are correct. These estimated amounts are based on certain assumptions with respect to a variety of factors. Both the actual amount of Allowed Claims in a particular Class and the funds available for distribution to such Class may differ from the Debtors' estimates. If the total amount of Allowed Claims in a Class is higher than the Debtors' estimates, or the funds available for distribution to such Class are lower than the Debtors' estimates, the percentage recovery to holders of Allowed Claims in such Class will be less than projected.

5.4 Objections to Classification of Claims.

Section 1122 of the Bankruptcy Code requires that the Plan classify Claims and Interests. The Bankruptcy Code also provides that the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtors believe that all Claims and Interests have been appropriately classified in the Plan. To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors would seek to (i) modify the Plan to provide for whatever classification might be required for Confirmation and (ii) use the acceptances received from any holder of Claims pursuant to this solicitation for the purpose of obtaining the approval of the Class or Classes of which such holder ultimately is deemed to be a member. Any such reclassification of Claims, although subject to the notice and hearing requirements of the Bankruptcy Code, could adversely affect the Class in which such holder was initially a member, or any other Class under the Plan, by changing the composition of such Class and the vote required for approval of the Plan. There can be no assurance that the Bankruptcy Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan based upon such reclassification. Except to the extent that modification of classification in the Plan requires resolicitation, the Debtors will, in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a determination by the Bankruptcy Court that acceptance of the Plan by any holder of Claims pursuant to this solicitation will constitute a consent to the Plan's treatment of such holder, regardless of the Class as to which such holder is ultimately deemed to be a member. The Debtors believe that under the Bankruptcy Rules, they would be required to resolicit votes for or against the Plan only when a modification adversely affects the treatment of the Claim or Interest of any holder.

The Bankruptcy Code also requires that the Plan provide the same treatment for each Claim or Interest of a particular Class unless the holder of a particular Claim or Interest agrees to a less favorable treatment of its Claim or Interest. The Debtors believe that the Plan complies with the requirement of equal treatment. To the extent that the Bankruptcy Court finds that the Plan does not satisfy such requirement, the Bankruptcy Court could deny confirmation of the Plan. Issues or disputes relating to classification and/or treatment could result in a delay in the

confirmation and consummation of the Plan and could increase the risk that the Plan will not be consummated.

5.5 Failure to Consummate the Plan.

The Plan provides for certain conditions that must be satisfied (or waived) prior to Confirmation and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. As of the date of the Plan, there can be no assurance that any or all of the conditions in the Plan will be satisfied (or waived). Accordingly, there can be no assurance that the Plan will be confirmed by the Bankruptcy Court. Further, if the Plan is confirmed, there can be no assurance that the Plan will be consummated.

5.6 Allowance of Claims May Substantially Dilute the Recovery to Holders of Claims under the Plan.

There can be no assurance that the estimated Claim amounts set forth in the Plan are correct, and the actual allowed amounts of Claims may differ from the estimates. The estimated amounts are based on certain assumptions with respect to a variety of factors, including with respect to the Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Other Secured Claims. Should these underlying assumptions prove incorrect, the actual Allowed amounts of Claims may vary from those estimated herein, thereby materially reducing the recovery to the Holder of the Wells Claim under the Plan.

5.7 Plan Releases May Not Be Approved.

There can be no assurance that the releases, as provided in Article XIV of the Plan, will be granted. Failure of the Bankruptcy Court to grant such relief may result in a plan of liquidation that differs from the Plan or the Plan not being confirmed.

5.8 Certain Tax Considerations.

There are a number of material income tax considerations, risks and uncertainties associated with the plan of liquidation of the Debtors described in this combined Disclosure Statement and Plan.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. NOTHING HEREIN SHALL CONSTITUTE TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

ARTICLE VI.

TREATMENT OF UNCLASSIFIED CLAIMS

6.1 Administrative Claims. Within the time period provided in Article VII of this Plan, each Holder of an Allowed Administrative Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Administrative Claim: (a) Cash equal to the amount of such Allowed Administrative Claim; or (b) such other treatment as to which the Debtors or the Wind-Down Administrator, as applicable, and the Holder of such Allowed Administrative Claim shall have agreed upon in writing.

(a) Final Administrative Claim Bar Date. Holders of Administrative Claims accruing from the date of entry of the Interim Administrative Claim Bar Date Order through the Effective Date, other than Professional Fee Claims, shall file with the Claims Agent and serve on the Wind-Down Administrator requests for payment, in writing, together with supporting documents, substantially complying with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, **so as to actually be received on or before the Final Administrative Claim Bar Date.** Any such Claim not filed by the Final Administrative Claim Bar Date shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof. The notice of Confirmation to be delivered pursuant to Bankruptcy Rules 2002(c)(3) and 2002(f) shall set forth the Final Administrative Claim Bar Date and shall constitute notice of such Bar Date. The Wind-Down Administrator shall have ninety (90) days (or such longer period as may be allowed by order of the Bankruptcy Court) following the Final Administrative Claim Bar Date to review and object to Administrative Claims.

(b) Bar Date for Applications for Professional Fees. Professional Fee Claims are Administrative Claims and all applications for allowance and payment of Professional Fee Claims shall be Filed with the Bankruptcy Court on or before the Professional Fee Bar Date. If an application for a Professional Fee Claim is not Filed by the Professional Fee Bar Date, such Professional Fee Claim shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof. The notice of Confirmation to be delivered pursuant to Bankruptcy Rules 2002(c)(3) and 2002(f) shall set forth the Professional Fee Bar Date and shall constitute notice of such Bar Date.

(c) For the avoidance of doubt, (i) the deadline for filing requests for payment of 503(b)(9) Claims was the General Claims Bar Date and (ii) the deadline for filing requests for payment of Administrative Claims that arose at any time on or after the Petition Date through and including the date of entry of the Interim Administrative Claim Bar Date Order is the Interim Administrative Claim Bar Date, and neither deadline is extended by this Combined Disclosure Statement and Plan nor the Confirmation Order.

6.2 U.S. Trustee Fees. All fees payable on or before the Effective Date pursuant to section 1930 of Title 28 of the United States Code shall be paid by the Debtors on or before the Effective Date. From and after the Effective Date, the Post-Effective Date Debtors shall be liable and shall pay the fees assessed against the Debtors' Estates until such time as a particular Debtor's Chapter 11 Case is closed, dismissed or converted. Notwithstanding anything to the contrary in this Plan, the U.S. Trustee shall not be required to file a proof of claim for administrative

expenses. For the avoidance of doubt, any and all U.S. Trustee Fees shall be payable solely from the Retained Assets.

6.3 Priority Tax Claims. Within the time period provided in Article X of this Plan, each Holder of an Allowed Priority Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Priority Tax Claim: (a) Cash equal to the amount of such Allowed Priority Tax Claim; or (b) such other treatment as to which the Debtors or the Wind-Down Administrator, as applicable, and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing.

ARTICLE VII.

TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

Unless the Holder of an Allowed Claim and the Debtors or the Wind-Down Administrator, as applicable, agree to a different treatment, each Holder of an Allowed Claim shall receive the following Distributions in accordance with Article X of the Plan:

7.1 Class 1: Priority Non-Tax Claims. Each Holder of an Allowed Priority Non-Tax Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 1 Claim: (A) Cash equal to the amount of such Allowed Priority Non-Tax Claim; or (B) such other treatment which the Debtors or the Wind-Down Administrator, as applicable, and the Holder of such Allowed Priority Non-Tax Claim have agreed upon in writing.

7.2 Class 2: Other Secured Claims. Each Holder of an Allowed Other Secured Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 2 Claim: (A) return of the collateral securing such Allowed Other Secured Claim; or (B) Cash equal to the amount of such Allowed Other Secured Claim; or (C) such other treatment which the Debtors or the Wind-Down Administrator, as applicable, and the Holder of such Allowed Other Secured Claim have agreed upon in writing.

7.3 Class 3: Wells Claims. Wells Fargo shall receive, in full satisfaction and discharge of the Wells Claims and its consent to the use of the Wind-Down Assets to pay Allowed Claims in accordance with the Plan, (1) treatment as a Released Party under the Plan, (2) Distributions of any Excess Cash after satisfaction in full of such Claims to be paid in accordance with the Plan, (3) the right to the return of any proceeds of the Letters of Credit, and (4) to treatment of the Wells Deficiency Claim as an Allowed General Unsecured Claim. Notwithstanding the above Wells Fargo retains its rights under the Wells Credit Documents and related liens (although its rights thereunder shall be subordinate to the obligations specified in the Plan including but not limited to the Distribution of the Estate Proceeds in accordance with the Waterfall set forth in Section 10.5 of this Plan).

7.4 Class 4: General Unsecured Claims. Holders of General Unsecured Claims shall receive no Distribution on account of such General Unsecured Claims.

7.5 Class 5: Intercompany Claims. Holders of Intercompany Claims shall receive no Distribution on account of their Intercompany Claims.

7.6 Class 6: Interests. On the Effective Date, all Interests shall be deemed canceled, extinguished and discharged and of no further force or effect, and the Holders of Interests shall not be entitled to receive or retain any property on account of such Interests.

7.7 Reservation of Rights Regarding Claims and Interests. Except as otherwise explicitly provided in the Plan, nothing shall affect the Debtors' rights and defenses, both legal and equitable, with respect to any Claims or Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

ARTICLE VIII.
ACCEPTANCE OR REJECTION OF THE PLAN

8.1 Class Entitled to Vote. Because Claims in Class 3 are Impaired and Holders thereof will receive or retain property or an interest in property under the Plan, only a Holder of Class 3 Claims shall be entitled to vote to accept or reject the Plan.

8.2 Acceptance by Impaired Classes of Claims or Interests. In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan. In accordance with section 1126(d) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Interests shall have accepted the Plan if such Plan is accepted by Holders of at least two-thirds (2/3) in amount of the Allowed Interests in such Class that have timely and properly voted to accept or reject the Plan.

8.3 Presumed Acceptance by Unimpaired Classes. Because Claims in Classes 1 and 2 are Unimpaired pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims in Classes 1 and 2 are deemed to have accepted the Plan and, therefore, Holders of Claims in Class 1 and 2 are not entitled to vote to accept or reject the Plan.

8.4 Presumed Rejections by Impaired Classes. Because Holders of General Unsecured Claims in Class 4, Holders of Intercompany Claims in Class 5 and Holders of Interests in Class 6 are not entitled to receive or retain any property under the Plan, pursuant to section 1126(g) of the Bankruptcy Code, Holders of General Unsecured Claims in Class 4, Holders of Intercompany Claims in Class 5 and Holders of Interests in Class 6 are presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

8.5 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code. To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtors reserve the right to request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the documents submitted in support thereof or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

8.6 Controversy Concerning Impairment. If a controversy arises as to whether any Claim or Interest is Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

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

ARTICLE IX.
MEANS OF IMPLEMENTING THE PLAN

9.1 Funding of Plan. The Plan will be funded by the Cash and Cash equivalents held by the Debtors and Post-Effective Date Debtors.

9.2 Post-Effective Date Debtors; Wind-Down Administrator.

(a) Post-Effective Date Debtors. The Debtors shall continue in existence after the Effective Date as the Post-Effective Date Debtors for purposes of (1) winding down the Debtors' Estates as expeditiously as reasonably possible and liquidating any non-Cash Retained Assets held by the Post-Effective Date Debtors after the Effective Date, (2) resolving any Disputed Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, and Other Secured Claims, (3) paying Allowed Claims in accordance with this Plan, (4) enforcing and prosecuting claims, interests, rights, and privileges under any Causes of Action in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith, (5) filing appropriate tax returns, and (6) administering the Plan in an efficacious manner. The Post-Effective Date Debtors shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (1) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court and (2) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Wind-Down Administrator to file motions or substitutions of parties or counsel in each such matter.

On the Effective Date, any Estate non-Cash Retained Assets shall vest in the Post-Effective Date Debtors for the purpose of liquidating the Estates and Consummating the Plan. Such Retained Assets shall be held free and clear of all Liens, Claims, and Interests of holders of Claims and Interests, except as otherwise provided in the Plan. Any distributions to be made under the Plan from such Retained Assets shall be made by the Wind-Down Administrator or its designee. The Post-Effective Date Debtors and the Wind-Down Administrator shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

(b) Wind-Down Administrator. The appointment of the Wind-Down Administrator shall be approved in the Confirmation Order, and such appointment shall be as of the Effective Date.

The Wind-Down Administrator shall act for the Post-Effective Date Debtors in the same capacity and with the same authority as applicable to a board of directors and officers, subject to the provisions hereof (and all certificates of incorporation and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the authority, power, and incumbency of the persons acting as directors and officers of the Post-Effective Date Debtors shall be deemed to have resigned, solely in their capacities as such, and the Wind-Down Administrator shall be appointed as the sole director or and the sole officer of the Post-Effective Date Debtors and shall succeed to the powers of the Post-Effective Date Debtors' directors and officers. From and after the Effective Date, the Wind-Down Administrator shall be the sole representative of, and shall act for, the Post-Effective Date Debtors. For the avoidance of doubt, the foregoing shall not limit the authority of the Post-Effective Date Debtors or the Wind-Down Administrator, as applicable, to continue the employment of any former director, manager, or officer.

The powers of the Wind-Down Administrator shall include any and all powers and authority to implement the Plan and to make distributions thereunder and wind down the Estates of the Debtors and the Post-Effective Date Debtors, as applicable, including: (1) liquidating, receiving, holding, investing, supervising, and protecting the Retained Assets of the Post-Effective Date Debtors remaining after consummation of the Sale Transaction; (2) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan; (3) making distributions as contemplated under the Plan; (4) establishing and maintaining bank accounts in the name of the Post-Effective Date Debtors; (5) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (6) paying all reasonable fees, expenses, debts, charges, and liabilities of the Post-Effective Date Debtors; (7) administering and paying taxes of the Post-Effective Date Debtors, including filing tax returns; (8) representing the interests of the Post-Effective Date Debtors before any taxing authority in all matters, including any action, suit, proceeding, or audit; and (9) exercising such other powers as may be vested in it pursuant to an order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan. In addition, the Wind-Down Administrator shall at all times enforce the terms of the Asset Purchase Agreement, including the Debtors' rights and the Purchaser's obligations thereunder.

The Wind-Down Administrator may resign at any time upon 30 days' written notice delivered to the Bankruptcy Court, provided that such resignation shall only become effective upon the appointment of a permanent or interim successor Wind-Down Administrator. Upon its appointment, the successor Wind-Down Administrator, without any further act other than the filing of a notice with the Bankruptcy Court, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Wind-Down Administrator relating to the Post-Effective Date Debtors shall be terminated.

The Wind-Down Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Wind-Down

Administrator, are necessary to assist the Wind-Down Administrator in the performance of his or her duties. The reasonable fees and expenses of such professionals shall be paid by the Post-Effective Date Debtors, upon the monthly submission of statements to the Wind-Down Administrator. The payment of the reasonable fees and expenses of the Wind-Down Administrator's retained professionals shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court.

Notwithstanding anything to the contrary herein, all fees, expenses, and disbursements of the Wind-Down Administrator in connection with the wind down and dissolution of the Debtors' Estates and the Post-Effective Date Debtors, as applicable, shall be funded from the Wind-Down Expense Reserve. For the avoidance of doubt, the Wind-Down Administrator's compensation, and the payment of Wind-Down Expenses, shall be funded from the Wind-Down Expense Reserve.

(c) Wind-Down. On and after the Effective Date, the Wind-Down Administrator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Wind-Down Administrator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

As soon as practicable after the Effective Date, the Wind-Down Administrator shall take any and all actions as the Wind-Down Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. From and after the Effective Date the Debtors (1) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (2) shall be deemed to have cancelled pursuant to this Plan all Interests, and (3) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date.

(d) Wind-Down Administrator Exculpation, Indemnification, Insurance, and Liability Limitation. The Wind-Down Administrator and the Wind-Down Protected Parties, each in their capacities as such, shall be deemed exculpated and indemnified, except for fraud, willful misconduct, or gross negligence, in all respects by the Post-Effective Date Debtors. The Wind-Down Administrator may obtain, at the expense of the Post-Effective Date Debtors, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Post-Effective Date Debtors. The Wind-Down Protected Parties may rely upon written information previously generated by the Debtors.

(e) Tax Returns. After the Effective Date, the Wind-Down Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws.

(f) Dissolution of the Post-Effective Date Debtors. Upon the Effective Date, the Post-Effective Date Debtors shall be deemed to be dissolved without any further action by the Post-Effective Date Debtors, including the filing of any documents with the secretary of state for the state in which the Post-Effective Date Debtors are formed or any other jurisdiction. The Wind-Down Administrator, however, shall have authority to take all necessary actions to dissolve the Post-Effective Date Debtors in and withdraw the Post-Effective Date Debtors from applicable states.

(g) Expenses of Wind-Down Administrator. Fees and expenses incurred by the Wind-Down Administrator shall be paid from the Wind-Down Expense Reserve in accordance with Article X below.

(h) Bonding of Wind-Down Administrator. The Wind-Down Administrator shall not be obligated to obtain a bond but may do so, in his or her sole discretion, in which case the expense incurred by such bonding shall be paid by the Wind-Down Expense Reserve.

(i) Fiduciary Duties of the Wind-Down Administrator. Pursuant to this Plan, the Wind-Down Administrator shall act in a fiduciary capacity on behalf of the interests of all Holders all Claims and Interests that will receive Distributions pursuant to the terms of this Plan.

9.3 Cancellation of Instruments and Stock; Reduction in Authorized Shares and Issuance of Single Share to Wind-Down Administrator. On the Effective Date, (i) other than as provided with respect to the treatment of the Wells Claim in Class 3, all instruments evidencing or creating any indebtedness or obligation of the Debtors, except such instruments that are authorized or issued under this Plan, shall be canceled and extinguished and (ii) Wells Fargo shall retain its Wells Credit Documents and liens; provided, however, that Wells Fargo's rights in connection therewith shall be subordinate to the obligations specified in the Plan, including but not limited to the Distribution of the Estate proceeds in accordance with the Waterfall set forth in Section 10.5 of this Plan. Additionally, as of the Effective Date, all Interests, and any and all warrants, options, rights or interests with respect to Interests that have been issued, could be issued or that have been authorized to be issued but that have not been issued, shall be deemed canceled and extinguished without any further action of any party. The Holders of, or parties to, the canceled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to this Plan. Following the Effective Date, the number of authorized shares of each class of stock in the Post-Effective Debtor shall be reduced to one hundred (100) shares, and each Post-Effective Date Debtor shall be deemed to have issued one (1) share of common stock to the Wind-Down Administrator, which shall be held solely for purposes of allowing the Wind-Down Administrator to approve any corporate action necessary to implement the terms of the Plan that would otherwise require the approval of the shareholders of the Post-Effective Date Debtor.

9.4 Operating Reports. Prior to the Effective Date, the Debtors shall timely File all reports, including without limitation, monthly operating reports required by the Bankruptcy Court, Bankruptcy Code, Bankruptcy Rules or the Office of the United States Trustee. On and after the

Effective Date, the Wind-Down Administrator shall timely File all reports, including without limitation, quarterly operating reports as required by the Bankruptcy Court, Bankruptcy Code, Bankruptcy Rules or the Office of the United States Trustee until entry of an order closing or converting the Chapter 11 Cases.

9.5 Post-Effective Date Professional Fees and Expenses. Professionals that perform post-Effective Date services for the Wind-Down Administrator shall provide monthly invoices to the Wind-Down Administrator describing the services rendered, and the fees and expenses incurred in connection therewith. Post-Effective Date professionals of the Wind-Down Administrator who timely tender such invoices shall be paid by the Wind-Down Administrator for such services, subject to Article X herein, not less than ten (10) days after the submission to the Wind-Down Administrator by such professionals of said monthly invoices, unless, within such ten (10) day period, a written objection to such payment is made by the Wind-Down Administrator. To the extent a written objection to such professional's monthly invoice cannot be resolved by the professional and the Wind-Down Administrator, payment of such invoice shall be made only upon Final Order of the Bankruptcy Court.

9.6 Disposition of Books and Records. After the Effective Date, the Debtors shall transfer all of the Debtors' books and records in their possession, if any, relating to the conduct of the Debtors' business prior to the Effective Date to the Wind-Down Administrator. From and after the Effective Date, the Wind-Down Administrator shall continue to preserve and maintain all documents and electronic data transferred to the Wind-Down Administrator by the Debtors and the Wind-Down Administrator shall not destroy or otherwise abandon any such documents and records (in electronic or paper format) absent further order of the Court after a hearing upon thirty (30) days' notice to parties-in-interest.

9.7 Corporate Action. On the Effective Date, all matters expressly provided for under this Plan that would otherwise require approval of the shareholders or directors of one or more of the Debtors, including but not limited to, the dissolution or merger of any of the Debtors, shall be deemed to have occurred and shall be in effect upon the Effective Date pursuant to the applicable general corporation law of the states in which the Debtors are incorporated without any requirement of action by the shareholders or directors of the Debtors.

ARTICLE X.
PROVISIONS GOVERNING RESERVES AND DISTRIBUTIONS

10.1 Establishment of Reserves.

(a) On the Effective Date and prior to making any Distributions, the Wind-Down Administrator shall establish the Disputed Administrative and Priority Claims Reserve and shall transfer thereto the amount of Cash as deemed necessary by the Wind-Down Administrator to fund the Disputed Administrative and Priority Claims Reserve in accordance with the provisions of the Plan.

(b) On the Effective Date and prior to making any Distributions, the Wind-Down Administrator shall establish the Wind-Down Expense Reserve, and shall transfer thereto

the amount of Cash as deemed necessary to fund the expenses of the Wind-Down Administrator in accordance with the provisions of the Plan.

10.2 Funding of Reserves. With respect to the Disputed Administrative and Priority Claims Reserve, the amount of Cash deposited into such reserve shall be equal to the amount of Cash that Holders of Disputed Administrative and Priority Claims in each reserve would be entitled under this Plan if such Disputed Claims were Allowed Claims in the amount of such Disputed Claim or such lesser amount as authorized in Section 11.2 of this Plan. With respect to the Wind-Down Expense Reserve, the amount of Cash deposited into such reserve shall be equal to the Wind-Down Expenses.

10.3 Disbursing Agent. The Wind-Down Administrator may employ or contract with other Persons or Entities to assist in or make the Distributions required by this Plan.

10.4 Distributions by Wind-Down Administrator. The Wind-Down Administrator shall make periodic and final Distributions as provided in this Article X, except that the Wind-Down Administrator shall reserve such amounts as are necessary to maintain the Reserves in accordance with the terms of this Plan. The Wind-Down Administrator may withhold from amounts distributable to any Person any and all amounts, determined in the Wind-Down Administrator's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

The Wind-Down Administrator shall require any Holder of an Allowed Claim or other distributee to furnish to the Wind-Down Administrator in writing an Employer Identification Number or Taxpayer Identification Number as assigned by the Internal Revenue Service and the Wind-Down Administrator may condition any Distribution to any Holder of an Allowed Claim or other distributee upon receipt of such identification number. If the Employer Identification Number or Taxpayer Identification Number are not provided by the required deadline established by the Wind-Down Administrator, which shall be no less than 30 days after the date that the Wind-Down Administrator makes such request, the Claim of any such Holder may be expunged and no distribution will be issued by the Wind-Down Administrator to such Holder or distributee.

10.5 Waterfall. The Wind-Down Administrator shall cause the proceeds of the Retained Assets, net of the Wind-Down Expense Reserve, to be distributed to Holders of Allowed Claims as follows (to the extent that such Claims have not been paid on or prior to the Effective Date):

- (a) first, to satisfy all Allowed Administrative Claims;
- (b) second, to satisfy all Allowed Other Secured Claims and Allowed Priority Tax Claims;
- (c) third, to satisfy the Allowed Priority Non-Tax Claims; and
- (d) fourth, the distribution of Excess Cash on account of the Wells Claim.

10.6 Timing of Distributions.

(a) Subject to the waterfall set forth in section 10.5, the Debtors shall pay each Allowed Administrative Claim, Allowed Priority Tax Claim, Allowed Priority Non-Tax Claim, and Allowed Other Secured Claim as soon as is reasonably practicable after the Effective Date of this Plan or and on the later of:

- (i) the date on which such Claim becomes an Allowed Claim by Final Order,
- (ii) the date on which, in the ordinary course of business, such Allowed Claim becomes due, or
- (iii) such other date as may be agreed upon by the Debtors or the Wind-Down Administrator, as applicable, and the Holder of such Allowed Claim.

Subject to the waterfall set forth in section 10.5, the Wind-Down Administrator may make periodic Distributions thereafter to Wells Fargo, in his or her discretion.

(b) Any Cash remaining in the Reserves after all Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Other Secured Claims have been resolved, and paid, as appropriate, and the Wind-Down Expenses have been fully paid, shall be available for Distributions to Wells Fargo in accordance with the Waterfall.

(c) Once all Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Other Secured Claims have been resolved, the Disputed Administrative, Priority Tax, Priority Non-Tax, and Other Secured Claims Reserve shall be dissolved. Once all Wind-Down Expenses have been paid in full in Cash and the Post-Effective Date Debtors have been dissolved, the Wind-Down Expense Reserve shall be dissolved.

(d) After all Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Priority Non-Tax Claims, and Disputed Other Secured Claims have been resolved and paid, if any non-Cash Retained Assets remain property of the Post-Effective Date Debtors, the Wind-Down Administrator shall assign or transfer such Retained Assets in satisfaction of the Wells Claim in accordance with section 10.5(d) of this Plan.

10.7 Distributions Upon Allowance of Disputed Claims. The Holder of a Disputed Claim that becomes an Allowed Claim subsequent to the Effective Date shall, subject to sections 10.5 and 10.6, receive a Distribution, in accordance with Article VII of the Plan, from the applicable Reserve as soon as reasonably practicable following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Final Order or by agreement of the parties. Such Distributions shall be made in accordance with the Plan based upon the Distributions that would have been made to such Holder under the Plan if the Disputed Claim had been an Allowed Claim on or prior to the Effective Date. No Holder of a Disputed Claim shall have any Claim against the applicable Reserve, the Wind-Down Administrator, the Debtors, the Post-Effective Date Debtors or the Estates with respect to such Claim until such Disputed Claim becomes an Allowed Claim, and no Holder of a Disputed Claim shall have any right to interest, dividends or other Distributions on such Disputed Claim except as provided in the Plan.

10.8 Undeliverable and Unclaimed Distributions.

(a) Holding Undeliverable and Unclaimed Distributions. If the Distribution to any Holder of an Allowed Claim is returned to the Wind-Down Administrator as undeliverable or is otherwise unclaimed, no additional Distributions shall be made to such Holder unless and until the Wind-Down Administrator is notified in writing of such Holder's then-current address. Nothing contained in this Plan shall require the Debtors or the Wind-Down Administrator to attempt to locate any Holder of an Allowed Claim.

(b) After Distributions Become Deliverable. The Wind-Down Administrator shall make all Distributions that have become deliverable or have been claimed on and after the Distribution Date as soon as reasonably practicable after such Distribution has become deliverable or has been claimed.

(c) Failure to Claim Unclaimed/Undeliverable Distributions. Notwithstanding sections 10.8(a), any Holder of an Allowed Claim that does not assert a claim pursuant to this Plan for an undeliverable or unclaimed Distribution within three (3) months after the Distribution Date shall be deemed to have forfeited its right to such undeliverable or unclaimed Distribution and any subsequent Distribution on account of its Allowed Claim and shall be forever barred and enjoined from asserting any such Claim for an undeliverable or unclaimed Distribution or any subsequent Distribution on account of its Allowed Claim against the Debtors, their Estates, the Post-Effective Date Debtors or their property. In such cases, Unclaimed Distributions shall re-vest in the Post-Effective Date Debtors within the time periods provided in this Article X of the Plan, free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary.

10.9 Interest on Claims. Unless otherwise specifically provided for in this Plan, the Confirmation Order, or required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim.

10.10 No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim will receive, in respect of such Claim, Distributions under this Plan in excess of the Allowed amount of such Claim.

10.11 Means of Cash Payment. Cash payments made pursuant to this Plan shall be in U.S. funds, by the means, including by check or wire transfer, determined by the Disbursing Agent.

10.12 Delivery of Distribution. Except as otherwise set forth in this Plan, Distributions to Holders of Allowed Claims shall be made (a) at the addresses set forth on the proofs of Filed by such Holders (or at the last known addresses of such Holders if no proof of Claim is Filed or if the Disbursing Agent has been notified of a change of address), (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent, or (c) if no proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address, at the addresses reflected in the Schedules, if any.

10.13 Record Date for Distributions. The Disbursing Agent will have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein

to recognize and distribute only to those Holders of Allowed Claims that are Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date. The Disbursing Agent shall instead be entitled to recognize and deal for all purposes under this Plan with only those record holders stated on the official claims register as of the close of business on the Distribution Record Date.

10.14 No Distributions Pending Allowance. Notwithstanding any other provision of this Plan, no payments or Distributions by the Disbursing Agent shall be made with respect to all or any portion of a Disputed Claim unless and until all Objections to such Disputed Claim have been settled or withdrawn by agreement of the parties or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim; provided however, that the Debtors, with the consent of Wells Fargo, or the Wind-Down Administrator, may in their discretion, pay any undisputed portion of a Disputed Claim.

10.15 Withholding and Reporting Requirements. In connection with this Plan and all Distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be reasonably necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any other provision of this Plan, each Holder of an Allowed Claim that is to receive a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding and other tax obligations, on account of such Distribution.

10.16 Setoffs. The Debtors or the Wind-Down Administrator, as applicable, may, but shall not be required to, setoff against any Claim or Interest and the payment or other Distribution to be made pursuant to this Plan in respect of such Claim, claims of any nature whatsoever that a Debtor may have against the Holder of such Claim; provided, however, neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Disbursing Agent of any such claim that the Disbursing Agent may have against such Holder, unless otherwise agreed to in writing by such Holder and the Debtors or the Wind-Down Administrator, as applicable.

10.17 De Minimis Distributions. Notwithstanding any provision in this Plan to the contrary, no payment of less than fifty dollars (\$50.00) shall be made on account of any Allowed Claim. Any Distribution not made pursuant to this section 10.17 shall be treated as an Unclaimed Distributions and are subject to section 10.8 hereof, without regard to any time limits in section 10.8(c).

10.18 Extensions of Time. The Wind-Down Administrator may File a motion to extend any deadlines for the making of Distributions or the establishment of Reserves hereunder prior to the occurrence of any such deadlines, to the extent necessary, which deadlines shall be deemed automatically extended after the Filing of such motion, and pending the entry of an order by the Bankruptcy Court extending any such deadline.

10.19 Payments of Self-Insured Employee Medical and Dental Benefits Under Cash Collateral Order. Notwithstanding anything to the contrary in this Plan, the Debtors and Wind-Down Administrator may, consistent with the Cash Collateral Order and Employee Wage and Benefits Motion and Employee Wage and Benefits Orders, but subject to the availability of funds after accounting for the Allowed amounts of Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, and the Reserves required to be funded under the Plan, make payments on account of valid reimbursement obligations under the Debtors' self-insured medical, prescription drug, and dental benefits programs.

10.20 Residual Assets. After final distributions have been made in accordance with the terms of the Plan, if there is any remaining Cash, the Wind-Down Administrator shall remit such Cash to Wells Fargo.

ARTICLE XI.

PROVISIONS FOR CLAIMS OBJECTIONS AND ESTIMATION OF CLAIMS

11.1 Claims Objection Deadline; Prosecution of Claims Objections. Except as otherwise provided for in this Plan, as soon as reasonably practicable after the Effective Date, but in no event later than the Claims Objection Deadline (unless extended, after notice to those Creditors who requested notice in accordance with Bankruptcy Rule 2002, by an Order of the Bankruptcy Court), the Wind-Down Administrator shall, and Wells Fargo may, File Objections to Claims and serve such objections upon the Holders of each of the Claims to which Objections are made. The Wind-Down Administrator shall be authorized to resolve all Disputed Claims by withdrawing or settling such Objections thereto with the consent of Wells Fargo, or by litigating to judgment in the Bankruptcy Court, or such other court having competent jurisdiction, the validity, nature, and/or amount thereof. If the Wind-Down Administrator agrees with the Holder of a Disputed Claim to compromise, settle, and/or resolve a Disputed Claim by granting such Holder an Allowed Claim, then the Wind-Down Administrator, with the consent of Wells Fargo, may compromise, settle, and/or resolve such Disputed Claim without Bankruptcy Court approval.

11.2 Estimation of Claims. For any purposes in these Chapter 11 Cases, including effectuating Distributions to Holders of Allowed Claims in accordance with the Plan, the Wind-Down Administrator may, at any time and regardless of whether an objection to a Disputed Claim has been brought, request that the Bankruptcy Court estimate, set, fix or liquidate the amount of such Disputed Claims pursuant to section 502(c) of the Bankruptcy Code. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation or a hearing concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any Contingent or unliquidated Claim, the amount so estimated shall constitute the maximum allowed amount of such Claim for purposes of Distribution under this Plan and establishment of any necessary Reserve. In lieu of estimating, fixing or liquidating the amount of any Disputed Claims, the Bankruptcy Court may determine the amount to be reserved for such Disputed Claims (singularly or in the aggregate), or such amount may be fixed by an agreement in writing by and between the Wind-Down Administrator and the Holder of such Disputed Claims. If the estimated amount constitutes the maximum allowed amount of such Claim, the Debtors or the

Wind-Down Administrator, as applicable, may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

ARTICLE XII.
EXECUTORY CONTRACTS AND LEASES

12.1 Executory Contracts and Unexpired Leases Deemed Rejected. On the Effective Date, all of the Debtors' Executory Contracts and unexpired leases will be deemed rejected as of the Effective Date in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except to the extent: (a) the Debtors previously have assumed, assumed and assigned or rejected such Executory Contract or unexpired lease, or (b) prior to the Effective Date, the Debtors have Filed a motion to assume, assume and assign, or reject an Executory Contract or unexpired lease on which the Bankruptcy Court has not ruled. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all rejections of Executory Contracts and unexpired leases pursuant to this Article and sections 365(a) and 1123 of the Bankruptcy Code.

12.2 Bar Date For Rejection Damages. If the rejection by the Debtors of an Executory Contract or an unexpired lease pursuant to section 12.1 of this Plan results in damages to the other party or parties to such Executory Contract or unexpired lease, a Claim for such damages arising from such rejection shall not be enforceable against the Debtors or their properties or agents, successors, or assigns, unless a Proof of Claim is filed with the Claims Agent **so as to actually be received on or before** the Rejection Bar Date. For the avoidance of doubt, this Plan shall not serve to extend the deadline to submit any Rejection Claim to the extent that the party asserting such Rejection Claim was subject to a deadline earlier than the Rejection Bar Date.

ARTICLE XIII.
CONFIRMATION AND CONSUMMATION OF THE PLAN

13.1 Conditions Precedent to the Effective Date. Each of the following is a condition precedent to the occurrence of the Effective Date:

- (a) the Confirmation Order, in a form and substance reasonably acceptable to the Debtors and Wells Fargo, shall have been entered by the Bankruptcy Court;
- (b) all documents, instruments, and agreements provided under, or necessary to implement, this Plan shall have been executed and delivered by the applicable parties and shall be in a form and substance reasonably acceptable to the Debtors and Wells Fargo; and
- (c) the Effective Date shall have occurred by January 17, 2019.

13.2 Notice of Effective Date. On or before five (5) Business Days after the Effective Date, the Wind-Down Administrator shall mail or cause to be mailed to all Holders of Claims a notice that informs such Persons of (a) the entry of the Confirmation Order, (b) the occurrence of the

Effective Date, (c) notice of the Final Administrative Claim Bar Date, Professional Fee Bar Date and Rejection Bar Date and (d) such other matters as the Wind-Down Administrator deems appropriate or as may be ordered by the Bankruptcy Court.

13.3 Waiver of Conditions Precedent to the Effective Date. The Debtors, subject to consent of Wells Fargo, which consent shall not be unreasonably withheld, may at any time, without notice or authorization of the Bankruptcy Court, waive in writing any or all of the conditions precedent to the Effective Date set forth in this Article, whereupon the Effective Date shall occur without further action by any Person, provided, however, that the condition specified in section 13.1(a) may not be waived. The Debtors reserve the right to assert that any appeal from the Confirmation Order shall be moot after the Effective Date of this Plan.

13.4 Effect of Non-Occurrence of Effective Date. If each of the conditions specified in this Article have not been satisfied or waived in the manner provided herein within thirty (30) calendar days after the Confirmation Date (or such later date as may be agreed to by the Debtors and Wells Fargo), then: (i) the Confirmation Order shall be vacated and of no further force or effect; (ii) no Distributions under the Plan shall be made; (iii) the Debtors and all Holders of Claims against or Interests in the Debtors shall be restored to the status quo as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; and (iv) all of the Debtors' obligations with respect to Claims and Interests shall remain unaffected by the Plan and nothing contained herein shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors, and the Plan shall be deemed withdrawn. Upon such occurrence, the Debtors shall File a written notification with the Bankruptcy Court and serve it upon such parties as the Bankruptcy Court may direct.

ARTICLE XIV.
EFFECTS OF CONFIRMATION

14.1 Exculpation and Releases.

(a) **Exculpation and Limitation of Liability.** Notwithstanding any other provision of this Plan, the Debtors, the Committee, and each of their respective Related Parties shall not have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or agents acting in such capacity, or Affiliates, or any of their successors or assigns, for any act or omission relating to, in any way, or arising from (i) these Chapter 11 Cases, (ii) formulating, negotiating or implementing this Plan, any contract, instrument, release or other agreement or document created or entered into in connection with the Plan; (iii) the Sale; (iv) any other post-petition act taken or omitted to be taken in connection with or in contemplation of the restructuring, sale or liquidation of the Debtors; (v) the solicitation of acceptances of this Plan, the pursuit of Confirmation of this Plan, the Confirmation of this Plan, the Consummation of this Plan or (vi) the administration of this Plan or the property to be distributed under this Plan, except for their gross negligence or willful

misconduct as determined by a Final Order, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations and any other applicable law or rules protecting the Debtors, the Committee, and each of their respective Related Parties from liability.

(b) **Releases by the Debtors.** Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, for good and valuable consideration, to the fullest extent permissible under applicable law, each of the Debtors, on their own behalf and as a representative of their respective Estates, shall, and shall be deemed to, completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Released Parties of and from any and all Claims, Causes of Action, obligations, suits, judgments, damages, debts, rights, remedies and liabilities of any nature whatsoever, whether liquidated or unliquidated, fixed or Contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to any of the Debtors, their respective assets, property and Estates or the Chapter 11 Cases, that may be asserted by or on behalf of any of the Debtors or their respective Estates, against any of the Released Parties.

(c) **Releases by Wells Fargo.** Subject to and upon the occurrence of the Closing Date, Wells Fargo, SG Personnel, LLC, ATC Realty Nine, Inc., and each of their respective affiliates agree to, and shall be deemed to have, released all of the Released Parties from any and all claims or causes of action, arising at any time prior to the Effective Date, whether known or unknown, relating to the Debtors, the business activities and operations of the Debtors, the debts, liabilities, obligations, equity interests in and assets of the Debtors, the ownership, management, direction, control, marketing or sale of the Debtors, the Asset Purchase Agreement, the Sale, the Plan Support Agreement, the Plan Term Sheet, this combined Disclosure Statement and Plan, or any transactions or communications among Wells Fargo and the Released Parties with respect to any of the foregoing, except to the extent necessary to enforce the claims based on the Wells Obligations in connection with recovering proceeds from the Letters of Credit. Notwithstanding the above Wells Fargo retains its rights against the Debtors under the Wells Credit Documents and related liens (although its rights thereunder shall be subordinate to the obligations specified in the Plan including but not limited to the Distribution of the Estate Proceeds in accordance with the Waterfall set forth in Section 10.5 of this Plan).

(d) **Injunction Related to Exculpation and Releases.** Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that hold, have held, or may hold a Claim or any other obligation, suit, judgment, damages, debt, right, remedy, causes of action or liability of any nature whatsoever, relating to any of the Debtors or any of their respective assets, property and Estates, that is

exculpated or released pursuant to this Article of the Plan are, and shall be, permanently, forever and completely stayed, restrained, prohibited, barred and enjoined from taking any of the following actions against the Debtors, the Post-Effective Date Debtors, the Wind-Down Administrator, the Debtors' Related Parties (with respect to the exculpation provisions), the Released Parties (with respect to the release provisions), and any of the property or assets of the Debtors or the Post-Effective Date Debtors, subject to administration under this Plan, on account of such released or exculpated liabilities, whether directly or indirectly, derivatively or otherwise, on account of or based on the subject matter of such Claims or other obligations, suits, judgments, damages, debts, rights, remedies, causes of action or liabilities:

1. commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including, without limitation, any judicial, arbitral, administrative or other proceeding) in any forum;
2. enforcing, attaching (including, without limitation, any prejudgment attachment), executing, collecting, or recovering in any manner, directly or indirectly, any judgment, award, decree, or other order;
3. creating, perfecting or enforcing, directly or indirectly, in any manner, any lien or encumbrance of any kind;
4. setting off, seeking reimbursement or contributions from, or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability or obligation that is released under this Article XIV of the Plan; and
5. commencing or continuing in any manner, in any place of any judicial, arbitration or administrative proceeding in any forum, that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order.

For the avoidance of doubt and notwithstanding anything to the contrary in this Plan or the Confirmation Order, nothing in this Article XIV shall stay, restrain, prohibit, bar or enjoin any entity from taking any action against or seeking relief from any of the Debtors, the Post-Effective Date Debtors, the Wind-Down Administrator, the Debtors' Related Parties (with respect to the exculpation provisions) or the Released Parties (with respect to the release provisions) for any act or omission constituting, arising out of, or relating to such Released Party's gross negligence or willful misconduct as determined by a Final Order.

Any Entity injured by any willful violation of such injunction may seek actual damages and, in appropriate circumstances, may seek punitive damages from the willful violator. Nothing contained in this Article XIV of this Plan shall prohibit the Holder of a Claim from litigating its right to seek to have such Claim declared an Allowed Claim and

paid in accordance with the distribution provisions of this Plan, or enjoin or prohibit the enforcement by the Holder of such Claim of any of the obligations of the Wind-Down Administrator under this Plan.

The releases and injunctions provided for in this Article XIV shall be effective upon the Effective Date of the Plan.

14.2 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in these Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the closing of the Chapter 11 Cases.

14.3 Vesting Provision. Any and all Retained Assets accruing to the Debtors or assertable as accruing to the Debtors shall remain assets of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code and on the Effective Date shall be transferred to and vest in the Post-Effective Date Debtors. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, only the Wind-Down Administrator shall have the right to liquidate any Retained Assets, and to pursue or not to pursue or settle any Causes of Action, rights to payment or Claims that belong to the Debtors as of the Effective Date or are instituted by the Wind-Down Administrator after the Effective Date, except as otherwise expressly provided in this Plan. Other than as set forth herein, no other Person may pursue such Retained Assets after the Effective Date.

ARTICLE XV.
RETENTION OF JURISDICTION

15.1 Exclusive Jurisdiction of Bankruptcy Court. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, these Chapter 11 Cases and this Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

- (a) allow, disallow, determine, subordinate, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest (whether filed before or after the Effective Date and whether or not Contingent, Disputed or unliquidated or for contribution, indemnification or reimbursement), including the compromise, settlement and resolution of any request for payment of any Claims or Interests, the resolution of any Objections to the allowance or priority of Claims or Interests and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any Objection to such Claim or Interest to the extent permitted under applicable law;
- (b) grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Effective Date;
- (c) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters, including, but not limited to, all Causes of Action, and

consider and act upon the compromise and settlement of any Claim or Interest, or Cause of Action;

(d) determine and resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract or unexpired lease to which the Debtors are a party or with respect to which the Debtors may be liable, and to hear, determine and, if necessary, liquidate any Claims arising there from;

(e) ensure that all Distributions to Holders of Allowed Claims under this Plan and the performance of the provisions of this Plan are accomplished as provided herein and resolve any issues relating to Distributions to Holders of Allowed Claims pursuant to the provisions of this Plan;

(f) construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with section 1142 of the Bankruptcy Code, as may be necessary for the enforcement, implementation, execution and Consummation of this Plan and all contracts, instruments, releases, other agreements or documents created in connection with this Plan, including, without limitation, the Disclosure Statement and the Confirmation Order, for the maintenance of the integrity of this Plan in accordance with sections 524 and 1141 of the Bankruptcy Code following the occurrence of the Effective Date;

(g) determine and resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation, implementation or enforcement of this Plan (and all exhibits and schedules to this Plan) or the Confirmation Order, including the releases and injunction provisions set forth in and contemplated by this Plan or the Confirmation Order, or any entity's rights arising under or obligations incurred in connection therewith;

(h) modify the Plan, the Disclosure Statement, and/or the Confirmation Order before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code, as well as any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate this Plan, to the extent authorized by the Bankruptcy Code and this Plan;

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

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

(k) determine any other matters that may arise in connection with or relating to this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument,

release, or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order;

(l) determine such other matters and for such other purposes as may be provided in the Confirmation Order;

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

(n) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with these Chapter 11 Cases;

(o) determine and resolve controversies related to the Estates, the Debtors or the Post Effective Date Debtors from and after the Effective Date;

(p) hear and determine any other matter relating to this Plan; and

(q) enter a final decree closing these Chapter 11 Cases.

ARTICLE XVI.
MISCELLANEOUS PROVISIONS

16.1 Modification of the Plan. The Debtors may alter, amend, or modify this Plan or any exhibits or schedules hereto under section 1127(a) of the Bankruptcy Code at any time prior to or after the Confirmation Date but prior to the substantial Consummation of this Plan, provided, however, that any such alteration, amendment or modification does not materially and adversely affect the treatment of Holders of Claims or Interests under this Plan. Any Holder of a Claim that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.

16.2 Revocation, Withdrawal, or Non-Confirmation of the Plan. The Debtors and Wells Fargo reserve the right to revoke or withdraw this Plan prior to the Confirmation Hearing. If this Plan is revoked or withdrawn prior to the Confirmation Hearing, or if the Plan is not confirmed by the Bankruptcy Court, then:

(a) this Plan shall be null and void in all respects, and

(b) nothing contained in this Plan or the Disclosure Statement shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Person, (ii) prejudice in any manner the rights of the Debtors, Wells Fargo or any other Person, or (iii) constitute an admission of any sort by the Debtors, Wells Fargo, or any other Person.

16.3 Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any Holder of a Claim against, or Interest in, the Debtors and

such Holder's respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under the Plan and whether or not such Holder has accepted the Plan.

16.4 Subordination Rights. The classification and manner of satisfying all Claims and the respective Distributions and treatments hereunder take into account and/or conform to the relative priority and rights of the Claims in each Class in connection with the contractual, legal and equitable subordination rights relating thereto, whether arising under contract, general principles of equitable subordination, section 510(b) of the Bankruptcy Code or otherwise. All subordination rights that a Holder of a Claim may have with respect to any Distribution to be made under the Plan shall be implemented through the Plan, and all actions by such Holder of a Claim related to the enforcement of such subordination rights shall be enjoined permanently. The provisions of any contractual or structural subordination of Claims shall remain enforceable by the Wind-Down Administrator on behalf of the Post-Effective Date Debtors after the occurrence of the Effective Date. Without limitation hereunder, the Wind-Down Administrator, on behalf of the Post-Effective Date Debtors, may likewise enforce any right of the Debtors or their Estates to equitably or otherwise subordinate Claims under section 510 of the Bankruptcy Code, which rights are deemed transferred to, remain and are preserved by the Post-Effective Date Debtors, except as otherwise expressly set forth herein or as expressly provided in a Final Order of the Bankruptcy Court in the Chapter 11 Cases.

16.5 Severability of Plan Provisions. If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtors, 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. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall 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 this Plan, as it may be altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

16.6 Dissolution of the Committee. The Committee shall dissolve on the Effective Date and the members of such Committee shall be released and discharged from all further rights and duties arising from or related to these Chapter 11 Cases, except with respect to, and to the extent of any applications for Professional Fee Claims or expense reimbursements for members of such Committee. The Committee and its retained Professionals may also participate in any appeal pending as of the Effective Date or filed thereafter, the outcome of which could affect the treatment of prepetition creditors (including Holders of Allowed Priority Claims and 503(b)(9) Claims), including, but not limited to, any cases, controversies, suits or disputes arising in connection with the Consummation, interpretation, implementation or enforcement of the Plan or the Confirmation Order. The Professionals retained by the Committee shall not be entitled to assert any Administrative Claims nor shall they have an Allowed Administrative Claims for any services rendered or expenses incurred after the Effective Date except in respect of the preparation and prosecution of or any objection to any Filed fee application and participation in any appeals.

16.7 Exemption from Section 1146. Pursuant to section 1146(a) of the Bankruptcy Code, under this Plan, (i) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtors; or (ii) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to this Plan, shall not be taxed under any law imposing a stamp tax or similar tax. To the extent that the Debtors or Wind-Down Administrator elect to sell any property prior to or after the Confirmation Date, such sales of property will be exempt from any transfer taxes in accordance with section 1146(c) of the Bankruptcy Code. All subsequent issuances, transfers or exchanges of securities, or the making or delivery of any instrument of transfer by the Debtors in the Chapter 11 Cases shall be deemed to be or have been done in furtherance of this Plan.

16.8 Filing of Additional Documents. On or before the Effective Date of this Plan, the Debtors may issue, execute, deliver, and File with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of this Plan.

16.9 Insurance. Confirmation of this Plan and the occurrence of the Effective Date shall have no effect on insurance policies of the Debtors in which the Debtors are or were insured parties. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering or delaying coverage on any basis regarding or related to these Chapter 11 Cases, this Plan or any provision within this Plan, including the treatment or means of liquidation set out within this Plan for insured Claims.

16.10 Successors and Assigns. The rights, benefits and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.

16.11 Governing Law. Except to the extent that the Bankruptcy Code or Bankruptcy Rules or other federal laws is applicable, and subject to the provisions of any contract, instrument, release, or other agreement or document entered into in connection with this Plan, the construction, implementation and enforcement of this Plan and all rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to conflicts of law principles which would apply the law of a jurisdiction other than the State of Delaware or the United States of America.

16.12 Exhibits and Schedules. All exhibits and schedules annexed hereto, and all documents submitted in support hereof, are incorporated into and are a part of this Plan as if set forth in full herein. Holders of Claims and Interests may obtain copies of the Filed exhibits and schedules upon written request to the Debtors. Upon their Filing, the exhibits and schedules may be inspected in the Office of the Clerk of the Bankruptcy Court or its designee during normal business hours. The documents contained in the exhibits and schedules shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

To the extent any exhibit or schedule annexed hereto is inconsistent with this Plan, the contents of this Plan shall control.

16.13 Computation of Time. In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

16.14 Notices. Any notice required or permitted to be provided under this Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery, or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

(a) If to the Debtors:

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Attn: M. Blake Cleary and Sean T. Greecher

(b) If to Wells Fargo:

RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Attn: John H. Knight

- and -

PILLSBURY WINTHROP SHAW PITTMAN LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998
Attn: M. David Minnick

- and -

PILLSBURY WINTHROP SHAW PITTMAN LLP
1540 Broadway
New York, NY 10036
Attn: Leo T. Crowley

(c) If to the Committee:

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347
Attn: Derek C. Abbott

- and -

KILPATRICK TOWNSEND & STOCKTON LLP

The Grace Building
1114 Avenue of the Americas
New York, New York 10036-7703
Attn: David M. Posner

(d) If to the Office of the United States Trustee:

OFFICE OF THE UNITED STATES TRUSTEE

844 King Street, Suite 2207, Lockbox 35
Wilmington, Delaware 19801
Attn: Jane M. Leamy

16.15 Reservation of Rights. The Filing of this combined Disclosure Statement and Plan, any statement or provision contained in this combined Disclosure Statement and Plan, or the taking of any action by the Debtors with respect to this Plan shall not be, and shall not be deemed to be, an admission or waiver of any rights of the Debtors with respect to the Holders of Claims and Interests.

Dated: September 20, 2018
Wilmington, Delaware

CSH Winddown, Inc.
(f/k/a Color Spot Holdings, Inc.)
Debtor and Debtor-in-Possession

By: /s/ Paul W. Russo
Name: Paul W. Russo
Position: Chief Executive Officer

CSN Winddown, Inc.
(f/k/a Color Spot Nurseries, Inc.)
Debtor and Debtor-in-Possession

By: /s/ Paul W. Russo
Name: Paul W. Russo
Position: Chief Executive Officer

HG Winddown, Inc.
(f/k/a Hines Growers, Inc.)
Debtor and Debtor-in-Possession

By: /s/ Paul W. Russo
Name: Paul W. Russo
Position: Chief Executive Officer

LSG Winddown, Inc.
(f/k/a Lone Star Growers, Inc.)
Debtor and Debtor-in-Possession

By: /s/ Paul W. Russo
Name: Paul W. Russo
Position: Chief Executive Officer