

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 11
)	
MILLER AUTO PARTS & SUPPLY)	Jointly Administered Under
COMPANY, INC., et al.,)	CASE NO. 14-68113-mgd
)	
Debtors.)	
)	

**DISCLOSURE STATEMENT FOR JOINT PLAN
OF LIQUIDATION PROPOSED BY DEBTORS
AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

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Dated: September 16, 2016

This Disclosure Statement (the “**Disclosure Statement**”) is filed in accordance with Section 1125 of Title 11, United States Code (as amended and supplemented, the “**Bankruptcy Code**”), by Miller Auto Parts & Supply Company, Inc. (“**Miller**”), Johnson Industries, Inc. (“**Johnson**”), Miller Auto Parts & Paint Company, Inc. (“**MAP**”), and AutoPartsTomorrow.com, LLC (“**AutoParts**”) (Miller, Johnson, MAP and AutoParts are sometimes hereafter referred to as the “**Debtors**”), as debtors and debtors-in-possession in the above-captioned case (the “**Reorganization Case**”), and the Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the Reorganization Case, and is related to the Joint Plan of Liquidation filed on September 16, 2016 (as it may be amended from time to time, the “**Plan**”, a copy of which is attached hereto as Exhibit 2). The information contained in this Disclosure Statement is provided by the Debtors. Capitalized but undefined terms have the same meanings set forth in the Plan, except where otherwise indicated herein.

I. INTRODUCTION

The purpose of this Disclosure Statement is to provide parties in interest with adequate information about the Plan sufficient to permit creditors to vote to accept or reject the Plan. Parties entitled to vote may vote to accept or to reject the Plan. The Debtors and the Committee (collectively, the “**Plan Proponents**”) urge parties in interest to read this Disclosure Statement and the Plan carefully prior to casting votes for or against the Plan.

ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

THE SUMMARY OF THE PLAN AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT, ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN FILED CONTEMPORANEOUSLY HERewith. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF. NO ASSURANCES EXIST THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME HEREAFTER.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN, AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO REPRESENTATIONS CONCERNING THE DEBTORS ARE AUTHORIZED BY THE DEBTORS OR THE COMMITTEE OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY OTHER REPRESENTATIONS OR INDUCEMENTS MADE TO SOLICIT YOUR ACCEPTANCE THAT ARE NOT CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION TO ACCEPT OR REJECT THE PLAN. FURTHERMORE, SUCH OTHER REPRESENTATIONS OR INDUCEMENTS SHOULD BE IMMEDIATELY REPORTED TO COUNSEL FOR THE DEBTORS OR THE COMMITTEE. COUNSEL FOR THE DEBTORS OR THE COMMITTEE MAY, IN TURN, COMMUNICATE SUCH INFORMATION TO THE BANKRUPTCY COURT FOR APPROPRIATE ACTION.

WITH RESPECT TO ADVERSARY PROCEEDINGS, CONTESTED MATTERS, OR OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE, OR BE CONSTRUED AS, AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER. INSTEAD, THIS DISCLOSURE STATEMENT SHALL CONSTITUTE STATEMENTS MADE IN CONNECTION WITH SETTLEMENT NEGOTIATIONS.

THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NONBANKRUPTCY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY. FURTHERMORE, THIS DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE LEGAL EFFECTS, INCLUDING, BUT NOT LIMITED TO, THE TAX EFFECTS, OF THE PROPOSED PLAN. YOU SHOULD CONSULT YOUR LEGAL OR TAX ADVISOR ON ANY QUESTIONS OR CONCERNS REGARDING THE TAX OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

ALL FINANCIAL INFORMATION CONTAINED IN THE PLAN AND THE DISCLOSURE STATEMENT HAS BEEN PREPARED BY THE DEBTORS. THE COMMITTEE HAS NOT INDEPENDENTLY VERIFIED SUCH FINANCIAL INFORMATION AND IS RELYING UPON THE DEBTORS' DISCLOSURES.

THE INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED RECENTLY. THE INFORMATION SET FORTH HEREIN WAS DERIVED FROM THE DEBTORS' BOOKS AND RECORDS, WHICH ARE DEPENDENT UPON INTERNAL ACCOUNTING METHODS. AS A RESULT, VALUATIONS OF ASSETS AND CLAIM LIABILITIES ARE ESTIMATED. ALTHOUGH SUBSTANTIAL EFFORT HAS BEEN MADE TO BE COMPLETE AND ACCURATE, THE DEBTORS AND THE COMMITTEE ARE UNABLE TO WARRANT OR REPRESENT THE FULL AND COMPLETE ACCURACY OF THE INFORMATION CONTAINED HEREIN.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

II. VOTING/CONFIRMATION

1. General Information

All Creditors entitled to vote under the Bankruptcy Code on the Plan may cast their votes for or against the Plan. As a condition to confirmation of a plan of reorganization, the Bankruptcy Code requires that either (a) all classes of creditors are "unimpaired" under the plan or (b) at least one class that is "impaired" under the plan votes to accept the plan. As a general matter, a class of claims is "impaired" under the Bankruptcy Code unless the plan leaves unaltered the legal, equitable, and contractual rights to which every holder of a claim in the class is entitled. As described below, Claims and Equity Interests in Classes 2 - 7 are impaired.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds of the dollar amount of the class and by more than one-half in number of claims. Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of impaired equity interests as acceptance by holders of at least two-thirds of the allowed equity interests in such class. Only those Creditors with unpaid Claims who have timely filed Proofs of Claim with the Bankruptcy Court on or before the Bar Date (March 16, 2015) (as defined herein below) and whose Claims have not been objected to (or estimated at zero) as of the date of the hearing on Confirmation of the Plan (the “**Confirmation Hearing**”) or whose Claims were scheduled by the Debtors and were not listed as disputed, contingent, or unliquidated, have the right to vote for the acceptance or rejection of the Plan and only their votes will be counted. (Claims not filed by the Bar Date and listed in the Debtors’ schedules as disputed, unliquidated, or contingent will be barred from participation in the Reorganization Case, discharged, and receive no Distributions under the Plan.) Holders of Allowed Equity Interests are listed in Class 7. Under the Plan, Allowed Equity Interests are impaired but are receiving nothing under the Plan, and, accordingly, the Holders of Allowed Equity Interests are deemed to have rejected the Plan and, therefore, are not entitled to vote on the Plan.

Holders of Claims who fail to vote are not counted as either accepting or rejecting the Plan. Voting is accomplished by completing, dating, signing and filing the ballot form. Ballot forms will be distributed to all Creditors entitled to vote on the Plan. The ballot form will indicate (i) where the ballot is to be filed and (ii) the deadline by which Creditors must cast their ballots. After carefully reviewing this Disclosure Statement and the attached Exhibits, and the Plan, each holder of a Claim in Classes 2 - 6 should vote on the Plan using the ballot form provided and submit it in accordance with the instructions to be provided.

2. Solicitation of Acceptances

This Disclosure Statement has been approved by the Bankruptcy Court as containing “adequate information” to permit Creditors and Equity Interest Holders to make an informed decision whether to accept or reject the Plan. This Disclosure Statement is provided to each Holder of a Claim, and is intended to assist Creditors in evaluating the Plan and in determining whether to accept or reject the Plan. Under the Bankruptcy Code, your acceptance of the Plan may not be solicited unless you receive a copy of this Disclosure Statement prior to, or concurrently with, such solicitation.

3. Persons Entitled to Vote on the Plan

All Creditors holding Claims impaired by the Plan may vote on the Plan. As noted above, Holders of Equity Interests are not entitled to vote on the Plan given that Equity Interests in Class 7 are receiving nothing under the Plan, and are therefore deemed to have rejected the Plan. In determining acceptance of the Plan, votes will only be counted if submitted by a Holder of a Claim, as defined by the Plan. The ballot form that you receive does not constitute a Proof of Claim. If you are in any way uncertain whether your Claim has been correctly Scheduled or is an Allowed Claim, you should check the Debtors’ Schedules, which are on file in the Bankruptcy Court for review by the general public. You may also review the following website of the Debtors’ claims, noticing and balloting agent, Logan & Company: www.loganandco.com.

4. Confirmation Hearing

The Court will set a Confirmation Hearing to determine whether the Plan has been accepted by the requisite number of Creditors and whether the other requirements for Confirmation of the Plan have been satisfied. Each Creditor will receive notice of the Confirmation Hearing.

5. Acceptances Necessary to Confirm the Plan

At the Confirmation Hearing, the Court shall determine, among other things, whether the Plan has been accepted by each impaired Class. As noted above, under Section 1126 of the Bankruptcy Code, an impaired class of creditors is deemed to accept the Plan if at least two-thirds (2/3) in amount and more than one-half (1/2) in number of those voting vote to accept the Plan. Further, unless there is unanimous acceptance of the Plan by an impaired Class, the Bankruptcy Court must also determine that Class members will receive property with a value, as of the Effective Date of the Plan, that is not less than the amount that such Class member would receive or retain if the Debtors were liquidated as of the Effective Date of the Plan under Chapter 7 of the Bankruptcy Code.

6. Confirmation of Plan Without Acceptances By All Impaired Classes

The Bankruptcy Code provides that the Plan may be confirmed even if it is not accepted by all impaired Classes. In order to be confirmed without the requisite number of acceptances of each impaired Class, the Court must find that at least one impaired Class has accepted the Plan without regard to the acceptances of insiders, and the Plan does not discriminate unfairly against, and is otherwise fair and equitable, to such impaired Class. Because Class 7 is deemed to have rejected the Plan, the Plan Proponents have requested Confirmation pursuant to the “cramdown” provisions of Section 1129(b) of the Bankruptcy Code. In connection therewith, the Plan Proponents shall be allowed to modify the proposed treatment of the Allowed Claims in any Class that votes against the Plan consistent with Section 1129(b)(2) of the Bankruptcy Code.

7. Considerations Relevant to Acceptance of the Plan

The Plan Proponents (the Debtors and the Committee) recommend that all Creditors entitled to vote should vote to accept the Plan. That recommendation is premised upon the view that the Plan is preferable to other available alternatives, including liquidation of the Debtors’ Estates under Chapter 7. It also appears unlikely that an alternate plan can be proposed that would provide for payments in an amount equal or greater than the amounts proposed under the Plan. If the Plan is not accepted, it is likely that the interests of all Creditors will be further diminished.

III. SUMMARY OF DISTRIBUTIONS UNDER THE PLAN

The chart below summarizes the timing and percentage distributions to each Class under the Plan. For a further discussion, see Article VI below.

Class No.	Claim/Interest	Treatment of Claim/Interest	Estimated Amount and Projected Recovery	Voting Rights
N/A	Administrative Expense Claims	Each holder of an Allowed Administrative Expense Claim, will be paid in full and in Cash, without interest, on or as soon as practicable after the later of (a) the Effective Date, or (b) the date after such Claim becomes an Allowed Administrative Expense Claim; or (c) as the holder of the Allowed Administrative Expense Claim may otherwise agree.	Estimated Amount: under \$890,000 Estimated Recovery: 100% of Allowed Amount	Unimpaired and not entitled to vote
N/A	Priority Tax Claims	Each holder of an Allowed Priority Tax Claim, will be paid in full, by regular quarterly installment payments in Cash from the Liquidating Trust in accordance with Section 1129(a)(9)(C) of the Bankruptcy Code. Holders of Allowed Priority Tax Claims shall receive interest on account of their Allowed Priority Tax Claims at the Section 6621 Interest (or, with respect to any city, county or state Governmental Authority, at the statutory rate).	Estimated Amount: \$0.00 Estimated Recovery: 100% of Allowed Amount	Unimpaired and not entitled to vote
1	Priority Claims	Each holder of an Allowed Priority Claim, will be paid in full and in Cash, without interest, on or as soon as practicable after the later of (a) the Effective Date, or (b) the date after such Claim becomes an Allowed Priority Claim; or (c) as the	Estimated Amount: \$0.00 Estimated Recovery: 100% of Allowed Amount	Unimpaired and not entitled to vote

Class No.	Claim/Interest	Treatment of Claim/Interest	Estimated Amount and Projected Recovery	Voting Rights
		holder of the Allowed Priority Claim may otherwise agree.		
2	Allowed Secured Claim of First Capital	The Allowed Secured Claim of First Capital shall receive payment in Cash, in an amount equal to the value of First Capital's Contingent Claim, on the later of (a) within sixty (60) days after the Effective Date, or (b) within ten (10) days after the date that such Contingent Claim is valued pursuant to a Final Order or such Contingent Claim is otherwise determined to be an Allowed Secured Claim by Final Order. The Plan Proponents reserve all rights to object to First Capital's Contingent Claim.	Estimated Amount: Between \$0 and \$160,000 Estimated Recovery: 100% of Allowed Amount of Contingent Claim	Impaired and entitled to vote
3	Allowed Non-Seller Note Claims	Non-Seller Note Claims in Class 3, to the extent not previously resolved by Final Order, will be the subject of adversary proceedings to determine the amount and priority of such Claims. Allowed Non-Seller Note Claims will be paid, if at all, in accordance with a Class 3 Final Order.	Estimated Amount: Between \$0 and \$400,000. Estimated Recovery: 100% of Allowed Amount	Impaired and entitled to vote
4	Allowed Seller Note Claims	Seller Note Claims in Class 4, to the extent not previously resolved by Final Order, will be the subject of adversary	Estimated Amount: Between \$0 and \$150,000 Estimated Recovery:	Impaired and entitled to vote

Class No.	Claim/Interest	Treatment of Claim/Interest	Estimated Amount and Projected Recovery	Voting Rights
		proceedings or claim objection to determine the amount and priority of such Claims. Allowed Seller Note Claims will be paid, if at all, in accordance with a Class 4 Final Order.	100% of Allowed Amount	
5	Other Secured Claims	All Allowed Secured Claims not otherwise classified under the Plan shall receive either the collateral securing such Allowed Claim or payment by the Liquidation Trust in Cash, in an amount equal to the value of such collateral within sixty days (60) after the later of the Effective Date or the date that such collateral is valued pursuant to a Final Order of the Bankruptcy Court. Any deficiency remaining will be treated as a Class 6 Claim. The Plan Proponents are not aware, as of the date of this Disclosure Statement, of any Claims in this Class 6.	Estimated Amount: \$0 Estimated Recovery: 100% of Allowed Amount	Impaired and entitled to vote
6	Allowed Unsecured Claims	Each holder of an Allowed Unsecured Claim shall receive a Pro Rata Share of Distributions from the Liquidating Trust on each Distribution Date.	Estimated Amount: \$2,700,000 Estimated Recovery: between 56% and 82% of Allowed Amount (depending on whether there are significant Priority Tax Claims or Claims in Classes 2, 3, 4 and 5 that are Allowed)	Impaired and entitled to vote
7	Allowed Equity Interests	Holders of Allowed Equity Interests shall not receive	Estimated Recovery: \$0.00	Deemed to reject and not

Class No.	Claim/Interest	Treatment of Claim/Interest	Estimated Amount and Projected Recovery	Voting Rights
		or retain any property under the Plan on account of such Equity Interests, and such Equity Interests will be cancelled in accordance with the Plan.		entitled to vote

The liability estimates outlined in the above chart are estimates only. The projected Administrative Expense Claims do not include estimated professional fees to be incurred by the Debtors or the Committee through a projected Effective Date of December 15, 2016. It is assumed that operating expenses will be paid in the normal course of business prior to the Effective Date and that a substantial portion of the professional fees and expenses to be incurred in the future will be paid on a monthly basis under the interim compensation arrangement approved previously in the Reorganization Case, subject to final review and approval by the Bankruptcy Court. However, please note that as more fully described in Article V, Section 12 below, the Committee's professionals may be entitled to an additional "Contingent Bonus" estimated to be in excess of \$240,000. It is not possible to project the eventual Distribution on Class 6 Claims with precision at this time, as the eventual distribution percentage is dependent upon the resolution of Claims in Classes 3 and 4 and, potentially, Class 5.

IV. DESCRIPTION OF THE DEBTORS' BUSINESS AND EVENTS LEADING UP TO THE CHAPTER 11 FILING

Prior to the commencement of the Reorganization Case, the Debtors were distributors of automotive parts and service equipment, and offered a unique product mix of both original equipment and aftermarket products. Johnson, MAP and AutoParts each are wholly owned subsidiaries of Miller. The Debtors operated from the Johnson headquarters in Atlanta, Georgia and had distribution operations in the southeast, northeast and on-line. The Debtors' Southeastern distribution center was located in Norcross, Georgia and supported nine satellite centers across the state and supplied parts to key fleet customers across the country. From the satellite locations, the Debtors distributed automotive parts and supplies to a network of dealers, repair shops and fleet customers. The Debtors had two Northeast distribution hubs, located in Bethel Park, Pennsylvania and Huntingdon, Pennsylvania, which supported eleven satellite centers in the Northeast region. From these locations, the Debtors distributed automotive parts and supplies to a network of dealers, and repair and service shops. Additionally, the Debtors maintained an on-line presence for retail and distribution focused on B-to-B and B-to-C e-commerce sites serving customers nationally under the AutoParts logo.

The Debtors' major product lines included: batteries; brake pads; brake drums and rotors; rotating electrical components such as starters and alternators; electrical engine sensors; various engine filters; air conditioning components; ride control assemblies such as shocks and struts; and, fuel components including fuel pumps, injectors and regulators. The Debtors sourced their parts from approximately 1,500 suppliers. The Debtors offered industry leading original

equipment brands, such as Delco, Motorcraft and MOPAR, as the cornerstone of the Debtors' strategy to offer original equipment parts whenever possible. The Debtors also offered parts from original equipment manufacturers that are Tier I suppliers to the automotive manufacturers, such as Bosch, Denso, Gates, Luk, NGK and Cummins. The Debtors sourced a portion of their non-OE product through its membership in the Auto Parts Alliance headquartered in San Antonio, Texas.

Founded as C.H. Miller Hardware Company, Inc. in 1921, Miller operated for over five generations under the Miller family ownership. In 2002, Golden Eagle Asset Management, acquired a controlling stake in the business and renamed it Miller Auto Parts & Supply Company, Inc., which had eight locations in the Huntingdon area, with less than \$4 million in annual revenue. Subsequently, Miller acquired a number of other locations in Pennsylvania, either in its own name or through MAP. In 2007, Miller acquired Johnson and gained a foothold in Georgia. In the months leading up to the Petition Date (September 14, 2014), the Debtors financial condition deteriorated such that they were unable to meet their current financial obligations as they came due in the ordinary course of business. Moreover, the Debtors' lack of liquidity severely limited the Debtors' ability to continue the operation of their businesses. After evaluating alternatives, conducting an exhaustive sale process and consulting with their advisors and directors, the Debtors eventually concluded that it was in their best interest, and the interests of their creditors and employees, to seek protection under Chapter 11 of the Bankruptcy Code.

V. SIGNIFICANT EVENTS DURING CHAPTER 11

1. The Debtors' Postpetition Financial Performance

Since the Petition Date, the Debtors operated their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. Summaries of the Debtors' post-petition financial performance are filed on a monthly basis with the Bankruptcy Court pursuant to the Operating Guidelines and Reporting Requirements for Debtors In Possession and Chapter 11 Trustees for Region 21 (the "**Monthly Operating Reports**"). The Monthly Operating Reports are available from the Office of the Clerk of the U.S. Bankruptcy Court for the Northern District of Georgia and are online at <https://ecf.ganb.uscourts.gov> (please note that a PACER account is required to view and download documents).

2. First Day Orders

Shortly after the Debtors filed the Reorganization Case, on September 17, 2014, a hearing was held on the following "First Day" motions, in which the Debtors sought entry of certain orders on an expedited basis in order to minimize disruption to the Debtors' business operations and facilitate an orderly reorganization process. Following the conclusion of that hearing the Bankruptcy Court entered orders on the "First Day" motions, including, without limitation, (i) an order granting joint administration of the Debtors' individual bankruptcy cases; (ii) an order authorizing the Debtors to pay accrued but unpaid prepetition wages earned by its employees, (iii) an order authorizing the Debtors to pay prepetition sales and use taxes; (iv) an order authorizing the Debtors to continue their insurance program; (v) an interim order allowing the Debtors to utilize postpetition financing to fund budgeted operating expenses, and (vi) an order establishing notice procedures to be utilized in the Reorganization Case.

3. The Debtors' Professionals

The Debtors retained the Atlanta-based firm of Scroggins & Williamson, P.C. as its general bankruptcy counsel. Scroggins & Williamson, P.C. has extensive experience representing debtors in complex Chapter 11 bankruptcy cases. The Debtors' prepetition counsel, McNees Wallace & Nurick LLC, was retained as special counsel with respect to corporate matters. Additionally, the Debtors retained the firm of GGG Partners, LLC, as their financial advisors, and McKonly & Asbury, LLP has been retained as accountants for preparation and filing of tax returns, and auditing the Debtors' 401(k) benefit plan. Finally, the Debtors retained Logan & Company as their claims, noticing and balloting agent.

4. Formation of Creditors Committee

On September 24, 2014, the U.S. Trustee pursuant to its authority under Section 1102 of the Bankruptcy Code appointed the following members to the Official Committee of Unsecured Creditors (the "**Committee**"): (i) Global Parts Distributors, LLC, (ii) Standard Motor Products, Inc., and (iii) Federal-Mogul Corporation. On June 16, 2015, the U.S. Trustee appointed Wix Filtration Corp. to the Committee to replace Standard Motor Products, Inc. The Committee retained the law firm of Kane Russell Coleman & Logan PC as its primary bankruptcy counsel, and also retained McKenna, Long & Aldridge, LLP, as its local counsel.¹ Both firms have substantial experience representing official committees in complex Chapter 11 cases.

5. Post-Petition Financing and Cash Collateral Use

As of the Petition Date, FCC, LLC d/b/a First Capital ("**First Capital**") and one or more other creditors asserted a security interest in funds of the Debtors. On September 15, 2014, the Debtors filed their Motion for an Interim Order (i) Authorizing (a) Secured Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, and 364(c) and (d); (b) Granting Security Interests, Superpriority Claims, and Adequate Protection and (c) Use Of Cash Collateral and (ii) Scheduling a Final Hearing; and Memorandum of Points and Authorities (the "**Financing Motion**"), seeking authority to borrow money and use cash collateral to fund ongoing operations. On September 18, 2014, the Court entered an interim order granting the Financing Motion, authorizing the Debtors to borrow money from First Capital and to use cash collateral to fund operations on an interim basis and scheduling a final hearing for October 3, 2014, on the Financing Motion. Following the conclusion of the final hearing, on October 3, 2014, the Court entered a final order granting the Financing Motion. The Debtors are currently operating in accordance with the final order, as it has been amended, from time to time.

6. Schedules and Statement of Financial Affairs

On October 3, 2014, the Debtors filed with the Court their schedules and statements required by Bankruptcy Rule 1007 (the "**Schedules**"). These Schedules provide information concerning the Debtors' financial condition on or about the Petition Date. These documents are

¹ On July 1, 2015, McKenna Long & Aldridge LLP changed its name to Dentons US LLP. On August 9, 2016, the Law Offices of Henry F. Sewell, Jr., LLC, gave notice that it was substituting as local counsel for the Committee in place of Dentons US LLP.

available from the Office of the Clerk of the U.S. Bankruptcy Court for the Northern District of Georgia and are online at <https://ecf.ganb.uscourts.gov> (please note that a PACER account is required to view and download documents), or at www.loganandco.com.

7. Bar Date

By Order of the Bankruptcy Court dated January 7, 2015, the Court established March 16, 2015, as the Bar Date by which all creditors holding prepetition claims (including administrative expense claims under 11 U.S.C. § 503(b)(9) for goods delivered within 20 days prior to the Petition Date) were required to file proofs of claim or be barred from (i) asserting any claim against the Debtors, and (ii) voting on, or receiving distributions under, the Plan. Certain creditors whose claims were listed in the Schedules and not identified as “contingent,” “disputed” or “unliquidated” may not have been required to file proofs of claim.

8. First Capital’s Secured Claims and Collateral

As of the Petition Date, the Debtors were indebted to First Capital in the approximate amount of \$12,995,703, inclusive of \$2,500,000 in reimbursement obligations for undrawn letters of credit, and potentially contract interest, default interest and charges, and certain fees and charges, under the following (collectively, the “**Pre-Petition First Capital Loan Documents**”): (a) Loan and Security Agreement dated as of 8/13/13 (the “**Loan and Security Agreement**”); (b) Intellectual Property Security Agreement dated as of 8/13/13 (the “**Intellectual Property Security Agreement**”); (c) Equity Interest Pledge dated as of 8/13/13 (the “**Equity Pledge**”); (d) Negative Pledge Agreement dated as of 8/13/13; (e) Deposit Account Control Agreement (Hard Account Agreement) dated as of 8/13/13; (f) Deposit Account Control Agreement (Springing Agreement) dated as of 8/13/13; and (g) Irrevocable Proxies dated as of 8/13/13. Copies of the Pre-Petition First Capital Loan Documents are attached as exhibits to the Financing Motion.

9. Sales

On October 10, 2014, the Debtors filed a motion to establish procedures to sell their assets free and clear of liens, claims, and encumbrances through a global sale or series of sales (the “**Sale Motion**”). Various objections were filed to the Sales Motion, and the Bankruptcy Court ultimately entered a series of orders granting the Sale Motion subject to certain modifications. As a result, four (4) different sales were ultimately approved to four (4) separate purchasers (Parts Authority, Inc., Fisher Auto Parts, Inc., TPH Acquisition LLLP, and Automotive Distributors Co.), the result of which was the sale of substantially all of the Debtors’ assets to those purchasers.

A summary of the net sale proceeds (net of commissions, taxes and closing costs) obtained for each of the Real Properties during the Reorganization Case is shown below:

<u>Purchaser</u>	<u>Net Proceeds</u>
Parts Authority, Inc.	\$ 6,037,785
Fisher Auto Parts, Inc.	\$ 3,003,133

TPH Acquisition LLLP	\$ 724,893
Automotive Distributors Co.	\$ <u>4,381,527</u>
Total	\$ 14,147,337

Of the above amount, \$12,507,810 was paid to First Capital on account of First Capital's secured claim and on account of the postpetition financing.

10. Settlements

Over the course of the Reorganization Case, the Committee and the Debtors negotiated and obtained Bankruptcy Court approval of tens of millions of dollars worth of scheduled and/or filed claims. Each settlement was approved under Bankruptcy Rule 9019 via motions filed with the Bankruptcy Court and approval orders entered as follows:²

Motion	Description of Settlement	Approval Order
Joint Motion for Approval of Agreement Regarding the Use of Cash Collateral and Obtaining Credit Pursuant to Rule 4001(d) [Dkt. No. 132]	Resolution of alleged default interest and termination fee of senior secured creditor in exchange for contingent claim.	Dkt. No. 158
Joint Motion to Approve Compromise and Settlement Between Ford Motor Company and the Official Committee of Unsecured Creditors [Dkt. No. 253]	Withdrawal of Ford Motor Company's \$7,774,928.64 in total administrative expense and secured claims in exchange for payment by the Debtors to Ford Motor Company of \$575,000, and mutual releases.	Dkt. No. 261
Debtors' Motion to Approve Settlement with TriStar Uptown Chrysler Dodge Jeep Nissan [Dkt. No. 281]	Withdrawal of \$18,789.41 administrative expense claim and \$32,230.14 general unsecured claim in exchange for mutual releases.	Dkt. No. 303
Debtors' Motion to Approve Compromise and Settlement with Extang Corporation [Dkt. No. 299]	Withdrawal of \$41,725.37 administrative expense claim and \$41,725.37 general unsecured claim in exchange for mutual releases.	Dkt. No. 338
Debtors' Motion to Approve Compromise and Settlement with AMREP, Inc. [Dkt. No. 334]	Withdrawal of \$43,262.04 administrative expense claim and payment by AMREP, Inc. of \$9,500 to the Debtors in exchange for allowance of unsecured claim of \$43,262.04 and mutual releases.	Dkt. No. 348

² This table provides a general description of each settlement. See filed motions for detailed description of each settlement.

Motion	Description of Settlement	Approval Order
Debtors' Motion to Approve Compromise and Settlement with SOMS Technologies, LLC [Dkt. No. 341]	Payment by SOMS Technologies, Inc. to the Debtors of \$15,000, reduction of \$61,864.92 in administrative expense claim to \$21,863.40, reduction of \$61,864.92 in unsecured claim to \$47,501.52, and removal of duplicative claims, in exchange for mutual releases.	Dkt. No. 354
Debtors' Motion to Approve Compromise and Settlement with Global Parts Distributors, LLC [Dkt. No. 343]	Withdrawal of \$397,500.87 administrative expense claims and unliquidated general unsecured claim in exchange for mutual releases.	Dkt. No. 353
Debtors' Motion to Approve Compromise and Settlement with Cummins Filtration, Inc. [Dkt. No. 365]	Withdrawal of \$57,457.23 administrative expense claim, reduction of \$519,720.22 general unsecured claim to \$348,399.78, and payment by Cummins Filtration, Inc. of \$86,800 to the Debtors in exchange for mutual releases.	Dkt. No. 386
Joint Motion to Approve Settlement Agreement and Compromise Between General Motors, LLC and the Official Unsecured Creditors Committee [Dkt. No. 368]	Withdrawal of General Motors, LLC's \$4,148,202.95 in total administrative expense and secured claims in exchange for payment by the Debtors to General Motors, LLC of \$400,000, and mutual releases.	Dkt. No. 413
Joint Motion to Approve Settlement Agreement and Compromise Between the Estate of David K. Goodman, Jr. and the Official Unsecured Creditors Committee [Dkt. No. 369]	Withdrawal of Estate of David K. Goodman, Jr.'s \$3,990,995 alleged secured claim in exchange for payment by the Debtors to Estate of David K. Goodman, Jr. of \$150,000, plus contingent claim of David K. Goodman, Jr. of up to \$225,000, and mutual releases.	Dkt. No. 414
Debtors' Motion to Approve Compromise and Settlement with Pacific Air Cargo Transfer Systems, Inc. [Dkt. No. 405]	Withdrawal of multiple claims in the amount of \$6,990 (both administrative expense, secured and general unsecured) in exchange for payment by Pacific Air Cargo Transfer Systems, Inc. of \$5,000 to the Debtors, allowance of \$6,990 unsecured claims and mutual releases.	Dkt. No. 426

Motion	Description of Settlement	Approval Order
Debtors' Motion to Compromise Settlement with Performance Friction Corporation [Dkt. No. 406]	Withdrawal of \$68,138.37 administrative expense claim and \$68,591.21 general unsecured claim in exchange for allowance of \$68,138.37 general unsecured claim, and mutual releases.	Dkt. No. 425
Joint Motion to Approve Compromise and Settlement Between Charles & Nancy Moore and the Official Committee of Unsecured Creditors [Dkt. No. 437]	Withdrawal of Charles & Nancy Moore's \$340,000 alleged secured claim in exchange for payment by Charles & Nancy Moore to Debtors of \$25,000 and mutual releases.	Dkt. No. 445
Joint Motion to Approve Settlement Agreement Between Thomas Miller, C.H. Miller Hardware, Inc. and the Official Unsecured Creditors Committee [Dkt. No. 453]	Withdrawal of Thomas Miller's \$148,759 and C.H. Miller Hardware, Inc.'s \$276,250 secured claims in exchange for Debtors' payment to Thomas Miller and C.H. Miller Hardware, Inc. of \$20,000 and mutual releases.	Pending
Joint Motion to Approve Settlement Agreement Between Fribourg Limited and the Official Unsecured Creditors Committee [Dkt. No. 454]	Withdrawal of Fribourg Limited's alleged \$1,000,000 secured claim in exchange for mutual releases.	Pending
Joint Motion to Approve Settlement Agreement [with Debtors' officers, directors, and related parties] [Dkt. No. 455]	Withdrawal of an aggregate of \$1,975,000 in alleged secured claims of Debtors' officers, directors, and related parties in exchange for a payment to Debtors' estate of \$800,000, and mutual releases.	Pending

11. Pending and Prospective Litigation

On July 13, 2016, the Committee filed its Motion for Entry of an Order Granting Standing and Authority to File and Prosecute Adversary Proceedings Against Sub-Debt Holders and Certain Other Parties on Behalf of the Debtors' Estates [Dkt. No. 440] (the "**Motion for Standing**"). On August 19, 2016, the Court entered an order granting the Motion for Standing [Dkt. No. 451] (the "**Standing Order**"). Pursuant to the Standing Order, the Committee is authorized to commence and prosecute claims against certain parties, including Sub-Debt Holders (as defined in the Standing Order).

On September 9, 2016, the Committee filed the following claim objections against "Seller" Sub-Debt Holders, objecting to the allowance of the respective Sub-Debt Holders' claims:

- Objection to Scheduled Claims of Joseph Horvath and Shirley Horvath [Dkt. No. 460];
- Objection to Scheduled Claim of Cook Brothers Automotive, Inc. [Dkt. No. 462]; and
- Objection to Scheduled Claim of Richard Cook [Dkt. No. 466]

On September 13, 2016, the Committee filed an adversary proceeding against the following “Seller” Sub-Debt Holders, seeking avoidance of alleged liens and disallowance of claims:

- Adversary Proceeding No. 16-05217 against Nicolle Carratura, Ralph Carratura, Danielle Delmonico, Robert Alfred Delmonico, and Robert Anthony Delmonico

On September 13, 2016, the Committee filed adversary proceedings against the following “Non-Seller” Sub-Debt Holders, seeking avoidance of alleged liens, disallowance of claims, and damages related to pre-petition payments made to such parties by the Debtors:

- Adversary Proceeding No. 16-05215 against George Sample; and
- Adversary Proceeding No. 16-05216 against EFG Bank

The Committee reserves all rights to bring additional claim objections and/or adversary proceedings pursuant to the terms of the Standing Order.

12. Committee’s Professionals’ Contingent Payment

On or about February 11, 2015, counsel for the Committee filed its Amended Application to Employ Kane, Russell, Coleman & Logan PC (“**KRCL**”) as Counsel for the Official Committee of Unsecured Creditors [Dkt. No. 204] (the “**KRCL Amended Motion**”). The KRCL Amended Motion was necessitated by the reality that after First Capital’s non-contingent secured claim was paid from sale proceeds,³ the Estate was left with approximately \$3,000,000⁴ in cash – against which the bankruptcy estates had to confront over \$15.25 million in Secured Claims and estimated Section 503(b)(9) Claims, thus mandating the reduction of legal fees to aid in the prevention of this case being converted to Chapter 7.

By the KRCL Amended Motion, KRCL agreed to reduce its fees to 25% below its normal 2014 hourly rates and not increase its hourly rates after 2014. In exchange, in the event a distribution is made to Unsecured Creditors, then KRCL is to be paid the remaining twenty-five percent (25%) of its fees (at 2014 rates) plus a bonus of 10% (collectively the “**Contingent**

³ As set forth in Article IV, Section 9 above, \$12,507,810 of the \$14,147,337 sale proceeds was paid to First Capital, leaving \$1,639,527.

⁴ \$3 million is comprised of \$1,639,527 noted in the footnote 3, above, plus approximately \$1,400,000 in cash that was not part of the sale proceeds.

Bonus”). The Committee estimates that the Contingent Bonus will be payable, subject to court approval, in the amount of approximately \$240,000.

VI. SUMMARY OF THE PLAN OF REORGANIZATION

The following sections summarize the salient provisions of the Plan. This summary refers to, and is qualified in its entirety by, reference to the Plan.

THE TERMS OF THE PLAN WILL GOVERN IN THE EVENT ANY INCONSISTENCY ARISES BETWEEN THIS SUMMARY AND THE PLAN. Parties are encouraged to review the Plan in its entirety for a full understanding of its provisions and its impact on Holders of Claims and Equity Interests. The Court has not yet confirmed the Plan described in this Disclosure Statement. In other words, the terms of the Plan do not yet bind any person or entity. However, if the Bankruptcy Court confirms the Plan and the Plan becomes effective, the Plan will bind all Holders of Claims and Equity Interests.

1. Overview of Plan Structure

A. Creation of Creditor Trust The Plan will create the “Creditor Trust” on the Effective Date. The Beneficiaries of the Creditor Trust will be the Holders of Allowed Claims against the Debtors, as set forth in the Plan. Allowed Claims against the Debtors, including Secured Claims, Unsecured Claims, Priority Claims, Administrative Expense Claims and Professional Fee Claims, shall be satisfied by the Creditor Trust. The primary purpose of the Creditor Trust will be to collect and distribute proceeds to its Beneficiaries as well as to prosecute any Causes of Action assigned to the Creditor Trust, including Avoidance Actions, as discussed in more detail above. Potential avoidance actions are identified in the Debtors’ Schedules.

The Creditor Trust shall have the authority to object to Claims which were not allowed or for which objections were not filed or asserted prior to the Effective Date. The Plan shall appoint a Creditor Trustee for the Creditor Trust and will further establish a Post-Confirmation Committee to which the Creditor Trustee shall report and confer as provided in the Plan. The Creditor Trustee and its professionals will be entitled to compensation from the amounts paid to the Creditor Trust. The Creditor Trust shall make periodic distributions to the Beneficiaries, in respect of their Allowed Claims. The specific rights, duties and obligations of the Creditor Trust, the Creditor Trustee and the Post-Confirmation Committee are set forth in detail in the Plan and the Creditor Trust Agreement attached as Exhibit B to the Plan.

B. Substantive Consolidation Entry of the Confirmation Order shall constitute the approval, pursuant to Section 105(a) of the Bankruptcy Code, of the substantive consolidation as of the Effective Date of all of the Debtors and the Debtors’ bankruptcy estates for all purposes related to Claims and distribution of Assets under the Plan. Substantive consolidation is an equitable remedy that has the effect of creating “one common pool of assets, liabilities and a single body of creditors, while extinguishing the intercorporate liabilities of the consolidated estates.” *White v. Creditors Serv. Corp. (In re Credit Serv. Corp.)*, 195 B.R. 680, 689 (Bankr. S.D. Ohio 1996); *In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000). Its primary purpose is to promote the equitable treatment of all creditors. *Eastgroup Props. v. Southern Motel Assoc.*,

Ltd., 935 F.2d 245, 248 (11th Cir. 1991). The Plan Proponents strongly believe that substantive consolidation of the Debtors and their respective bankruptcy estates, for purposes of resolving Claims and making Distributions as proposed under the Plan, will reflect the economic reality of the Debtors' true operational and financial structure. Further, substantive consolidation will be fair and equitable for Creditors because it avoids the burden and expense of requiring the Debtors to untangle the web of their respective businesses and operations. The applicable legal standard for substantive consolidation has been well defined by the courts.

To establish a prima facie case for substantive consolidation, a party must demonstrate that (i) there is a substantial identity between the entities to be consolidated; and (ii) consolidation is necessary to avoid some harm or to realize some benefit. *Eastgroup*, 935 F.2d at 249. Factors considered by courts to determine whether substantive consolidation is appropriate include:

- (i) presence or absence of consolidated financial statements;
- (ii) unity of interests and ownership between the various corporate entities;
- (iii) existence of parent and inter-corporate guarantees on loans;
- (iv) degree of difficulty in segregating and ascertaining individual assets and liabilities;
- (v) existence of transfers of assets without formal observance of corporate formalities;
- (vi) commingling of assets and business functions; and
- (vii) profitability of consolidation at a single physical location.

Id. See also *Holywell Corp. v. Bank of New York*, 59 B.R. 340, 347 (S.D. Fla. 1986). Once a prima facie case for substantive consolidation is made, a presumption arises that creditors have not relied solely upon the credit of individual debtor entities. The burden then shifts to an objecting creditor to show that: (i) it has relied on the separate credit of one of the entities to be consolidated; and (ii) it will be prejudiced by substantive consolidation. *Eastgroup*, 935 F.2d at 249. Even if the objecting creditor meets this burden, the Court may still order substantive consolidation if the benefits of such relief heavily outweigh the harm. *Id.*

The Plan Proponents believe that substantive consolidation of the Debtors' separate estates is warranted and appropriate in these cases because the Debtors' operated as a single, integrated entity: (i) the Debtors used consolidated financial statements and systems, including a centralized cash-management system through which all cash flow was deposited and controlled; (ii) the Debtors filed tax returns on a consolidated basis; (iii) there was a strong unity of interest and ownership between these Debtors because they were all controlled by the same group of officers and directors; (iv) the Debtors were co-obligors on the First Capital secured loan, which loan was secured by all of the assets of the Debtors, as well as co-obligors on other obligations; (v) the Debtors' remaining assets were and are commingled and interdependent; (vi) the Debtors' administrative, managerial, and financial records are now and have been centered at one physical

location; and (vii) a failure to consolidate the cases might unfairly favor one group of similarly situated creditors over others.

During the Debtors' bankruptcy cases, the assets of the Debtors were sold sequentially, and all of the net proceeds of the initial sales were used to reduce the Debtors' secured debt to First Capital. Only a portion of the later sales, and settlements with third parties, generated funds remaining to pay other Allowed Claims; all of the net proceeds of the earlier sales were consumed to pay the secured debt of First Capital. Under a strict "first in first out" approach (and without any consideration of inter-company obligations), an argument could be made that Creditors asserting claims only against certain of the Debtors would get virtually nothing, while creditors asserting claims only against other Debtors whose assets were sold later, would be entitled to receive as much as a 100% disbursement. Such a result would be both irrational and inequitable under the circumstances.

The inherent inequity discussed above could be potentially rectified by allocating the estate's assets between the separate bankruptcies in a way that would ensure that all Creditors received equal proportional payments. However, this treatment would have the same effect as consolidating the Debtors, and would greatly increase the cost and complexity of administering the estate.

A review of the proofs of claim filed in the cases showed that a number of creditors are listed as filing against the wrong debtor. This review also highlighted the inequities discussed above. Without consideration of any inter-company debt between the Debtors (and recoveries from Causes of Action or claims against third parties), creditors asserting claims against only one of the Debtors might argue that they would receive more without substantive consolidation. However, such arguments would be overcome by the fact that these Debtors all pooled their funds and operated as a single financial entity to a large degree.

The reality is that all of the Debtors had a common secured debt to First Capital. All Debtors operated using the same bank accounts. All deposits were made into the same accounts and bills were paid from these same accounts. None of the Debtors had separate operating accounts. Additionally, the senior corporate management of each of the Debtors overlapped substantially. In fact, the Debtors were consolidated prior to the Bankruptcy Cases in both operation and corporate structure.

Based on the foregoing, the Plan Proponents believe that the facts of this case establish a prima facie case for substantive consolidation under the *Eastgroup* test (for purposes of resolving claims and making distributions). Indeed, the Plan Proponents believe that substantive consolidation is the only way to deal fairly with creditors of these Debtors. For these reasons, substantive consolidation (for purposes of resolving claims and making distributions) is both desirable and necessary. Substantive consolidation will also facilitate and expedite the administration of the Debtors' estates by eliminating duplicative or inconsistent efforts on the part of the various estates with respect to claims administration and asset recovery.

2. Treatment under Plan of Administrative Expenses and Priority Tax Claims

A. *Nonclassification* In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Expenses and Priority Tax Claims have not been classified in the Plan. The treatment accorded to Administrative Expenses and Priority Tax Claims is set forth in Article 3 of the Plan.

B. *Administrative Expenses* Except as otherwise provided in the Plan, on or before the later to occur of the Effective Date or entry of a Final Order Allowing the Administrative Expense Claim, each Holder of an Allowed Administrative Expense Claim shall be paid by the Debtors an amount, in Cash, equal to the Allowed Amount of its Administrative Expense Claim, in accordance with Section 1129(a)(9)(A) of the Bankruptcy Code. Notwithstanding the foregoing, each Holder of an Allowed Administrative Expense Claim may be paid (a) on such other terms as may be agreed upon by the Holder of such Allowed Administrative Expense Claim and the Debtors or the Creditor Trustee, as the case may be, or (b) as otherwise ordered by a Final Order of the Bankruptcy Court.

C. *Fees and Charges* All fees and charges assessed against the Estate under Chapter 123 of Title 28, United States Code, 28 U.S.C. §§ 1911-1930, which are incurred but unpaid for all periods through the Effective Date, will be paid on the Effective Date by the Debtors. The Creditor Trustee shall be responsible for paying all fees and charges assessed against the Estate under Chapter 123 of Title 28, United States Code, 28 U.S.C. §§ 1911-1930 from the Effective Date through the Final Decree Date.

D. *Applications for Allowance of Administrative Expenses* All Holders of Administrative Expenses (including Holders of any Claims for non-ad valorem Postpetition federal, state, or local Taxes, but excluding Section 503(b)(9) Claims and Professional Fee Claims) that do not file an application or other Bankruptcy Court-approved pleading by the Administrative Expense Bar Date will be forever barred from asserting such Administrative Expense against the Debtors or their Estates. Section 503(b)(9) Claims are not subject to the Administrative Expense Bar Date, but rather were required to file such Claims on or before March 16, 2016, pursuant to the terms of the applicable Bar Date Order.

E. *Priority Tax Claims* On the Effective Date, the Creditor Trust shall assume the obligation to pay any Allowed Priority Tax Claim in accordance with the Plan. Each Holder of an Allowed Priority Tax Claim shall receive on account of such Allowed Priority Tax Claim regular quarterly installment payments in Cash from the Creditor Trust in accordance with Section 1129(a)(9)(C) of the Bankruptcy Code. Holders of Allowed Priority Tax Claims shall receive interest on account of their Allowed Priority Tax Claims at the Section 6621 Interest Rate; provided, however, that if the Holder of such Allowed Priority Tax Claim is a city, county or state, such Holder shall receive interest on account of its Allowed Priority Tax Claim at the applicable statutory rate under state law. Notwithstanding the foregoing, each Holder of an Allowed Priority Tax Claim may be paid by the Creditor Trustee (a) on such other terms as may be agreed upon by the Holder of such Allowed Priority Tax Claim and the Creditor Trustee or (b) as otherwise ordered by a Final Order of the Bankruptcy Court. Each Holder of an Allowed Priority Tax Claim shall credit toward its Claim, dollar-for-dollar, any payment of any part of said Claim to the extent the same is paid by a third-party. The Creditor Trustee may prepay in

whole or part any Allowed Priority Tax Claim at any time, without interest or penalty, at which time such Allowed Priority Tax Claim shall not be entitled to any further distributions from the Creditor Trust.

3. Designation of Classes of Claims and Equity Interests

A. In General Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Equity Interests. A Claim or Equity Interest is classified (a) in a particular Class only to the extent the Claim or Equity Interest qualifies within the description of that Class and (b) in a different Class to the extent the Claim or Equity Interest qualifies within the description of that different Class. Unless otherwise expressly stated, the Classes of Claims set forth below include all Claims that qualify within the description of that Class. As of the Confirmation Hearing, any Class of Claims which does not contain any Creditor's Claims will be deemed deleted automatically from the Plan, and any Class of Claims which does not contain an Allowed Claim (or a Claim temporarily or provisionally Allowed by the Bankruptcy Court for voting purposes) will be deemed automatically deleted from the Plan with respect to voting on confirmation of the Plan.

B. Classes For purposes of the Plan, Claims and Equity Interests are classified as follows:

1. Class 1 consists of all Priority Claims.
2. Class 2 consists of the Allowed Secured Claim of First Capital.
3. Class 3 consists of Allowed Non-Seller Note Claims held by Non-Seller Note Parties whose Claims have not otherwise been resolved by Final Order, including through an approved settlement, as of the date of this Disclosure Statement. Each Class 3 sub-class below shall be treated for voting, Section 1129(b) of the Bankruptcy Code and all other purposes as a separate Class. Class 3 consists of the following sub-classes with the understanding that any Class 3 sub-class Claimant whose Claim is resolved by Final Order prior to the Confirmation Hearing will be deemed deleted from below and whose claim will be treated as set forth in such Final Order:
 - 3(a) Robert Kahan;
 - 3(b) Sayed Aleali;
 - 3(c) Thomas Miller;
 - 3(d) C. H. Miller Hardware, Inc.;
 - 3(e) EFG Bank;
 - 3(f) George Sample;
 - 3(g) Fribourg Limited;
 - 3(h) Ladjevardi Trust;
 - 3(i) Bahman & Yasmin Mossavar-Rahmani
 - 3(j) Dariush Owlia; and
 - 3(k) United American Securities, Inc.

4. Class 4 consists of Allowed Seller Note Claims held by Seller Note Parties whose Claims have not otherwise been resolved by Final Order, including through an approved settlement, as of the date of this Disclosure Statement. Each Class 4 sub-class below shall be treated for voting, Section 1129(b) of the Bankruptcy Code and all other purposes as a separate Class. Class 4 consists of the following sub-classes with the understanding that any Class 4 sub-class Claimant whose Claim is resolved by Final Order prior to the Confirmation Hearing will be deemed deleted from below and whose claim will be treated as set forth in such Final Order:
 - 4(a) Cook Brothers Automotive;
 - 4(b) Danielle Delmonico;
 - 4(c) Nicole and Ralph Carratura;
 - 4(d) Gary Cook;
 - 4(e) Richard Cook;
 - 4(f) Robert Alfred Delmonico;
 - 4(g) Robert Anthony Delmonico; and
 - 4(h) Shirley and Joseph Horvath.
5. Class 5 consists of all Allowed Secured Claims other than the Allowed Claims set forth in Classes 2, 3 and 4. Each Class 5 Allowed Secured Claim shall constitute its own Class 5 sub-class, i.e. Class 5(a), 5(b), 5(c), and so forth.
6. Class 6 consists of all Allowed Unsecured Claims.
7. Class 7 consists of all Equity Interests in the Debtors.

4. Treatment of Classified Claims and Equity Interests

A. *In General* Claims and Equity Interests will be treated under the Plan in the manner set forth in Article 6 of the Plan. Except as otherwise specifically provided in the Plan, the treatment of, and the consideration to be received by, Holders of Allowed Claims and Holders of Allowed Equity Interests pursuant to the Plan will be in full and final satisfaction, settlement, release, extinguishment, and discharge of their respective Allowed Claims, of any nature whatsoever, and Allowed Equity Interests.

B. *Unclassified Claims* Each Holder of an Allowed Administrative Expense Claim or an Allowed Priority Tax Claim will receive the treatment set forth in Article 3 of the Plan.

C. *Class 1: Priority Claims* On the later to occur of the Effective Date or entry of a Final Order Allowing the Class 1 Claim, each Holder of an Allowed Priority Claim shall be paid by the Debtors, if before the Effective Date, or the Creditor Trustee, if after the Effective Date, as the case may be, an amount in Cash equal to the Allowed Amount of its Priority Claim, in accordance with Section 1129(a)(9)(B) of the Bankruptcy Code. Notwithstanding the foregoing, each Holder of an Allowed Priority Claim may be paid (a) on such other terms as may be agreed upon by the Holder of such Allowed Priority Claim and the Debtors or the Creditor

Trustee, as the case may be, or (b) as otherwise ordered by a Final Order of the Bankruptcy Court. Class 1 is Unimpaired by the Plan. Accordingly, Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan.

D. Class 2: Secured Claim of First Capital Class 2 consists of the Allowed Secured Claim of First Capital, which is secured by a first priority security interest in certain assets of the Debtors. First Capital has a Contingent Claim pursuant to the Order Granting Joint Motion for Approval of Agreement Regarding the Use of Cash Collateral and Obtaining Credit Pursuant to Bankruptcy Rule 4001(d) [Dkt. No. 158]. First Capital's Contingent Claim is based on the ultimate percentage recovery to Class 6 Unsecured Claims. First Capital shall receive payment in Cash, in an amount equal to the value of First Capital's Contingent Claim, on the later of (a) within sixty (60) days after the Effective Date, or (b) within ten (10) days after the date that such Contingent Claim is valued pursuant to a Final Order of the Bankruptcy Court or such Contingent Claim is otherwise determined to be an Allowed Secured Claim by Final Order. Any deficiency remaining will be treated as a Class 6 Claim. Class 2 is Impaired under the Plan. Accordingly, First Capital, as the Holder of the Allowed Class 2 Claim, is entitled to vote to accept or reject the Plan.

E. Class 3: Non-Seller Note Claims Each Class 3 Non-Seller Note Claim Holder, expressly including each sub-class within Class 3, will be the subject of an adversary proceeding (the "**Class 3 Adversary Proceedings**") to determine, among other things: (i) the extent, validity and priority of its asserted Non-Seller Note Claim based upon perfection issues pursuant to Section 544 of the Bankruptcy Code and valuation issues pursuant to Section 506 of the Bankruptcy Code; (ii) recharacterization of debt as equity; (iii) improper dividends and fraudulent conveyance actions applicable to Prepetition payments received by Class 3 Non-Seller Note Claim Holders; and (iv) objections to Non-Seller Note Claims. All Class 3 Adversary Proceedings will be commenced on or before the Confirmation Hearing. All Class 3 Non-Seller Note Claim Holders' Distributions will be reserved for as part of the Disputed Claim Reserve until a Final Order is entered by the Bankruptcy Court rendering judgment or approving a settlement pursuant to Bankruptcy Rule 9019, or otherwise resolving the entirety of the Class 3 Adversary Proceeding applicable to the respective Class 3 sub-class (the "**Class 3 Final Order**"); pending such Class 3 Final Order, the applicable Class 3 Non-Seller Note Claim Holders' asserted Non-Seller Note Claim will be preserved and otherwise not diminished or altered by Confirmation of the Plan. Each Class 3 Non-Seller Note Claim Holder will be paid, if at all, in accordance with the Class 3 Final Order. Each of the Class 3 sub-classes are impaired by the Plan. Accordingly, Class 3 Non-Seller Claim Holders are entitled to vote to accept or reject the Plan.

F. Class 4: Seller Note Claims

Each Class 4 Seller Note Claim Holder, expressly including each sub-class within Class 4, will be the subject of an adversary proceeding (the "**Class 4 Adversary Proceedings**") to determine, among other things: (i) the extent of its asserted Seller Note Claim based upon perfection issues pursuant to Section 544 of the Bankruptcy Code and valuation issues pursuant to Section 506 of the Bankruptcy Code; and (ii) objections to Seller Note Claims. All Class 4 Adversary Proceedings will be commenced on or before the Confirmation Hearing. All Class 4 Seller Note Claim Holders' Distributions will be reserved for as part of the Disputed Claim

Reserve until a Final Order is entered by the Bankruptcy Court rendering judgment, approving a settlement pursuant to Bankruptcy Rule 9019, or otherwise resolving the Class 4 Adversary Proceeding applicable to the respective Class 4 sub-class (the “**Class 4 Final Order**”); pending such Class 4 Final Order, the applicable Class 4 Seller Note Claim Holders’ asserted Seller Note Claim will be preserved and otherwise not diminished or altered by Confirmation of the Plan. Each Class 4 Seller Note Claim Holder will be paid, if at all, in accordance with the Class 4 Final Order. To the extent a Class 4 Seller Note Claim Holder failed to file a Proof of Claim, the Debtor, Committee and/or the Creditor Trustee, as the case may be, reserves the right to file a claim objection, in their respective sole discretion, instead of a commencing a Class 4 Adversary Proceeding against such Seller Note Claimant. Each of the Class 4 sub-classes are impaired by the Plan. Accordingly, each sub-class of Class 4 Seller Note Claim Holders are entitled to vote to accept or reject the Plan.

G. Class 5: Other Secured Claims Class 5 consists of all Allowed Secured Claims not otherwise classified under the Plan, if any. Each Holder of an Allowed Secured Claim in Class 5 shall receive either (i) the return of their collateral securing such Allowed Class 5 Claim or (ii) payment in Cash, in an amount equal to the value of such collateral, on the later of (a) within sixty (60) days after the Effective Date, or (b) within ten (10) days after the date that such collateral is valued pursuant to a Final Order of the Bankruptcy Court or such Class 5 Claim is otherwise determined to be an Allowed Secured Claim by Final Order. Any deficiency remaining will be treated as a Class 6 Claim. Class 5 is Impaired by the Plan. Holders of Class 5 Claims are impaired and are entitled to vote to accept or reject the Plan.

H. Class 6: Unsecured Claims Class 6 consists of all Allowed Unsecured Claims. Holders of Allowed Unsecured Claims in Class 6 shall receive a Pro Rata Share of Distributions upon Class 6 Claims on each Distribution Date to be determined under the Plan, but only after all Allowed Claims in Classes 1, 2, 3, 4 and 5 have been paid in full or, alternatively, have been fully reserved for by the Creditor Trustee as part of the Disputed Claims Reserve. Class 6 is Impaired by the Plan. Accordingly, Holders of Class 6 Claims are entitled to vote to accept or reject the Plan.

I. Class 7: Equity Interests Class 7 consists of all Equity Interests in the Debtors. As of the Effective Date, all Equity Interests shall be terminated, canceled and of no further force or effect. Holders of Class 7 Equity Interests are not entitled to receive or retain any property under the Plan on account of their Equity Interests. Accordingly, Class 7 Equity Interest Holders are deemed to have rejected the Plan pursuant to Section 1126(8). Class 7 Equity Interest Holders are not entitled to vote on the Plan.

5. Acceptance or Rejection of Plan

A. Each Impaired Class Entitled to Vote Separately The Holders of Claims in each Impaired Class and sub-class of Class 3, 4 and 5 Claims will be entitled to vote separately to accept or reject the Plan unless there is an objection pending against such Claim, including Class 3 Adversary Proceedings and Class 4 Adversary Proceedings, at the time set for voting on the Plan and the Holder of such Claim has not sought an order of the Bankruptcy Court temporarily allowing such Claim for voting purposes. Classes 3 and 4, and potentially Class 5, have more than one Claimant, in which case each Claimant shall constitute a sub-class entitled to

vote separately to accept or reject the Plan. For purposes of the Plan, each sub-class shall constitute its own separate Class for all purposes.

B. Acceptance by Impaired Classes Classes 2 through 7 are Impaired under the Plan. Holders of Claims in Classes 2 through 6 are entitled to vote to accept or reject the Plan. Each sub-class in Classes 3 and 4 and potentially Class 5 constitute its own class for purposes of voting to accept or reject the Plan. Pursuant to Section 1126(c) of the Bankruptcy Code, an Impaired Class of Claims will have accepted the Plan if (a) the Holders (other than any Holder designated pursuant to Section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in dollar amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders (other than any Holder designated pursuant to Section 1126(e) of the Bankruptcy Code) of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

C. Presumed Acceptance of Plan Class 1 is Unimpaired under the Plan. Pursuant to Section 1126(f) of the Bankruptcy Code, the Holders of Claims in Unimpaired Classes are conclusively presumed to have accepted the Plan and, thus, are not entitled to vote on the Plan. Except as otherwise expressly provided in the Plan, nothing contained in the Plan or otherwise will affect the Debtors' rights and legal and equitable claims or defenses in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to setoffs or recoupments against Unimpaired Claims.

D. Deemed Non-Acceptance of Plan Holders of Class 7 Equity Interests will not receive or retain any Property or equity interest under the Plan on account of such Equity Interests, and, therefore, Class 7 is deemed not to have accepted the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Accordingly, votes of Holders of Class 7 Equity Interests are not being solicited by the Debtors.

E. Impairment Controversies If a controversy arises as to whether any Claim or Equity Interest, or any Class of Claims or Class of Equity Interests, is Impaired under the Plan, such Claim, Equity Interest, or Class shall be treated as specified in the Plan unless the Bankruptcy Court shall determine such controversy upon motion of the party challenging the characterization of a particular Claim or Equity Interest, or a particular Class of Claims or Class of Equity Interests, under the Plan.

F. Voting If a Claim is the subject of an objection or an adversary proceeding prior to the deadline for submission of votes and the Holder of the Claim has not filed a motion seeking relief under Rule 3018 of the Bankruptcy Rules, the Holder shall not be entitled to vote to accept or reject the Plan.

G. Cramdown In the Plan, the Debtors and the Committee have requested confirmation pursuant to the cramdown provisions of Section 1129(b) of the Bankruptcy Code with respect to Class 7 (which is deemed to have rejected the Plan) and with respect to any other Impaired Class, including sub-classes, that votes to reject the Plan.

VII. MEANS OF IMPLEMENTATION AND EXECUTION OF PLAN

1. Overview

The Plan and the distributions to Creditors provided for therein will be funded from the Creditor Trust Assets.

2. Creation of the Creditor Trust

On the Effective Date, the Creditor Trust shall be established pursuant to the Creditor Trust Agreement. The Creditor Trust shall be governed by the Creditor Trust Agreement, the Plan and the Confirmation Order.

3. Transfer of Assets to the Creditor Trust

On the Effective Date, the Debtors shall transfer all Assets, including all Cash, Avoidance Actions and Causes of Action, to the Creditor Trust. All transfers to the Creditor Trust shall be free and clear of all liens, claims, interests and encumbrances.

4. Selection of Creditor Trustee

The Creditor Trustee designated by the Plan is MEMA Financial Services Group, Inc., in its capacity as trustee under the terms of the Creditor Trust Agreement and pursuant to the Confirmation Order. MEMA Financial Services Group, Inc., the Creditor Trustee, is a multi-faceted leader in providing credit and financial executives in the automotive aftermarket with significant insight into the aftermarket, via white papers, surveys and similar means, and regarding customer's trade payments and operations, via credit discussion groups and periodic reports. MEMA Financial Services Group, Inc. has over a 100-year existence and is a wholly owned subsidiary of the Motor Equipment Manufacturers Association. Many of the Debtors' unsecured suppliers belong to or have otherwise benefited from MEMA Financial Services Group, Inc.'s insolvency-related services, technological abilities and industry knowledge and experience.

Confirmation of the Plan shall constitute the approval of the Creditor Trustee as a professional pursuant to the applicable provisions of the Bankruptcy Code. The Creditor Trustee shall conduct the final liquidation and distribution of the Estates. The Creditor Trust shall also wind-up of the Debtors' affairs in accordance with the terms and conditions of the Plan. The Post-Confirmation Committee shall be permitted to terminate and replace the Creditor Trustee at its discretion upon unanimous vote of all members without approval of the Bankruptcy Court, provided, however, that the Post-Confirmation Committee shall provide the Creditor Trustee with thirty (30) days written notice of its intent to remove the Creditor Trustee. If the Creditor Trustee believes that its removal is not in the best interests of Creditors, then the Creditor Trustee may seek Bankruptcy Court approval to continue as Creditor Trustee. If such authority is sought, the Bankruptcy Court shall hear the matter and issue an Order resolving whether the Creditor Trustee shall continue or be replaced, or otherwise issue an appropriate order. In accordance with the Creditor Trust Agreement, the Creditor Trustee will serve in such capacity through the earlier of (a) the date that the Creditor Trust and the Disputed Claims Reserve are dissolved in accordance with the Plan and (b) the date such Creditor Trustee resigns, is terminated or is otherwise unable to serve. In the event that the Creditor Trustee should resign, is terminated or is unable to serve, the Post-Confirmation Committee shall appoint a successor and the Creditor Trustee shall promptly assign, transfer, and deliver to such successor all Assets

in the Creditor Trust and take such actions and execute and deliver such instruments as may reasonably be necessary to accomplish such assignment, transfer, or delivery.

5. Vesting of Assets in Creditor Trust

As of the Effective Date, pursuant to the provisions of Section 1141 of the Bankruptcy Code, all Creditor Trust Assets shall be deemed to have automatically been transferred to and shall vest in the Creditor Trust to be held in trust for the benefit of the Beneficiaries, free and clear of all liens, claims, charges, encumbrances, and interests of creditors and interest holders, except as otherwise expressly provided under the Creditor Trust Agreement, the Plan or in the Confirmation Order. Beneficiaries shall not receive certificates and their interest in the Creditor Trust is non-transferable. As of the Effective Date, (i) the Debtors and the Estates shall be deemed to have appointed the Creditor Trust as their true and lawful attorney in fact with full power of substitution, which appointment is coupled with an interest and is irrevocable, and (ii) the Creditor Trust shall have full power to act in the name of the Debtors and their Estates for all purposes permitted under the Plan. As of the Effective Date, the Creditor Trust, by and through the Creditor Trustee, is hereby appointed pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code as the representative of the Estates with full authority to commence, prosecute, and settle all Causes of Action in the name of the Debtors or the Creditor Trust, as appropriate. For the avoidance of doubt, nothing herein shall be construed to restrict or limit the ability or standing of the Creditor Trustee to assert any Causes of Action transferred to the Creditor Trust. Upon the Effective Date, the Debtors shall be deemed to have released all of its right, title, and interest in, and to all benefits from, the Assets transferred to the Creditor Trust. In connection with any Causes of Action that are included in the Creditor Trust Assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications thereto (whether written or oral) will also exist for the benefit of the Creditor Trust and will vest in the Creditor Trustee and its representatives, and will also be preserved for and as to the Debtors. The Creditor Trustee is authorized to take all necessary actions to benefit from and to preserve such privileges.

6. Maintaining Bank Accounts

The Creditor Trustee shall deposit any Cash in interest bearing accounts, or such other accounts, as it deems appropriate, and, any interest earned shall be added to the Creditor Trust and distributed in accordance with the Plan. The Creditor Trust shall be authorized to continue to use any bank accounts used by the Debtors prior to the Effective Date.

7. Treatment of Creditor Trust for Federal Income Tax Purposes; No Successor in-Interest

The Creditor Trust will be established for the primary purpose of liquidating the Liquidation Proceeds, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Creditor Trust. Accordingly, the Creditor Trustee will, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidation Proceeds, make timely distributions to the Beneficiaries in accordance with the Plan and the Creditor Trust Agreement and not unduly prolong its duration. The Creditor Trust will

not be deemed a successor-in-interest of the Debtor for any purpose other than as specifically set forth herein or in the Creditor Trust Agreement.

The Creditor Trust is intended to be treated as a “liquidating trust” pursuant to Treasury Regulation § 301.7701-4(d) and as a “grantor trust” for federal income tax purposes, pursuant to Section 671 through 679 of the Internal Revenue Code of 1986, as amended (the “IR Code”). In the event that the Creditor Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulations Section 301.7701-4(d), the Creditor Trustee shall take such action as it shall deem appropriate to have the Creditor Trust classified as a partnership for federal tax purposes under Treasury Regulations Section 301.7701-3 (but not a publicly traded partnership within the meaning of Section 7704 of the IR Code), including, if necessary, creating or converting it into a Delaware limited partnership or limited liability company that is so classified. For federal income tax purposes, the Beneficiaries will be treated as the grantors and owners of the Creditor Trust and, therefore, will be responsible for the payment of tax on their respective allocable share of the taxable income of the Creditor Trust.

As soon as reasonably practicable after the Effective Date, the Creditor Trustee (to the extent that the Creditor Trustee deems it necessary or appropriate in its sole discretion) will value the Liquidation Proceeds based on the good faith determination of the value of such Liquidation Proceeds. The valuation will be used consistently by all parties (including the Debtor, the Creditor Trustee, and the Beneficiaries) for all federal income tax purposes. The Bankruptcy Court will resolve any dispute regarding the valuation of the Liquidation Proceeds. The right and power of the Creditor Trustee to invest the Liquidation Proceeds transferred to the Creditor Trust, the proceeds thereof, or any income earned by the Creditor Trust, will be limited to the right and power to invest such Liquidation Proceeds (pending distributions in accordance with the Plan).

8. Responsibilities of Liquidating Trustee

The responsibilities of the Liquidating Trustee will include, without limitation:

- A. Prepare periodic reports, as the Creditor Trustee deems appropriate, providing information regarding the administration of the Creditor Trust. Such reports may include, for example, (i) receipts and disbursements since the prior reporting period, (ii) a schedule of all asset dispositions, (iii) a schedule of Distributions made, and (iv) a summary listing of the status of the resolution of objections to Claims and Causes of Action. Such periodic report shall be distributed pursuant to the Designated Notice.
- B. Maintain records and books of account relating to the Creditor Trust’s assets, the management thereof and all transactions undertaken by the Creditor Trustee on behalf of the Creditor Trust. The Creditor Trustee shall also maintain records and books of account relating to all Distributions contemplated under the Plan.
- C. Open, maintain, close as appropriate bank accounts in the name of the Creditor Trust and to deposit any Cash in accounts, as it deems appropriate, and, interest earned, if any, shall be added to the Liquidation Proceeds and distributed in

accordance with the Plan. The Creditor Trustee shall be authorized to continue to use any bank accounts used by the Debtors prior to the Effective Date. The Creditor Trustee shall not be obligated to deposit Cash Assets of the Creditor Trust into an interest-bearing bank account.

- D. Establish and maintain the Disputed Claims Reserve in accordance with the terms of the Plan;
- E. Conduct an analysis of Claims, to the extent not completed prior to the Effective Date. Prosecute, negotiate and reconcile objections and potential objections to Claims, including litigating, compromising or otherwise resolving such Claim objections, as necessary and appropriate;
- F. File all reports and appropriate tax returns as necessary;
- G. Take such actions as are necessary to prosecute, determine not to prosecute, resolve or compromise, as appropriate, all Causes of Action;
- H. Conduct investigations deemed appropriate by the Creditor Trustee, including, if deemed appropriate, examinations under Bankruptcy Rule 2004; and
- I. Conduct the administration of the Reorganization Case and the Plan, including to obtain a Final Decree and to pay any U.S. Trustee quarterly fees.

9. Creditor Trust Expenses

All Creditor Trust Expenses will be charged against and paid from the proceeds of the Liquidation Proceeds, and the Creditor Trustee will pay the same as and when due and payable. The Creditor Trustee will engage attorneys to prosecute Causes of Action, and represent the Creditor Trustee. The Professionals retained by the Creditor Trustee or by the Post-Confirmation Committee shall be entitled to payment of their fees and reimbursement of all reasonable expenses on a monthly basis pursuant to the terms agreed to by the Creditor Trustee and the Post-Confirmation Committee, in consultation with each other. The Professionals retained by the Creditor Trustee or the Post-Confirmation Committee will submit periodic statements for services rendered and costs incurred to the Creditor Trustee and the Post-Confirmation Committee. The Creditor Trustee will have ten (10) days to object to any such statement and may seek input from the Post-Confirmation Committee. In the event that any such objection is received to the relevant Professional's fees that cannot be promptly resolved by such Professional and the Creditor Trustee, the dispute will be submitted by the Creditor Trustee to the Bankruptcy Court for adjudication following Designated Notice. The Bankruptcy Court will retain jurisdiction to adjudicate any such objection. In the event that no objection is raised to the Creditor Trustee or Post-Confirmation Committee's respective Professionals, within the ten (10) day period, such statement will be promptly paid by the Creditor Trustee. No Professional for either the Creditor Trustee or the Post-Confirmation Committee shall be required to provide notice of the monthly fee statements to Creditors, the Bankruptcy Estates, or the Office of the United States Trustee. The payment due upon the Creditor Trustee's receipt of such Professionals' invoices shall be 100% of fees and expenses as approved by the Creditor Trustee or the Post-Confirmation Committee, as the case may be, and the Professionals shall not be

required to file fee applications. Any compensation paid to Professionals and the Creditor Trustee shall be in accordance with the Creditor Trustee's general powers and obligations as set forth in §§ 10.04 and 10.05 of the Plan.

10. Settlement Authority

The Creditor Trustee shall be authorized to resolve objections to Claims, to enter into settlements of Causes of Action and otherwise resolve disputes, without notice or further order of the Bankruptcy Court; provided, however, that, with respect to matters involving more than \$250,000 in controversy, the Creditor Trustee shall only be authorized to resolve such matters upon approval by Final Order of the Bankruptcy Court. If the Creditor Trustee seeks Bankruptcy Court approval of any settlement of any Cause of Action, Disputed Claim, or other matter, such request must provide Designated Notice.

11. Bonding of Liquidating Trustee

The Creditor Trustee will not be obligated to obtain a bond but may do so, in its sole discretion, in which case the expense incurred by such bonding will be paid by the Creditor Trust.

12. Reporting and Notice

As more fully set forth in § 10.05.1 of the Plan, the Creditor Trustee shall file periodic reports with the Bankruptcy Court setting forth the assets, liabilities and activities of the Creditor Trust since the prior report, including a statement of all amounts paid for compensation of professionals and the Creditor Trustee, and the Creditor Trustee shall serve a copy upon all parties entitled to Designated Notice.

13. Dissolution of the Debtors

The Debtors will be dissolved by the Creditor Trustee (or those to whom the Creditor Trustee delegates) no later than six (6) years from the Effective Date unless the Bankruptcy Court, upon a motion filed prior to the sixth (6th) anniversary or the end of any extension period approved by the Bankruptcy Court (the filing of which will automatically extend the term pending the entry of an order by the Bankruptcy Court granting or denying the motion), determines that a fixed period extension is necessary to facilitate or complete the recovery and liquidation of the Assets. After (a) the final Distribution of the Disputed Claims Reserve and the balance of the Liquidation Proceeds pursuant to the Plan, and (b) the filing by or on behalf of the Debtors of a certification of dissolution with the Bankruptcy Court in accordance with the Plan, the Debtors will be deemed dissolved for all purposes without the necessity for any other or further actions. Notwithstanding the foregoing, nothing shall prohibit the Creditor Trustee from dissolving one or more of the Debtors at any time after the Effective Date, as the Creditor Trustee deems necessary or appropriate.

14. Full and Final Satisfaction Against Liquidating Trust

On and after the Effective Date, the Debtors, the Creditor Trust and Creditor Trustee will have no liability on account of any Holders of Claims or Equity Interests except as set forth in

the Plan. The total payments and Distributions made by the Creditor Trustee under the Plan will be in full and final satisfaction, settlement, and release of and in exchange for all Claims or Equity Interests against the Debtors.

15. Limitation of Liability

A. The Creditor Trust, Creditor Trustee, the Creditor Trustee's affiliates (as defined in Section 101(2) of the Bankruptcy Code), the Post-Confirmation Committee (including its individual members) and their respective representatives, agents, Professionals, employees, successors or assigns (collectively the "**Liquidation Entities**") shall not be liable or otherwise responsible in any manner whatsoever for any act or omission of any kind or character, in any capacity, to any Claimant, Creditor, Person or any third party, with the sole exception for specific acts or omissions determined by Final Order to arise solely from gross negligence, willful misconduct or fraud. The Creditor Trustee may, in connection with the performance of its duties and in its sole and absolute discretion, consult with the Creditor Trustee's Professionals, and will not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such Professionals, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Creditor Trustee will not be under any obligation to consult with the Creditor Trustee's Professionals, and the determination not to do so will not result in the imposition of liability upon the Creditor Trustee, its Professionals or any other of the Liquidation Entities.

B. Neither the Creditor Trustee nor any of the other Liquidation Entities shall be liable for (and the Liquidation Proceeds shall not be burdened or otherwise available to pay or otherwise satisfy any judgment for) any act or omission taken or omitted to be taken other than acts or omissions determined by Final Order to have arisen solely from gross negligence, willful misconduct or fraud. No recourse will ever be had, directly or indirectly, against the Creditor Trustee or the Creditor Trust arising from or otherwise related to any legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge or note, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed or otherwise agreed or consented to, whether expressly or impliedly, by the Creditor Trustee relating directly or indirectly to the Plan, the Creditor Trust Agreement or by reason of the creation of any indebtedness by the Creditor Trustee or otherwise by the Creditor Trustee carrying out its duties or discretion under the Trust Agreement or the Plan. All such liabilities, covenants, and agreements of the Liquidation Entities, or any of them, whether in writing or otherwise, pursuant to or in carrying out the purpose of the Plan or the Creditor Trust Agreement will be enforceable only against, and will be satisfied only out of, the Liquidation Proceeds or such part thereof as will, under the terms of any such agreement or understanding, be liable therefore, or will be evidence only of a right of payment out of the Liquidation Proceeds, as the case may be. Every undertaking, contract, covenant, agreement or understanding entered into in writing by the Creditor Trustee may (but will not be necessary to invoke the full protections of these Limitation of Liabilities) provide expressly against the personal liability of the Creditor Trustee.

C. The Creditor Trust shall indemnify and hold harmless the Creditor Trustee and all other Liquidation Entities from and against and in respect to any and all liabilities, losses, damages, claims, causes of action, costs and expenses in connection with any action, suit,

proceeding, or investigation brought by or threatened against such Liquidation Entities, including, but not limited to attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions, provided, however, that no such indemnification will be made for such actions or omissions of the Creditor Trustee solely as a result of gross negligence, willful misconduct or fraud as determined by Final Order. The Plan contains additional limitations of liabilities.

16. Reliance on Documents

The Creditor Trustee may rely, and will be protected in acting or refraining from acting, upon any certificates, opinions, statements, instruments or reports believed by it to be genuine and to have been signed by the proper Person or Persons.

17. Requirement of Undertaking

The Creditor Trustee may request any court of competent jurisdiction to require, and any such court may in its discretion require, in any suit for the enforcement of any right or remedy under the Plan, or in any suit against the Creditor Trustee for any act taken or omitted by the Creditor Trustee, that the filing party litigant in such suit undertake to pay the costs of such suit, and such court may in its discretion assess reasonable costs, including, without limitation, reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant.

18. Post-Confirmation Committee

A. The Committee shall continue in existence until the Effective Date, at which time the Committee shall be terminated for all purposes. On the Effective Date, a Post-Confirmation Committee shall be formed. The Post-Confirmation Committee shall be comprised of two (2) members designated by the Committee at least three (3) Business Days prior to the commencement of the Confirmation Hearing. The Post-Confirmation Committee shall not be the successor to the Committee in any manner whatsoever and shall expressly not have the role or duties of the Committee; rather the Post-Confirmation Committee shall only have the role as expressly set forth in the Plan. In the event of death, incapacitation or resignation of any member of the Post-Confirmation Committee, the remaining member of the Post-Confirmation Committee shall have the right to designate a successor, who must be a Claimant. If a Post-Confirmation Committee member assigns or releases its Claim(s) against the Debtors or releases the Creditor Trust of the obligation to pay its Claim(s), such act shall constitute a resignation from the Post-Confirmation Committee. Until a vacancy on the Post-Confirmation Committee is filled, the Post-Confirmation Committee shall function in its reduced number; provided, however, that in the event a vacancy in the Post-Confirmation Committee occurs, the remaining member shall have the right, but not the obligation, to appoint a successor member to the Post-Confirmation Committee in the sole discretion of such surviving member. Upon the final Distribution, the Post-Confirmation Committee, without further action or notice, shall be dissolved and the members thereof shall be released and discharged of and from all further involvement related to and arising from their service as Post-Confirmation Committee members.

B. The Post-Confirmation Committee, who shall serve without compensation, shall expressly have no fiduciary duty, responsibility or any other duties of any kind or character to any Creditor, Claimant, party in interest or any other Person. The sole purpose of the Post-Confirmation Committee is: (i) to provide the Creditor Trustee with a sounding board should the Creditor Trustee desire input from representative Creditors; and (ii) to remove and/or appoint a successor Creditor Trustee should the Creditor Trustee appointed in the Confirmation Order resign, be removed, become incapacitated or be otherwise unable to continue to serve as Creditor Trustee. In serving as a member of the Post-Confirmation Committee, such members shall not assume or be deemed to have assumed any liability or duty of any kind or character whatsoever to any Claimant, Person, Interest Holders, the Debtors, the Creditor Trust, the Creditor Trustee, or any other parties in interest in the Chapter 11 Cases and shall not be liable for any acts or omissions of any kind or character whatsoever while acting in that capacity. The Post-Confirmation Committee shall have the right to retain counsel or other Professionals without further order of the Bankruptcy Court, who shall be paid their reasonable fees and expenses by the Creditor Trust. In addition, the members of the Post-Confirmation Committee shall be entitled to reimbursement from the Creditor Trust of their reasonable out-of-pocket expenses incurred in connection with their involvement as members of the Post-Confirmation Committee. The Post-Confirmation Committee shall have independent standing to appear and be heard in any judicial or other proceeding as to any matter relating to the Plan, the Reorganization Case or the Creditor Trust. The Bankruptcy Court shall retain jurisdiction to hear any disputes relating to the expenses of the Post-Confirmation Committee and the fees and expenses of the Post-Confirmation Committee's Professionals, which disputes, if any, shall be resolved by the Bankruptcy Court after Designated Notice and hearing.

VIII. PROVISIONS GOVERNING DISTRIBUTIONS

1. Determination of Claims

A. From and after the Effective Date, the Creditor Trustee shall have the exclusive authority to file, settle, compromise, withdraw, or litigate to judgment all objections to Claims. As of the Effective Date, the Creditor Trustee shall be deemed to be substituted for the Debtors, and succeed to all rights and defenses of the Debtors, with respect to any objections to Claims which have not been finally resolved prior to the Effective Date. Except as to any late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases, if any, pursuant to the Confirmation Order, all objections to Claims shall be filed with the Bankruptcy Court by no later than one hundred and twenty (120) days following the Effective Date (unless such period is extended by the Bankruptcy Court upon motion of the Creditor Trustee). Objections to late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases shall be filed on the later of (a) one hundred and twenty (120) days following the Effective Date or (b) the date that is ninety (90) days after the Creditor Trustee receives actual notice of the filing of such Claim.

B. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the Holder of the Claim if the objecting party effects service in any of the following manners: (a) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004, (b) to the extent counsel for the Holder of a Claim is unknown, by first class mail, postage prepaid, on the signatory and at the address on the

Proof of Claim or other representative identified on the Proof of Claim or any attachment thereto, or (c) by first class mail, postage prepaid, on any counsel that has filed a notice of appearance in the Reorganization Case on behalf of the Holder of a Claim.

C. Disputed Claims shall be fixed or liquidated in the Bankruptcy Court as core proceedings within the meaning of 28 U.S.C. § 157(b)(2)(B) unless the Bankruptcy Court orders otherwise. If the fixing or liquidation of a contingent or unliquidated Claim would cause undue delay in the administration of the Reorganization Case, such Claim shall be estimated by the Bankruptcy Court for purposes of allowance and Distribution. Prior to the Effective Date, the Debtors may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtors previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, such estimated amount will constitute either the Allowed Amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors or the Liquidating Trustee, as appropriate, may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. The determination of Claims in Estimation Hearings shall be binding for purposes of establishing the maximum amount of the Claim for purposes of allowance and Distribution. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Procedures for specific Estimation Hearings, including provisions for discovery, shall be set by the Bankruptcy Court giving due consideration to applicable Bankruptcy Rules and the need for prompt determination of the Disputed Claim.

2. Distribution Dates

Distributions to Holders of Allowed Claims other than Class 6 Claims shall be made as set forth in Article 6 of the Plan. As soon as reasonably practicable after the Effective Date and payment in full of (or reservation for) the Class 2 through 5 Claims, the Creditor Trustee shall make an initial Distribution from Liquidation Proceeds to Holders of Allowed Claims in Class 6. Thereafter, the Creditor Trustee shall make Distributions to Holders of Allowed Class 6 Claims on subsequent Distribution Dates up to and including the date of the final Distribution under the Plan. Notwithstanding the foregoing, the Creditor Trustee, after reserving for all Disputed Claims and otherwise reserving sufficient funds for Classes 2 through 5, expenses of the Creditor Trust and such other amounts deemed by the Creditor Trustee as appropriate, the Creditor Trustee may make a partial Distribution to Allowed Class 6 Claimants any time after the Effective Date.

3. Interest on Claims

Except as provided in a Final Order entered in the Reorganization Case, (a) no holder of any Claim shall be entitled to interest accruing on or after the Petition Date on such Claim, and (b) interest shall not accrue or be paid upon any Disputed Claim with respect to the period from

the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim, or any part thereof, becomes an Allowed Claim.

4. One Distribution Per Holder

If the Holder of a Claim holds more than one Claim in any one Class, all Claims of such Holder in such Class shall be aggregated and deemed to be one Claim for purposes of Distribution hereunder, and only one Distribution shall be made with respect to the single aggregated Claim. Further, to the extent a Holder of a Claim has filed Proofs of Claim, each representing one single Claim, against multiple Debtors, such Holder of a Claim shall only be entitled to a single Distribution in full satisfaction of such Claim.

5. Effect of Preconfirmation Distributions

Nothing in the Plan shall be deemed to entitle the Holder of a Claim that received, prior to the Effective Date, full or partial payment of such Holder's Claim, by way of settlement or otherwise, pursuant to a Final Order of the Bankruptcy Court, provision of the Bankruptcy Code, or other means, to receive a duplicate payment in full or in part pursuant to the Plan; and all such full or partial payments shall be deemed to be payments made under the Plan for purposes of satisfying the obligations of the Debtors or the Creditor Trustee to such Holder under the Plan.

6. Payments by Cash; Small Distribution; Rounding

All payments made pursuant to the Plan shall be in Cash and by any means reasonably selected by the Creditor Trustee, as applicable, including check or wire transfer. If a Cash payment to be received by any Holder of an Allowed Claim on any Distribution Date (except the final Distribution) would be \$100 or less in the aggregate, notwithstanding any contrary provision of the Plan, in the Creditor Trustee's sole discretion, no such payment will be made to such Holder, and such Cash, if applicable, shall be held for such Holder until the next Distribution Date, at which time such Cash payment shall be made to the Holder. The Creditor Trustee shall include an additional amount in the Unpaid Claims Reserve for unpaid Distributions resulting from such undistributable small amounts. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction down to the nearest whole cent.

7. Disputed Claims

Notwithstanding any other provisions of the Plan, no payments or other Distribution of any kind will be made on account of any Claim until such Claim becomes an Allowed Claim and then only to the extent that such Claim is an Allowed Claim. The Creditor Trustee shall establish and maintain the Disputed Claims Reserve sufficient to fund Disputed Claims that may subsequently become Allowed Claims, as determined by the Creditor Trustee's prudent judgment. To the extent a Disputed Claim becomes an Allowed Claim after any initial Distributions, a Distribution as calculated above shall be made in respect of such Allowed Claim, but only to the extent necessary to equal the percent previously distributed to other Holders of Allowed Claims, within thirty (30) days after such claim becomes an Allowed Claim by Final Order of the Bankruptcy Court. Notwithstanding the foregoing, any holder of both an Allowed Claim(s) and a Disputed Claim(s) shall receive the appropriate payment or Distribution on the

Allowed Claim(s), although, except as otherwise agreed by the Creditor Trustee in its sole discretion, no payment or distribution shall be made on the Disputed Claim(s) until such dispute is resolved by settlement or Final Order. Should any Holder of a Disputed Claim not assert a liquidated amount which can be used for purposes of the Creditor Trustee being able to make necessary and prudent reserves for such Claim, as necessary for making interim Distributions to Allowed Claimants, the Creditor Trustee may include a prudent amount in the Disputed Claims Reserve for such claim or may request the Bankruptcy Court to estimate the amount of the Claim, either for purposes of (i) allowance, (ii) determining a maximum amount of such Claim, or (iii) otherwise the amount to reserve so as to enable the Creditor Trustee to make the appropriate reserve to proceed with an interim Distribution. The Creditor Trustee, in its sole discretion and as part of the reconciliation, objection, resolution and compromise of objected Claims, may agree to make a distribution in full to such Holder of a Disputed Claim as part of a compromise and resolution of such Disputed Claim. The Creditor Trustee may reserve funds in addition to the total Disputed Claims to the extent the Creditor Trustee deems such extra reserve to be prudent.

8. Unclaimed Property

Unclaimed Property shall be held in the Unpaid Claims Reserve to be held for the benefit of the Holders of Allowed Claims entitled thereto under the terms of the Plan. For a period of the later of one year following the first Distribution to a Class of Claims or 180 days after a Distribution is made to a Claimant on account of which Unclaimed Property first results (said period being hereinafter referred to as the “**Claiming Period**”), Unclaimed Property shall be held in the Unpaid Claims Reserve solely for the benefit of the Holders of Allowed Claims which have failed to claim such property. During the Claiming Period, Unclaimed Property due the Holder of an Allowed Claim shall be released from the Unpaid Claims Reserve and delivered to such Holder upon presentation of proper proof by such Holder of its entitlement thereto. In the event that there is Unclaimed Property in the Unpaid Claims Reserve with regard to any Claim, the Creditor Trustee shall, until such Unclaimed Property is claimed or the Claiming Period with regard to the Holder of such Claim has expired, make all subsequent Distributions due with regard to such Claim to the Unpaid Claims Reserve. After the Claiming Period with regard to such Holder has expired, no subsequent Distributions shall be made on account of such Claim, and such Claim shall be treated as being disallowed, waived, and satisfied; provided, however, that the Claiming Period may be extended for the Holder of any Allowed Claim by agreement between the Creditor Trustee and the Post-Confirmation Committee. At the end of the Claiming Period, the Holder of an Allowed Claim theretofore entitled to Unclaimed Property shall cease to be entitled thereto and the Unclaimed Property shall be Liquidation Proceeds. Notwithstanding the foregoing, if there is any Unclaimed Property in the Unpaid Claims Reserve as a result of the final Distribution and such Unclaimed Property remains in the Unpaid Claims Reserve after expiration of the Claiming Period, and if, in the sole judgment of the Creditor Trustee, the Unclaimed Property is not sufficient to make a meaningful Distribution, such Unclaimed Property shall be used to satisfy any unpaid Credit Trust fees and expenses, and the balance shall be paid to the registry of the Bankruptcy Court or donated to a charitable organization. These provisions shall apply without regard to any applicable non-bankruptcy laws with respect to unclaimed property. The Unpaid Claims Reserve may, but need not be, maintained as an interest bearing account. All interest earned thereon shall be Liquidation Proceeds, and no Claimant

entitled to funds from the Unpaid Claims Reserve shall be entitled to interest with regard to the amounts due to such Claimant.

9. Closing Case; Charitable Gift

The Creditor Trustee, in consultation with the Post-Confirmation Committee, shall be authorized to apply to the Bankruptcy Court for authority to close the Reorganization Case at any time when the Plan has been substantially consummated, the final Distribution has been made or as otherwise appropriate. If, after all Causes of Action have been resolved and Assets liquidated or otherwise administered and the proceeds thereof distributed in accordance with the Plan, including by Distributions, the Creditor Trustee, in consultation with the Post-Confirmation Committee, may determine that the expense of administering the Plan is likely to exceed the remaining amount of the Liquidation Proceeds, the Creditor Trustee shall apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to close the Reorganization Case; (ii) donate any balance to a charitable organization selected by the Creditor Trustee and which is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code; and (iii) close the Reorganization Case in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

10. Compliance with Tax Requirements

In connection with the Plan, the Creditor Trustee shall comply with all tax withholding and reporting requirements imposed by federal, state, local and foreign taxing authorities, and all distributions hereunder shall be subject to such withholding and reporting requirements. Notwithstanding the above, each Holder of an Allowed Claim that is to receive a Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such Distribution.

IX. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

1. Rejection of Executory Contracts and Unexpired Leases

Subject to insurance policies as set forth in § 9.05 of the Plan, any Executory Contract, including but not limited to, personal service or employment agreement, or Unexpired Lease that has not been expressly rejected or assumed by the Debtors with the Bankruptcy Court's approval on or prior to the Confirmation Date will be deemed rejected by the Debtors as of the Effective Date unless there is pending before the Bankruptcy Court on the Confirmation Date a motion to assume such Executory Contract or Unexpired Lease. The Confirmation Order will constitute an order of the Bankruptcy Court, pursuant to Section 365 of the Bankruptcy Code, approving the rejection of Executory Contracts and Unexpired Leases which do not constitute Assumed Contracts.

2. Approval of Rejection of Executory Contracts and Unexpired Leases

Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute the approval, pursuant to Sections 365(a) and 1123(b)(2) of the

Bankruptcy Code, of the rejection of the Executory Contracts and Unexpired Leases rejected pursuant to § 9.01 of the Plan.

3. Inclusiveness

Each Executory Contract and Unexpired Lease to be rejected pursuant to the terms of the Plan shall include all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such Executory Contract or Unexpired Lease.

4. Claims under Rejected Executory Contracts and Unexpired Leases

Unless otherwise ordered by the Bankruptcy Court, any Claim for damages arising by reason of the rejection of any Executory Contract or Unexpired Lease must be filed with the Bankruptcy Court on or before thirty (30) days after the Confirmation Date or such Claim shall be forever barred and unenforceable against the Debtors, their Estates and the Creditor Trust. The Plan, the Confirmation Order and any other order of the Bankruptcy Court providing for the rejection of an Executory Contract or Unexpired Lease shall constitute adequate and sufficient notice to Persons or Entities which may assert a Claim for damages from the rejection of an Executory Contract or Unexpired Lease of the foregoing deadline for filing a Claim in connection therewith. All Claims for damages from the rejection of an Executory Contract or Unexpired Lease, once fixed and liquidated by the Bankruptcy Court and determined to be Allowed Claims, shall be Allowed Unsecured Claims in Class 6.

5. Insurance Policies

Notwithstanding anything in the Plan, all of the Debtors' Insurance Policies (together with any agreements, documents, or instruments relating thereto) which are current and unexpired as of the Confirmation Date shall be treated as Executory Contracts and shall be assumed under the Plan. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or the Creditor Trust may hold against any Person or Entity, including the insurers under any of the Insurance Policies.

X. DISCHARGE, RELEASE, LIMITATION OF LIABILITY, AND GENERAL INJUNCTION

1. General Injunction

Pursuant to Sections 105, 1123, 1129 and 1141 of the Bankruptcy Code, in order to preserve and implement the various transactions contemplated by and provided for in the Plan, as of the Effective Date, except as otherwise expressly provided in the Plan or in the Confirmation Order, all Persons or Entities that have held, currently hold or may hold a Claim, Debt, or Liability against the Debtors are and shall be permanently enjoined and forever barred to the fullest extent permitted by law from taking any of the following actions on account of any such Claims, Debts, or Liabilities, other than actions brought to enforce any rights or obligations under the Plan or the Plan Documents: (a) commencing or continuing in any manner any action or other proceeding against the Debtors, their Estates, the Creditor Trustee, Assets, the Liquidation Proceeds or their respective property; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors, their

Estates, the Creditor Trustee, Assets, the Liquidation Proceeds or their respective property; (c) creating, perfecting or enforcing any Lien or encumbrance against the Debtors, their Estates, the Creditor Trustee, Assets, the Liquidation Proceeds or their respective property; (d) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtors, their Estates, or the Creditor Trustee; (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan or Confirmation Order; or (f) interfering with or in any manner whatsoever disturbing the Creditor Trust Agreement, the rights and remedies of the Debtors, their Estates or the Creditor Trustee under the Plan and the Plan Documents and the other documents executed in connection therewith. The Debtors and the Creditor Trustee shall have the right to independently seek enforcement of this general injunction provision. This general injunction provision is an integral part of the Plan and is essential to its implementation. Notwithstanding anything to the contrary contained in the Plan, the provisions of the Plan shall not release, or be deemed a release of, any of the Causes of Action or rights related directly or indirectly to any objection to any Claim.

2. Exculpation from Liability

The Debtors, their current officers as of the Confirmation Date, the Professionals for the Debtors (acting in such capacity), the Committee, and its members, and the Professionals for the Committee, the Creditor Trustee and the Professionals for the Creditor Trustee (acting in such capacity), the Post-Confirmation Committee and the Professionals for the Post-Confirmation Committee (acting in such capacity) (collectively, the “**Exculpated Parties**”) shall neither have nor incur any liability whatsoever to any Person or Entity for any act taken or omitted to be taken in good faith in connection with or related to the formulation, preparation, dissemination, or confirmation of the Plan, the Disclosure Statement, any Plan Document, or any contract, instrument, release, or other agreement or document created or entered into, or any other act taken or omitted to be taken, in connection with the Plan or the Reorganization Case, in each case for the period on and after the Petition Date and through the Effective Date; provided, however, that this exculpation from liability provision shall not be applicable to any liability found by a court of competent jurisdiction to have resulted from fraud or the willful misconduct or gross negligence of any such party. The rights granted under the Plan are cumulative with (and not restrictive of) any and all rights, remedies, and benefits that the Exculpated Parties have or obtain pursuant to any provision of the Bankruptcy Code or other applicable law. In furtherance of the foregoing, the Exculpated Parties shall have the fullest protection afforded under Section 1125(e) of the Bankruptcy Code and all applicable law from liability for violation of any applicable law, rule or regulation governing the solicitation of acceptance or rejection of a plan or the offer, issuance, sale or purchase of securities. This exculpation from liability provision is an integral part of the Plan and is essential to its implementation. Notwithstanding anything to the contrary contained in the Plan, the provisions of the Plan shall not release, or be deemed a release of, any of the Causes of Action.

3. Release

On the Effective Date, the Exculpated Parties shall be unconditionally released from any and all claims, obligations, suits, judgments, damages, losses, rights, remedies, causes of action, charges, costs, debts, indebtedness, or liabilities whatsoever, whether known or unknown,

foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon any act or omission, transaction, event or other occurrence taking place between the Petition Date and the Effective Date, which is in any way relating to the Debtors, the Reorganization Case, any Property of the Debtors, the business or operations of the Debtors, any Plan Documents, the Plan, or any of the transactions contemplated thereby; provided, however, that this release provision shall not be applicable to any liability found by a court of competent jurisdiction to have resulted from fraud or the willful misconduct or gross negligence of any such party nor shall this release apply to any prepetition acts of any of the officers, directors, members or managers of any of the Debtors. The Confirmation Order shall enjoin the prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any such claim, obligation, suit, judgment, damage, loss, right, remedy, cause of action, charge, cost, debt, indebtedness, or liability which arose or accrued during such period or was or could have been asserted against any of the Exculpated Parties, except as otherwise provided in the Plan or in the Confirmation Order. Each of the Exculpated Parties shall have the right to independently seek enforcement of this release provision. This release provision is an integral part of the Plan and is essential to its implementation. Notwithstanding anything to the contrary contained in the Plan, the provisions of the Plan shall not release, or be deemed a release of, any of the Causes of Action.

4. Barton Doctrine

The “Barton Doctrine”, *e.g. Barton v. Barbour*, 104 U.S. 126, 26 L.Ed. 672 (1881) (Supreme Court held that a trustee cannot be sued without leave of the bankruptcy court), which prohibits a party from suing either a trustee, the officers of a debtor in possession, or their attorneys, in a non-appointing court for acts done in their official capacity, shall pertain to the provisions of the Plan, and shall stand as one of the bases for enforcement of such provisions. *See, e.g., Carter v. Rodgers*, 220 F.3d 1249, 1252 (11th Cir. 2000) (“[j]oining the other circuits that have considered this issue, we hold that a debtor must obtain leave of the bankruptcy court before initiating an action in district court when that action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor’s official capacity”); *Patco Energy Express v. Lambros*, 2009 U.S. App. LEXIS 25771 (11th Cir. 2009) (“[w]here a plaintiff neglects to obtain leave from the appointing court, a suit filed [against a bankruptcy trustee] in another court must be dismissed for lack of subject matter jurisdiction”); *In the Matter of Linton*, 136 F.3d 544, 545 (7th Cir. 1998); *In re DeLorean Motor Co.*, 991 F.2d 1236, 1240-41 (6th Cir. 1993) (“[i]t is well settled that leave of the appointing forum must be obtained by any party wishing to institute an action in a nonappointing forum against a trustee, for acts done in the trustee’s official capacity and within the trustee’s authority as an officer of the court counsel for trustee, court appointed officers who represent the estate, are the functional equivalent of a trustee”); *In re Balboa Improvements, Ltd.*, 99 B.R. 966, 970 (9th Cir. BAP 1989) (holding that permission to sue debtor’s attorney for alleged misconduct in the administration of an estate must be obtained from the bankruptcy court).

5. Continuation of Automatic Stay

The automatic stay arising out of Section 362(a) of the Bankruptcy Code shall continue in full force and effect until the Consummation Date, and the Debtors, their Estates, and the Creditor Trust shall be entitled to all of the protections afforded thereby. The Bankruptcy Court shall have the power to grant such additional and supplemental stays as may be necessary or

appropriate to protect and preserve the assets of the Debtors, their Estates and/or the Creditor Trust or to permit the just and orderly administration of the Plan. All Assets (including the Liquidation Proceeds and the Reserve) shall remain property of the Creditor Trust until distributed in accordance with this Plan, and no entity shall at any time have any claim to or interest in any asset of the Creditor Trust except to the extent that such entity is the holder of an Allowed Claim entitled to Distributions under the Plan.

6. No Liability for Tax Claims

Unless a taxing Governmental Authority has asserted a Claim against the Debtors before the Bar Date or Administrative Expense Claim Bar Date established therefore, no Claim of such Governmental Authority shall be Allowed against the Creditor Trust, the Debtors or their directors, officers, employees or agents for taxes, penalties, interest, additions to tax or other charges arising out of (i) the failure, if any, of the Debtors, or any other Person or Entity to have paid tax or to have filed any tax return (including any income tax return or franchise tax return) in or for any prior year or period, or (ii) an audit of any return for a period before the Petition Date. The entry of the Confirmation Order shall be deemed to be a determination that no provision of the Plan has avoidance of taxes as a principal purpose, and the Confirmation Order shall so provide.

7. Regulatory or Enforcement Actions

Nothing in this Plan shall restrict any federal government regulatory agency from pursuing any regulatory or police enforcement action or performing its statutory duties against any Person or Entity in any forum, but only to the extent not prohibited by the automatic stay of Section 362 of the Bankruptcy Code or enjoined pursuant to Section 524 or 1141(d) of the Bankruptcy Code. Nothing contained in § 13.07 of the Plan is intended to, nor shall it, supersede or alter any applicable provisions of the Bankruptcy Code.

8. No Liability for Untimely Administrative Expense Claims

Holders of Administrative Expense Claims (including Holders of any Claims for Postpetition Federal, state or local taxes) that do not file an application or other Bankruptcy Court-approved pleading by the Administrative Expense Claims Bar Date will be forever barred from asserting such Administrative Expense Claims against the Debtors, their Estates, the Creditor Trust, or any of their respective properties, including the Assets.

XI. U.S. FEDERAL INCOME TAX CONSIDERATIONS

1. General

A description of certain U.S. federal income tax consequences of the transactions proposed in the Plan is provided below. This description is based upon the Internal Revenue Code of 1986, as amended (the “IRC”), final and temporary Treasury Regulations promulgated thereunder, judicial decisions and administrative determinations of the Internal Revenue Service (“IRS”) in effect as of the date of this Disclosure Statement. Changes in these authorities, which may have retroactive effect, or new interpretations of existing authority may cause the U.S. federal income tax consequences of the Plan to differ materially from the consequences

described below. No rulings have been requested from the IRS and no legal opinions have been requested from counsel with respect to any tax consequences of the Plan. No tax opinion is given by this Disclosure Statement.

The following discussion summarizes certain U.S. federal income tax consequences of the Plan to holders of the Allowed Unsecured Claims. This summary does not address the U.S. federal income tax consequences to holders whose Claims or Equity Interests (i) are paid in full, in cash, or which are otherwise not Impaired under the Plan (i.e., Allowed Administrative Claims, Priority Claims, Priority Tax Claims and Secured Claims) or (ii) that are not receiving any distribution under the Plan.

This description does not cover all aspects of federal income taxation that may be relevant to the Debtors or holders of Claims. For example, the description provided below does not address issues of special concern to certain types of taxpayers, such as dealers in securities, life insurance companies, financial institutions, tax exempt organizations, foreign taxpayers, investors in pass-through entities, broker dealers and tax-exempt organizations. The description also does not address state, local or foreign tax considerations that may be applicable to the holders of Claims.

Further, this description assumes that all holders of Claims are U.S. persons and does not address tax consequences to any holders of Claims that are not U.S. persons. For purposes of this discussion, a U.S. person is any of the following: (i) a citizen or resident of the United States; (ii) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (iii) an estate the income of which is subject to U.S. federal income tax regardless of its source; or (iv) a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more U.S. persons or (2) has validly elected to be treated as a U.S. person for U.S. federal income tax purposes. If a partnership (or other entity taxed as a partnership for U.S. federal income tax purposes) is a holder of a Claim, the tax treatment of a partner in the partnership generally will depend on the status of the partner and upon the activities of the partnership. Accordingly, partnerships that are holders of Claims are urged to consult their tax advisors regarding the specific U.S. federal income tax consequences to them.

NO RULING HAS BEEN SOUGHT OR OBTAINED FROM THE IRS WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN AND NO OPINION OF COUNSEL HAS BEEN OBTAINED BY THE DEBTOR WITH RESPECT THERETO. NO REPRESENTATION OR ASSURANCE IS BEING MADE WITH RESPECT TO THE FEDERAL INCOME TAX CONSEQUENCES AS DESCRIBED HEREIN. CERTAIN TYPES OF CLAIMANTS AND INTEREST HOLDERS MAY BE SUBJECT TO SPECIAL RULES NOT ADDRESSED IN THIS SUMMARY OF FEDERAL INCOME TAX CONSEQUENCES. THERE MAY ALSO BE STATE, LOCAL, OR FOREIGN TAX CONSIDERATIONS APPLICABLE TO EACH HOLDER OF A CLAIM OR EQUITY INTEREST WHICH ARE NOT ADDRESSED HEREIN. EACH HOLDER OF A CLAIM OR EQUITY INTEREST AFFECTED BY THE PLAN MUST CONSULT AND RELY UPON SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES OF THE PLAN WITH RESPECT TO SUCH HOLDER'S CLAIM OR EQUITY INTEREST. THIS INFORMATION MAY NOT BE

USED OR QUOTED IN WHOLE OR IN PART IN CONNECTION WITH THE OFFERING FOR SALE OF SECURITIES.

IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THIS COMMUNICATION IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (I) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE OR (II) PROMOTING, MARKETING, OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.

2. Federal Income Tax Consequences to Holders of Claims

Assuming the Creditor Trust is taxed as a “grantor trust” or as a “partnership” for federal income tax purposes, under the Plan, a Holder of a Claim generally will recognize taxable gain or loss to the extent of the difference between the amount realized (i.e., the amount of cash and the value placed on the other assets deemed contributed) by the Holder to the Creditor Trust in respect of its Claim, excluding accrued interest, and the Holder’s tax basis in the Claim, excluding any claim for accrued interest.

The tax character of a Holder’s gain or loss as capital or ordinary will be determined by a number of factors, including whether the claimant has a special tax status (such as being a dealer in securities, a financial institution, or an insurance company), or whether the Claim was a capital asset in the hands of the holder. In addition, whether the Claim was purchased with original issue discount or market discount could affect the character of any gain or loss that is recognized as capital or ordinary gain or loss. Likewise, the basis of such Claim for purposes of determining the amount of any gain or loss recognized on the exchange can be affected by such factors as whether such obligation was purchased with original issue discount, and whether and to what extent the holder has previously claimed a bad debt deduction with respect to such Claim.

As discussed below, assuming the Creditor Trust is taxed as a “grantor trust” or as a “partnership” for federal income tax purposes, in the future, each Holder of a Claim will be required to report such Holder’s share of the income of the Creditor Trust.

3. Tax Treatment of Creditor Trust and Contribution of Assets

The Creditor Trust is intended to qualify for classification as a “liquidating trust” that is treated for federal income tax purposes as a grantor trust. However, no ruling has been sought from the IRS that the Creditor Trust will meet the standard for classification as a “liquidating trust” and no assurance can be given that the IRS will not disagree with this conclusion that the Creditor Trust is taxable as a grantor trust for federal income tax purposes. Assuming the Creditor Trust is recognized as a grantor trust for federal income tax purposes, the claimants of the Debtors that are beneficiaries of the Creditor Trust will be treated as the “grantors” of the Creditor Trust, and the Creditor Trust will be disregarded for tax purposes as an entity separate from the “grantors.” The grantors will report the income and loss from the Creditor Trust as if they held their proportionate interest in the assets of the Creditor Trust, and received the income

and paid expenses of the Creditor Trust, directly (instead of through the Creditor Trust). Assuming the Creditor Trust is a grantor trust, the Creditor Trust will file annual information returns (a Form 1041, with attached informational statements) with the IRS reporting each “grantor’s” respective share of income received and expense paid by the Creditor Trust.

Accordingly, assuming the Creditor Trust is recognized as a grantor trust for U.S. federal income tax purposes, the transfer of Cash and any remaining assets of the Debtors to the Creditor Trust will be treated for U.S. federal income tax purposes as if the Debtors distributed an interest in each of the assets transferred directly to the holders of Claims in exchange for their outstanding Claims against or stock of the Debtors. Each claimant would then be deemed to contribute its interest in these assets to the Creditor Trust. No gain or loss is recognized by a Holder of a Claim on the “deemed” contribution of the interest in these assets to the Creditor Trust and the basis in its interest in the Creditor Trust will equal the aggregate basis in the assets contributed in the Creditor Trust after taking into account any gain or loss recognized by a Holder of a Claim on the receipt of the interests in these assets of the Debtors (as discussed above).

If the Creditor Trust is not treated as a grantor trust for federal income tax purposes, then the Creditor Trust likely will be classified as a “partnership” for federal income tax purposes (so long as the Creditor Trust does not make an election to be taxed as a corporation for federal income tax purposes), in which case the creditors of the Debtors that are beneficiaries of the Creditor Trust will be treated as “partners” of the “partnership” for federal income tax purposes. Unlike a grantor trust, the “partnership” would be treated as an entity required to compute income and loss, file tax returns, and make tax elections, but income and loss would pass through to the beneficiaries of the Creditor Trust (who are considered “partners” of the “partnership” for federal income tax purposes) to be reported by them on their separate income tax returns. If the Creditor Trust is treated as a “partnership” for U.S. federal income tax purposes, the beneficiaries of the Creditor Trust will be treated for U.S. federal income tax purposes as if the Debtors had distributed the interests in each of the assets so transferred directly to the Holders of Claims in exchange for their outstanding Claims against or stock of the Debtors and the Holders then contributed the interests in these assets to a “partnership” for federal income tax purposes in exchange for an interest in the “partnership.” No gain or loss is recognized upon the deemed exchange of the interests in these assets for an interest as a “partner” in the “partnership.” Each Holder’s basis in its interest in the “partnership” will equal the aggregate basis in the assets deemed contributed to the “partnership” after taking into account any gain or loss recognized by a claimant or shareholder on the receipt of the interests in these assets from the Debtors (as discussed above). The partners of the partnership will be required to report their share of income, gain, loss, deduction or credit allocated to them by the partnership. Assuming the Creditor Trust is a partnership, the Creditor Trust will file annual returns (a Form 1065, with attached Schedule K-1s for each partner) with the IRS, and issue to each partner a K-1 reporting each “partner’s” respective share of income, gain, loss deduction or other item of the Creditor Trust.

4. Accrued Interest

To the extent that any amount received by a Holder of a Claim is attributable to accrued but untaxed interest, such amount should be taxable to the Holder as interest income, if such

accrued interest has not been previously included in the Holder's gross income for U.S. federal income tax purposes. Conversely, a claimant may be able to recognize a deductible loss for such purposes to the extent that any accrued interest was previously included in the claimant's income, but was not paid in full by the Debtors. The extent to which any consideration received by a Holder under the Plan will be attributable but untaxed interest is unclear. The Debtors will treat the aggregate consideration to be distributed to the claimants as first satisfying the stated principal amount of the Claims with any excess allocated to accrued, but unpaid interest, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a bankruptcy plan is binding for U.S. federal income tax purposes. However, the IRS could take a different view.

5. Backup Withholding

Under the IRC's backup withholding rules, a Holder of a Claim should be subject to back-up withholding with respect to distributions or payments made pursuant to the Plan unless that Holder (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact or (b) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional income tax, but merely an advance payment of income tax that may be claimed as a credit on the income tax return of the person that is subject to backup withholding and refunded to the extent it results in an overpayment of income tax on such return. Holders of Claims may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

THE FOREGOING DISCUSSION IS NOT INTENDED AS TAX ADVICE TO THE DEBTOR'S CREDITORS AND SHAREHOLDERS REGARDING THE FEDERAL INCOME TAX CONSEQUENCES TO THEM UNDER THE PLAN. THE FOREGOING IS INTENDED TO BE A SUMMARY ONLY. IT IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING OR CONSULTATION WITH A TAX ADVISOR THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM OR INTEREST. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

XII. LIQUIDATION ALTERNATIVE

The Plan Proponents have analyzed whether a liquidation of the Debtors' remaining assets by a Chapter 7 Trustee, who is unfamiliar with the Debtors and its Assets, would result in a higher return to the creditors of the Estate than under the proposed Plan. Given that the Plan proposes a liquidation of the Debtors' remaining Assets by those most familiar with them, the Debtors and the Committee have concluded that a Chapter 7 liquidation would likely result in a

net return to creditors that is lower than the net return to creditors that can realistically be realized through the Plan. Such Liquidation Analysis is attached hereto as Exhibit 1.

The Debtors and the Committee believe that Chapter 7 would result in diminution in the value to be realized by Holders of Unsecured Claims under the liquidation proposed by the Plan. In the event the Debtors are forced to complete their liquidation in Chapter 7, the resulting disruption and uncertainty would almost certainly diminish the value of the Debtors' remaining assets, as the layer of expense occasioned by the appointment of a Chapter 7 Trustee would be more than what is estimated by the Creditor Trustee under the Plan continuing to retain the Debtors' Professionals and remaining consultants, who are already familiar with the Claims and other issues facing the Debtors. Consequently, it is believed that the Plan will provide a greater and more certain return to creditors than would liquidation of the Debtors' Assets by a Chapter 7 Trustee who is unfamiliar with the Debtors and its business.

XIII. MISCELLANEOUS PROVISIONS IN PLAN

1. No Admissions

The Plan provides for the resolution, settlement and compromise of Claims against and Equity Interests in the Debtors. Nothing herein will be construed to be an admission of any fact or otherwise binding upon the Debtors in any manner prior to the Effective Date.

2. Revocation or Withdrawal of the Plan

The Plan Proponents reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Plan Proponents revoke or withdraw the Plan, or if Confirmation of the Plan does not occur, then the Plan will be deemed null and void in all respects, and nothing contained in the Plan will be deemed (a) to constitute a waiver or release of any Claims by or against, or Equity Interests in, the Debtors or any other Person, (b) to constitute a waiver or release of any Claims by the Committee, or (c) to prejudice in any manner the rights of the Debtors or any other Person, including the Committee, in any further proceedings involving the Debtors.

3. Settlement of Claims and Causes of Action

Except as otherwise provided in the Plan, the Creditor Trustee may commence or continue in any appropriate court or tribunal any suit or other proceeding for the enforcement of any claim or Cause of Action which the Debtors and/or the Committee had the power to assert immediately prior to the Effective Date and may settle or adjust such claim or Cause of Action in accordance with the terms of the Plan.

4. Standard for Approval by Bankruptcy Court

If any of the matters described in the Plan is brought for approval before the Bankruptcy Court, any such approval will mean the entry of an order by the Bankruptcy Court approving the matter using the standards for approval of similar matters by a Chapter 11 debtor in possession.

5. Further Assurances

The Debtors, the Committee and the Creditor Trustee are authorized to execute and deliver any and all papers, documents, contracts, agreements, and instruments that may be necessary to carry out and implement the terms and conditions of the Plan.

6. Headings

The headings and table of contents used in the Plan are for convenience and reference only and will not constitute a part of the Plan for any other purpose or in any manner affect the construction of the provisions of the Plan.

7. Notices

All notices, requests, or other documents in connection with or required to be served by the Plan will be in writing and will be sent by first class United States mail, postage prepaid, or by overnight delivery by a recognized courier service, to:

A. If to the Debtors:

Miller Auto Parts and Supply Company, Inc.
Attn.: George Hare
205 Hunters View
Roswell, GA 30075

with a mandatory copy to:

J. Robert Williamson
Scroggins & Williamson, P.C.
One Riverside
4401 Northside Parkway
Suite 450
Atlanta, GA 30327

B. If to the Creditors Committee:

Joseph M. Coleman
Jason B. Binford
Kane Russell Coleman & Logan PC
3700 Thanksgiving Tower
1600 Elm Street
Dallas, TX 75201

8. Contemporaneous Service

Copies of all notices under the Plan to any party will be given to the Debtors and the Committee contemporaneously with the giving of notice to such party.

9. Changes of Address

Any entity may change the person or address to whom or to which notices are to be given hereunder by filing a written instrument to that effect with the Bankruptcy Court and serving same on the parties set forth above and other Parties as part of the Designated Notice.

10. Designated Notice Sufficient

Notwithstanding any other provision of the Plan, when notice and a hearing is required with regard to any action to be taken by the Debtors, the Creditor Trust, the Post-Confirmation Committee, or the Creditor Trustee, Designated Notice shall be adequate. With respect to any proposed action to be taken as authorized under the Plan which may only be taken following Designated Notice, the following procedures shall apply. After Designated Notice of the proposed action has been provided as required under the Plan, if any party in interest files with the Bankruptcy Court within ten (10) days of the service of such Designated Notice a written objection to the proposed action, and serves a copy of said objection upon the Creditor Trustee, the Post-Confirmation Committee, and their respective counsel, then the Bankruptcy Court shall schedule a hearing with respect to such objection and, unless the objection is withdrawn by agreement of the parties, the proposed action may only be taken if approved by Final Order of the Bankruptcy Court. If no objection is timely filed and served, the proposed action may be taken without further authorization or approval by the Bankruptcy Court.

11. Governing Law

Except to the extent that federal law (including the Bankruptcy Code or the Bankruptcy Rules) is applicable, or to the extent that the Plan or a provision of any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan provides otherwise, the rights and obligations arising under the Plan will be governed by, construed, and enforced in accordance with the laws of the State of Georgia, without giving effect to the principles of conflicts of law thereof.

12. Limitation of Allowance

No attorney's fees, punitive damages, penalties, special damages, lost profits, treble damages, exemplary damages, or interest will be paid with respect to any Claim or Equity Interest except as specified herein or as Allowed by a Final Order of the Bankruptcy Court.

13. Estimated Claims

To the extent that any Claim is estimated for any purpose other than for voting, then in no event will such Claim be Allowed in an amount greater than the estimated amount.

14. Consent to Jurisdiction

Upon any default under the Plan, the Debtors and the Creditor Trustee, as the case may be, consent to the jurisdiction of the Bankruptcy Court or any successor to the Bankruptcy Court and agree that it will be the preferred forum for all proceedings relating to any such default. Except as otherwise provided in the Plan or the Plan Documents, by accepting any Distribution

or payment under or in connection with the Plan, by filing any Proof of Claim, by filing any Cure Claim, by voting on the Plan, or by entering an appearance in the Reorganization Case, all Creditors and other parties in interest, including foreign Creditors and foreign parties in interest, have consented, and will be deemed to have expressly consented, to the jurisdiction of the Bankruptcy Court for all purposes with respect to any and all matters relating to, arising under or in connection with the Plan or the Reorganization Case, including the matters and purposes set forth in Article 13 of the Plan. The Bankruptcy Court will maintain jurisdiction to the fullest extent allowed under applicable law over all matters set forth in Article 13 of the Plan.

15. Setoffs

Subject to the limitations provided in Section 553 of the Bankruptcy Code, the Debtors and the Creditor Trust may, but will not be required to, set off against any Claim and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever the Debtors and the Creditor Trust may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim hereunder will constitute a waiver or release by the Debtors or the Creditor Trust of any such claim that the Debtors and the Creditor Trust may have against such Holder.

16. Successors and Assigns

The rights, benefits, duties, and obligations of any Person named or referred to in the Plan will be binding upon and will inure to the benefit of any heir, executor, administrator, successor, or assign of such Person.

17. No Interest

Except as expressly stated in the Plan or otherwise provided by a Final Order of the Bankruptcy Court, no Holder of an Allowed Claim will be entitled to the accrual of Postpetition interest or the payment of Postpetition interest, penalties, or late charges on account of such Claim for any purpose.

18. Modification of Payment Terms

The Debtors reserve the right to modify the treatment of any Allowed Claim, as provided in Section 1123(a)(4) of the Bankruptcy Code, at any time after the Effective Date, upon the consent of the Holder of such Allowed Claim.

19. Entire Agreement

The Plan and Plan Documents set forth the entire agreement and undertakings relating to the subject matter thereof and supersede all prior discussions and documents. No Person will be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by the parties in writing.

20. Severability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, subject to the consent of the Committee, will 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 will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

21. Confirmation Order and Plan Control

To the extent the Confirmation Order or the Plan is inconsistent with the Disclosure Statement or any agreement entered into between the Debtors and any third party, unless otherwise expressly provided in the Plan, the Plan controls the Disclosure Statement and any such agreements, and the Confirmation Order (any and other orders of the Bankruptcy Court) will be construed together and consistent with the terms of the Plan.

22. Computation of Time

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

This 16th day of September, 2016.

Respectfully submitted,

**MILLER AUTO PARTS & SUPPLY
COMPANY, INC., et al.**

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Exhibit 1

Liquidation Analysis

I. Issues and Qualifying Factors¹

The Debtors believe, based on the following hypothetical analysis (the “Liquidation Analysis”) that the Plan meets the “best interest of creditors” test as set forth in section 1129(a)(7) of the Bankruptcy Code. There is at least one Impaired Class of Claims contemplated to receive recoveries under the Plan. Further, each Holder of an Impaired Claim will receive under the Plan value on the Effective Date that is not less than the value such Holder would receive if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code (“Chapter 7”) on the Effective Date. The Debtors believe the Liquidation Analysis and the conclusions set forth herein are fair and accurate, and represent the Debtors’ best judgment with regard to the results of a Chapter 7 liquidation of the Debtors. The analysis was prepared solely to assist the Court in making this determination, and should not be used for any other purpose. The Liquidation Analysis was prepared by the Debtors and is based on the Debtors’ assets as of August 31, 2016 as presented in the Debtors’ monthly operating report filed with the Bankruptcy Court.

The Liquidation Analysis is based on a number of estimates and assumptions that are inherently subject to significant uncertainties and contingencies that are beyond the control of the Debtors. There can be no assurances that the values assumed in the accompanying analysis would be realized if the Debtors were, in fact, liquidated under Chapter 7. Accordingly, actual recovery values and recovery percentages could vary from the amounts set forth herein and such variances could be material.

The estimated net recovery values presented herein consist of the net proceeds from the hypothetical disposition of the Assets, reduced by certain costs and claims that may arise under a Chapter 7 liquidation. Asset recoveries presented herein are net of estimated direct costs of a Chapter 7 liquidation and related encumbrances. Discounts have been applied to the recovery values of certain Assets to account for the nature and timing of the Chapter 7 liquidation process. The Liquidation Analysis assumes that an orderly wind-down would be substantially completed within approximately six-months. The Debtors believe that six-months is an appropriate time period for liquidation, after taking into account the amount of time it would take to market, sell and dispose of the remaining Assets. There can be no assurances that the liquidation activities could be completed within the time frames outlined above. It is possible that the disposition of the Assets could exceed the assumed liquidation period, which could reduce the hypothetical recoveries.

The Debtors are being substantively consolidated under the Plan, and therefore the Liquidation Analysis is presented on a consolidated basis. The Liquidation Analysis also assumes that the Chapter 7 liquidation process would be uncontested and cooperative. To the extent this were not the case, the recoveries on the Assets could be lower than assumed in this Liquidation Analysis.

The outcome of an orderly liquidation process could be materially different from the estimated recoveries as indicated herein if the Debtors expedited the liquidation of Assets on a forced liquidation basis (i.e. the Chapter 7 trustee disposes of the Assets in fewer than six-months).

The Liquidation Analysis necessarily contains an estimate of the amount of Claims that will ultimately become Allowed Claims. Estimates for various Classes of Claims are based solely upon the Debtors’ continuing review of the Debtors’ books and records. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims at the projected levels set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtors have projected amounts of Claims that are consistent with the estimated Claims reflected in the Disclosure Statement.

The Liquidation Analysis assumes that there are no recoveries from the pursuit of any potential preferences, fraudulent conveyances or other causes of action (which the Debtors believe even if pursued would not be

¹ Terms not otherwise defined herein shall be given the meanings ascribed to them in the Plan.

material to the analysis) and does not include the estimated costs of pursuing those actions. The Debtors reserve all rights in connection with any preferences, fraudulent conveyances, or other causes of action.

II. General Assumptions

The following is a list of key assumptions that were utilized in the Liquidation Analysis:

1. The basis for the Liquidation Analysis is the Asset values in the Debtors' assets as of August 31, 2016 as presented in the Debtors' monthly operating report filed with the Bankruptcy.
2. The Liquidation Analysis assumes that the liquidation of the Debtors would commence on September 1, 2016 under the direction of a court-appointed Chapter 7 trustee. The Liquidation Analysis reflects the wind-down of operations over a six-month period (the "Liquidation Period"), during which time the Cash proceeds, net of liquidation-related costs, would be distributed to satisfy Claims.
3. The Liquidation Analysis assumes that proceeds realized from a Chapter 7 liquidation would be further reduced by the administrative costs incurred during the wind-down of the operations and the reconciliation of Claims. These costs include primarily professional fees and fees of the Chapter 7 trustee.
4. The Liquidation Analysis assumes that net proceeds from the sale of the Assets will be distributed under the absolute priority rule provided in section 1129(b)(2) of the Bankruptcy Code and that no distributions will be made to Holders of Equity Interests until all Creditors are paid in full.
5. Upon conversion of the Bankruptcy Cases to Chapter 7, it is assumed that the Debtors will be permitted the use of Cash for the purposes of managing a wind-down and liquidation of the Assets.
6. While the Liquidation Analysis assumes liquidation over a six-month period commencing September 1, 2016, it is possible that the disposition and recovery from certain Assets could take longer to realize. The potential impact of litigation and actions by other Creditors could increase the amount of time required to realize the recoveries assumed in this analysis. Such events could also add additional costs to the liquidation in the form of higher legal and professional fees to resolve these potential events.

III. Liquidation Analysis for the Debtors

Presented in the schedule below is a summary of the estimated net book value of Assets and the related estimated liquidation recoveries (\$ in thousands):

(in thousands)

	Reported Book Value at 9/30/2014	Estimated Book Value at Liquidation Date ¹	Potential Recovery Under Chapter 7 Conversion					
			Lower		Mid		Higher	
			(\$)	(%)	(\$)	(%)	(\$)	(%)
Remaining Assets								
Cash	495	3,564	3,564	100%	3,564	100%	3,564	100%
Accounts Receivable	7,570	-	-	N/A	-	N/A	-	N/A
Inventory	19,253	-	-	N/A	-	N/A	-	N/A
Plant, Property and Equipment - Net	764	-	-	N/A	-	N/A	-	N/A
Total Remaining Assets	28,082	3,564	3,564	100%	3,564	100%	3,564	100%

Estimated Liquidation Costs and Claims

Chapter 7 Trustee Fees	102	102	102
Chapter 7 Trustee's Professional Fees	300	300	300
Dr. Goodman Estate and Tom Miller D&O Settlement	100	100	100
Administrative Claims (503b9)	550	550	550
Committee Professionals Contingent Bonus	240	240	240
Professional Fee Claims	55	55	55
Total Estimated Liquidation Costs and Claims	1,346	1,346	1,346

Net Estimated Liquidation Proceeds	2,218	62%	2,218	62%	2,218	62%
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	Liquidation Distribution					
	Est. Claim Amount	Net Distri- bution	%	Net Distri- bution	%	Net Distri- bution
PRELIMINARY²						
Estimated Claims						
Class 1: Priority Claims	-	-	0%	-	0%	-
Class 2: Allowed Secured Claim of First Capital	-	-	0%	-	0%	-
Class 3: Allowed Non-Seller Note Claims	1,202	1,202	100%	1,202	100%	1,202
Class 4: Allowed Seller Note Claims	495	495	100%	495	100%	495
Class 5: Other Secured Claims	-	-	0%	-	0%	-
Class 6: Allowed Unsecured Claims	3,500	521	15%	521	15%	521
Class 7: Allowed Equity Interests	-	-	0%	-	0%	-
Total	5,197	2,218	43%	2,218	43%	2,218

¹ - Liquidation Date is assumed to be August 31, 2016. Cash balance includes Non-Seller Note settlement of \$800,000.

² - The information in this table is preliminary and the Debtors reserve all rights with respect to any asserted claim.

[See Section IV. Notes to Liquidation Analysis on the following pages]

IV. Notes to Liquidation Analysis

Except where noted, the Asset and liability values are assumed to be consistent with the latest available financial data. For the purposes of the Liquidation Analysis, the Debtors have utilized the Debtors' assets as of August 31, 2016 as presented in the Debtors' monthly operating report filed with the Bankruptcy.

(1) Cash

The Debtors' Cash balance as of the end of August 2016 was \$2,764,003.56 as reported in the monthly operating report for the period ending August 31, 2016. The cash balance has been increased by \$800,000 to reflect the settlement agreement with several Non-Seller Note holders that has not been paid to the estate as of the end of August 2016. The Liquidation Analysis assumes that a conversion to Chapter 7 would reduce the Cash balance amount to zero by the commencement of the hypothetical liquidation.

(2) Accounts Receivable

All Accounts Receivable have been liquidated as of August 31, 2016.

(3) Inventory

All Inventory has been liquidated as of August 31, 2016.

(4) Property, Plant and Equipment

All Property Plant and Equipment has been liquidated as of August 31, 2016.

(5) Chapter 7 Trustee Fees

Amount represents the preliminary estimated Chapter 7 trustee costs. The Chapter 7 trustee fees are calculated based upon the statutory scale set forth in section 326(a) of the Bankruptcy Code, which provides for fees equal to 25% of the first \$5,000 of distributions; 10% of the next \$45,000 of distributions; 5% of the next \$950,000 of distributions; and 3% of distributions in excess of \$1,000,000.

(6) Chapter 7 Trustee's Professional Fees

It is assumed that the Chapter 7 trustee will hire advisors to assist in the administration of the Chapter 7 liquidation. The Debtors have assumed \$50,000 per month during the Liquidation Period for the compensation of the trustee's legal and financial professionals including accounting and tax support.

(7) Administrative Claims

This liquidation analysis assumes Administrative Claims consist solely of 503(b)(9) claims that have not been paid current during the Bankruptcy Cases.

(8) Professional Fee Claims

This liquidation analysis assumes Professional Fee Claims have been paid current during the Bankruptcy Cases except for the services provided in the month of August 2016 to be paid in the month of September 2016 as budgeted in the stipulation filed with the court (Doc 446) on August 2, 2016.

(9) Class 1: Priority Claims

This liquidation analysis assumes Priority Claims have been paid current during the Chapter 11 Cases.

(10) Class 2: Allowed Secured Claim of First Capital

In the case of liquidation, the Allowed Secured Claim of First Capital, if any, would have 100% recovery.

(11) Class 3: Allowed Non-Seller Note Claims

In the case of liquidation, the Allowed Non-Seller Note Claims, if any, would have 100% recovery.

(12) Class 4: Allowed Seller Note Claims

In the case of liquidation, the Allowed Seller Note Claims, if any, would have 100% recovery.

(13) Class 5: Other Secured Claims

This liquidation analysis assumes Other Secured Claims have been paid current during the Chapter 11 Cases.

(14) Class 6: Allowed Unsecured Claims

In the case of liquidation, the Allowed Unsecured Claims would have a recovery of approximately 22%.

(15) Class 7: Allowed Equity Interests

Per the Plan, holders of Equity Interests in the Debtors shall neither receive nor retain any property under the Plan. On the Effective Date, all Equity Interests in the Debtors shall be cancelled and of no further force or effect and all Claims filed on account of Equity Interests shall be deemed disallowed by operation of the Plan.

V. Comparison to Hypothetical Recovery Under the Plan

The Plan estimates a recovery of 100% to Class 1: Priority Claims, Class 2: Allowed Secured Claim of First Capital, Class 3: Allowed Non-Seller Note Claims, Class 4: Allowed Seller Note Claims and Class 5: Other Secured Claims. The Plan estimates a recovery for Class 6: Allowed Unsecured Claims of approximately 56% to 82%, depending on a number of factors. The Debtors believe the estimates are fair and accurate, and represent the Debtors' best judgment with regard to the results of the confirmation of the Plan. The estimated recoveries under the Plan are based on a number of estimates and assumptions that are inherently subject to significant uncertainties and contingencies and that are beyond the control of the Debtors. There can be no assurances that the recoveries assumed would be realized if the Plan was, in fact, confirmed. Accordingly, actual recovery values and recovery percentages could vary from the amounts set forth in the Plan and such variances could be material.

The Plan estimates that each holder of an Impaired Claim will receive value on the Effective Date that is not less than the value such Holder would receive if the Debtors were to be liquidated under Chapter 7 on the Effective Date. The Debtors believe that the Plan meets the "best interest of creditors" test as set forth in section 1129(a)(7) of the Bankruptcy Code.

Exhibit 2

Joint Plan of Liquidation