

**THIS IS NOT A SOLICITATION FOR ACCEPTANCES OR REJECTIONS OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT SOLICITED UNTIL THE DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL TO THE BANKRUPTCY COURT, BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT AT THIS TIME.**

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

----- X  
In re: :  
: Chapter 11  
QRS Recycling Of Georgia, LLC<sup>1</sup> :  
: Case No. 16-58837  
Debtor. :  
----- X

**DISCLOSURE STATEMENT FOR DEBTOR QRS RECYCLING OF GEORGIA, LLC'S  
PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

/s/ Daniel M. Simon  
Daniel M. Simon (GA Bar No. 690075)  
DLA PIPER LLP (US)  
One Atlantic Center  
1201 West Peachtree Street, Suite 2800  
Atlanta, Georgia 30309  
Telephone: (404) 736-7871  
Facsimile: (312) 251-2854  
E-mail: daniel.simon@dlapiper.com

/s/ Jim Irving  
James R. Irving (KY Bar No. 96048)  
(admitted *pro hac vice*)  
BINGHAM GREENEBAUM DOLL LLP  
3500 National City Tower  
101 South Fifth Street  
Louisville, KY 40202  
Telephone: (502) 587-3606  
Facsimile: (502) 540-2215  
E-mail: jirving@bgdlegal.com

*Counsel for QRS Recycling of Georgia, LLC*

Dated: February 6, 2018

**THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS  
\_\_\_\_\_, 2018 AT 5:00 .M. (\_\_\_\_\_). TO BE COUNTED, BINGHAM  
GREENEBAUM DOLL LLP, 3500 PNC TOWER, 101 S. FIFTH STREET,  
LOUISVILLE, KY 40204 MUST ACTUALLY RECEIVE YOUR BALLOT ON OR  
BEFORE THE VOTING DEADLINE.**

\_\_\_\_\_

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 5278.

**THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, THE PLAN AND ANY EXHIBITS THERETO IS SPECULATIVE, AND PERSONS SHOULD NOT RELY ON SUCH DOCUMENTS IN MAKING INVESTMENT DECISIONS WITH RESPECT TO (A) THE DEBTOR OR (B) ANY OTHER ENTITIES THAT MAY BE AFFECTED BY THE CHAPTER 11 CASE.**

THE DEBTOR IS PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR DEBTOR QRS RECYCLING OF GEORGIA, LLC'S PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE TO HOLDERS OF CLAIMS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE PLAN. YOU SHOULD NOT RELY UPON OR USE THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR ANY OTHER PURPOSE.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(B) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND IS NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS. THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE AUTHORITY AND NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN.

THIS DISCLOSURE STATEMENT MAY CONTAIN "FORWARD LOOKING STATEMENTS" WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD LOOKING TERMINOLOGY SUCH AS "MAY," "EXPECT," "ANTICIPATE," "ESTIMATE," OR "CONTINUE" OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD LOOKING STATEMENTS. THE DISTRIBUTION PROJECTIONS AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY, AND THE TIMING AND AMOUNT OF ACTUAL DISTRIBUTIONS TO HOLDERS OF ALLOWED CLAIMS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED, THEREFORE, ANY ANALYSES, ESTIMATES OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE.

NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. THE DEBTOR URGES EACH HOLDER OF A CLAIM OR AN EQUITY INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF DISCLOSURE CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE MERITS OF THE PLAN.

IT IS THE DEBTOR'S POSITION THAT THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION OR WAIVER. RATHER, HOLDERS OF CLAIMS AND EQUITY INTERESTS AND OTHER ENTITIES SHOULD CONSTRUE THIS DISCLOSURE STATEMENT AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR LITIGATION CLAIM OR PROJECTED OBJECTION TO A PARTICULAR CLAIM IS, OR IS NOT, IDENTIFIED IN THE DISCLOSURE STATEMENT. THE DEBTOR MAY SEEK TO INVESTIGATE, FILE AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THE DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS. THE PLAN RESERVES FOR THE DEBTOR THE RIGHT TO BRING CAUSES OF ACTION (DEFINED IN THE PLAN) AGAINST ANY ENTITY OR PARTY IN INTEREST EXCEPT THOSE SPECIFICALLY RELEASED.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTOR'S CHAPTER 11 CASE AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRITY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTOR'S MANAGEMENT EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTOR DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

THE DEBTOR'S MANAGEMENT HAS REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THIS DISCLOSURE STATEMENT. ALTHOUGH THE DEBTOR HAS USED ITS REASONABLE BUSINESS JUDGMENT TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION, NO ENTITY HAS AUDITED THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THIS DISCLOSURE STATEMENT.

THE DEBTOR IS MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAIONED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTOR MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE

STATEMENT, THE DEBTOR HAS NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS AND EQUITY INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE DEBTOR FILED THIS DISCLOSURE STATEMENT. HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN MUST RELY ON THEIR OWN EVALUATION OF THE DEBTOR AND THEIR OWN ANALYSIS OF THE TERMS OF THE PLAN, INCLUDING, WITHOUT LIMITATION, ANY RISK FACTORS CITED HEREIN, IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

THE DEBTOR HAS NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTOR HAS NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTOR OR THE VALUE OF ITS PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM OR INTEREST IN A VOTING CLASS SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN.

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I SUMMARY.....	1
A. Rules of Interpretation .....	1
B. The Chapter 11 Case and the Sale of the Debtor’s Assets.....	1
C. The Purpose of the Plan .....	2
D. Treatment of Claims and Equity Interests .....	2
E. Entities Entitled to Vote on the Plan.....	4
F. Solicitation Process.....	4
G. Voting Procedures.....	5
H. Effect of Release Provisions In Ballots .....	5
I. Confirmation Hearing .....	6
ARTICLE II BACKGROUND TO THE CHAPTER 11 CASE.....	6
A. The Debtor’s Business .....	6
1. The Debtor’s Operations.....	6
2. The Debtor’s Employees.....	6
3. The Debtor’s Officers and Directors.....	7
B. Events Leading to the Chapter 11 Case .....	7
C. The Sale and the Chapter 11 Case .....	7
ARTICLE III SUMMARY OF THE PLAN .....	9
A. Summary .....	9
B. Administrative and Priority Claims .....	10
1. Establishment of the Administrative Claims Bar Date.....	10
2. Accrued Professional Compensation .....	11
4. Priority Tax Claims.....	11

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
5. Other Priority Claims .....	11
C. Classification and Treatment of Claims and Equity Interests.....	11
1. Summary .....	11
2. Classification and Treatment of Claims and Equity Interests.....	12
D. Nonconsensual Confirmation .....	13
ARTICLE IV MEANS FOR IMPLEMENTATION OF THE PLAN .....	14
A. Vesting of Assets .....	14
B. The GUC Trust .....	14
C. Responsible Person to Effectuate Distributions.....	14
D. Corporate Authority .....	15
E. Retention of Professionals .....	15
F. Compensation of the Responsible Person.....	15
G. Costs and Expenses of the Responsible Person .....	15
H. Liability.....	15
I. Liquidation of the Debtor.....	16
J. Operations of the Debtor Between the Confirmation Date and the Effective Date .....	16
K. Term of Injunctions or Stays.....	16
L. Books and Records .....	16
ARTICLE V PROVISIONS GOVERNING VOTING AND DISTRIBUTIONS.....	17
A. Voting of Claims.....	17
B. Distribution Dates .....	17
C. Disbursing Agents.....	17
D. Record Date for Distributions.....	18

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
E. Delivery of Distributions .....	18
F. Undeliverable and Unclaimed Distributions.....	18
G. Manner of Cash Payments Under the Plan .....	18
H. Compliance with Tax Requirements.....	19
I. No Payments of Fractional Dollars.....	19
J. Interest on Claims .....	19
K. No Distribution in Excess of Allowed Amount of Claim.....	19
L. Setoff and Recoupment.....	19
M. <i>De Minimis</i> Distributions; Charitable Donation .....	20
N. United States Trustee Fees.....	20
O. No Distributions on Late-Filed Claims.....	20
ARTICLE VI DISPUTED CLAIMS.....	20
A. No Distribution Pending Allowance.....	20
B. Resolution of Disputed Claims .....	21
C. Objection Deadline .....	21
D. Estimation of Claims.....	21
ARTICLE VII TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	21
A. Rejection of Executory Contracts and Unexpired Leases.....	21
B. Claims Based on Rejection of Executory Contracts or Unexpired Leases .....	22
ARTICLE VIII CONDITIONS PRECEDENT TO THE EFFECTIVE DATE.....	22
A. Conditions Precedent .....	22
B. Waiver.....	22



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
ARTICLE IX INDEMNIFICATION, RELEASE, INJUNCTIVE AND RELATED PROVISIONS.....	23
A. Compromise and Settlement.....	23
B. Releases.....	23
C. Exculpation.....	24
D. Preservation of Causes of Action.....	24
1. Vesting of Causes of Action.....	24
E. Injunction.....	25
F. Releases of Liens.....	26
ARTICLE X RETENTION OF JURISDICTION.....	26
ARTICLE XI MISCELLANEOUS PROVISIONS.....	28
A. Modification of Plan.....	28
B. Revocation of Plan.....	28
C. Binding Effect.....	28
D. Successors and Assigns.....	28
E. Governing Law.....	29
F. Reservation of Rights.....	29
G. Section 1146 Exemption.....	29
H. Section 1125(e) Good Faith Compliance.....	29
I. Further Assurances.....	29
J. Service of Documents.....	29
K. Filing of Additional Documents.....	30
L. No Stay of Confirmation Order.....	30
ARTICLE XII SOLICITATION AND VOTING PROCEDURES.....	30

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
A. Solicitation Package.....	30
1. Contents of the Solicitation Package .....	30
2. Distribution of Solicitation Package .....	31
B. Voting Instructions and General Tabulation Procedures .....	31
1. Voting Record Dates.....	31
2. Voting Deadline and Ballot Submission.....	31
3. Who May Vote.....	32
4. General Ballot Tabulation.....	32
ARTICLE XIII CONFIRMATION PROCEDURES.....	34
A. Confirmation Hearing .....	34
B. Statutory Requirements for Confirmation of the Plan .....	35
1. Best Interests of Creditors Test/Liquidation Analysis .....	36
2. Feasibility.....	36
3. Acceptance by Impaired Classes .....	36
C. Contact for More Information.....	37
ARTICLE XIV PLAN-RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN.....	38
A. Certain Bankruptcy Law Considerations .....	38
1. Parties-in-Interest May Object to the Debtor’s Classification of Claims and Equity Interests .....	38
2. Failure to Satisfy Vote Requirement.....	38
3. The Debtor May Not Be Able to Secure Confirmation of the Plan.....	38
4. Nonconsensual Confirmation.....	39
5. The Debtor May Object to the Amount or Classification of a Claim.....	40
6. Risk of Non-Occurrence of the Effective Date.....	40

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
7. Contingencies Not to Affect Votes of Impaired Classes to Accept or Reject the Plan.....	40
B. Risk Factors That May Affect Distributions Under the Plan.....	40
1. The Debtor Cannot State with Any Degree of Certainty What Recover Will Be Available to holders of Allowed Claims in a Voting Class.....	40
2. Actual Amounts of Allowed Claims May Differ from the Estimated Claims and Adversely Affect the Recovery on Claims .....	41
C. Disclosure Statement Disclaimer.....	41
1. No Waiver of Right to Object or Reject to Recover Transfers and Assets .....	41
2. Information Was Provided by the Debtor and Was Relied Upon by the Debtor’s Advisors .....	41
D. Liquidation Under Chapter 7 .....	41
ARTICLE XV CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES .....	42
A. Federal Income Tax Consequences to the Debtor .....	43
B. Federal Income Tax Consequences to Holders of the MPT Secured Claim and/or General Unsecured Claims .....	43
C. Federal Income Tax Treatment of Equity Interests .....	43
D. Withholding and Reporting.....	43
ARTICLE XVI GLOSSARY OF DEFINED TERMS.....	44
ARTICLE XVII CONCLUSIONS AND RECOMMENDATION .....	51

**EXHIBITS**

Exhibit A                      The Plan

Exhibit B

Exhibit C

Exhibit D

Exhibit E

Exhibit F

Exhibit G

Exhibit H

Exhibit I

Exhibit J

Exhibit K

## ARTICLE I

### SUMMARY<sup>2</sup>

Pursuant to section 1125 of the Bankruptcy Code, the Debtor submits this Disclosure Statement to holders of Claims and Equity Interests in connection with (a) the solicitation of votes to accept or reject the Plan, dated as of February \_\_, 2018 and (b) the Confirmation Hearing, which is scheduled for [\_\_\_\_], 2018 at [\_\_\_\_] (Eastern Standard Time).

The following summary is qualified in its entirety by the more detailed information and financial statements contained elsewhere in this Disclosure Statement.

#### **A. Rules of Interpretation**

1. For purposes herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neutral gender shall include the masculine, feminine and the neutral gender; (b) any reference herein to a contract, instrument, release, indenture or other agreement or document being in a particular form or an particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (e) the words “herein,” “hereof” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

2. The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed hereby.

3. All references herein to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

#### **B. The Chapter 11 Case and the Sale of the Debtor’s Assets**

On the Petition Date, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the stated intent of liquidating its assets to maximize the value of its estate for the benefit of its creditors. The Debtor believed that the liquidation of its remaining

---

<sup>2</sup> Capitalized terms not otherwise defined herein are defined in the glossary contained in Article XVI of this Disclosure Statement

assets pursuant to chapter 11 of the Bankruptcy Code, as opposed to chapter 7 of the Bankruptcy Code, would yield greater recovery to the Debtor's creditors.

On June 13, 2016, the Debtor filed a motion authorizing the Debtor to sell certain assets with an auctioneering via auction free and clear of all liens, claims encumbrances, and interests ("Sale Motion"). [Docket No. 71]. On June 22, 2016, the Court entered an Order motion authorizing the Debtor to sell certain assets with an auctioneering via auction free and clear of all liens, claims encumbrances, and interests ("Sale Order"). [Docket No. 79]. Under the terms of the Sale Order, the Debtor was authorized to employ Yellen as auctioneer and to take any and all actions as are necessary or appropriate to effectuate the sale of the Debtor's assets. On September 22, the Debtor filed a Report of Sale of Assets [Docket No. 111].

### **C. The Purpose of the Plan**

On February 5, 2018, the Debtor filed the Plan with the Bankruptcy Court to facilitate the liquidation of the Debtor's Estate and the Distribution of the Assets to holders of Allowed Claims. A copy of the Plan is attached hereto as Exhibit A and is incorporated herein by reference.

The Debtor believes that the Plan provides the best recoveries possible for holders of Allowed Claims and strongly recommends that, of such holders are entitled to vote, that they vote to accept the Plan.

Pursuant to section 1141(d)(3) of the Bankruptcy Code, the Plan does not contain a discharge for the Debtor as the Plan is a liquidating plan and the Debtor will not be engaging in business after the consummation of the Plan. Therefore, the Debtor is not entitled to a discharge under section 727(a) of the Bankruptcy Code.

### **D. Treatment of Claims and Equity Interests**

THE FOLLOWING CHART IS A SUMMARY OF THE CLASSIFICATION AND TREATMENT OF ALLOWED CLAIMS AND EQUITY INTERESTS AND THE POTENTIAL DISTRIBUTIONS UNDER THE PLAN. THE AMOUNTS SET FORTH BELOW ARE ESTIMATES ONLY. REFERENCE SHOULD BE MADE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN FOR A COMPLETE DESCRIPTION OF THE CLASSIFICATION AND TREATMENT OF ALLOWED CLAIMS AND EQUITY INTERESTS. THE RECOVERIES SET FORTH BELOW ARE PROJECTED RECOVERIES AND ARE, THEREFORE, SUBJECT TO CHANGE. THE ALLOWANCE OF CLAIMS AND EQUITY INTERESTS MAY BE SUBJECT TO LITIGATION OR OTHER ADJUSTMENTS, AND ACTUAL ALLOWED AMOUNTS FOR CLAIMS AND EQUITY INTERESTS MAY DIFFER MATERIALLY FROM THESE ESTIMATED AMOUNTS.

<u>Class/Type of Claim or Equity Interest</u>	<u>Plan Treatment of Class</u>	<u>Projected Recovery Under Plan</u>
<b>UNCLASSIFIED CLAIMS</b>		
Administrative Claims	Paid in full in Cash on the Effective Date or as soon as practicable thereafter, or otherwise waived in the context of accrued professional claims.	100%
Priority Tax Claims	Paid in full in Cash on the Effective Date or as soon as practicable thereafter.	100%
Other Priority Claims	Paid in full in Cash on the Effective Date or as soon as practicable thereafter.	100%
<b>CLASSIFIED CLAIMS</b>		
Secured Claims (Class 1)	Secured Claims will be partially assumed and paid by proceeds from the Sale as set forth in the Sale Order	4.1%
General Unsecured Claims (Class 2)	General Unsecured Claims will receive a pro rata distribution of the Assets remaining in the GUC Trust after all Administrative and Priority Claims have been satisfied	unknown
Deficiency Claim (Class 3)	The Deficiency Claim shall be voluntarily subordinated to the General Unsecured Claims and there will not be any Assets remaining in the GUC Trust to satisfy it	0%
Intercompany Claims (Class 4)	The Intercompany Claims shall be voluntarily subordinated to the General Unsecured Claims and there will not be any Assets remaining in the GUC Trust to satisfy them	0%
Equity Interests (Class 5)	All Equity Interests in the Debtor shall be cancelled	0%

**E. Entities Entitled to Vote on the Plan**

The Plan divides Claims against Interests in the Debtor into Classes and provides separate treatment for each Class.

As provided in section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Priority Tax Claims and Other Priority Claims will not be classified for the purposes of voting or receiving distributions under the Plan.

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
1	Secured Claims	Impaired	Entitled to Vote
2	General Unsecured Claims	Impaired	Entitled to Vote
3	Deficiency Claim	Impaired	Deemed to Reject
4	Intercompany Claims	Impaired	Deemed to Reject
5	Equity Interests	Impaired	Deemed to Reject

The Debtor **IS** soliciting votes to accept or reject the Plan from holders of Secured Claims in Class 1 and General Unsecured Claims in Class 2 because such holders are Impaired under the Plan and will receive Distributions under the Plan. Accordingly, holders of Secured Claims in Class 1 and General Unsecured Claims in Class 2 have the right to vote to accept or reject the Plan.

The Debtor **IS NOT** seeking votes from the holders of the Deficiency Claims in Class 3 and Equity Interests in Class 5 because such holders will receive no Distribution under the Plan. Therefore, the holders of the Deficiency Claims in Class 3, the Intercompany Claim 4, and Equity Interests in Class 5 are deemed to have rejected the Plan and will not be entitled to vote to accept or reject the Plan.

For a detailed description of the Classes of Claims and Equity Interests, as well as their respective treatment under the Plan see Article III of the Disclosure Statement.

**F. Solicitation Process**

The following documents and materials will constitute the solicitation package:

- Plan;
- Disclosure Statement;
- Disclosure Statement Order;
- Confirmation Hearing Notice;
- Appropriate Ballot; and
- Pre-addressed, postage pre-paid return envelope.

The Debtor intends to distribute the solicitation packages no fewer than thirty-five (35) calendar days before the Voting Deadline. The Debtor submits that distribution of the solicitation packages at least thirty-five (35) calendar days prior to the Voting Deadline will



provide the requisite materials to holders of Claims entitled to vote on the Plan in compliance with Bankruptcy Rules 2002(b) and 3017(d).

The solicitation package will be distributed to holders of Secured Claims in Class 1 and General Unsecured Claims in Class 2 as of the Voting Record Date and in accordance with the Solicitation Procedures. The Solicitation Procedures set forth in the Disclosure Statement Order, which is attached hereto as **Exhibit B**. The solicitation package may also be obtained by contacting Debtor's bankruptcy counsel (Bingham Greenebaum Doll LLP, Attn: James R. Irving, 3500 National City Tower, 101 South Fifth Street, Louisville, KY 40202 (jirving@bgdlegal.com)).

### **G. Voting Procedures**

**The Voting Record Date is \_\_\_\_\_, 2018.** The Voting Record Date is the date on which holders of Claims that are entitled to vote to accept or reject the Plan will be determined.

**The Voting Deadline is 5:00 p.m. (Eastern Standard Time) on \_\_\_\_\_, 2018.** To ensure that a vote is counted, holders of Claims that are entitled to vote on the Plan must: (i) complete the Ballot; (ii) indicate a decision either to accept or reject the Plan; and (iii) sign and return the Ballot to the address set forth on the enclosed pre-addressed envelope provided in the solicitation package or by delivery via first-class mail, overnight courier or personal delivery, so that all Ballots are **actually received** no later than the Voting Deadline, by the Voting Agent. ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM ENTITLED TO VOTE, BUT THAT DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN OR INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN, WILL NOT BE COUNTED.

EACH HOLDER OF A CLAIM ENTITLED TO VOTE MUST VOTE ALL OF ITS INTEREST WITHIN A PARTICULAR CLASS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH INTEREST.

IF A BALLOT IS RECEIVED AFTER THE VOTING DEADLINE, IT WILL NOT BE COUNTED UNLESS THE DEBTOR DETERMINES OTHERWISE.

Prior to deciding whether and how to vote on the Plan, each holder in a Voting Class should consider carefully all of the information in this Disclosure Statement, especially the risk factors described herein.

### **H. Effect of Release Provisions In Ballots**

All holders of Claims or Equity Interests who do not opt out of the Plan's release provisions with respect to the Released Parties pursuant to an election contained on the relevant ballot to vote to accept or reject the Plan shall be deemed "Releasing Parties" who will grant the releases described in Article VIII of the Plan. For the avoidance of doubt, in order to "opt out" any holder of Claims or Equity Interests must actually check the box on their Ballot stating that they "opt out" of granting the release and then submit the Ballot to the Voting Agent by the Voting Deadline as set forth in the Solicitation Procedures. Alternatively, all holders of Claims

or Equity Interests who vote their Ballot to reject the Plan and who then submit the Ballot to the Voting Agent by the Voting Deadline as set forth in the Solicitation Procedures will be deemed to “opt out” of the releases described in Article VIII of the Plan. **For the avoidance of doubt, all holders of Claims or Equity Interests who do not explicitly and properly “opt out”, including those holders of Claims or Equity Interests that do not vote on the Plan, will be deemed to have consented to the releases described in Article VIII of the Plan and will be considered “Releasing Parties” for purposes of this Disclosure Statement and the Plan.**

### **I. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan.

**The Confirmation Hearing will commence on [REDACTED], 2018 at [REDACTED] (Eastern)**, before the Honorable James R. Sacca, Courtroom 1340, Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

## **ARTICLE II**

### **BACKGROUND TO THE CHAPTER 11 CASE**

#### **A. The Debtor’s Business**

##### **1. The Debtor’s Operations**

On November 14, 2011, the Debtor was formed as a Kentucky limited liability company. In 2012, the Debtor opened its facility at 120 Hollow Tree Lane SW, Atlanta, GA 30354 (the “Facility”). At the Facility, the Debtor focused on plastic recovery, pioneering the sorting of centralized, mixed, post-consumer containers.

The Debtor’s recycling operations were complemented by the operations of its non-debtor affiliates, QRS, Inc., Re-Poly, LLC, QRS Holding Company, QRS Export, Inc., QRS Direct, LLC, Rhino, LLC and QRS Re-Poly, LLC. Together, with the operations of its non-debtor affiliates in Baltimore, MD, Louisville, KY, New Albany, IN and St. Louis, MO, the Debtor was part of one of the largest recycling networks in the country, processing thousands of tons of post-consumer plastic, paper, cardboard, metal and commercial dry waste. As recently as 2014, the Debtor and its non-debtor affiliates were recognized by the American Chemistry Council with its Innovation in Plastic Recycling Award, and the Debtor and the non-debtor affiliates are generally regarded as national leaders in the recycling industry.

##### **2. The Debtor’s Employees**

On May 13, 2016, the Debtor terminated 22 employees as the Debtor began to cease operations. As of the Petition Date, the Debtor employed only three (3) employees to winddown

its business operations. As of the filing of this Disclosure Statement, the Debtor no longer has any employees.

### **3. The Debtor's Officers and Directors**

As of the Petition Date, the Debtor's managing member is Gregory Jenson, who serves as the Debtor's President and CEO. The Debtor has one other member, Mathew Jenson.

#### **B. Events Leading to the Chapter 11 Case**

Prior to the Petition Date, beginning in 2014, the Debtor began incurring significant operating expenses in connection with the reorganization and expansion of its business. Specifically, the Debtor invested significant capital into the Facility, which relied upon new technologies that required greater capital investments than the Debtor initially expected. Also beginning in 2015, the Debtor was impacted by the downturn in the price of oil, plastic and other related commodities. The low market prices of oil, oil-based plastics and other related commodities have forced the Debtor to lower the prices that it sells its recycled plastic materials for.

As a result of the higher than expected one-time costs of its investment in the Facility, as well as the reduced profitability of its business due to low commodity prices, the Debtor has incurred significant trade debt and has struggled to meet the obligations owed to its secured lender. Subsequently, the Debtor was no longer able to consistently generate a profit from its operations, and in 2015 and 2016, it operated at a significant loss. As a result, the Debtor incurred significant debts.

#### **C. The Sale and the Chapter 11 Case**

On the Petition Date, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court. The Debtor continues to manage and operate its business as a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. On June 8, 2016, the Office of the U.S. Trustee appointed the Committee of Creditors Holding Unsecured Claims (the "Committee"). No trustee or examiner has been appointed in the Chapter 11 Case.

On June 13, 2016, the Debtor filed the Sale Motion authorizing the Debtor to sell certain assets with an auctioneering via auction free and clear of all liens, claims encumbrances, and interests. [Docket No. 71]. On June 22, 2016, the Court entered a Sale Order authorizing the Debtor to sell certain assets with an auctioneering via auction free and clear of all liens, claims encumbrances, and interests. [Docket No. 79]. Under the terms of the Sale Order, the Debtor was authorized to employ Yellen as auctioneer and to take any and all actions as are necessary or appropriate to effectuate the sale of the Debtor's assets. On September 22, the Debtor filed a Report of Sale of Assets [Docket No. 111].

In addition to the Sale Motion, the Debtor has filed a number of pleadings with the Bankruptcy Court in the Chapter 11 Case, a brief summary of which is included below:

- On the Petition Date, the Debtor filed a motion seeking authority to use existing bank accounts [Docket No. 6] and to use cash collateral [Docket No. 12]. On June 22, 2016, the Court entered an Order authorizing the Debtor's use of cash collateral on an interim basis [Docket No. 78].
- Pursuant to the Bankruptcy Rule 1007(c) the initial deadline for the Debtor to file its Schedules and Statement of Financial Affairs ("SOFA") was June 3, 2016. On May 20, 2016 the Debtor filed the *Application to Extend Time to File Schedules and Statement of Financial Affairs* [Docket No. 5]. On May 27, 2014, the Court entered an order [Docket No. 49] granting that motion and extending the Debtor's deadline to file its Schedules and SOFA through and including June 17, 2016. On June 17, 2016, the Debtor filed its Schedules [Docket No. 75] and SOFA [Docket No. 76].
- Also on the Petition Date, the Debtor filed the *Motion of the Debtor for Entry of an Order (I) Authorizing It to Pay Certain Employee Obligations and Maintain and Continue Employee Benefits and Programs and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Obligations* [Docket No. 9] (the "Employee Wage Motion"), by which it sought entry of an order (i) authorizing the Debtor to pay certain employee obligations and maintain and continue employee benefit programs, (ii) authorizing banks to honor and process checks and transfers related to such obligations. On May 23, 2016, the Debtor filed an Amended Employee Wage Motion [Docket No. 24]. On May 27, 2016, the Bankruptcy Court entered an order [Docket No. 51] granting the Employee Wage Motion.
- Also on the Petition Date, the Debtor filed the *Motion for Continuation of Utility Service* [Docket No. 7] (the "Utilities Motion"), by which it sought entry of an order (i) establishing procedures for determining requests for additional assurance of payment from utility companies and (ii) prohibiting utility companies currently providing services, or which will provide services, to the Debtor from otherwise altering, refusing or discontinuing services to, or discriminating against the Debtor. On May 23, 2016, the Debtor filed an Amended Utilities Motion [Docket No. 23]. On May 27, 2016, the Bankruptcy Court entered an order [Docket No. 50] granting the Utilities Motion.
- Also on the Petition Date, the Debtor filed the *Motion of the Debtor and Debtor In Possession for Entry of an Order Under 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 10] (the "Compensation Procedures Motion") by which it sought entry of an order establishing compensation procedures for retained professionals in the Chapter 11 Case. On May 23, 2016, the Debtor filed an Amended Motion

of the Debtor and Debtor In Possession for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals [Docket No. 25]. On June 22, the Debtor filed a *Stipulation And Agreed Final Order (I) Authorizing The Debtors Use Of Cash Collateral On An Interim Basis Pursuant To 11 U.S.C. § 363, (II) Granting Adequate Protection To The Debtors Prepetition Secured Lender Pursuant To 11 U.S.C. §§ 361 And 363, And (III) Granting Related Relief* [Docket No. 78] (the “Agreed Compensation Procedures Motion”). On September 16, 2016, the Bankruptcy Court entered an order [Docket No. 102] granting the Agreed Compensation Procedures Motion.

- On Petition Date, the Debtor filed the *Application to Employ Bingham Greenebaum Doll LLP as Counsel, Nunc Pro Tunc, as of the Petition Date* [Docket No. 11] (the “BGD Retention Application”) seeking to retain Bingham Greenebaum Doll LLP as the Debtor’s bankruptcy counsel nunc pro tunc to the Petition Date. On May 23, 2016, the Debtor filed an *Amended Application to Employ Bingham Greenebaum Doll LLP as Counsel, Nunc Pro Tunc, as of the Petition Date* [Docket No. 26]. On June 1, 2016, the Bankruptcy Court entered an order [Docket No. 60] granting the BGD Retention Application.
- On June 11, 2016, the Debtor filed the *Application to Employ DLA Piper LLP as Local Counsel, Nunc Pro Tunc, as of the Petition Date* [Docket No. 70] (the “DLA Retention Application”) seeking to retain DLA Piper LLP as the Debtor’s local bankruptcy counsel nunc pro tunc to the Petition Date. On September 16, 2016, the Bankruptcy Court entered an order [Docket No. 104] granting the DLA Retention Application.

On June 22, 2016, the U.S. Trustee conducted the meeting of creditors under section 341 of the Bankruptcy Code. The U.S. Trustee concluded the meeting that same day.

### ARTICLE III

#### SUMMARY OF THE PLAN

##### A. Summary

1. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtor has not classified Administrative Claims, Priority Tax Claims and Other Priority Claims.

2. The following table classifies Claims against and Equity Interests in the Debtor for all purposes, including voting confirmation and Distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that

any such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date. Each Class set forth below is treated under the Plan as a distinct Class for voting and distribution purposes.

3. Summary of Classification and Treatment of Classified Claims and Equity Interests.

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
1	Secured Claim	Impaired	Entitled to Vote
2	General Unsecured Claims	Impaired	Entitled to Vote
3	Deficiency Claim	Impaired	Deemed to Reject
4	Intercompany Claims	Impaired	Deemed to Reject
5	Equity Interests	Impaired	Deemed to Reject

**B. Administrative and Priority Claims**

**1. Establishment of the Administrative Claims Bar Date**

a. The deadline for parties to submit a request for payment of an Administrative Claim (“Administrative Claims Bar Date”) shall be \_\_\_\_\_.

b. Likewise, by the Bar Date Order, the Bankruptcy Court has established \_\_\_\_\_, 2018 as the Section 503(b)(9) Claim Deadline, the deadline for parties to submit a request for payment of an Administrative Claim incurred under section 503(b)(9) of the Bankruptcy Code.

c. Except as otherwise provided herein, on or before 5:00 p.m. (Eastern Standard Time), on the Final Administrative Claims Bar Date, each holder of an Administrative Claim shall File with the Bankruptcy Court and serve on counsel for the Debtor and the Responsible Person, any request for payment of an Administrative Claim incurred before the Administrative Claims Bar Date.

d. Any request for payment of an Administrative Claim before the Administrative Claim Bar Date will be timely Filed only if it is Filed with the Bankruptcy Court by 5:00 p.m. (Eastern Standard Time) on the Administrative Claim Bar Date; provided, however, that a request for payment of an Administrative Claim arising between the Petition Date and the Administrative Claims Bar Date or under section 503(b)(9) of the Bankruptcy Code shall be deemed timely only to the extent such request was submitted in accordance with the terms of the Bar Date Order.

e. Notwithstanding anything herein, the Debtor’s Professionals shall not be required to file a request for payment of Accrued Professional Compensation on or before the Administrative Claims Bar Date. Such Professionals will instead file final fee applications as required by the Bankruptcy Code, Bankruptcy Rules, Confirmation Order and in accordance with the Plan.

## **2. Accrued Professional Compensation**

The deadline for submission by Professionals for Bankruptcy Court approval of Accrued Professional Compensation shall be the forty-fifth (45th) day following the Effective Date. For the avoidance of doubt, the Debtor's and the Committee's professionals shall waive all claims for Accrued Professional Compensation that have not already been paid by order of Court.

## **3. Priority Tax Claims**

The Responsible Person shall pay each holder of an Allowed Priority Tax Claim the full unpaid amount of such Allowed Priority Tax Claim in Cash, on the latest of (i) the Effective Date or as soon as practicable thereafter, and (ii) the date such Priority Tax Claim becomes Allowed or as soon as practicable thereafter and (iii) the date such Allowed Priority Tax Claim is payable under applicable non-bankruptcy law, provided that such Allowed Priority Tax Claim shall be paid prior to the assessment of any penalty by the applicable Governmental Unit.

## **4. Other Priority Claims**

The Responsible Person shall pay each holder of an Allowed Other Priority Claim the full unpaid amount of such Allowed Other Priority Claim in Cash, on the latest of (i) the Effective Date or as soon as practicable thereafter, and (ii) the Other Priority Claim becomes Allowed or as soon as practicable thereafter and (iii) the date such Allowed priority Tax Claim is payable under applicable non-bankruptcy law, provided that such Allowed Other Priority Claim is payable under applicable non-bankruptcy law.

## **C. Classification and Treatment of Claims and Equity Interests**

### **1. Summary**

a. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtor has not classified Administrative Claims, Priority Tax Claims and Other Priority Claims, as described in the Plan.

b. The following table classifies Claims against and Equity Interests in the Debtor for all purposes including voting, confirmation and Distributions pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest asserted in that Class is Allowed and has not been paid or otherwise settled prior to the Effective Date. Each Class set forth below is treated hereunder as a distinct Class for voting and Distribution purposes.

c. Summary of Classification and Treatment of Classified Claims and Equity Interests:

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Secured Claim	Impaired	Entitled to Vote
2	General Unsecured Claims	Impaired	Entitled to Vote
3	Deficiency Claim	Impaired	Deemed to Reject
4	Intercompany Claims	Impaired	Deemed to Reject
5	Equity Interests	Impaired	Deemed to Reject

**2. Classification and Treatment of Claims and Equity Interests**

a. Secured Claim (Class 1)

- i. **Classification:** Class 1 consists of the Secured Claims of PrivateBank and Trust Company (“PrivateBank”).
- ii. **Treatment:** PrivateBank holds a secured claim in the approximate amount of \$13,635,360.21).
- iii. **Voting:** Class 1 is Impaired and, therefore, the Secured Claims (Class 1), is entitled to vote to accept or reject the Plan.

b. General Unsecured Claims (Class 2)

- i. **Classification:** Class 2 consists of the General Unsecured Claims.
- ii. **Treatment:** Except to the extent that a holder of an Allowed General Unsecured Claim has been paid by the Debtors or Prime prior to the Effective Date or agrees to a less favorable classification and treatment, each holder of an Allowed General Unsecured Claim shall receive their Pro Rata share of the GUC Trust Distributable Cash from the GUC Trust. Distributions to holders of Allowed General Unsecured Claims shall be made as soon as practicable as the Responsible Person may determine in his sole discretion.
- iii. **Voting:** Class 2 is Impaired and, therefore, holders of General Unsecured Claims (Class 2) are entitled to vote to accept or reject the Plan.

c. Deficiency Claims (Class 3)

- i. **Classification:** Class 3 consists of the Deficiency Claims.



- ii. **Treatment:** PrivateBank has consented to having the Deficiency Claim subordinated, which is conditioned upon PrivateBank being included as a Released Party under the terms of the Plan. Given the fact that the amount of the General Unsecured Claims far exceeds the value of the Debtor's Assets, the Debtor anticipates that PrivateBank will not receive any recovery based upon the Deficiency Claim.
  - iii. **Voting:** Class 3 will receive no Distribution under the Plan and, therefore, under section 1126(g), PrivateBank, the sole holder of the Deficiency Claim (Class 3), is deemed to reject the Plan.
- d. Intercompany Claims (Class 4)
- i. **Classification:** Class 4 consists of Intercompany Claims.
  - ii. **Treatment:** The Non-Debtor Affiliates have consented to having the Intercompany Claims subordinated, which is conditioned upon the Non-Debtor Affiliates being included as Released Parties under the terms of the Plan. Given the fact that the amount of the General Unsecured Claims far exceeds the value of the Debtor's Assets, the Debtor anticipates that the Non-Debtor Affiliates will not receive any recovery based upon the Intercompany Claims.
  - iii. **Voting:** Class 4 will receive no Distribution under the Plan and, therefore, under section 1126(g), the Non-Debtor Affiliates, the sole holders of the Intercompany Claims (Class 4), are deemed to reject the Plan.
- e. Equity Interests (Class 5)
- i. **Classification:** Class 5 consists of Equity Interests.
  - ii. **Treatment:** Holders of Equity Interests in Class 5 shall receive no Distribution under the Plan.
  - iii. **Voting:** Class 5 will receive no Distribution under the Plan and, therefore, under section 1126(g) holders of Equity Interests (Class 5) are deemed to reject the Plan.

#### **D. Nonconsensual Confirmation**

If holders of Claims in Classes 1 and/or 2 do not vote to accept the Plan by the requisite statutory majority provided in section 1126 of the Bankruptcy Code, the Debtor reserves the right to amend the Plan. The Debtor intends to request that the Bankruptcy Court confirm the

Plan pursuant to section 1129(b) of the Bankruptcy Code notwithstanding the deemed rejection of the Plan by holders of Claims and Equity Interests in Classes 3, 4 and 5.

#### **ARTICLE IV**

##### **MEANS FOR IMPLEMENTATION OF THE PLAN**

###### **A. Vesting of Assets**

On the Effective Date the Assets shall vest in the GUC Trust.

###### **B. The GUC Trust**

On the Effective Date, the Debtor, on its own behalf and on behalf of the beneficiaries, shall execute the GUC Trust Agreement, and all other necessary steps shall be taken to establish the GUC Trust. Also on the Effective Date, all of the Debtor's Assets shall vest in the GUC Trust, including, but not limited to the Wind-Down Expense, any unused and unapplied portions of the Carve-Out, the Debtor's other Cash and the Causes of Action. The GUC Trust shall be established for the sole purposes of adjudicating Claims and distributing the Assets for the benefit of the beneficiaries of the GUC Trust, with no objective to continue or engage in the conduct of a trade or business. The GUC Trust shall be deemed to be a party in interest for purposes of contesting, settling or compromising objections to Claims and Causes of Action. The GUC Trust shall be vested with all the powers and authority set forth in this Plan and the GUC Trust Agreement. The Responsible Person shall be responsible for administering the GUC Trust and for reconciling and objecting to Claims, pursuing Causes of Action and making distributions to holders of Allowed Claims as set forth in the Plan.

###### **C. Responsible Person to Effectuate Distributions**

The Responsible Person shall be deemed to have been appointed as the Estate's and the GUC Trust's representative by the Bankruptcy Court pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Responsible Person shall be entitled to retain counsel and other professionals to carry out his duties.

The Responsible Person shall be appointed for the sole purpose of liquidating and distributing the remaining Assets which have been transferred to the GUC Trust, with no objective to continue or engage in the conduct of a trade or business. To the extent that the Responsible Person determines that it would generate Cash for the GUC Trust, the Responsible Person shall have the authority to pursue and settle the Causes of Action. In accordance with this Plan, the Responsible Person shall (i) pay to each holder of an Allowed Administrative Claim, Allowed Priority Tax Claim and Allowed Other Priority Claim, the full unpaid amount of each such Allowed Claim; and (ii) make Distributions of the remaining Assets, in Cash, to the holders of Allowed General Unsecured Claims in Class 2.

**D. Corporate Authority**

All actions and transactions contemplated under the Plan shall be authorized upon confirmation of the Plan without the need for further approvals, notices, or meetings of the Debtor's board of directors or Equity Interest holders, other than the notice provided by serving the Plan or notices of the entry of the Confirmation order and of the Effective Date of the Plan on (i) all known holders of Claims and (ii) all current directors of the Debtor. The Confirmation Order shall include provisions dispensing with the need for further approvals, notices, or meetings of any of the Debtor's board of directors or Equity Interest holders and authorizing and directing any officer of the Debtor to execute any document, certificate, or agreement necessary to effectuate the Plan on behalf of the Debtor, which documents, certificates, and agreements shall be binding on the Debtor, the Creditors, and all Equity Interest holders. From and after the Effective Date, the Responsible Person is vested with authority to take any action contemplated by this Plan on behalf of the Debtor and GUC Trust that would otherwise require the approval of members, board of directors, or officers of the Debtor or GUC Trust. From and after the Effective Date, the authority, power and incumbency of the persons then acting as directors and/or officers of the Debtor shall be terminated and such directors and/or officers shall be deemed to have resigned or to have been removed without cause and have no further duties or responsibilities with respect to the Debtor.

**E. Retention of Professionals**

The Responsible Person may retain and compensate attorneys and other professionals to assist in his or her duties as Responsible Person on such terms (including on a contingency or hourly basis) as the Responsible Person deems reasonable and appropriate without Bankruptcy Court approval. The payment of the reasonable fees and expenses of the responsible Person's retained professionals shall be made in the ordinary course of business from the Assets and shall not be subject to the approval of the Bankruptcy Court. Professionals and former employees of the Debtor shall be eligible for retention by the Responsible Person.

**F. Compensation of the Responsible Person**

The Responsible Person shall be entitled to reasonable compensation in the amount of \$150 per hour of his recorded time, plus expense reimbursements as set forth in the Plan.

**G. Costs and Expenses of the Responsible Person**

The costs and expenses of the Responsible Person, including the reasonable fees and expenses of the responsible Person and each of his retained professionals and contractors, shall be paid out of the Assets prior to Distribution to holders of Class 2 General Unsecured Claims.

**H. Liability**

Neither the Responsible Person nor his professionals or contractors shall be liable for any act or omission taken or omitted to be taken other than acts or omissions resulting from the Responsible Person's, his professional's or his contractor's willful misconduct, gross negligence, or fraud. The Responsible Person, his professionals and contractors may, in connection with the

performance of their duties or functions, and in their sole absolute discretion, consult with attorneys, accountants, financial advisors and agents, and shall 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 Persons other than acts or omissions resulting from the willful misconduct, gross negligence or fraud of the Responsible Person, his professionals or his contractors. Notwithstanding such authority, the Responsible Person, his professionals and his contractors shall be under no obligation to consult with attorneys, accountants, or their agents, and their determination to not do so should not result in imposition of liability on the Responsible Person, his professionals or contractors unless such determination is based on willful misconduct, gross negligence, or fraud.

Any claim asserted under the Plan must be brought in the Bankruptcy Court.

**I. Liquidation of the Debtor**

After the Effective Date, the Responsible Person shall: (a) file a certificate of dissolution, together with all other necessary corporate documents, to effect the dissolution of the Debtor and any of its subsidiaries, if applicable, under the applicable laws of the State of Georgia; and (b) complete and file the Debtor's final federal, state and local tax returns, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of the Debtor or its Estate for any tax incurred during the administration of the Chapter 11 Case or through the date of such dissolution, as determined under applicable tax laws. The filing of the Debtor's certificate of dissolution shall be authorized and approved in all respects without further action by the stockholders or the board of directors of the Debtor; provided, however, in no event shall the Debtor be dissolved later than three (3) years following the Effective Date.

**J. Operations of the Debtor Between the Confirmation Date and the Effective Date**

The Debtor shall continue to operate as debtor-in-possession during the period from the Confirmation Date through and until the Effective Date and as Reorganized Debtor from the Effective Date through the date of its dissolution.

**K. Term of Injunctions or Stays**

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through and including the Effective Date.

**L. Books and Records**

To the extent that the Debtor has any Books and Records as of the Effective Date, the Debtor shall transfer dominion and control over those Books and Records to the Responsible Person. The Responsible Person may abandon any of the Books and Records that in his sole business judgment neither he nor the GUC Trust need, and neither the Responsible Person nor the GUC Trust shall be responsible for maintaining any records. Pursuant to section 554 of the Bankruptcy Code, the Plan shall constitute motion and notice, so that no further notice or

Bankruptcy Court filings are required to effectuate the aforementioned abandonment of the Books and Records and entry of the Confirmation Order shall be deemed approval thereof.

## **ARTICLE V**

### **PROVISIONS GOVERNING VOTING AND DISTRIBUTIONS**

#### **A. Voting of Claims**

Each holder of an Allowed Claim in an Impaired Class of Claims that is entitled to vote on the Plan pursuant to the Plan shall be entitled to vote separately to accept or reject the Plan, as provided in such order as is entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan or other order or orders of the Bankruptcy Court.

#### **B. Distribution Dates**

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

#### **C. Disbursing Agents**

All distributions under the Plan by the Responsible Person shall be made by the Responsible Person as Disbursing Agent or such other entity designated by the Responsible Person as Disbursing Agent.

The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, instruments and other documents necessary to perform his duties under the Plan, (b) make all Distributions contemplated by the Plan, (c) employ professionals to represent him with respect to his responsibilities, and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

The Disbursing Agent shall only be required to act and make Distributions in accordance with the terms of the Plan and shall have no (x) liability for actions taken in accordance with the Plan or in reliance upon information provided to him in accordance with the Plan or (y) obligation or liability for Distributions under the Plan to any party who does not hold an Allowed Claim at the time of Distribution or who does not otherwise comply with the terms of the Plan.

Except as otherwise ordered by the Bankruptcy Court, any reasonable fees and expenses incurred by the Responsible Person acting as the Disbursing Agent (including, without limitation, reasonable attorneys' fees and expenses) on or after the Effective Date shall be paid in Cash from the Assets in the ordinary course of business and without need for an order of the Bankruptcy Court.

**D. Record Date for Distributions**

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Record Date will be treated as the holders of those Claims for all purposes, notwithstanding that any periods provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the Record Date. The Responsible Person shall have no obligation to recognize any transfer of any Claim occurring after the Record Date. In making any Distribution with respect to any Claim, the Responsible Person shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the proof of Claim filed with respect thereto or on the Schedules as the holder thereof as of the close of business on the Record Date and upon such other evidence or record of transfer or assignment that was known to the Debtors as of the Record Date and is available to the Responsible Person.

**E. Delivery of Distributions**

Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the holders of Allowed Claims shall be made by the Disbursing Agent at (a) the address of each holder as set forth in the Schedules, unless superseded by the address set forth on proofs of Claim filed by such holder or (b) the last known address of such holder if no proof of Claim is filed or if the Responsible Person has not been notified in writing of a change of address.

**F. Undeliverable and Unclaimed Distributions**

In the event that any Distribution to any holder of an Allowed Claim made by the Disbursing Agent is returned as undeliverable, the Disbursing Agent shall use commercially reasonable efforts to determine the current address of each holder, but no Distribution to such holder shall be made unless and until the Disbursing Agent has determined the then current address of such holder; provided, however, that all Distributions to holders of Allowed Claims made by the Disbursing Agent that are unclaimed for a period of one (1) year after Distribution thereof shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and revested in the Debtor's Estate and any entitlement of any holder of any Claims to such further obligation to make any Distribution to the holder of such Claim on account of such Claim, and any entitlement of any holder of such Claim to any such Distributions shall be extinguished and forever barred; provided, however, that the holder of such Claim may receive future Distributions on account of such Claim by contacting the Responsible Person at some point prior to the final Distribution.

**G. Manner of Cash Payments Under the Plan**

Except as otherwise provided herein, Cash payments made pursuant to the Plan shall be in United States dollars by checks drawn on a domestic bank or by wire transfer from a domestic bank, at the option of the Responsible Person.

#### **H. Compliance with Tax Requirements**

In connection with this Plan and all instruments issued in connection herewith and Distributions hereunder, the Disbursing Agent shall comply with all withholding and reporting requirements imposed by any federal, state or foreign taxing authority, and all Distributions hereunder shall be subject to any 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 on such Holder by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution. Any party issuing any instrument or making any Distribution under the Plan has the right, but not the obligation, to not make a Distribution until such Holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

#### **I. No Payments of Fractional Dollars**

Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole dollar.

#### **J. Interest on Claims**

Except as specifically provided in this Plan or the Confirmation Order, interest shall not accrue on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid on any Claim that is a Disputed Claim in respect of the period from the Effective Date to the date an interim or final Distribution is made thereon if and after the Disputed Claim becomes an Allowed Claim. Except as expressly provided herein or in a Final Order of the Bankruptcy Court, no prepetition Claim shall be Allowed to the extent that it is for post-petition interest or other similar charges.

#### **K. No Distribution in Excess of Allowed Amount of Claim**

Notwithstanding anything to the contrary contained in the Plan, no holder of an Allowed Claim shall receive in respect of that Claim any Distribution in excess of the Allowed amount of such Claim.

#### **L. Setoff and Recoupment**

The Responsible Person may setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any Claims or defenses of any nature whatsoever that the Debtor or its Estate may have against the holder of such Claim but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor, the Estate, the Responsible Person or the GUC Trust of any right of setoff or recoupment that any of them may have against the holder of any Claim. Any such setoffs or recoupments may be challenged in Bankruptcy Court. Notwithstanding any

provision in the Plan to the contrary, nothing herein shall bar any creditor from asserting its setoff or recoupment rights to the extent permitted under section 553 or any other provision of the Bankruptcy Code; provided, however, that such setoff or recoupment rights are timely asserted; provided further that all rights of the Debtor and its Estate, the Responsible Person and the GUC Trust with respect thereto are reserved.

**M. *De Minimis* Distributions; Charitable Donation**

Notwithstanding anything to the contrary therein, the Responsible Person shall not be required to make a Distribution to any holder of an Allowed Claim if the dollar amount of the Distribution is less than \$15 or otherwise so small that the cost of making that Distribution exceeds the dollar amount of such Distribution. On or about the time that the final Distribution is made, the Responsible Person may make a charitable donation with undistributed funds if, in the reasonable judgment of the Responsible Person, the cost of calculating and making the final Distribution of the remaining funds is excessive in relation to the benefits to the holders of Claims who would otherwise be entitled to such Distributions, and such charitable donation is provided to an entity not otherwise related to the Debtor or the Responsible Person.

**N. United States Trustee Fees**

All fees due and payable pursuant to section 1930 of Title 28 of the U.S. Code shall be paid by the Responsible Person using the Assets. The Responsible Person shall be responsible for Filing quarterly reports for the GUC Trust in a form reasonably acceptable to the U.S. Trustee.

**O. No Distributions on Late-Filed Claims**

Except as otherwise provided in a Final Order of the Bankruptcy Court, any Claim as to which a proof of Claim or other request was required to be Filed or submitted and was first Filed or submitted after the applicable bar date in the Chapter 11 Case, including, without limitation, the deadlines established herein, or in the Bar Date Order, shall automatically be deemed a late-filed Claim that is disallowed in the Chapter 11 Case, without need for (a) any further action by the Responsible Person or the GUC Trust or (b) an order of the Bankruptcy Court. Nothing in this paragraph is intended to expand or modify the applicable bar dates or any orders of the Bankruptcy Court relating thereto.

**ARTICLE VI**

**DISPUTED CLAIMS**

**A. No Distribution Pending Allowance**

Notwithstanding any other provision of the Plan, the responsible Person shall not make any Distribution on account of any Disputed Claim unless and until such Claim becomes Allowed.



**B. Resolution of Disputed Claims**

The Responsible Person shall have the right to make and file objections to Claims in the Bankruptcy Court. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, all Disputed Claims shall be subject to the exclusive jurisdiction of the Bankruptcy Court. After the Effective Date, the Responsible Person shall be the successor in interest to any objections to Claims filed by the Debtor before the Effective Date, and the Responsible Person shall be responsible for prosecuting and/or settling those objections.

**C. Objection Deadline**

All objections to Disputed Claims shall be Filed no later than the Claims Objection Bar Date, unless otherwise ordered by the Bankruptcy Court after notice and a hearing.

**D. Estimation of Claims**

At any time, the Responsible Person may request that the Bankruptcy Court estimate any Disputed Claim to the extent permitted by section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Responsible Person has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall have jurisdiction to estimate any Claim at any time during litigation concerning any objection to such Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court estimates any Disputed Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on the Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum a limitation on the Claim, the Debtor or the Responsible Person may elect to pursue supplemental proceedings to object to the ultimate allowance of the Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

**ARTICLE VII**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Rejection of Executory Contracts and Unexpired Leases**

The Plan shall constitute a motion to reject all executory contracts and unexpired leases not previously assumed and assigned pursuant to an order of the Bankruptcy Court, and the Estate and the GUC Trust shall have no further liability thereunder. The entry of the Confirmation order by the Bankruptcy Court shall constitute approval of any such rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code and that the rejection thereof is on the best interests of the Debtor, the Estate and all parties in the Chapter 11 Case.

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Claims created by the rejection of executory contracts and unexpired leases pursuant to the Plan, or the termination of any executory contract or unexpired lease after the entry of the Confirmation Order, but prior to the Effective Date, must be filed with the Bankruptcy Court and served on the Responsible Person no later than thirty (30) days after the entry of the Confirmation Order. Any Claims arising from the rejection of an executory contract or unexpired lease pursuant to the Plan for which proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtor, the Estate, the GUC Trust and the Responsible Person, their successors and assigns, and their assets and properties, unless otherwise ordered by the Bankruptcy Court or as otherwise provided in the Plan. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in the Plan. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be treated as General Unsecured Claims under the Plan and shall be subject to the provisions of the Plan.

**ARTICLE VIII**

**CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

**A. Conditions Precedent**

The following are conditions precedent to the Effective Date that must be satisfied or waived:

1. The Confirmation Order has become a Final Order;
2. There shall be no stay or injunction in effect with respect to the Confirmation Order, which such Confirmation Order shall contain approval of the releases provided for herein; and
3. The appointment of the Responsible Person shall have been confirmed by entry of the Confirmation order or other order of the Bankruptcy Court.

**B. Waiver**

Notwithstanding the conditions in the Plan, the Debtor reserves, in its sole discretion, the right to waive the occurrence of any condition precedent to the Effective Date or to modify any of the foregoing conditions precedent. Any such written waiver of a condition precedent set forth in the Plan may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action.

## ARTICLE IX

### INDEMNIFICATION, RELEASE, INJUNCTIVE AND RELATED PROVISIONS

#### A. Compromise and Settlement

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the Distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith settlement and compromise of all Claims and Equity Interests. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement as fair, equitable, reasonable and in the best interests of the Debtor, the Estate and holders of Claims and Equity Interests.

#### B. Releases

1. Releases by the Debtor. Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, for the good and valuable consideration provided by each of the Releasees, the Debtor hereby provides a full discharge and release to the Releasees (and each such Releasee so released shall be deemed to release and discharge the Debtor) from any and all Causes of Action, existing as of the Effective Date or thereafter arising, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way to the Debtor (including those in any way related to the Chapter 11 Case or the Plan), including, without limitation, those Causes of Action the Debtor would have been legally entitled to assert or that any Person would have been legally entitled to assert for or on behalf of the Debtor; provided, however, that the foregoing provisions of the Plan shall not operate to waive or release any Causes of Action expressly set forth in and preserved by the Plan.

2. Release by Holders of Claims and Interests. Notwithstanding anything contained herein to the contrary, effective as of the Effective Date and to the fullest extent authorized by applicable law, the Releasing Parties are deemed to have released and discharged the Debtor and the Estate and the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, including any derivative claims, asserted on behalf of any Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's restructuring, the Chapter 11 Case, the Sale, or the transactions or events giving rise to, any claim or interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of claims and interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, or any related agreements, instruments, or other documents, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes actual fraud, willful misconduct, or gross negligence. For the avoidance of doubt, the Debtor and GUC Trust shall not be released from any Administrative Claims, Priority Claims, or Claims in Classes 1, 2, 3 and 4 described herein, to the extent that such claims are receiving the

treatment described herein. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any obligations arising on or after the Effective Date of any party under the Plan or any document, instrument, or agreement executed to implement the Plan.

3. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth in the Plan pursuant to Bankruptcy Rule 9019 and its finding that they are: (a) in exchange for good and valuable consideration, representing a good faith settlement and compromise of the Claims and Causes of Action thereby released; (b) in the best interests of the Debtor and all holders of Claims and Equity Interests; (c) fair, equitable and reasonable; (d) approved after due notice and opportunity for hearing; and (e) a bar to any of the Debtor or Releasing Parties, subject to the Plan, asserting any Claim or Cause of Action thereby released.

### **C. Exculpation**

Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties shall neither have nor incur any liability to any Entity for any Claims and Causes of Action arising after the Petition Date, including any act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming or consummating the Plan, the Disclosure Statement, or any other contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the Sale or in connection with the Chapter 11 Case; provided, however, that the foregoing provisions of the Plan shall have no effect on the liability of any Person that results from any such act or omission that is determined in a Final Order to have constituted gross negligence or willful misconduct; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its duties.

### **D. Preservation of Causes of Action**

#### **1. Vesting of Causes of Action**

a. Except as otherwise provided in the Plan or Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtor or the Estate may hold against any Person shall vest in the GUC Trust on and after the Effective Date.

b. Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date, the Responsible Person, on behalf of the GUC Trust, shall have the exclusive right, but not the obligation, to investigate, institute, prosecute, abandon, settle or compromise any Causes of Action, in his or her sole discretion and without further order of the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in the Chapter 11 Case.

c. Preservation of All Causes of Action Not Expressly Settled or Released

d. Unless a Cause of Action against any Person is expressly waived, relinquished, released, compromised or settled in the Plan or any Final Order (including the Confirmation Order), the Debtor and/or the Estate expressly reserve such Cause of Action for the GUC Trust and the Responsible Person and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action upon or after the entry of the Confirmation Order or the Effective Date based on the Disclosure Statement, Plan or Confirmation Order, except where such Causes of Action have been expressly released in the Plan (including, without limitation, and for the avoidance of doubt, the releases contained in the Plan) or any other Final Order (including the Confirmation Order). In addition, the Debtor and the Estate expressly reserve the right of the Responsible Person, on behalf of the GUC Trust, to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Person, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

e. Subject to the description in the immediately preceding paragraph, any Person to whom the Debtor has incurred an obligation (whether on account of services, purchase or sale of goods or otherwise), or who has received services from the Debtor or a transfer of money or property of the Debtor, or who has transacted business with the Debtor, or leased equipment or property from or to the Debtor should assume that any such obligation, transfer, or transaction may be reviewed by the Responsible Person subsequent to the Effective Date and may be the subject of an action after the Effective Date, regardless of whether: (i) such Person filed a proof of Claim against the Debtor in the Chapter 11 Case; (ii) the Debtor has objected to any such Person's proof of Claim; (iii) any such Person's Claim was included in the Schedules; (iv) the Debtor has objected to any such Person's scheduled Claim; or (v) any such Person's scheduled Claim has been identified by the Debtor as disputed, contingent or unliquidated.

## **E. Injunction**

1. From and after the Effective Date, all Persons are permanently enjoined from commencing or continuing in any manner against the Debtor, the Estate, the Responsible Person, the GUC Trust, their successors and assigns, and their assets and properties, as the case may be, any suit, action or other proceeding, on account of or respecting any Claim, demand, liability, obligation, debt, right, Cause of Action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order.

2. Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, from and after the Effective Date, all Entities shall be precluded from asserting against the Debtor, the Estate, the Responsible Person, the GUC Trust, their successors and assigns, and their assets and properties, any other Claims or Equity Interests based upon any documents, instruments, or any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date.

3. The rights afforded in the Plan and the treatment of all Claims and Equity Interests in the Plan shall be in exchange for and in complete satisfaction of Claims and Equity Interests of any nature whatsoever, against the Debtor or any of its assets or properties. On the Effective Date, all such Claims against, and Equity Interests in, the Debtor shall be satisfied and released in full.

4. Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, all Persons are permanently enjoined, on and after the Effective Date, on account of any Claim or Equity Interest satisfied and released hereby, from:

- a. Commencing or continuing in any manner any action or other proceeding of any kind against the Debtor, the Estate, the Responsible Person, the GUC Trust, their successors and assigns, and their assets and properties;
- b. Enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtor, the Estate, the Responsible Person, the GUC Trust, their successors and assigns, and their assets and properties;
- c. Creating, perfecting or enforcing any encumbrance of any kind against the Debtor, the Estate, the Responsible Person, the GUC Trust, their successors and assigns, and their assets and properties;
- d. Asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtor or against the property or Estate of the Debtor, except to the extent a right to setoff, recoupment or subrogation is asserted with respect to a timely filed proof of claim; and
- e. Commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim, Equity Interest or Cause of Action released or settled hereunder.

#### **F. Releases of Liens**

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date, all Liens against property of the Estate shall be fully released and discharged.

### **ARTICLE X**

#### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Debtor, the Responsible Person, the GUC Trust and the Plan as is legally permissible, including, without limitation, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;
2. Grant, deny or otherwise resolve any and all applications of Professionals or Persons retained in the Chapter 11 Case by the Debtor for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;
3. Resolve any matters related to the assumption, assignment or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable and to hear, determine and, if necessary, liquidate, any Claims arising therefrom;
4. Ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Responsible Person after the Effective Date, provided, however, that the Debtor and the Estate and, following the Effective Date, the Responsible Person and the GUC Trust shall reserve the right of the Responsible Person to commence actions in all appropriate jurisdictions;
6. Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with the Plan;
7. Resolve any cases, controversies, suits or disputes that may arise in connection with the Effective Date, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
8. Issue injunctions, enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Effective Date or enforcement of the Plan, except as otherwise provided in the Plan;
9. Enforce the releases and injunctions set forth in the Plan;
10. Resolve any cases, controversies, suits or disputes with respect to the releases, injunction, and other provisions contained in the Plan, and enter such orders as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
11. Enter and implement such orders as necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

12. Resolve any other matters that may arise in connection with or relate to the Plan, the Confirmation Order or any contract, instrument, release, indenture or other agreement or documents adopted in connection with the Plan; and

13. Enter an order and/or the Final Decree concluding the Chapter 11 Case.

## **ARTICLE XI**

### **MISCELLANEOUS PROVISIONS**

#### **A. Modification of Plan**

Subject to the limitations contained in the Plan: (1) the Debtor reserves the right, in accordance with the Bankruptcy Court and the Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; and (2) after the entry of the Confirmation Order, the Debtor or the Responsible Person may, upon order of the Bankruptcy Court, amend or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency on the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

#### **B. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw the Plan prior to the entry of the Confirmation Order and to file subsequent chapter 11 plans. If the Debtor revokes or withdraws the Plan or if entry of the Confirmation Order or the Effective Date does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission of any sort by the Debtor or any other Entity.

#### **C. Binding Effect**

On the Effective Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interest in, the Debtor and such holder's respective successors and assigns, whether or not the Claim or Equity Interest of such holder is Impaired under the Plan, whether or not such holder has accepted the Plan and whether or not such holder is entitled to a Distribution under the Plan.

#### **D. Successors and Assigns**

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.



**E. Governing Law**

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without giving effect to the principles of conflict of laws thereof.

**F. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and the Effective Date has occurred. Neither the filing of the Plan, any statement or provisions contained herein, nor the taking of any action by the Debtor or any Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor with respect to the holders of Claims or Equity Interests or other parties in interest or (2) any holder of a Claim or other party in interest prior to the Effective Date.

**G. Section 1146 Exemption**

Pursuant to section 1146(g) of the Bankruptcy Code, and transfers of property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

**H. Section 1125(e) Good Faith Compliance**

Confirmation of the Plan shall act as a finding by the Bankruptcy Court that the Debtor and each of its Representatives have acted in "good faith" under section 1125(e) of the Bankruptcy Code.

**I. Further Assurances**

The Debtor, all holders of Claims receiving Distributions hereunder and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

**J. Service of Documents**

Any pleading, notice or other document required by the Plan to be served on or delivered shall be sent by first-class U.S. mail, postage prepaid as follows:

To the Responsible Person &  
GUC Trust:

John A. Thompson, Jr.  
ADAMS AND REESE LLP  
3424 Peachtree Road NE, Suite 1600  
Atlanta, GA 30326  
Telephone: (470) 427-3706  
Facsimile: (404) 500-5975  
E-mail: john.thomson@arlaw.com

To the Debtor:

James R. Irving  
BINGHAM GREENEBAUM DOLL LLP  
3500 PNC Tower  
101 South Fifth Street  
Louisville, KY 40202  
Telephone: (502) 587-3606  
Facsimile: (502) 540-2215  
E-mail: jirving@bgdlegal.com

#### **K. Filing of Additional Documents**

On or before the Effective Date, the Debtor may file with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

#### **L. No Stay of Confirmation Order**

The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rules 3020(e), 6004(h) and 7062.

### **ARTICLE XII**

#### **SOLICITATION AND VOTING PROCEDURES**

On \_\_\_\_\_, the Bankruptcy Court entered the Disclosure Statement Order approving the adequacy of the Disclosure Statement and the Solicitation Procedures. A copy of the Solicitation Procedures is attached as **Exhibit 1** to the Disclosure Statement Order, which in turn, is attached hereto as **Exhibit B**. In addition to approving the Solicitation Procedures, the Disclosure Statement Order established certain dates and deadlines, including the date for the Confirmation hearing, the deadline for parties to object to confirmation of the Plan, the Voting Record Date and the Voting Deadline. The Disclosure Statement order will also approve the forms of Ballots and certain confirmation-related notices. The Disclosure Statement Order and the Solicitation Procedures should be read in conjunction with the Disclosure Statement.

#### **A. Solicitation Package**

##### **1. Contents of the Solicitation Package**

The following materials shall constitute the solicitation package:

- Plan;
- Disclosure Statement;
- Disclosure Statement Order;
- Confirmation Hearing Notice;
- Appropriate Ballot; and

- Pre-addressed, postage pre-paid return envelope.

## **2. Distribution of Solicitation Package**

The Debtor shall serve, or cause to be served, all of the materials in the solicitation package on holders of the Secured Claim in Class 1 and the General Unsecured Claims in Class 2.

The Debtor shall serve, or cause to be served, a notice of non-voting status and a notice of the Confirmation Hearing on holders of the Deficiency Claim in Class 3, the Intercompany Claims in Class 4, and the Equity Interests in Class 5.

The Debtor also shall serve, or cause to be served, all of the materials in the solicitation package (except Ballots) on (a) the U.S. Trustee; (b) the United States Attorneys' Office; and (c) the Committee's counsel.

### **B. Voting Instructions and General Tabulation Procedures**

#### **1. Voting Record Dates**

The Bankruptcy Court has approved \_\_\_\_\_, 2018, as the Voting Record Date.

#### **2. Voting Deadline and Ballot Submission**

The Bankruptcy Court has approved \_\_\_\_\_, 2018, at 5:00 p.m. (Eastern Standard Time) as the Voting Deadline.

For holders of all Claims, the Voting Agent will answer questions regarding the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, provide additional copies of all materials and oversee the voting tabulation. The Voting Agent will also process and tabulate ballots for each Class entitled to vote to accept or reject the Plan.

**TO BE COUNTED AS VOTES TO ACCEPT OR REJECT THE PLAN, BALLOTS CAST BY HOLDERS IN THE CLASSES ENTITLED TO VOTE MUST BE RECEIVED BY THE VOTING AGENT BY THE VOTING DEADLINE, AT THE ADDRESS LISTED ON THE BALLOT, WHETHER BY FIRST CLASS MAIL, OVERNIGHT COURIER OR PERSONAL DELIVERY. THE BALLOTS AND THE PRE-ADDRESSED, POSTAGE PRE-PAID ENVELOPES ACCOMPANYING THE BALLOTS WILL CLEARLY INDICATE WHERE THE BALLOT MUST BE RETURNED.**

Ballots must be actually received by the Voting Agent. If holders of Claims have questions on the procedures for voting on the Plan they may call Debtor's bankruptcy counsel (502) 587-3606.

To obtain an additional copy of the Plan, the Disclosure Statement or other solicitation package materials (except Ballots), parties may contact Debtor's counsel (Bingham Greenebaum Doll LLP, Attn: James R. Irving, 3500 National City Tower, 101 South Fifth Street, Louisville, KY 40202 (jirving@bgdlegal.com)).

Ballots received after the Voting Deadline will not be counted by the Debtor in connection with the Debtor's request for confirmation of the Plan.

### **3. Who May Vote**

In general, a holder of a claim or interest may vote to accept or to reject a plan if no party-in-interest has objected to such claim or interest, and the claim or interest is Impaired by the Plan. If the holder of an Impaired claim or interest will not receive any distribution under the plan in respect of such Claim or Equity Interest, the Bankruptcy Code deems such holder to have rejected the plan. If the Claim or Equity Interest is not Impaired, the bankruptcy Code deems that the holder of such Claim or Equity Interest has accepted the plan and the plan proponent need not solicit such holder's vote.

Pursuant to section 1124 of the Bankruptcy Code, a class of Claims or Equity Interests is deemed to be "impaired" under a plan unless the plan: (a) leaves unaltered the legal, equitable and contractual rights to which the Claim or Equity Interest entitles the holder of such class Claim or Equity Interest; (b) cures any default and reinstates the original terms of such obligation; or (c) provides that, on the consummation date, the holder of such Claim or Equity Interest receives cash equal to the allowed amount of that claim or, with respect to any Equity Interest, any fixed liquidation preference to which the holder of such Equity Interest is entitled or any fixed price at which the debtor may redeem the security.

Only holders of the Secured Claim in Class 1 and General Unsecured Claims in Class 2 shall be entitled to vote on the Plan.

### **4. General Ballot Tabulation**

The following voting procedures and standard assumptions shall be used in tabulating Ballots:

- Except as otherwise provided herein, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline, the Voting Agent shall reject such Ballot as invalid and, therefore, the Debtor shall decline to count it in connection with confirmation of the Plan;
- The Voting Agent will date-stamp all Ballots when received. The Voting Agent shall retain the original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Bankruptcy Court;
- As soon as reasonably practicable before the Confirmation Hearing, unless such other date is set by the Bankruptcy Court, the Voting Agent will File a voting report with the Bankruptcy Court. The voting report shall, among other things, delineate every irregular Ballot including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking original signatures or lacking necessary information, received via facsimile or electronic mail, or damaged. The

voting report shall indicate the Debtor's intentions with regard to such irregular Ballots;

- The method of delivery of Ballots to be sent to the Voting Agent is at the election and risk of each holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Voting Agent actually receives the original executed Ballot;
- An original executed Ballot is required to be submitted by the Entity submitting such Ballot. Delivery of a Ballot to the Voting Agent by facsimile, e-mail, or any other electronic means will not be valid;
- No Ballot should be sent to any of the Debtor or the Debtor's agents (other than the Voting Agent), and if so sent will not necessarily be counted;
- If multiple Ballots are received from the same holder with respect to the same Claim prior to the Voting Deadline, the last Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot;
- Holders must vote all of their Claims within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted;
- The Debtor, subject to contrary order of the Bankruptcy Court, may waive any defects or irregularities as to any particular Ballot at any time, either before or after the close of voting, and such waivers will be documented in the voting report;
- Neither the Debtor nor any other Entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the voting report, nor will any of them incur any liability for failure to provide such notification;
- Unless waived or as ordered by the Bankruptcy Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;
- In the event a designation of lack of good faith is requested by a party-in-interest under section 1126(e) of the Bankruptcy Code, the Bankruptcy Court will determine whether any vote to accept or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted or rejected;
- Subject to any contrary order of the Bankruptcy Court, the Debtor reserves the right to reject any and all Ballots not in proper form, the acceptance of

which, on the opinion of the Debtor, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; provided, however, that any such rejections will be documented in the voting report; and

- The following Ballots shall not be counted in determining acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the holder; (ii) any Ballot cast by an Entity that does not hold a Secured Claim in Class 1 or a General Unsecured Claim in Class 2; (iii) any unsigned Ballot lacking an original signature; (iv) any Ballot not marked to accept or reject the Plan, or marked both to accept and reject the Plan; and (v) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein.

### ARTICLE XIII

#### CONFIRMATION PROCEDURES

##### A. Confirmation Hearing

**The Confirmation Hearing will commence on [REDACTED], 2018 at [REDACTED] (Eastern)**, before the Honorable James R. Sacca, Courtroom 1340, Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

The Plan Objection Deadline is 5:00 p.m. (Eastern) on [\_\_\_\_\_].

All Plan Objections must be Filed with the Bankruptcy Court and served on the Debtor and certain other parties in accordance with the Disclosure Statement Order on or before the Plan Objection Deadline.

The Debtor's proposed schedule will provide Entities sufficient notice of the Plan Objection Deadline, which will be more than the 28 days as required by Bankruptcy Rule 2002(b). The Debtor believes that the Plan Objection Deadline will afford the Bankruptcy Court, the Debtor and other parties-in-interest reasonable time to consider the Plan Objections prior to the Confirmation Hearing.

**THE BANKRUPTCY COURT MAY NOT CONSIDER PLAN OBJECTIONS UNLESS THEY ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE DISCLOSURE STATEMENT ORDER.**

Plan Objections must be served on all of the following parties: (i) the U.S. Trustee, Attn: James H. Morawetz, 75 Ted Turner Drive, SW, Atlanta, GA 30303; (ii) counsel to the Committee: Adams & Reese LLP, Attn: John A Thomson, Jr., 3424 Peachtree Road NE, Suite 1600 Atlanta, GA 30326; and (iii) counsel to the Debtor, Bingham Greenebaum Doll LLP, 3500

PNC Tower, 101 South Fifth Street, Louisville, KY 40202, Attn: James R. Irving; and (v) all of the parties that have requested notice in the Chapter 11 Case.

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

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtor believes:

- The Plan complies with the applicable provisions of the Bankruptcy Code;
- It has complied with the applicable provisions of the Bankruptcy Code;
- The Plan has been proposed in good faith and not by any means forbidden by law;
- Any payment to be made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment made before confirmation of the Plan is reasonable;
- Either each holder of an Impaired Claim or Equity Interest will have accepted the Plan, or will receive or retain under the Plan on account of such Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtor was liquidated on that date under chapter 7 of the Bankruptcy Code;
- The Class that is entitled to vote on the Plan will have accepted the Plan;
- Except to the extent the holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Claims, Priority Tax Claims and Other Priority Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable;
- Confirmation of the Plan is not likely to be followed by the liquidation (other than as contemplated by the Plan) or the need for further financial reorganization of the Debtor or any successors thereto under the Plan;
- It will have paid the required filing fees pursuant to 28 U.S.C. § 1930;
- There will be sufficient funds for the Responsible Person to pay quarterly fees to the U.S. Trustee on or before the last day of the calendar month following the calendar quarter for which the fee is owed in the Chapter 11 Case, until the case is closed converted or dismissed, whichever occurs first.

## **1. Best Interests of Creditors Test/Liquidation Analysis**

Often called the “best interests” test, section 1129(a)(7) of the Bankruptcy Code requires that the Bankruptcy Court find, as a condition to confirmation, that the Plan provides, with respect to each Class, that each holder of a Claim or an Equity Interest in such Class either (a) has accepted the Plan or (b) will receive or retain under the Plan property with a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtor liquidated under chapter 7 of the Bankruptcy Code. To make these findings, the Bankruptcy Court must: (a) estimate the Cash liquidation proceeds that a chapter 7 trustee would generate if the Chapter 11 Case was converted to a chapter 7 case and the assets of the Estate were liquidated; (b) determine the liquidation Distribution that each non-accepting holder of a Claim or an Equity Interest would receive from such liquidation proceeds under the priority scheme dictated in chapter 7; and (c) compare such holder’s liquidation Distribution to the Plan Distribution that such holder would receive if the Plan were confirmed.

In chapter 7 cases, unsecured creditors and interest holders of a debtor are paid from available assets generally in the following order, with no junior class receiving any payments until all amounts due to senior classes have been paid fully or any such payment is provided for: (a) holders of secured claims (to the extent of the value of their collateral); (b) holders of priority claims; (c) holders of unsecured claims; (d) holders of debt expressly subordinated by its terms or by order of the bankruptcy court; and (e) holders of equity interests.

The Debtor believes that the value of any Distributions if the Chapter 11 Case was converted to a case under chapter 7 of the Bankruptcy Code would be less than the value of Distributions under the Plan because, among other reasons, Distributions in a chapter 7 case may not occur until a later date than Distributions under the Plan would occur, thereby reducing the present value of such Distributions. In the event that the Chapter 11 case was converted to a case under chapter 7 of the Bankruptcy Code, it is possible that Distribution of the proceeds of a liquidation could be delayed for a significant period while the chapter 7 trustee and its advisors become knowledgeable about, among other things, the Chapter 11 Case and the Claims against the Debtor. The proceeds received in a chapter 7 liquidation would likely be further depleted by the fees and expenses of a chapter 7 trustee and the trustee’s professional advisors, as well as by the accrual of claims throughout the chapter 7 period that must be paid on a priority basis.

## **2. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that confirmation is not likely to be followed by the liquidation of the Debtor or the need for further financial reorganization, unless the Plan contemplates such liquidation. Indeed, section 1123(b)(4) of the Bankruptcy Code permits liquidation plans that “provide for the sale of all or substantially all of the property of the estate, and the Distribution of the proceeds of such sale among holders of claims or interests” in chapter 11 proceedings. The Plan provides for the liquidation of the Debtor by the distribution of the Sale proceeds and remaining assets. Further, the Debtor maintains that there is a reasonable expectation that the payments required to be made during the terms of the Plan will, in fact, be made.

## **3. Acceptance by Impaired Classes**



The Bankruptcy Code requires, as a condition to confirmation, that, except as described below, each class of Claims or Equity Interests that is Impaired under the Plan, accept the Plan.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of Impaired Claims or Equity Interests as acceptance by holders of at least two-thirds in amount and more than one-half in number of such Claims or Equity Interests.

The Deficiency Claim in Class 3, the Intercompany Claims in Class 4, and the Equity Interests in Class 5 are Impaired under the Plan and will not receive any distribution. Accordingly, they are deemed to have rejected the Plan.

The Secured Claim in Class 1 and the General Unsecured Claims in Class 2 are Impaired under the Plan, and as a result, the holders of Claims in Classes 1 and 2 are entitled to vote on the Plan. Such Voting Classes must accept the Plan for the Plan to be confirmed, or must be “crammed down” under section 1129(b) of the Bankruptcy Code. As stated above, Classes 1 and 2 will have accepted the Plan if the Plan is accepted by at least two-thirds in amount and more than one-half in number of the Claims in Class 1 (other than any interests designated under section 1126(e) of the Bankruptcy Code) that have voted to accept or reject the Plan.

As described more fully herein, the Bankruptcy Court may confirm the Plan over the deemed rejections of the Plan by the Claims and Equity Interests in Classes 3 and 4 if the Bankruptcy Court determines that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to the Claims and Equity Interests in Classes 3 and 4. The Debtor believes that the Plan satisfies these requirements and the Debtor may request such nonconsensual Confirmation in accordance with subsection 1129(b) of the Bankruptcy Code.

### **C. Contact for More Information**

Any interested party desiring further information about the Plan may contact legal counsel to the Debtor:

/s/ Daniel M. Simon

Daniel M. Simon (GA Bar No. 690075)  
DLA PIPER LLP (US)  
One Atlantic Center  
1201 West Peachtree Street, Suite 2800  
Atlanta, Georgia 30309  
Telephone: (404) 736-7871  
Facsimile: (312) 251-2854  
E-mail: daniel.simon@dlapiper.com

/s/ Jim Irving

James R. Irving (KY Bar No. 96048)  
(admitted *pro hac vice*)  
BINGHAM GREENEBAUM DOLL LLP  
3500 PNC Tower  
101 South Fifth Street  
Louisville, KY 40202  
Telephone: (502) 587-3606  
Facsimile: (502) 540-2215  
E-mail: jirving@bgdlegal.com

## ARTICLE XIV

### PLAN-RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS THAT ARE IMPAIRED SHOULD READ AND CONSIDER CAREFULLY THE

FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.

#### A. Certain Bankruptcy Law Considerations

##### 1. Parties-in-Interest May Object to the Debtor's Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code provides that a plan may replace a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created (i) three Classes of Claims encompassing Claims that are substantially similar to the other Claims in such Classes, and (ii) one Class of Equity Interests encompassing Equity Interests that are substantially similar to the other Equity Interests in that Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

##### 2. Failure to Satisfy Vote Requirement

If votes are received in an amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtor intends to seek, as promptly as practicable thereafter, confirmation of the Plan. In the event that sufficient votes are not received, the Debtor may seek approval of an alternative chapter 11 plan. There can be no assurance the terms of any such alternative chapter 11 plan would be similar or as favorable to the holders of Allowed Claims as those proposed in the Plan.

##### 3. The Debtor May Not Be Able to Secure Confirmation of the Plan

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, including, among other requirements, a finding by the bankruptcy court that: (a) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to non-accepting holders of claims and equity interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance the Bankruptcy Court will confirm the Plan. A non-accepting holder of an Allowed Claim might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that the Disclosure Statement, the balloting procedures and voting results are appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for Confirmation has not been met, including the requirement that the terms of the Plan do not “unfairly discriminate” and are “fair and equitable” to non-accepting Classes.

Confirmation of the Plan is also subject to certain conditions as described in the Plan. If the Plan is not confirmed, it is unclear what Distributions, if any, holders of Allowed Claims would receive with respect to their Allowed Claims.

The Debtor, subject to the terms and conditions of the Plan, reserves the right to modify the terms and conditions of the Plan as necessary for confirmation of the Plan. Any such modifications could result in a less favorable treatment of any non-accepting Class, as well as of any Classes junior to such non-accepting Class, than the treatment currently provided in the Plan. Such a less favorable treatment could include a Distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan.

#### **4. Nonconsensual Confirmation**

The Bankruptcy Court may confirm the Plan over the rejection or deemed rejection of the Plan by classes of Claims or Equity Interests if the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to such class. Because the Debtor seeks a cramdown under section 1129(b) of the Bankruptcy Code with respect to the deemed rejection of the Plan by holders of the Deficiency Claim in Class 3, the Intercompany Claims in Class 4 and Equity Interests in Class 5, the Debtor must satisfy the factors listed below.

*No Unfair Discrimination.* This test applies to classes of claims or equity interests that are equal priority and are receiving different treatment under a plan of reorganization. The test does not require that the treatment be the same or equivalent, but that such treatment be “fair.”

*Fair and Equitable Test.* This test applies to classes of different priority (e.g., unsecured versus secured) and includes the general requirement that no class of claims receive more than 100% of the allowed amount of the claims in such class. As to the dissenting class, the test sets different standards, depending on the type of claims or interests in such class:

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

*Equity Interests.* Either (i) each equity interest holder will receive or retain under the plan of reorganization property of a value equal to the greater of (a) the fixed liquidation

preference or redemption price, if any, of such stock and (b) the value of the stock or (ii) the holders of interests that are junior to the equity interests of the dissenting class will not receive or retain any property under the plan or reorganization.

The Debtor believes the Plan will satisfy both the “no unfair discrimination” requirement and the “fair and equitable” requirement, notwithstanding that Classes 3 and 4 will receive no Distribution, because as to such Classes, there are no classes of equal priority receiving more favorable treatment (aside from \_\_\_\_ voluntarily agreeing to have the Deficiency Claim subordinated behind the General Unsecured Claims) and no class that is junior to such dissenting Classes will receive or retain any property on account of the Claims or Equity Interests in such class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion.

#### **5. The Debtor May Object to the Amount or Classification of a Claim**

Except as otherwise provided in the Plan, the Debtor (and any successor in interest to the Debtor) reserves the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in this Disclosure Statement cannot be relied on by any holder of a Claim where such Claim is subject to an objection. Any holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated Distributions described in this Disclosure Statement.

#### **6. Risk of Non-Occurrence of the Effective Date**

Although the Debtor believes that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur.

#### **7. Contingencies Not to Affect Votes of Impaired Classes to Accept or Reject the Plan**

The Distributions available to holders of Allowed Claims under the Plan can be affected by a variety of contingencies. The occurrence of any and all such contingencies, which could affect Distributions available to holders of Allowed Claims under the Plan, will not affect the validity of the vote taken by the Impaired Class to accept or reject the Plan or require any sort of revote by the Impaired Class.

### **B. Risk Factors That May Affect Distributions Under the Plan**

#### **1. The Debtor Cannot State with Any Degree of Certainty What Recover Will Be Available to Holders of Allowed Claims in a Voting Class**

A number of unknown factors make certainty in creditor recoveries impossible. First, the Debtor cannot know with any certainty, at this time, the number or amount of Claims that will ultimately be Allowed. Second, the Debtor cannot know with any certainty, at this time, the Cash value of the Assets that will be distributed under the terms of the Plan. For example, the Debtor is not certain what the GUC Trust and Responsible Person will recover on account of the

Causes of Action. In fact, the Debtor has not yet conducted an analysis of the Causes of Action, including the potential actions under chapter 5 of the Bankruptcy Code, that seemingly comprises one of the largest assets of the Debtor's Estate that is not being sold under the terms of the Sale and that will be transferred to the GUC Trust for the benefit of the Debtor's creditors.

**2. Actual Amounts of Allowed Claims May Differ from the Estimated Claims and Adversely Affect the Recovery on Claims**

The Claims estimates set forth herein are based on various assumptions. The actual amounts of Allowed Claims may differ significantly from those estimates should one or more underlying assumption prove to be incorrect. Such differences may adversely affect the percentage recovery to holders of Allowed Claims under the Plan. Additionally, the Debtor has made certain assumptions, as described herein, regarding liquidation under chapter 7 of the Bankruptcy Code, which should be read carefully.

**C. Disclosure Statement Disclaimer**

**1. No Waiver of Right to Object or Reject to Recover Transfers and Assets**

The vote by a holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any Claims or rights of the Debtor, the GUC Trust or the Responsible Person to object to that holder's Allowed Claim or to bring Causes of Action regardless of whether any Claims or Causes of Action of the Debtor or the Estate are specifically or generally identified herein. Further, nothing in this Disclosure Statement or in the Plan should be considered a waiver of the Debtor's, the GUC Trust's or the Responsible Person's right to pursue the Causes of Action.

**2. Information Was Provided by the Debtor and Was Relied Upon by the Debtor's Advisors**

Counsel to the Debtor have relied upon information provided by the Debtor in connection with the preparation of this Disclosure Statement. Although counsel to the Debtor have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not verified independently the information contained herein.

**D. Liquidation Under Chapter 7**

If the Plan is not Confirmed, the Chapter 11 Case will likely be converted to a case under chapter 7 of the bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate the assets of the Debtor for Distribution in accordance with the priorities established by the Bankruptcy Code. The Debtor believes that any such conversion would reduce any Distribution to holders of Claims, especially claims to General Unsecured Creditors in Class 2, based upon, among other things, the (i) increased costs of a chapter 7 case arising from the fees payable to a chapter 7 trustee and professional advisors to such trustee; (ii) substantial increases in claims which would be satisfied on a priority basis; (iii) substantially longer period of time that would elapse until distributions could be made under chapter 7; and (iv) the fact that absent

the confirmation of the Plan, and the releases provided therein, PrivateBank will not agree to have the Deficiency Claim subordinated to General Unsecured Claims.

## ARTICLE XV

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

The following is a summary of certain U.S. federal income tax consequences of the Plan to the Debtor and certain holders of Claims. This summary is based on the Internal Revenue Code, Treasury Regulations thereunder and administrative and judicial interpretations and practice, all as in effect on the date of the Disclosure Statement and all of which are subject to change, with possible retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtor does not intend to seek a ruling from the Internal Revenue Services as to any of the tax consequences of the Plan discussed below. There can be no assurance that the Internal Revenue Service will not challenge one or more of the tax consequences of the Plan described below.

This summary does not apply to holders of Claims that are not U.S. Persons (as such term is defined in the Internal Revenue Code) or that are otherwise subject to special treatment under U.S. federal income tax law (including, without limitation, banks, governmental authorities or agencies, financial institutions, insurance companies, pass-through entities, tax-exempt organizations, brokers and dealers in securities, mutual funds, small business investment companies and regulated investment companies). The following discussion assumes that holders of Allowed Claims and such Claims as “capital assets” within the meaning of section 1221 of the Internal Revenue Code. Moreover, this summary does not purport to cover all aspects of U.S. federal income taxation that may apply to the Debtor and holders of Allowed Claims based upon their particular circumstances. Additionally, this summary does not discuss any tax consequences that may arise under any laws other than U.S. federal income tax law, including under state, local or foreign tax law.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

**INTERNAL REVENUE SERVICE CIRCULAR 230 DISCLOSURE:** TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, ANY TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE

TRANSACTIONS OR MATTERS ADDRESSED BY THE DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

**A. Federal Income Tax Consequences to the Debtor**

The Debtor has filed a consolidated federal income tax return with the IRS and consolidated state income tax returns with the State of Georgia for all tax years up to and including the tax year ending 2015. The Debtor does not expect to incur any substantial tax liability as a result of implementation of the Plan.

**B. Federal Income Tax Consequences to Holders of the Secured Claim and/or General Unsecured Claims**

THERE ARE MANY FACTORS THAT WILL DETERMINE THE TAX CONSEQUENCES TO EACH CREDITOR. FURTHERORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. THEREFORE IT IS IMPORTANT THAT EACH CREDITOR OBTAIN HIS, HER OR ITS OWN PROFESSIONAL TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH CREDITOR AS A RESULT OF THE PLAN.

**C. Federal Income Tax Treatment of Equity Interests**

THERE ARE MANY FACTORS THAT WILL DETERMINE THE TAX CONSEQUENCES TO EACH HOLDER OF A DEFICIENCY CLAIM AND EQUITY INTEREST OF THE DEBTOR. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. THEREFORE IT IS IMPORTANT THAT EACH HOLDER OF A DEFICIENCY CLAIM AND EQUITY INTEREST OF THE DEBTOR OBTAIN HIS, HER OR ITS OWN PROFESSIONAL TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH HOLDER OF A DEFICIENCY CLAIM AND EQUITY INTEREST OF THE DEBTOR AS A RESULT OF THE PLAN.

**D. Withholding and Reporting**

Payment of interest, dividends, and certain other payments are generally subject to federal backup withholding at the rate of 28% unless the payee of such payment furnishes such payee's correct taxpayer identification number (social security number or employer identification number) to the payor. The Responsible Person may be required to withhold the applicable percentage of any payments made to a holder who does not provide his taxpayer identification number. Backup withholding is not an additional tax, but an advance payment of tax that may be refunded by the Internal Revenue Service to the extent such withholding results in an overpayment of tax by the taxpayer.

THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL.

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

## ARTICLE XVI

### GLOSSARY OF DEFINED TERMS

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Accrued Professional Compensation*” means, at any given moment, all accrued and/or unpaid fees for legal, financial advisory, accounting and other professional services and reimbursement of expenses of such professionals that are awardable and allowable under sections 328, 330(a) or 331 of the Bankruptcy Code, or otherwise rendered prior to the Effective Date, including in connection with (a) applications filed pursuant to sections 330 and 331 of the Bankruptcy Code; (b) motions seeking the enforcement of the provisions of the Plan or Confirmation Order by all Professionals in the Chapter 11 Case that the Bankruptcy Court has not denied by a Final Order, to the extent that any such fees and expenses have not previously been paid regardless of whether a fee application has been filed for any such amount; and (c) applications for allowance of Administrative Claims arising under sections 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(6) of the Bankruptcy Code. To the extent the Bankruptcy Court or any higher court denies by a Final Order any amount of a Professional’s fees or expenses or any such Professional voluntarily waives or reduces its fees or expenses, then those amounts shall no longer be Accrued Professional Compensation.

2. “*Administrative Claims*” means Claims for costs and expenses of administration under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including, without limitation, the actual and necessary costs and expenses incurred on and after the Petition Date and before the Effective Date of preserving the Estate and operating the business of the Debtor (such as wages, salaries or commissions for services and payments for goods and other services and leased premises). Notwithstanding the foregoing, (i) any fees or charges assessed against the Estate of the Debtor under section 1930 of Chapter 123 of title 28 of the United States Code are excluded from the definition of Administrative Claims and shall be paid in accordance with the Plan, and (ii) Accrued Professional Compensation is excluded from the definition of Administrative Claims and shall be paid in accordance with the Plan.

3. “*Administrative Claims Bar Dates*” means the Final Administrative Claims Bar Date.

4. “*Allowed*” means, with respect to any Claim or Equity Interest, except as otherwise provided by a Final Order of the Bankruptcy Court: (a) a Claim or Equity Interest that has been scheduled by the Debtor in its schedules of liabilities that has been Filed by the Claims



Objection Bar Date; (b) a Claim or Equity Interest that either is not Disputed or has been allowed by a Final Order; (c) a Claim or Equity Interest that has been reviewed and deemed allowed by the Responsible Person; (d) a Claim or Equity Interest that is allowed: (i) in any stipulation of amount and nature of Claim executed prior to the entry of the Confirmation Order and approved by the Bankruptcy Court by a Final Order or (ii) in any stipulation with the Debtor or amount and nature of Claim or Equity Interest executed on or after the entry of the Confirmation Order; (e) a Claim or Equity Interest that is deemed allowed pursuant to the terms hereof or Allowed in the Confirmation Order; or (f) a Disputed Claim as to which a proof of claim has been timely Filed and as to which no objection has been Filed by the Claims Objection Bar Date.

5. “*Assets*” means all assets of the Debtor as of the Effective Date, including all Cash of the Estate, Causes of Action, Books and Records and Privileges, as well as the Wind-Down Expenses.

6. “*Ballot*” means the form of ballot, approved by the Disclosure Statement Order, used to record votes in favor of or opposed to the Plan.

7. “*Bankruptcy Code*” means section 101, et seq. of title 11 of the United States Code, and applicable portions of titles 18 and 28 of the United States Code, as in effect as of the Petition Date.

8. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Northern District of Georgia, or such other court of competent jurisdiction exercising jurisdiction over the Debtor and the Assets or any portion thereof, or any proceeding arising under or related to the Bankruptcy Code or the Chapter 11 Case.

9. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, promulgated under 28 U.S.C. § 2075, the Local Rules of the United States Bankruptcy Court for the Northern District of Georgia, and general orders and chambers procedures of the Bankruptcy Court, each as applicable to the Chapter 11 Case and as amended from time to time.

10. “*Bar Date Order*” means the Order Establishing Deadlines for Filing Proofs of Claim and Section 503(b)(9) Claim Requests and Approving the Form and Manner of Notice Thereof.

11. “*Books and Records*” means all books and records of the Debtor, including, without limitation, all documents and communications of any kind, whether physical or electronic.

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

13. “*Carve-Out*” means the cash set aside under the terms of the Final Financing Order that is not subject to liens or priority Claims and is intended to pay the Debtor’s professionals and the U.S. Trustee Fees.

14. “*Cash*” means cash and cash equivalents, including, but not limited to bank deposits, liquid investments, checks and similar items.

15. “*Causes of Action*” means claims, actions, causes of action, choses in action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, defenses, rights of setoff, recoupment, subrogation, contribution, reimbursement or indemnity, counterclaims and crossclaims against any other Person, based in law and/or equity, whether under the Bankruptcy Code or other applicable law, whether direct, indirect, derivative or otherwise, whether known, suspected or unsuspected and whether asserted or unasserted as of the Effective Date. For the avoidance of any doubt, “*Causes of Action*” includes, without limitation all claims and any avoidance, preference, recovery, fraudulent transfer, subordination or other actions against insiders and/or any other entities under the Bankruptcy Code. The Schedules set forth a list of transfers of property made by the Debtor before the Petition Date, and the recipients of such transfers should be aware that they may be liable for an avoidance, preference, recover, fraudulent transfer, etc. as defined under the Bankruptcy Code. However, the mere fact that a party is not listed in the Schedules, the Plan or the Disclosure Statement does not mean that the Debtor does not hold a Cause of Action against that party.

16. “*Chapter 11 Case*” means the chapter 11 case commenced when the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on the Petition Date and pending in the Bankruptcy Court as case number 16-58837-jrs.

17. “*Claim*” means a “claim,” as that term is defined in section 101(5) of the Bankruptcy Code, against the Debtor.

18. “*Claims Objection Bar Date*” means the deadline for objecting to Claims, which shall be the forty-fifth (45th) day following the Effective Date; provided, however, that the Debtor or the Responsible Person upon notice and motion may seek extensions of this date from the Bankruptcy Court.

19. “*Class*” means a category of Claims or Equity Interests as set forth herein pursuant to section 1122(a) of the Bankruptcy Code.

20. “*Confirmation Date*” means the date on which the Confirmation Order is entered by the Bankruptcy Court.

21. “*Confirmation Hearing*” means the hearing before the Bankruptcy Court scheduled for \_\_\_\_\_, 2018 at [\_\_\_\_\_] (Eastern Standard Time) during which the Debtor will seek confirmation of the Plan.

22. “*Confirmation Hearing Notice*” means that certain confirmation hearing notice filed with the Bankruptcy Court following entry of the Disclosure Statement Order.

23. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

24. “*Creditor*” means a “creditor” as that term is defined in section 101(10) of the Bankruptcy Code.

25. “*Debtor*” or “*Debtor-in-Possession*” means QRS Recycling of Georgia, LLC, a Kentucky limited liability company.

26. “*Disbursing Agent*” means the Responsible Person or his designee.

27. “*Disclosure Statement*” means the Disclosure Statement for Debtor QRS Recycling of Georgia, LLC’s Plan of Liquidation Under Chapter 11 of the Bankruptcy Code, prepared and distributed in accordance with the Bankruptcy Code, Bankruptcy Rules and any other applicable law, as it is amended, supplemented or modified from time to time.

28. “*Disclosure Statement Order*” means the order approving the Disclosure Statement.

29. “*Disputed*” means, with respect to any Claim or Equity Interest, any Claim or Equity Interest: (a) listed on the Schedules as unliquidated, disputed or contingent, unless a proof of Claim in a liquidated amount has been timely filed; (b) as to which the Debtor, the Responsible Person or other party has interposed a timely objection or request for estimation in accordance with this Plan, the Confirmation Order, the Bankruptcy Code and the Bankruptcy Rules; or (c) as otherwise disputed by the Debtor in accordance with applicable law, which objection, request for estimation or dispute has not been withdrawn or determined by a Final Order; provided, however, that for purposes of this Plan, the Responsible Person shall have the power, up to and including the Claims Objection Bar Date, to determine a Claim to be Disputed upon review of the claims register and the Books and Records and may cause the amendment of the Schedules to reflect any such determination.

30. “*Distributions*” means the distributions of Cash to be made in accordance with the Plan.

31. “*Effective Date*” means the date selected by the Debtor that is a Business Day after the entry of the Confirmation Order on which: (a) no stay of the Confirmation Order is in effect; and (b) all relevant conditions have been satisfied or waived.

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

33. “*Equity Interest*” means any “equity security” as that term is defined in section 101(16) of the Bankruptcy Code in the Debtor that existed immediately prior to the Petition Date.

34. “*Estate*” means the estate of the Debtor created on the Petition Date by section 541 of the Bankruptcy Code.

35. “*Exculpated Parties*” means, collectively, the Debtor, the officers and directors of the Debtor serving in such capacities immediately prior to the Effective Date, and the Debtor’s Professionals (each of the foregoing in its individual capacity as such).

36. “*File*” or “*Filed*” means, with respect to any motion, pleading or other document, entered on the docket of the Chapter 11 Case.

37. “*Final Administrative Claims Bar Date*” means the first Business Day that is thirty (30) days after the Effective Date and is the deadline for a holder of an Administrative claim to file a request with the Bankruptcy Court for payment of such Administrative Claim in the manner indicated herein.

38. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

39. “*Final Financing Order*” means the *Final Order (I) Authorizing the Debtor’s Use of Cash Collateral On An Interim Basis Pursuant To 11 U.S.C. § 363, (II) Granting Adequate Protection to the Debtors Prepetition Secured Lender Pursuant To 11 U.S.C. §§ 361 And 363, and (III) Granting Related Relief* [Docket No. 78] entered by the Bankruptcy Court on June 22, 2016.

40. “*Final Order*” means an order or judgment of the Bankruptcy Court that has not been reversed, stayed, modified or amended, and s to which the time to file an appeal, motion for reconsideration or rehearing (excluding the times prescribed by Bankruptcy Rules 9023 and 9024), or request for a stay has expired.

41. “*General Unsecured Claims*” means Claims against the Debtor that are not Administrative Claims, Priority Tax Claims, Other Priority Claims, Deficiency Claims, or Equity Interests.

42. “*Governmental Unit*” means a “governmental unit” as that term is defined in section 101(27) of the Bankruptcy Code.

43. “*GUC Trust*” means the liquidating trust created pursuant to the Plan.

44. “*Impaired*” means “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code, with respect to any Class of Claims or Equity Interests.

45. “*Initial Distribution Date*” means the date that is as soon as practicable after the Administrative Claims Bar Date, when Distributions under this Plan shall commence to holders of Allowed Claims.

46. “*Intercompany Claims*” means the intercompany claims held by the Non-Debtor Affiliates against the Debtor.

47. “*Interim Financing Order*” means the Order Authorizing the Debtor’s Use of Cash Collateral on an Interim Basis [Docket No. 42] entered by the Bankruptcy Court on May 26, 2016.

48. “*Lien*” shall mean a “lien” as that term is defined in section 101(37) of the Bankruptcy Code, including, without limitation, a deed of trust, mortgage, charge, security interest, pledge or other encumbrance against or interest in property to secure payment or performance of a claim, debt or litigation.

49. “*Non-Debtor Affiliates*” means QRS, Inc., Re-Poly, LLC, QRS Holding Company, QRS Export, Inc., QRS Direct, LLC, Rhino, LLC and QRS Re-Poly, LLC.

50. “*Ordinary Course Professional*” means any professional retained, employed and compensated by the Debtor under the terms of the Order Granting Motion of the Debtor and Debtor In Possession for Entry of an Order Under 11 U.S.C. §§ 105(a), 327, 328 and 330 Authorizing it to Retain and Pay Professionals Utilized by the Debtor In the Ordinary Course of Business [Docket No. 106] entered by the Bankruptcy Court on September 16, 2016.

51. “*Other Priority Claims*” means Claims accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than Priority Tax Claims.

52. “*Person*” means a “person” as that term is defined in section 101(41) of the Bankruptcy Code, including, without limitation, any individual or Entity.

53. “*Petition Date*” means May 20, 2016, the date on which the Debtor commenced the Chapter 11 Case.

54. “*Plan*” means this plan of liquidation under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court, as the case may be.

55. “*Plan Objection Deadline*” means the deadline for parties-in-interest in the Chapter 11 Case to object to the Plan, and which is set forth in the Disclosure Statement Order as [redacted] at 5:00 p.m. (Eastern Standard Time).

56. “*Plan Supplement*” means the supplement to the Plan containing certain documents and forms of documents specified in the Plan, which documents and forms shall be the hearing on confirmation of the Plan.

57. “*Priority Tax Claims*” means Claims of Governmental Units accorded priority in right of payment under section 507(a) of the Bankruptcy Code.

58. “*Privileges*” means the right to assert or waive any privilege, including, but not limited to, any attorney-client privilege, work-product protection, or other privilege or immunity attaching to any documents or communications (whether written, electronic or oral), and control over or rights to direct current or former agents, attorneys, advisors and other professionals of the Debtor with respect thereto.

59. “*Professional*” means any Person employed in the Chapter 11 case pursuant to a Final Order in accordance with sections 327, 328 or 1103 of the Bankruptcy Code, and to be compensated for services rendered prior to and including the Effective Date pursuant to sections 327, 328, 329, 330 or 331 of the Bankruptcy Code.

60. “*Protected Parties*” means any of the Debtor, the Responsible Person and their respective officers, directors, current (but not former) employees, current (but not former)

independent contractors, members, shareholders, advisors, attorneys, representatives, professionals and other agents.

61. “*Record Date*” means the date that the Disclosure Statement Order is entered on the docket by the Bankruptcy Court.

62. “*Released Parties*” means, collectively: (a) the GUC Trust; (b) the Responsible Person; (c) the Debtor’s officers, directors and employees; (d) PrivateBank; and (e) with respect to the foregoing entities in clauses (a) through (d), their respective current and former affiliates, subsidiaries, officers, directors, principals, members, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals; including, but not limited to, the Debtor’s non-debtor affiliates: QRS, Inc., Re-Poly, LLC, QRS Holding Company, QRS Export, Inc., QRS Direct, LLC, Rhino, LLC and QRS Re-Poly, LLC.

63. “*Releases*” means the releases described in Article IX B.

64. “*Releasing Parties*” means, collectively, holders of Claims or Equity Interests who do not opt out of the Plan’s release provisions with respect to the Released Parties pursuant to an election contained on the relevant ballot to vote to accept or reject the Plan.

65. “*Representatives*” means, with regard to a Person (including the Debtor), any current or former officers, directors, employees, advisors, attorneys, professionals (including Professionals), accountants, investment bankers, financial advisors, consultants, agents and other representatives (including their respective officers, directors, employees, independent contractors, members and professionals).

66. “*Responsible Person*” means \_\_\_\_\_ in his capacity as fiduciary responsible for administering the Estate in accordance with the Plan.

67. “*Sale*” means the sale, approved by the Bankruptcy Court pursuant to the Sale Order, of substantially all of the Debtor’s assets with Auctioneer Yellen Partner, LLC via auction free and clear of all liens, claims, encumbrances, and interests.

68. “*Sale Order*” means the *Order Granting Motion Of The Debtor And Debtor In Possession Under 11 U.S.C. §§ 105 And 363 And Rules 2002, 6004, And 9007 Of The Federal Rules Of Bankruptcy Procedure For Entry Of An Order: (I) Authorizing The Debtor To Employ Yellen Partners, LLC As Auctioneer; (II) Authorizing The Debtor To Sell Certain Assets With Auctioneer Via Auction Free And Clear Of All Liens, Claims, Encumbrances, And Interests; And (III) Granting Related Relief* [Docket No. 79] entered by the Bankruptcy Court on June 22, 2016, as may be amended by further Bankruptcy Court order.

69. “*Schedules*” mean, collectively, the schedules of assets and liabilities, schedules of executory contracts and statements of financial affairs pursuant to section 521 of the Bankruptcy Code Filed by the Debtor on June 17, 2016 [Docket Nos. 75, 76], as may be amended or modified from time to time.

70. “*Solicitation Procedures*” means the solicitation procedures set forth in the Disclosure Statement Order.

71. “*Subsequent Distribution Date*” means any date that a Distribution not made on the Initial Distribution Date is made.

72. “*U.S. Trustee*” means the United States Trustee appointed under Article 591 of title 28 of the United States Code to serve in Region 21, including the Northern District of Georgia.

73. “*Voting Agent*” means Bingham Greenebaum Doll LLP.

74. “*Voting Deadline*” means the deadline of 5:00 p.m. (Eastern Standard Time) on \_\_\_\_\_, 2018, to accept or reject the Plan.

75. “*Voting Record Date*” means \_\_\_\_\_, 2018, the date on which holders of Claims that are entitled to vote to accept or reject the Plan will be determined.

76. “*Wind-Down Expense*” means cash funded into the GUC Trust by the Non-Debtor Affiliates in an amount up to \$20,000, so that the GUC Trust has a total of \$20,000 in cash following the Debtor’s payment of all administrative and priority claims and the transfer of its remaining cash to the GUC Trust. This cash is in exchange for the Non-Debtor Affiliates inclusion as Released Parties.

## ARTICLE XVII

### CONCLUSIONS AND RECOMMENDATION

The Debtor believed the Plan is in the best interests of all holders of Claims and urges all holders of Claims entitled to vote to accept the Plan and to evidence such acceptance by returning their Ballots so that they will be received by the Voting Agent by the Voting Deadline, \_\_\_\_\_, 2018 at 5:00 p.m. (Eastern Standard Time).