

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

**IN RE:** ) **CHAPTER 11**  
 )  
**BEAULIEU GROUP, LLC, et al.,** ) **Jointly Administered Under**  
 ) **CASE NO. 17-41677-mgd**  
 )  
**Debtors.** )

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**DISCLOSURE STATEMENT TO ACCOMPANY  
JOINT PLAN OF LIQUIDATION**

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**Dated: February 9, 2018**

## ARTICLE I INTRODUCTION

This Disclosure Statement (the “**Disclosure Statement**”) is filed in accordance with Section 1125 of Title 11, United States Code (as amended and supplemented, the “**Bankruptcy Code**”), by Beaulieu Group, LLC (“**Beaulieu**”) and Beaulieu Trucking, LLC (“**Trucking**”) (Beaulieu and Trucking are sometimes hereafter referred to as the “**Debtors**”), as debtors and debtors-in-possession in the above-captioned Chapter 11 cases (the “**Cases**”), and the Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the Cases, to provide information to all known creditors and equity interest holders about the the Joint Plan of Liquidation filed on February 9, 2018 (as it may be amended from time to time, the “**Plan**”, a copy of which is attached hereto as Exhibit 1. The purpose of the Disclosure Statement is to provide information of a kind and in detail sufficient to enable Creditors and Interest Holders in certain impaired Classes to make an informed judgment regarding whether to accept or reject the Plan and to inform Holders of Claims and Interests in the unimpaired Classes of their treatment under the Plan. The information contained in this Disclosure Statement is provided by the Debtors. The Debtors and the Committee (collectively, the “**Plan Proponents**”) urge parties in interest to read this Disclosure Statement and the Plan carefully prior to casting votes for or against the Plan.

Unless otherwise defined herein, capitalized terms used herein shall have the same meaning ascribed to them in the Plan.

### 1.1 Disclaimer

**ALL CREDITORS AND INTEREST HOLDERS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS AND THE DISCLOSURE STATEMENT AS A WHOLE.**

**THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, STATUTORY PROVISIONS, DOCUMENTS RELATED TO THE PLAN, EVENTS IN THE DEBTORS’ CHAPTER 11 CASES, AND FINANCIAL INFORMATION. ALTHOUGH THE DEBTORS BELIEVE THAT THE PLAN AND RELATED DOCUMENT SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS’ MANAGEMENT, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. FOR THE FOREGOING REASONS, AS WELL AS THE COMPLEXITY OF THE DEBTORS’ FINANCIAL MATTERS, THE DEBTORS ARE UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY INACCURACY OR OMISSION. THE FINANCIAL DATA SET FORTH HEREIN,**

**EXCEPT AS OTHERWISE SPECIFICALLY NOTED, HAS NOT BEEN SUBJECTED TO AN INDEPENDENT AUDIT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF. NO ASSURANCES EXIST THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME HEREAFTER.**

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

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

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

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

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

**1.2 Disclosure Statement**

This Disclosure Statement sets forth certain information regarding the Debtors’ pre-petition activity. This Disclosure Statement also describes the Plan, alternatives to the Plan, effects of confirmation of the Plan, and the manner in which distributions will be made under the Plan. In addition, the Disclosure Statement discusses the confirmation process and voting procedures that Holders of Claims in impaired Classes must follow for their votes to be counted.

**WHEN AND IF CONFIRMED BY THE BANKRUPTCY COURT, THE PLAN WILL BIND THE DEBTORS AND ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS, WHETHER OR NOT THEY ARE ENTITLED TO VOTE OR DID VOTE ON THE PLAN AND WHETHER OR NOT THEY RECEIVE OR RETAIN ANY DISTRIBUTIONS OR PROPERTY UNDER THE PLAN. THUS, ALL CLAIMANTS ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT CAREFULLY. IN PARTICULAR, HOLDERS OF IMPAIRED CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT, THE PLAN, AND ANY EXHIBITS TO THE PLAN OR DISCLOSURE STATEMENT, CAREFULLY AND IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

**1.3 Summary of Distributions Under the Plan**

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

<b>Class No.</b>	<b>Claim/Interest</b>	<b>Treatment of Claim/Interest</b>	<b>Estimated Amount and Projected Recovery</b>	<b>Voting Rights</b>
N/A	Administrative Expense Claims	Each holder of an Allowed Administrative Expense Claim will be paid in full and in Cash, without interest, on or as soon as practicable after the later of (a) the Effective Date, or (b) the date after such Claim is Allowed; or (c) as the holder may otherwise agree.	Estimated Amount: \$11,000,000  Estimated Recovery: 100% of Allowed Amount	Unimpaired and not entitled to vote

<b>Class No.</b>	<b>Claim/Interest</b>	<b>Treatment of Claim/Interest</b>	<b>Estimated Amount and Projected Recovery</b>	<b>Voting Rights</b>
N/A	Priority Tax Claims	Each holder of an Allowed Priority Tax Claim, will be paid in Cash in full on the Effective Date or as soon thereafter as is reasonably practicable, but in no event later than the end of five (5) years from the Petition Date through regular quarterly installments in Cash through and including the date such Allowed Priority Tax Claim is paid in full. If paid over time, the Holder shall receive interest at the Section 6621 Interest Rate (or the applicable statutory rate under state law).	Estimated Amount: \$12,000  Estimated Recovery: 100% of Allowed Amount	Unimpaired and not entitled to vote
1	Priority Claims	Each holder of an Allowed Priority Claim, will be paid in full and in Cash, without interest, on or as soon as practicable after the later of (a) the Effective Date, or (b) the date after such Claim is Allowed; or (c) as the holder may otherwise agree.	Estimated Amount: \$2,000,000  Estimated Recovery: 100% of Allowed Amount	Unimpaired and not entitled to vote
2	Secured Claims of ABL Lenders	ABL Lenders shall retain all rights and interests under the Cash Collateral Agreement, including without limitation, all rights with respect to Cash Collateral (as defined therein), in satisfaction of its Class 2 Claims.	Estimated Amount: \$6,956,700  Estimated Recovery: 100% of Allowed Amount	Unimpaired and not entitled to vote

<b>Class No.</b>	<b>Claim/Interest</b>	<b>Treatment of Claim/Interest</b>	<b>Estimated Amount and Projected Recovery</b>	<b>Voting Rights</b>
3	Secured Claim of Cygnets	On or before the later to occur of the Effective Date or entry of a Final Order allowing the Claim, Allowed Secured Claims of Cygnets shall be paid from net sale proceeds generated from the sale of certain Cygnets collateral, as authorized by the Sale Order or other order of the Court.	Estimated Amount: \$2,808,670*  Estimated Recovery: 100% of Allowed Amount  *Subject to pending objection	Unimpaired and not entitled to vote
4	Secured Claim of CT Lender	On or before the later to occur of the Effective Date or entry of a Final Order allowing the Claim, Allowed Secured Claims of CT Lenders shall be paid from net sale proceeds generated from the sale of certain CT Lender collateral, as authorized by the Sale Order or other order of the Court.	Estimated Amount: \$202,548*  Estimated Recovery: 100% of Allowed Amount  *Subject to pending objection	Unimpaired and not entitled to vote
5	Other Secured Claims	Each Allowed Secured Claim in Class 5 shall be satisfied, at the Liquidating Trustee's option, as follows (i) by the transfer, assignment and conveyance by the Liquidating Trustee of the collateral securing such Class 5 Claim to the Holder of such Allowed Secured Claim in full and final satisfaction of such Allowed Secured Claim, (ii) by the sale of the collateral securing such	Estimated Amount: \$ 0.00  Estimated Recovery: 100% of Allowed Secured Claim	Unimpaired and not entitled to vote

<b>Class No.</b>	<b>Claim/Interest</b>	<b>Treatment of Claim/Interest</b>	<b>Estimated Amount and Projected Recovery</b>	<b>Voting Rights</b>
		<p>Allowed Secured Claim, following Designated Notice, and the payment by the Liquidating Trustee to the Holder of such Allowed Secured Claim the net sale proceeds in an amount equal to the value of such Holder's interest in the collateral in full and final satisfaction of such Allowed Secured Claim, or (iii) by payment of Cash to the Holder of such Allowed Secured Claim in an amount equal to the value of such holder's interest in the collateral securing the Allowed Secured Claim.</p>		
6	Unsecured Claims	<p>As soon as is reasonably practicable following the Effective Date, as determined by the Liquidating Trustee in his or her sole discretion, and on each Distribution Date thereafter, the Liquidating Trustee shall make a pro-rata Distribution to the Holders of Allowed Class 6 Claims of the Liquidation Proceeds less the Retained Proceeds that remain in the Estate after the payment and satisfaction of Allowed Claims in Classes 1 to 5 and Class 7.</p>	<p>Estimated Amount: \$103,000,000 Estimated Recovery: 8%</p>	Impaired and entitled to vote

<b>Class No.</b>	<b>Claim/Interest</b>	<b>Treatment of Claim/Interest</b>	<b>Estimated Amount and Projected Recovery</b>	<b>Voting Rights</b>
7	Convenience Class Claims  (Unsecured Claims of \$5,000.00 or less)	Holder of an Allowed Class 7 Claim shall receive a one-time Distribution from the Liquidating Trust on or before sixty days following the Effective Date or as soon thereafter as is reasonably practicable in an amount equal to five percent (5%) of such Holder's Allowed Claim in full and final satisfaction of such Allowed Claim.	Estimated Amount: \$971,000  Estimated Recovery: 5% of Allowed Claim	Impaired and entitled to vote
8	Allowed Equity Interests	Holder of Allowed Equity Interests shall not receive or retain any property under the Plan, and such Equity Interests will be cancelled; provided, however, that in the event Class 6 Claims are paid in full (plus interest as set forth in the Plan), remaining Liquidation Proceeds will be distributed pro rata to Holder of Equity Interests.	Estimated Recovery: \$0.00	Deemed to reject and not entitled to vote

The liability estimates outlined in the above chart are estimates only, and may change as objections are filed and resolved. The projected Administrative Expense Claims do not include estimated professional fees to be incurred by the Debtors or the Committee through a projected Effective Date of May 31, 2018. It is assumed that a substantial portion of the professional fees and expenses to be incurred in the future will be paid on a monthly basis under the interim compensation arrangement approved previously in the Cases, subject to final review and approval by the Bankruptcy Court. Estimated distributions do not take into account any proceeds resulting



from successful pursuit of Causes of Action following the Effective Date. Such additional recoveries may increase the estimated distributions for Class 6.

#### **1.4 Notice of Substantive Consolidation**

**PLEASE TAKE NOTICE THAT THE PLAN PROVIDES FOR SUBSTANTIVE CONSOLIDATION OF THE DEBTORS' ASSETS AND LIABILITIES INTO A SINGLE ESTATE. THE PLAN PROVIDES THAT THE ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE APPROVAL, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE, OF THE SUBSTANTIVE CONSOLIDATION OF BEAULIEU AND TRUCKING AND THEIR BANKRUPTCY ESTATES FOR ALL PURPOSES RELATED TO CLAIMS AND DISTRIBUTION OF ASSETS UNDER THE PLAN. AS A RESULT, ON AND AFTER THE CONFIRMATION DATE (I) ALL ASSETS AND LIABILITIES OF EITHER OF THE DEBTORS AND THEIR ESTATES SHALL BE TREATED AS THOUGH THEY WERE MERGED WITH AND INTO BEAULIEU GROUP, LLC; (II) NO DISTRIBUTIONS SHALL BE MADE UNDER THE PLAN ON ACCOUNT OF ANY CLAIM HELD BY ANY OF THE DEBTORS AGAINST ANY OTHER DEBTOR PARTY; (III) ALL GUARANTEES OF EITHER DEBTOR OF THE OBLIGATIONS OF ANY OTHER DEBTOR SHALL BE ELIMINATED; AND (IV) EACH AND EVERY CLAIM AND PROOF OF CLAIM AGAINST EITHER OF THE DEBTORS SHALL BE DEEMED ONE CLAIM OR PROOF OF CLAIM AGAINST BOTH OF THE DEBTORS AND A SINGLE OBLIGATION OF THE CONSOLIDATED ESTATE ON AND AFTER THE CONFIRMATION DATE. ADDITIONALLY, THE SUBSTANTIVE CONSOLIDATION EFFECTED PURSUANT TO THE PLAN SHALL NOT CREATE DEFENSES TO ANY AVOIDANCE ACTION OR CAUSE OF ACTION OR REQUIREMENTS FOR ANY THIRD PARTY TO ESTABLISH MUTUALITY IN ORDER TO ASSERT A RIGHT OF SETOFF. FOR THE REASONS SET FORTH IN GREATER DETAIL BELOW IN ARTICLE V, SECTION 5.1 OF THE DISCLOSURE STATEMENT, THE PLAN PROPONENTS BELIEVE THAT THE REQUIREMENTS FOR SUBSTANTIVE CONSOLIDATION ARE MET IN THESE BANKRUPTCY CASES AND THAT SUBSTANTIVE CONSOLIDATION IS NECESSARY TO ENSURE EQUITABLE TREATMENT OF CREDITORS. THE PLAN PROPONENTS ARE NOT CURRENTLY SEEKING TO SUBSTANTIVELY CONSOLIDATE THE DEBTORS' ESTATES WITH THE ESTATE OF BEAULIEU OF AMERICA, INC. , WHICH IS CURRENTLY A DEBTOR IN POSSESSION IN A CHAPTER 11 CASE (CASE NO. 17-41678-MGD) JOINTLY ADMINISTERED WITH THE DEBTORS' CASES. HOWEVER, THE PLAN PROPONENTS RESERVE THE RIGHT TO SEEK TO SUBSTANTIVELY CONSOLIDATE BEAULIEU OF AMERICA, INC.'S ESTATE WITH THE DEBTORS' ESTATES AT A LATER DATE IF IT IS DETERMINED THAT THERE IS A SOUND BASIS TO DO SO.**

#### **1.5 Background**

On July 16, 2017 (the "**Petition Date**"), the Debtors each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the

Northern District of Georgia, Rome Division (the “**Bankruptcy Court**”). Upon filing for Chapter 11 protection, the Debtors each became a “Debtor-in-Possession” under the Bankruptcy Code and have acted in that capacity since that time.

The Debtors, together with the Committee, have filed simultaneously with this Disclosure Statement their Joint Plan of Liquidation. The Debtors and the Committee, as proponents of the Plan, distribute this Disclosure Statement together with the Plan in order to solicit acceptances of the Plan. This introductory section is qualified in its entirety by the detailed explanations that follow and the provisions of the Plan. In the event of conflict between anything stated in this Disclosure Statement and the Plan, the terms of the Plan will control.

## **1.6 Solicitation of Acceptances**

Pursuant to a Court Order dated [\_\_\_\_\_], 2018, creditors and interest holders may accept or reject the Plan no later than [\_\_\_\_\_], **2018** (the “**Voting Deadline**”). A ballot with which to indicate and file an acceptance or rejection of the Plan has been provided to you. You must complete and file your ballot on or before the Voting Deadline in order for your vote to count. Any ballot that is executed by the holder of any Allowed Claim but does not indicate acceptance or rejection of the Plan shall be deemed to have accepted the Plan. Any other ballot not filed in accordance with the filing instructions on the ballot pertaining to the Plan shall not be counted for voting purposes.

*THE PLAN PROPONENTS HEREBY SOLICIT APPROVAL OF THE PLAN BY THEIR CREDITORS AND INTEREST HOLDERS. THE PLAN PROPONENTS BELIEVE THE PLAN PROVIDES THE OPTIMUM RETURN TO CREDITORS AND THAT LIQUIDATION UNDER CHAPTER 7 OF THE BANKRUPTCY CODE WOULD RESULT IN A REDUCED DISTRIBUTION TO UNSECURED CREDITORS. THE PLAN PROPONENTS URGE EACH CREDITOR AND INTEREST HOLDER TO VOTE IN FAVOR OF THE PLAN BY MARKING THE “ACCEPTS” BOX ON THE ENCLOSED BALLOT AND FILING IT WITH THE COURT ON OR BEFORE THE VOTING DEADLINE.*

## **ARTICLE II**

### **HISTORY OF THE DEBTORS AND EVENTS LEADING UP TO CHAPTER 11**

#### **2.1 History of the Debtors**

##### **(a) The Debtors’ Business Operations**

Beaulieu was one of the largest, vertically integrated carpet manufacturers in North America, and was also engaged in the distribution of carpet and hard surface flooring products in both residential and commercial markets in the United States and many foreign countries. In 2016, Beaulieu’s revenue was approximately \$556 million, of which 87% was related to the sale of carpet.

Beaulieu was a pioneer in the carpet industry in developing vertically integrated manufacturing and distribution operations, from raw materials to carpet manufacturing through

sales and distribution. As of the Petition Date, Beaulieu had eight manufacturing facilities in Georgia and one in Alabama, and three distribution facilities in Georgia, California and Chicago, Illinois. The largest manufacturing and distribution facilities, and the company headquarters, were located in Dalton, Georgia. As of the Petition Date, Beaulieu had approximately 2500 full and part-time hourly and salaried employees.

In its residential segments, which represented 82% of revenue in 2016, Beaulieu sold carpet and hard surface flooring products to over 14,000 independent retailers and several big box retailers in North America. Beaulieu's residential business included sales in the multi-family, or apartment, markets and to select builders. The commercial business, which represented 18% of Beaulieu's revenue in 2016, sold products to end users through architecture and design firms and independent commercial flooring dealers.

During the Bankruptcy Case, as described in greater detail below, Beaulieu sold substantially all of its assets and no longer engages in business.

**(b) The Debtors' Ownership Structure**

Carl M. Bouckaert and Mieke D. Hanssens founded Beaulieu and its co-Debtor companies, and ownership remains with Mr. Bouckaert, Ms. Hanssens, and their four adult children. Beaulieu of America, Inc., the original operating entity, was founded in 1978. In or around 1996, Beaulieu was formed and Beaulieu of America, Inc. transferred its assets to Beaulieu, which was the operating entity as of the Petition Date. Beaulieu Trucking was formed in 2000, but has never maintained operations. The Debtors have operated under this structure since that date.

Beaulieu Group is owned by the following: Mr. Bouckaert (approx. 18.1%, voting units); Ms. Hanssens (approx. 18.1%, voting units); the CAMI Trust, a trust owned by the four Bouckaert children: Nathalie Bouckaert Pollard, Nicolas Bouckaert, Stan Bouckaert, and Stephanie Bouckaert (approx. 63.3%, non-voting units); and Beaulieu of America, Inc. (approx. 0.5%, non-voting units).

Beaulieu of America, Inc., a Georgia S corporation owned by Carl M. Bouckaert and Mieke D. Hanssens, is a non-operating entity that only holds non-voting units of Beaulieu Group.

Beaulieu Trucking, LLC, a Delaware limited liability company whose sole member is Beaulieu Group, is also a non-operating entity.

(c) **The Debtors' Pre-Petition Capital Structure**

As of the Petition Date, the Debtors were a party to three secured loans as follows:

- i. Bank of America, N.A., as collateral and administrative agent for certain financial institutions as lenders (collectively, the “**ABL Lenders**”) and Beaulieu Group as the borrower, and Beaulieu America and Beaulieu Trucking as guarantors, were parties to the Amended and Restated Loan and Security Agreement dated October 20, 2011 (the “**Pre-Petition Loan Agreement**”; together, with all related agreements, documents and instruments, the “**Pre-Petition Loan Documents**”). The Debtors were indebted to the ABL Lenders, as of the Petition Date, in the approximate principal amount of \$45,218,227, plus \$6,574,000 in reimbursement obligations for undrawn letters of credit, and contract interest, default interest and charges, legal fees, and certain fees and charges (collectively, the “**Pre-Petition Obligations**”). The Pre-Petition Obligations were secured by the Debtors' assets, including, *inter alia*, the following (i) a first priority security interest in the Debtors' accounts receivable and inventory, and (ii) a second priority security interest in the Debtors' real estate, machinery and equipment (the “**PP&E Collateral**”).
- ii. Beaulieu Group and Cygnets, LLC (“**Cygnets**”) were parties to a Term Loan and Security Agreement dated October 20, 2011 (as amended and otherwise modified from time to time, the “**Cygnets Term Loan**”) pursuant to which Cygnets extended a \$29 million secured loan to Beaulieu Group. Cygnets is an entity owned and managed by Mieke D. Hanssens, one of the founders and owners of the Beaulieu business. The Term Loan was secured by a first priority lien in the Debtors' real estate and equipment, and a second priority lien in the Debtors' accounts receivable and inventory. As of the Petition Date, the Debtors were indebted to Cygnets under the Cygnets Term Loan in the approximate principal amount of \$18,815,531.54, exclusive of accrued but unpaid interest, costs and attorney's fees.
- iii. Beaulieu Group and CT Lender, LLC (“**CT Lender**”) were parties to a Subordinated Third-Lien Term Loan Promissory Note dated September 1, 2016 (as amended and otherwise modified from time to time, the “**Subordinated Term Loan**”) pursuant to which CT Lender extended a \$6 million secured loan to Beaulieu Group. CT Lender is an entity owned by the CAMI Trust. The Subordinated Term Loan was secured by a third priority lien in substantially all of the Debtors' assets, subordinate to the Pre-Petition Loan Agreement and the Cygnets Term Loan. As of the Petition Date, the total amount due under the Subordinated Term Loan was approximately \$6,000,000.

## 2.2 Events Leading Up To Chapter 11

While the carpet industry is a \$10 billion market annually in the United States, consumer preference has shifted toward hard surface flooring products. At the same time, competition in the carpet industry has increased and caused more downward pressure on pricing. Over 10 years,

Beaulieu's revenue declined from \$1 billion in 2007 to less than \$600 million in 2016 and adjusted EBITDA dropped from \$55 million in 2007 to negative \$16 million in 2016, while its market share decreased from 7.7% to 4.4%.

In 2016, Beaulieu added new members to its board of directors and brought in new senior management to develop a business turnaround and transformation plan. This included right-sizing the organization, streamlining plants and operations, selling non-core assets, and developing new products. Over time, however, Beaulieu's borrowing base under the Pre-Petition Loan Agreement had decreased, and it had insufficient liquidity to complete its turnaround efforts.

After one or more events of default were declared under the Pre-Petition Loan Agreement, starting in December 2016, Beaulieu entered into a series of forbearance agreements with the ABL Lenders. From December 16, 2016 through June 30, 2017, the Debtors executed 7 forbearance agreements, and in conjunction with the forbearance extensions, the ABL Lenders under the Pre-Petition Loan Agreement increased a block on availability in the borrowing base formula. The availability block rapidly increased to \$20 million on a Pre-Petition Loan Agreement balance of less than \$60 million, which exacerbated the Debtors' liquidity issues.

On June 30, 2017, the Pre-Petition Loan Agreement matured. On that date, the parties executed an eighth forbearance agreement for a period of 2 weeks through July 14, 2017. Subsequently, when it became apparent that the ABL Lenders under the Pre-Petition Loan Agreement would not agree to extend the loan or to make further extensions of the forbearance agreement, the Debtors, in consultation with their advisors, decided to seek relief under Chapter 11 of the Bankruptcy Code in order to preserve and enhance the value of their business and assets for their employees, customers, vendors and other stakeholders.

## **2.3 Significant Events During Chapter 11**

### **(a) The Debtors' Postpetition Financial Performance**

Since the Petition Date, the Debtors have operated their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. Summaries of the Debtors' post-petition financial performance are filed on a monthly basis with the Bankruptcy Court pursuant to the Operating Guidelines and Reporting Requirements for Debtors In Possession and Chapter 11 Trustees for Region 21 (the "**Monthly Operating Reports**"). The Monthly Operating Reports are available from the Office of the Clerk of the U.S. Bankruptcy Court for the Northern District of Georgia and are also available online at [www.americanlegal.com/beaulieu](http://www.americanlegal.com/beaulieu).

### **(b) First Day Orders**

Shortly after the Debtors filed the Bankruptcy Cases, on July 18, 2017, a hearing was held on certain "First Day" motions, in which the Debtors sought entry of orders providing certain relief on an expedited basis in order to minimize disruption to the Debtors' business operations and facilitate an orderly reorganization process. Following the conclusion of that hearing the Bankruptcy Court entered orders on the "First Day" motions, including, without limitation, (i) an order granting joint administration of the Debtors' individual bankruptcy cases; (ii) an order

authorizing the Debtors to pay accrued but unpaid prepetition wages earned by its employees, (iii) an order authorizing the Debtors to pay prepetition sales and use taxes; (iv) an order authorizing the Debtors to continue their insurance programs; (v) an interim order allowing the Debtors to utilize postpetition financing to fund budgeted operating expenses, and (vi) an order establishing notice procedures to be utilized in the Cases.

(c) **The Debtors' Professionals**

The Debtors retained the Atlanta-based firm of Scroggins & Williamson, P.C. as its general bankruptcy counsel. Scroggins & Williamson, P.C. has extensive experience representing debtors in complex Chapter 11 bankruptcy cases. The Debtors' primary prepetition counsel, McGuireWoods LLP, was retained as special counsel with respect to corporate matters. On August 14, 2017, an order was entered authorizing the Debtors to retain the firm of Armory Strategic Partners, LLC, to provide interim management services. Pursuant to that order, Peter Richter and Scott Avila of Armory were designated as Co-Chief Restructuring Officers for the Debtors. Finally, the Debtors retained American Legal Claim Services, LLC as their claims, noticing and balloting agent.

(d) **Formation of Creditors Committee**

On July 21, 2017, the U.S. Trustee pursuant to its authority under Section 1102 of the Bankruptcy Code appointed the following members to the Official Committee of Unsecured Creditors (the "**Committee**"): (i) BASF, (ii) Brauns Express, (iii) Solution Dyed Technologies, (iv) U.S. Floors, Inc. (v) Art Guild, Inc., (vi) Zhejiang Kingdom Plastics and (vii) Syntec Industries, LLC. The Committee retained the law firms of Fox Rothschild LLP and Thompson Hine LLP as co-counsel. Both firms have substantial experience representing official committees in complex Chapter 11 cases. In addition, the Committee retained Phoenix Management Services, LLC as financial advisors to the Committee.

(e) **Post-Petition Financing and Cash Collateral Use**

On July 16, 2017, the Debtors filed their Debtors' Motion For Interim And Final Orders (I) Authorizing (A) Secured Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362, And 364(C) And (D); (B) Granting Security Interests, Superpriority Claims, And Adequate Protection And (C) Use Of Cash Collateral And (II) Scheduling A Final Hearing; And Memorandum Of Points And Authorities (the "**Financing Motion**"), seeking authority to borrow money and use cash collateral to fund ongoing operations. On July 18, 2017, the Court entered an interim order granting the Financing Motion, authorizing the Debtors to borrow money from Bank of America and to use cash collateral to fund operations on an interim basis. On August 31, 2017, the Court entered a final order granting the Financing Motion (the "**Final Order**").

Paragraph 22 of the Final Order established October 20, 2017 (the "**Challenge Deadline**") as the deadline for the Committee to challenge the amount, validity, perfection, enforceability, priority or extent of the pre-petition debt and/or liens asserted by Bank of America and/or Cygnets. By stipulation filed with the Court on October 13, 2017 [Dkt. No. 311], the Committee and the ABL Lenders agreed that the pre-petition security interests of the ABL Lenders did not extend to

titled motor vehicles, a 12.1 acre tract of unimproved land in Eton, Georgia and commercial tort claims. Otherwise, the stipulation provides that the Challenge Deadline had expired as to the ABL Lenders.

The Challenge Deadline was extended through and including December 4, 2017 as to Cygnets and CT Lender by order of the Court dated October 16, 2017 [Dkt. No. 321]. On December 4, 2017, the Committee filed objections to the claims and liens asserted by Cygnets and CT Lender [Dkt. Nos. 430-432]. Those objections remain pending.

On December 1, 2017, the Debtors filed a Motion Seeking Entry of an Order Authorizing Debtors to (a) Pay Undisputed Amounts of Obligations Owed to Certain Secured Creditors, (b) Escrow Disputed Amounts as Adequate Protection, and (c) Use Cash Collateral to Pay Ordinary Course Expenses [Dkt. No. 433] in which the Debtors sought authorization to pay certain undisputed amounts owed to Reeves Young, LLC; Cygnets; and CT Lenders, each of which hold valid liens against the Debtors' remaining assets<sup>1</sup>, and to place in escrow certain disputed amounts that might be owed to such creditors. The Debtors also sought authority to use remaining cash collateral to pay ordinary course expenses. An interim order was entered on December 8, 2017 [Dkt. No. 461] which allowed payment of the undisputed portion of the Cygnets Term Loans and the Subordinated Term Loan and established escrows in the amount of \$4M and \$1M as adequate protection for Cygnets and CT Lender, respectively, in the event the disputed portions of their claims are ultimately allowed. Pursuant to that interim order in December 2017, Cygnets was paid \$15,815,513.54 and CT Lender was paid \$6,327,645.83. On January 30, 2018, a final order was entered allowing the use of cash collateral, approving as final the \$1M escrow established as adequate protection for CT Lender and increasing the escrow to \$5M as adequate protection for Cygnets.

**(f) Schedules and Statement of Financial Affairs**

On August 18, 2017, the Debtors filed with the Court their schedules and statements required by Bankruptcy Rule 1007 (the “**Schedules**”). These Schedules provide information concerning the Debtors' financial condition on or about the Petition Date. These documents are available from the Office of the Clerk of the U.S. Bankruptcy Court for the Northern District of Georgia and are online at <https://ecf.ganb.uscourts.gov> (please note that a PACER account is required to view and download documents), or at [www.americanlegal.com/beaulieu](http://www.americanlegal.com/beaulieu).

**(g) Bar Date**

By Order of the Bankruptcy Court dated September 19, 2017, the Court established November 21, 2017 and January 12, 2018, as the Bar Date by which all non-governmental creditors and governmental entities, respectively, holding prepetition claims (including administrative expense claims under 11 U.S.C. § 503(b)(9) for goods delivered within 20 days prior to the Petition Date) were required to file proofs of claim or be barred from (i) asserting any claim against the Debtors, and (ii) voting on, or receiving distributions under, the Plan. Creditors whose claims

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<sup>1</sup> As a result of the sale of substantially all of the Debtors' assets during the Bankruptcy case, as described below, all loan obligations to the ABL Lenders were paid in full other than the contingent letter of credit obligations.

were listed in the Schedules and not identified as “contingent,” “disputed” or “unliquidated” were not required to file proofs of claim.

**(h) Disputes with Mohawk**

In April, 2017, prior to the Petition Date, Beaulieu and Aladdin Manufacturing of Alabama, LLC, an Alabama limited liability company and a subsidiary of Mohawk Industries, Inc. (“**Mohawk**”) entered into an Asset Purchase Agreement (the “**Mohawk APA**”) pursuant to which Beaulieu sold to Mohawk a manufacturing facility located in Bridgeport, Alabama (the “**Bridgeport Fibers Facility**”) engaged in the production of nylon fibers, resins and finished yarns used in the manufacture of certain Beaulieu products. In connection with the Mohawk APA, Beaulieu and Mohawk entered into a Transition Manufacturing Agreement (the “**TMA**”) pursuant to which Mohawk would continue to manufacture certain products for Beaulieu. Also in connection with the Mohawk APA, Beaulieu and Mohawk entered into that a Supplier Agreement (the “**Supplier Agreement**”) pursuant to which Mohawk would sell certain products to Beaulieu on a “take or pay basis”.

Three days prior to the Petition Date, on July 13, 2017, Mohawk sent Beaulieu a letter purporting to terminate the TMA, contending that cause existed to do so under the terms of the agreement. Subsequent to the Petition Date, Mohawk informed Beaulieu that it contended that a late payment on the Supplier Agreement two days prior to the Petition Date automatically converted the purchase terms to “cash before delivery” (“**CBD**”) as opposed to the 30-day terms that existed under the Supplier Agreement prior to that point. Beaulieu disputed that Mohawk was entitled to terminate the TMA or convert the payment terms under the Supplier Agreement to CBD. The parties ultimately reached a compromise agreement resolving these disputes consensually. Pursuant to the compromise, on August 7, 2017, the Debtors filed a *Motion Seeking Entry of an Order Authorizing Debtors to Assume Executory Contract as Modified by Agreement of the Parties, Fix Certain Rights of the Parties, and Granting Related Relief* [Dkt. No. 142] (the “**Mohawk Contracts Motion**”). The Motion Contract Motion was granted by an Order entered on August 18, 2017 [Dkt. No. 206] (the “**Mohawk Contract Order**”).

The Mohawk Contract Order, *inter alia*, authorized the Debtors to assume the TMA as amended by agreement of the parties. In connection with the assumption of the amended TMA, the parties had agreed that the Debtors could cure pre-petition payment defaults under the TMA in the amount of \$2,254,105 by transferring certain equipment to Mohawk, including, without limitation, 85 looms (the “**Looms**”) to be selected by Mohawk which were located at another Beaulieu facility in Bridgeport, Alabama (the “**Bridgeport Fabric Facility**”). In order to minimize the impact on Beaulieu’s operations, the parties agreed that Beaulieu would be permitted to continue using the Looms for a transition period of up to four months (the “**Transition Period**”).

At or prior to the hearing on the Mohawk Contracts Motion, the Debtors and the Committee expressed concern that a potential purchaser interested in purchasing the Bridgeport Fabric Facility and/or other assets of the Debtors might require the Looms to be included as a condition of the offer. As a result, the following language was included in paragraph 7 of the Mohawk Contract



Order allowing the Debtors to pay cash to Mohawk in lieu of transferring the Looms if such a purchaser was identified during the Transition Period:

*During the Transition Period, in the event that the Debtors identify a buyer for the Debtors' Bridgeport facility that desires to acquire the facility and the Beaulieu Bridgeport Looms (as defined in the Agreement), following the delivery of a written request from the Debtors to Mohawk, Mohawk and the Debtors shall negotiate in good faith in an effort to reach agreement on (a) other equipment of the Debtors of roughly equal value which could be transferred to Mohawk as an acceptable substitute for the Beaulieu Bridgeport Looms (as determined by Mohawk in an exercise of its reasonable business judgment), or (b) a mutually agreeable amount representing the reasonable value of the Beaulieu Bridgeport Looms which could be paid to Mohawk by the Debtors as consideration for the Debtors retaining the Beaulieu Bridgeport Looms . . . .*

As discussed in more detail below, on October 6, 2017, during the Transition Period, the Beaulieu filed a motion [Dkt. No. 297] (the "**Sale Motion**") seeking authority to sell substantially all of its assets to Engineering Floors, LLC ("**EFL**"), other than certain assets expressly excluded from the sale. The proposed asset package to be sold to EFL included the Looms. At or about the time the Sale Motion was filed, Beaulieu notified Mohawk of its intent to invoke the provisions of Paragraph 7 of the Order, and the parties began negotiations with respect to the reasonable value of the Looms. When the parties were not able to quickly reach agreement, in order to permit the Court to consider the proposed asset sale to EFL (including the Looms) at the hearing on the Sale Motion set for October 30, 2017, on October 13, 2017, the Debtors filed a Motion to Enforce Order Authorizing the Debtors to Assume Executory Contract as Amended by Agreement of the Parties [Dkt. No. 310] (the "**Motion to Enforce Order**"). On November 1, 2017, by agreement between the Debtors and Mohawk, a Consent Order Regarding Motion to Enforce Order [Dkt. No. 346] (the "**Consent Order**") was entered which permitted the Debtors to sell the Looms to EFL and continued the hearing on the Motion to Enforce Order until December 5, 2017. The Consent Order also provided that the Court would decide the reasonable valuation of the Looms at the December 5<sup>th</sup> hearing, and pending that decision the Debtors were required to hold in escrow \$2,500,000 from the EFL sale proceeds for the benefit of Mohawk.

Over the next five weeks Mohawk and the Debtors engaged in discovery with respect to the Motion to Enforce. At the December 5<sup>th</sup> hearing, the parties presented argument and introduced evidence regarding relevant issues, including the valuation of the Looms and the proper construction of paragraph 7 of the Mohawk Contract Order. Following the hearing, on December 11, 2017, the Court entered an Order on the Motion to Enforce Order Authorizing Debtors to Assume Executory Contract as Modified by Agreement of the Parties [Dkt No. 462] (the "**Enforcement Order**"). The Enforcement Order held that the "reasonable value" of the Looms as contemplated under the Mohawk Contract Order was an aggregate value of \$1.7 million, and directed the Debtors to pay this amount to Mohawk from the escrowed sale proceeds in satisfaction of all obligations of the Debtors with respect to the Looms. The Court's holding freed up \$800,000 of the escrowed sale proceeds for use by the Debtors' estates.

There is one open dispute remaining with Mohawk. Under the Mohawk APA, \$1 million of the purchase price, defined as a "Performance Deferred Payment Amount," was held back to

allow testing of certain equipment and reasonably necessary repairs, subject to procedures and limitations spelled out in the Mohawk APA. Mohawk takes the position that it is entitled to permanently retain \$669,250 of the \$1 million Performance Deferred Payment Amount under the terms of the Mohawk APA. The Debtors have disputed that Mohawk is entitled to retain any portion of the Performance Deferred Payment Amount. If that dispute cannot be resolved consensually, it is anticipated that the dispute will need to be submitted to the Bankruptcy Court and/or alternative dispute resolution, as appropriate. On or about January 29, 2018, Mohawk paid to the Debtors \$330,750, which represents the undisputed portion of the Performance Deferred Payment Amount.

**(i) Sale to Engineered Floors, LLC and Pentz Street Holdings, LLC**

Due to a number of factors, including projected short-term operating losses in Chapter 11 and the importance of eliminating continuing uncertainty which might undermine employee morale and harm the Business, the Debtors determined shortly after filing Chapter 11 that it was necessary to move quickly to initiate a sale process in order to maximize the value of their assets. Significantly, deadlines imposed by the ABL Lenders under the Debtors' post-petition financing agreement required the Debtors to obtain Court approval for one or more sales of the Debtors' assets on or before November 3, 2017. Accordingly, the Debtors, with assistance from their financial and legal advisors, took a number of steps to implement a formal sales process. By October 3, 2017, the Debtors had obtained the following results: (a) approximately sixty (60) potential purchasers had executed confidentiality agreements and had conducted some degree of due diligence in the virtual data room, (b) a non-binding indication of interest (an "IOI") for the purchase of substantially all of the Debtors' assets had been received from three potential purchasers, and (c) non-binding IOI's had been received from seven potential purchasers for the purchase of one or more specified facilities or business segments.

Following the Petition Date, Engineered Floors, LLC ("EFL"), one of the Debtors' largest competitors, submitted an initial proposal to purchase one of the Debtors' facilities located in Bridgeport, Alabama. After conducting further due diligence and having additional discussions with representatives of the Debtors about a potential purchase of the Bridgeport facility, EFL expressed an interest in purchasing the Debtors' entire business. Following a period of intensive negotiation during late September and early October, agreement on essential terms was reached between the parties which were set forth initially in a Letter of Intent and then in more detail in a definitive asset purchase agreement signed by the parties as of October 5, 2017 (the "APA"). The APA provided, inter alia, for the sale of substantially all of the Debtors' real and personal property to EFL and its affiliate, Pentz Street Holdings, LLC, less certain excluded assets, for a total purchase price of \$90 million.

Because of EFL's concern that the Debtors' business would deteriorate during Chapter 11 if a sale was not closed expeditiously, EFL informed the Debtors that it was not interested in participating in a lengthy auction process and would only be interested in purchasing substantially all of Beaulieu's business assets under a private sale process to be commenced promptly so that the proposed sale could be presented for approval by the Court in time to accommodate a closing by early November. Based on the circumstances, including the lack of any other going concern

bid, the Debtors determined that the proposed private sale negotiated with EFL was likely to generate substantially more value for the Estates than through an auction sales process, particularly if EFL declined to participate in that process. Therefore, the Debtors' agreed to seek approval of the APA as a private sale under 11 U.S.C. § 363.

Accordingly, on October 6, 2017, the Debtors filed their *Motion for Entry of an Order (I) Authorizing the Sale of Assets Free and Clear of Liens, Claims and Encumbrances; (II) Granting First Request for Authority to Assume and Assign Executory Contracts and Unexpired Leases and Establishing Cure Costs in Connection Therewith; and (III) Granting Related Relief* [Dkt. No. 297] (as may be amended from time to time, the "**Sale Motion**"). On October 30, 2017, the Court held a hearing on the Sale Motion and approved the proposed transaction. On November 1, 2017, the Court entered an *Order (A) Approving Asset Purchase Agreement And Authorizing the Sale of Assets of the Debtors Outside the Ordinary Course of Business, (B) Authorizing the Sale of Assets Free And Clear of All Liens, Claims, Encumbrances And Interests, (C) Authorizing the Assumption And Sale And Assignment Of Certain Executory Contracts And Unexpired Leases And Establishing Cure Costs In Connection Therewith, And (D) Granting Related Relief* granting the Sale Motion [Dkt. No. 345] (the "**Sale Order**") authorizing the Debtors to sell substantially all of their personal property assets to Engineered Floors, LLC and certain real property to Pentz Street Holdings, LLC for a total purchase price of ninety million dollars (\$90,000,000), subject to certain adjustments as set forth in the Sale Order and underlying purchase agreement. The transactions authorized by the Sale Order were closed effective as of 12:01 a.m. on November 6, 2017.

(j) **CoveView Fee Dispute**

On July 26, 2017, the Debtors filed an application seeking to retain CoveView Advisors LLC and Advisory Group Equity Services Ltd. ("**CoveView**") to provide investment banking services with respect to one or more transactions focusing on a restructuring or refinancing of the Debtors' obligations, and/or the sale of the Debtors' assets. On August 15, 2017, the Committee objected to CoveView's retention on a number of grounds. On August 24, 2017, the Court entered an order authorizing the retention of CoveView for the purposes specified in the application; however, the Court built in some additional requirements regarding approval of any ultimate fee sought. In particular, the Court allowed the Committee and the US Trustee to object to the reasonableness of any fees sought under in 11 U.S.C. § 330. On November 14, 2017, CoveView filed its first and final fee application seeking compensation under its engagement agreement with the Debtors. On November 29, 2017, the Committee objected to the reasonableness of CoveView's proposed fees. Following discovery and briefing, the Court held an evidentiary hearing on January 24, 2018. On February 2, 2018 the Court orally announced her ruling in which the Court sustained the objection in part, and reduced the requested transaction fee from \$1.8M to \$1.1M.

(k) **Termination of Pension Plan**

Prior to the Petition Date, Beaulieu acquired a company, Coronet Industries, Inc. ("**Coronet**"), which was the sponsor of an established defined benefit pension plan (as thereafter amended, the "**Pension Plan**"). Subsequent to the purchase of Coronet, Beaulieu became the

primary sponsor of the Pension Plan, which was a single-employer plan, and covered certain current and former employees of Beaulieu and Coronet. The Pension Plan was frozen well prior to the Petition Date. As of October 26, 2017, Beaulieu was the administrator of the Pension Plan within the meaning of 29 U.S.C. §§ 1002(16) and 1301(a)(1). Based on its current financial situation, the Debtors are unable (i) to meet current minimum funding requirements of the Pension Plan and (ii) to meet future minimum funding requirements of the Pension Plan. On November 21, 2017, the Debtors filed a *Motion Seeking Entry of an Order Authorizing Debtors to Execute Agreement for Appointment of Trustee and Termination of Pension Plan* (the “**Pension Plan Motion**”), seeking authority to enter into an agreement with the Pension Benefit Guaranty Corporation (the “**PBGC**”) which would provide for the termination of the Pension Plan and the transfer thereof to the PBGC. However, the Pension Plan Motion may be withdrawn pending ongoing negotiations between the PBGC, the Debtors and certain other parties whereby another party may become the sponsor of the Pension Plan, thereby avoiding the need to terminate the Pension Plan. If such negotiations do not culminate in an agreement, the Debtors intend to proceed with the Pension Plan Motion.

**(I) Rejection of Executory Contracts**

Following the closing of the sale to EFL, the Debtors filed three omnibus motions seeking to reject, effective as of the October 6, 2017 closing date, executory contracts and unexpired leases which were not assigned to EFL. Those motions were granted by orders entered on December 8, 2017, and the underlying contracts and leases have been rejected.

**ARTICLE III  
CLASSIFICATION OF CLAIMS AND INTERESTS**

**3.1 Introduction**

The following is a summary of the Plan. This overview is qualified in its entirety by reference to the provisions of the Plan. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Allowed Administrative Expense Claims (including but not limited to Postpetition Health Claims and Postpetition Georgia Workers Compensation Claims) and Allowed Priority Tax Claims are not classified under the Plan. All other Claims and Interests in the Case are classified as shown below. The Plan provides that holders of Allowed Claims in certain classes will be entitled to a distribution of cash. Notwithstanding any provision of the Plan, a Claim in a particular Class is entitled to receive Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class, and only to the extent such Claim has not been paid, released, or otherwise satisfied prior to the Effective Date.

**3.2 Classifications**

The Plan divides all classified Claims and Interests into the following Classes, which shall be mutually exclusive.

- Class 1: Class 1 shall consist of all Allowed Priority Claims.  
Class 2: Class 2 shall consist of Allowed Secured Claims of the ABL Lenders.

- Class 3: Class 3 shall consist of Allowed Secured Claims of Cygnets, LLC.  
Class 4: Class 4 shall consist of Allowed Secured Claims of CT Lender, LLC.  
Class 5: Class 5 shall consist of the Allowed Secured Claims against the Debtors that are not included in Class 2, Class 3, or Class 4.  
Class 6: Class 6 shall consist of the Allowed Unsecured Claims not included in Class 7.  
Class 7: Class 7 shall consist of all Allowed Convenience Class Claims.  
Class 8: Class 8 consists of all Allowed Equity Interests in the Debtors.

#### **ARTICLE IV DESCRIPTION OF CLAIMS AND TREATMENT UNDER THE PLAN**

Claims and Interests, as well as their treatment and an analysis of whether they are classified or unclassified and impaired or unimpaired, are described as follows:

#### **4.1 Unclassified Claims**

##### **(a) Nonclassification**

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

##### **(b) Administrative Expenses**

Except as otherwise provided below, on or before the later to occur of (i) thirty (30) days following the Administrative Expense Claim Bar Date, or (ii) ten (10) business days following the date of entry of a Final Order allowing the Claim, each Holder of an Allowed Administrative Expense Claim shall be paid in full, in cash in an amount equal to the Allowed Amount of its Administrative Expense Claim, in accordance with Section 1129(a)(9)(A) of the Bankruptcy Code. In the case of Professional Compensation Claims which have been allowed by Final Order, such Claims shall be paid in full, in cash, on or before the later of the Effective Date or ten business days following the date of a Final Order allowing such Claims. Postpetition Health Claims shall be paid as set forth in Article II, Section 2.03 of the Plan. Postpetition Georgia Worker's Compensation Claims shall be paid as set forth in Article II, Section 2.04 of the Plan. Notwithstanding the foregoing, each Holder of an Allowed Administrative Expense Claim may be paid (a) on such other terms as may be agreed upon by the Holder of such Allowed Administrative Expense Claim and the Liquidating Trustee or (b) as otherwise ordered by a Final Order of the Bankruptcy Court.

##### **(c) Postpetition Health Claims**

Following the Effective Date, the Liquidating Trustee or his or her designee shall be authorized to administer and pay Postpetition Health Claims in accordance with the terms of the Health Plan. As of the date hereof, the majority of the Postpetition Health Claims have been paid.

The Debtors estimate that the remaining, unpaid Postpetition Health Claims will not exceed \$250,000.

**(d) Postpetition Georgia Worker's Compensation Claims**

Following the Effective Date, the Liquidating Trustee or his or her designee shall be authorized to administer and pay Postpetition Georgia Worker's Compensation Claims in accordance with applicable laws and regulations governing self-insured employers in Georgia. Prior to the Petition Date the Debtors were required to obtain Letters of Credit totaling in excess of \$2.8 million in favor of the Georgia Self-Insurers Fund as security for the Debtors' self-insured workers compensation obligations in Georgia. Those Letters of Credit were issued by the ABL Lenders and are fully collateralized by cash of the Debtors which is being held by the ABL Lenders pursuant to the Cash Collateral Agreement. The Debtors believe that the total amount of Allowed Post-Petition Workers Compensation Claims will be significantly less than the amount of the Letters of Credit; therefore, the Debtors anticipate that some or all of the cash collateralizing the Letters of Credit will be released to the Liquidating Trust at some point in the future.

**(e) Fees and Charges**

All fees and charges assessed against the Estate under Chapter 123 of Title 28, United States Code, 28 U.S.C. §§1911-1930, which are incurred but unpaid for all periods through the Effective Date, will be paid on the Effective Date, or as soon thereafter as reasonably practicable, by the Liquidating Trustee.

**(f) Applications for Allowance of Administrative Expenses**

All Holders of Administrative Expense Claims (other than Claims pursuant to 11 U.S.C. § 503(b)(9)) that do not file an application or other Bankruptcy Court-approved pleading on or before the date which is thirty (30) days after the Effective Date (unless such date is extended by the Court) will be forever barred from asserting such Administrative Expense Claim against the Debtors, their Estates or the Liquidating Trustee. Claims arising under 11 U.S.C. §503(b)(9) were required to be filed by November 21, 2017 for non-governmental entities or January 12, 2018 for governmental entities pursuant to the Bar Date Order.

**(g) Priority Tax Claims**

The Liquidating Trustee will pay all Allowed Priority Tax Claims in Cash in full on the Effective Date or as soon thereafter as is reasonably practicable, but in no event later than the end of five (5) years from the Petition Date. As to any Allowed Priority Tax Claim not paid in full on the Effective Date, the Holder of such Allowed Priority Tax Claim shall receive on account of such Allowed Priority Tax Claim regular quarterly installment payments in Cash in accordance with Section 1129(a)(9)(C) of the Bankruptcy Code through and including the date such Allowed Priority Tax Claim is paid in full. Holders of Allowed Priority Tax Claims shall receive interest on account of their Allowed Priority Tax Claims at the Section 6621 Interest Rate; provided, however, that if the Holder of such Allowed Priority Tax Claim is a city, county or state, such Holder shall receive interest on account of its Allowed Priority Tax Claim at the applicable

statutory rate under state law. To the extent that any Allowed Priority Tax Claim is allowed after the Effective Date, it will be paid in full in Cash as soon after allowance as is reasonably practicable over a period no later than the end of five (5) years from the Petition Date, including interest as calculated above.

#### **4.2 Unimpaired Classes of Claims and Interests**

The following classes of Claims and Interests are unimpaired; therefore, under 11 U.S.C. § 1126(f), they will be conclusively presumed to have accepted the Plan.

##### **(a) Class 1: Priority Claims**

Each holder of an Allowed Priority Claim designated in Class 1 shall be paid as follows:

- (i) In full, in cash, on or before the later of the Effective Date or, if an objection to such Claim is asserted, five business days following the date of a Final Order allowing any such Claim; or
- (ii) Upon such other terms as may be agreed to between the Liquidating Trustee and a Holder of an Allowed Priority Claim.

Class 1 is unimpaired by the Plan. Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan.

##### **(b) Class 2: Allowed Secured Claims of ABL Lenders**

Class 2 consists of the Allowed Secured Claims of the ABL Lenders against the Debtors which survived the closing of the Purchase Agreement in accordance with the Cash Collateral Agreement. Under the Cash Collateral Agreement, the Debtors agreed that the ABL Lenders would continue to hold cash collateral in the amount of \$6,881,700.00 (as of the sale closing date) as security for the Debtors' obligations under Letters of Credit issued by the ABL Lenders for the benefit of the Debtors which were to remain in place following the closing. Additionally, the Debtors agreed to deliver to the ABL Lenders cash collateral in the amount of \$75,000 to ensure payment of fees and expenses related to cash management services which the ABL Lenders would continue to provide following the sale closing. On and after the Effective Date, the ABL Lenders shall retain all rights and interests under the Cash Collateral Agreement, including without limitation, all rights with respect to Cash Collateral (as defined therein), in satisfaction of its Class 2 Claims. Class 2 is unimpaired by the Plan. Holders of Class 2 Claims are not entitled to vote to accept or reject the Plan.

##### **(c) Class 3: Allowed Secured Claims of Cygnets**

Class 3 consists of the Allowed Secured Claims of Cygnets against the Debtors. On or before the later to occur of the Effective Date or entry of a Final Order allowing the Claim, Allowed Secured Claims of Cygnets shall be paid from net sale proceeds generated from the sale of certain Cygnets collateral, as authorized by the Sale Order or other order of the Court.

Class 3 is unimpaired by the Plan. Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan.

**(d) Class 4: Allowed Secured Claims of CT Lender**

Class 4 consists of the Allowed Secured Claims of CT Lender against the Debtors. On or before the later to occur of the Effective Date or entry of a Final Order allowing the Claim, Allowed Secured Claims of CT Lenders shall be paid from net sale proceeds generated from the sale of certain CT Lender collateral, as authorized by the Sale Order or other order of the Court. Class 4 is unimpaired by the Plan. Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan.

**(e) Class 5: All Other Allowed Secured Claims**

Each Allowed Secured Claim in Class 5 shall be satisfied, at the Liquidating Trustee's option, as follows (i) by the transfer, assignment and conveyance by the Liquidating Trustee of the collateral securing such Class 5 Claim to the Holder of such Allowed Secured Claim in full and final satisfaction of such Allowed Secured Claim, (ii) by the sale of the collateral securing such Allowed Secured Claim, following Designated Notice, and the payment by the Liquidating Trustee to the Holder of such Allowed Secured Claim the net sale proceeds in an amount equal to the value of such Holder's interest in the collateral in full and final satisfaction of such Allowed Secured Claim, or (iii) by payment of Cash to the Holder of such Allowed Secured Claim in an amount equal to the value of such holder's interest in the collateral securing the Allowed Secured Claim. Class 5 is unimpaired under the Plan. Holders of Allowed Class 5 Secured Claims are not entitled to vote to accept or reject the Plan.

**4.3 Impaired Classes of Claims and Interests**

The following classes of Claims and Interests are impaired; therefore, Holders of such Claims are entitled to vote on the Plan.

**(a) Class 6: Unsecured Claims**

Class 6 consists of all Allowed Unsecured Claims which are not Class 7 Convenience Class Claims. As soon as is reasonably practicable following the Effective Date, as determined by the Liquidating Trustee in his or her sole discretion, the Liquidating Trustee shall make a pro-rata Distribution to the Holders of Allowed Class 6 Claims of the Liquidation Proceeds less the Retained Proceeds that remain in the Liquidating Trust after the payment and satisfaction of Allowed Claims in Classes 1 to 5 and Class 7. On each Distribution Date or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall make pro-rata Distributions to the holders of Allowed Class 6 Claims of any available Liquidation Proceeds less Retained Proceeds that remain in the Liquidating Trust (after the payment and satisfaction of any remaining unpaid Allowed Claims in Classes 1, 2, 3, 4 or 5), until the date on which all Allowed Class 6 Claims have been paid in full. Class 6 is Impaired by the Plan. Each Holder of an Allowed Class 6 Unsecured Claim is entitled to vote to accept or reject the Plan.



**(b) Class 7: Convenience Class Claims**

Class 7 consists of all Allowed Unsecured Claims equal to or less than five thousand dollars (\$5,000.00) and all Allowed Unsecured Claims that exceed five thousand dollars (\$5,000.00) and whose Holders have elected voluntarily to reduce their Claims to five thousand dollars (\$5,000.00), waive and release any excess amount or remaining Claims against the Debtors, their Estates, and the Liquidating Trustee and participate in Class 7. In the event Class 7 votes to reject the Plan, Class 7 will be eliminated and Holders of Claims that would otherwise be included in Class 7 will be treated as Holders of Class 6 Claims. On or before sixty days following the Effective Date or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall make a one-time Distribution to each Holder of an Allowed Class 7 Claim in an amount equal to five percent (5 %) of such Holder's Allowed Claim in Class 7 in full and final satisfaction of such Allowed Claim. To the extent that any Class 7 Claim is allowed after the Effective Date, it will be paid five percent (5 %) of the Allowed Claim in Cash within five (5) business days after the Claim is allowed or as soon thereafter as is reasonably practicable. Class 7 is Impaired by the Plan. Each Holder of an Allowed Class 7 Convenience Class Claim is entitled to vote to accept or reject the Plan.

**(c) Class 8: Equity Interests**

Class 8 consists of all Equity Interests in the Debtors. All Equity Interests of the Debtors shall be cancelled on the Effective Date; provided, however, that if Assets remain in the Liquidating Trust following payment in full of all Allowed Claims of Classes 1 through 7, such remaining Assets shall be distributed Pro Rata to the Holders of Equity Interests as of the Effective Date. Because Holders of Equity Interests in Class 8 do not retain any property under the Plan on account of such Equity Interests; under the provisions of Section 1126(g) of the Bankruptcy Code, Class 8 is deemed not to have accepted the Plan.

**ARTICLE V  
MEANS FOR IMPLEMENTATION OF THE PLAN**

**5.1 Substantive Consolidation**

As noted above, entry of the Confirmation Order shall constitute the approval, pursuant to Section 105(a) of the Bankruptcy Code, of the substantive consolidation as of the Effective Date of Beaulieu Group, LLC and Beaulieu Trucking, LLC and their Estates for all purposes related to Claims and distribution of assets under the Plan. Substantive consolidation is an equitable remedy that has the effect of creating "one common pool of assets, liabilities and a single body of creditors, while extinguishing the intercorporate liabilities of the consolidated estates." *White v. Creditors Serv. Corp.* (*In re Credit Serv. Corp.*), 195 B.R. 680, 689 (Bankr. S.D. Ohio 1996); *In re Bonham*, 229 F.3d 750, 764 (9th Cir. 2000). Its primary purpose is to promote the equitable treatment of all creditors. *Eastgroup Props. v. Southern Motel Assoc., Ltd.*, 935 F.2d 245, 248 (11th Cir. 1991). The Plan Proponents strongly believe that substantive consolidation of the Debtors and their respective bankruptcy estates as proposed under the Plan will reflect the economic reality of the

Debtors' true operational and financial structure. The applicable legal standard for substantive consolidation has been well defined by the courts.

To establish a *prima facie* case for substantive consolidation, a party must demonstrate that (i) there is a substantial identity between the entities to be consolidated; and (ii) consolidation is necessary to avoid some harm or to realize some benefit. *Eastgroup Props. v. Southern Motel Assocs. Ltd.*, 935 F.2d 245, 249 (11th Cir. 1991). Factors considered by courts to determine whether substantive consolidation is appropriate include:

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

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

The Plan Proponents believe that substantive consolidation of the Debtors' separate Estates is warranted and appropriate in these cases because (i) there is a strong unity of interest and ownership between these Debtors because they were all controlled by the same group of officers, directors and members; (ii) the Debtors were all co-obligors on the ABL Lender secured loans, which loans were secured by substantially all of the assets of the Debtors; and (iii) a failure to consolidate the cases might unfairly favor one group of similarly situated creditors over others.

While only one of the Debtors had any on-going business operations, both of the Debtors had a common secured debt to the ABL Lenders. In reality, the Debtors were consolidated prior to the Bankruptcy Case in both operation and corporate structure.

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

As noted previously, the Plan Proponents have decided not to seek at this time to substantively consolidate the Debtors' Estates with the bankruptcy estate of Beaulieu of America, Inc. (Case No. 17-41678-mgd), but have reserved the right to do so at a later date. There is a large unresolved claim filed by Norma and Kenny Holt (Proof of Claim No. 1488)(the "**Holt Claim**") against only Beaulieu of America, Inc., and not Beaulieu Group, LLC or Beaulieu Trucking, LLC. The Holt Claim arises out of a personal injury suffered pre-petition by Ms. Holt, a former employee, and is the subject of a lawsuit in Alabama. The stated amount of the Holt Claim is \$25 million, plus interest. The claim is disputed. However, while there appears to be insurance coverage for the claim, the Debtors are uncertain at this time if the coverage would be sufficient to satisfy the amount of damages that might be awarded if Beaulieu of America, Inc. is unsuccessful in contesting the claim. Because Beaulieu of America, Inc. has little if any assets remaining, any portion of the Holt Claim which is allowed in excess of insurance coverage would dilute the funds available for the Debtors' creditors if the bankruptcy estate of Beaulieu of America, Inc. were to be substantively consolidated with the Debtors' Estates. In the event that the Holt Claim is disallowed, or is settled or adjudicated at an amount that is within policy limits, the Plan Proponents will likely reevaluate whether to seek to consolidate Beaulieu of America, Inc.'s bankruptcy estate with the Debtors' Estates.

## **5.2 Creation of Liquidating Trust**

On the Effective Date, the Liquidating Trust shall be created. The Liquidating Trust shall be governed by the Liquidating Trust Agreement, the Plan and the Confirmation Order. A copy of the Liquidating Trust Agreement is attached to the Plan as Schedule 6.02. The primary purpose of the Liquidating Trust will be to collect and distribute proceeds to its Beneficiaries as well as to prosecute any Causes of Action, including Avoidance Actions, as discussed in more detail below. Potential avoidance actions are identified in the Debtors' Schedules. The initial Liquidating Trustee shall be PMCM 2, LLC.

## **5.3 Transfer and Vesting of Assets to the Liquidating Trust**

On the Effective Date, all Assets, including all Cash and Causes of Action, shall be deemed to have automatically been transferred to and shall vest in the Liquidating Trust. All transfers to the Liquidating Trust shall be free and clear of all liens, claims, interests and encumbrances, except as otherwise set forth in the Plan. For the avoidance of doubt, nothing herein shall be construed to restrict or limit the ability or standing of the Liquidating Trustee to assert any Causes of Action transferred to the Liquidating Trust. In connection with any Causes of Action, any attorney-client privilege, work-product privilege or protection, or other privilege or immunity attaching to any

documents or communications thereto (whether written or oral) will also exist for the benefit of the Liquidating Trust and will vest in the Liquidating Trustee and his or her representatives, and will also be preserved for and as to the Debtors. The Liquidating Trustee is authorized to take all necessary actions to benefit from such privileges. For federal income tax purposes, the transfer of the Property to the Liquidating Trust will be deemed to be a transfer to the Holders of Allowed Claims (who are the Liquidating Trust Beneficiaries), followed by a deemed transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust.

#### **5.4 Treatment of Liquidating Trust for Federal Income Tax Purposes; No Successor-in-Interest**

The Liquidating Trust will be established for the primary purpose of liquidating the Liquidating Trust Assets, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Accordingly, the Liquidating Trustee will, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions to the Liquidating Trust Beneficiaries in accordance with the Plan and the Liquidating Trust Agreement and not unduly prolong its duration. The Liquidating Trust will not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth in the Plan or in the Liquidating Trust Agreement.

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

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

### **5.5 Rights and Obligations of the Liquidating Trustee**

The Liquidating Trustee shall have the rights, duties and obligations set forth in the Liquidating Trust Agreement and the Plan. Such rights, duties and obligations include, but are not limited to, exercising control and authority over the Liquidating Trust Assets and responsibility for liquidating and administering (or abandoning, as the case may be) the Liquidating Trust Assets and taking actions on behalf of, and representing, the Liquidating Trust. The Liquidating Trustee shall be the representative of the Estates as contemplated by Section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidating Trustee shall have the rights and powers of a trustee appointed under Sections 702 and 1104 of the Bankruptcy Code to act on behalf of the Estates and the Liquidating Trust with regard to the administration of the Cases and the Property of the Estates and the Liquidating Trust. The Liquidating Trustee shall have the authority to bind the Liquidating Trust within the limitations set forth in the Liquidating Trust Agreement, the Plan and the Confirmation Order, but shall for all purposes hereunder be acting in the capacity of Liquidating Trustee and not individually. Within the limitations set forth in the Liquidating Trust Agreement and subject to the provisions of the Plan, the responsibilities and authority of the Liquidating Trustee, shall include, without limitation: (a) the making of Distributions to Holders of Allowed Claims as contemplated in the Plan; (b) establishing and maintaining disputed claim reserves to be determined in the discretion of the Liquidating Trustee; (c) conducting an analysis of Claims not already allowed by prior order of the Court, and prosecuting objections thereto or settling or otherwise compromising such Claims if necessary and appropriate in accordance with the Plan; (d) filing appropriate tax returns with respect to the Liquidating Trust in the exercise of its fiduciary obligations; (e) retaining the Liquidating Trust Professionals; (f) taking such actions as are necessary to prosecute, resolve or compromise, as appropriate, all Causes of Action assigned to the Liquidating Trust; and (g) taking such actions as are necessary and reasonable to carry out the purposes of the Liquidating Trust.

### **5.6 Post-Confirmation Report of Liquidating Trust**

The Liquidating Trustee shall file all required post-confirmation operating reports through the date the Cases are closed.

### **5.7 Dissolution of Liquidating Trust**

The Liquidating Trust will be dissolved no later than six (6) years from the Effective Date unless the Bankruptcy Court, upon a motion filed prior to the sixth (6th) anniversary or the end of any extension period approved by the Bankruptcy Court (the filing of which will automatically extend the term of the Liquidating Trust pending the entry of an order by the Bankruptcy Court granting or denying the motion), determines that a fixed period extension (not to exceed two (2) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or opinion letter that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets. After (a) the final Distribution of the Disputed Claims Reserve and the balance of the Liquidating Trust Assets pursuant to the Plan, and (b) the filing by or on behalf of the Liquidating Trust of a certification of

dissolution with the Bankruptcy Court in accordance with this Plan, the Liquidating Trust will be deemed dissolved for all purposes without the necessity for any other or further actions.

#### **5.8 The Committee and the Post-Confirmation Committee**

On the Effective Date, the Committee will be dissolved and Post-Confirmation Committee will be formed to serve as an advisory board to the Liquidating Trustee. The Post-Confirmation Committee will assume the rights and obligations set forth in the Plan and the Liquidating Trust Agreement. Each member of the Post-Confirmation Committee must hold, at all times throughout their service on the Post-Confirmation Committee, an Unsecured Claim against the Estate (or be the legal nominee or designee of a holder of an Unsecured Claim against the Estate). Any member that sells all of its Unsecured Claim against the Estate shall be immediately removed from the Post-Confirmation Committee. The purchaser of an Unsecured Claim from a member of the Post-Confirmation Committee shall not automatically succeed to the member's position on the Post-Confirmation Committee by reason of the purchase of the Unsecured Claim but may be appointed pursuant to the bylaws of the Post-Confirmation Committee. A member's rights of membership on the Post-Confirmation Committee may not be transferred to or otherwise be assigned or delegated to another person or entity without the express consent of the Post-Confirmation Committee.

#### **5.9 Further Transactions**

The Liquidating Trustee shall be authorized to execute, deliver, file, and/or record such contracts, instruments, releases, indentures, and other agreements or documents, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. In order to facilitate the liquidation and distribution of the Estates and the wind-up of the Debtors' affairs, on the Effective Date the Liquidating Trustee shall be deemed, by operation of law and the Confirmation Order and without need for any action by any person affiliated with the Debtors or any officer or director of the Debtors, to hold an irrevocable power of attorney on behalf of the Debtors and the Estates and with respect to all assets of the Debtors and the Estates.

#### **5.10 Administration of Claims**

From and after the Effective Date, the Liquidating Trustee shall have the exclusive authority to file, settle, compromise, withdraw, or litigate to judgment all objections to Claims. As of the Effective Date, the Liquidating Trustee shall be deemed to be substituted for the Debtors, and succeed to all rights and defenses of the Debtors, with respect to any objections to Claims which have not been finally resolved prior to the Effective Date. Except as to any late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases, if any, pursuant to the Confirmation Order, all objections to Claims shall be filed with the Bankruptcy Court by no later than one hundred and eighty (180) days following the Effective Date (unless such period is extended by the Bankruptcy Court upon motion of the Liquidating Trustee). Objections to late-filed Claims and Claims resulting from the rejection of executory contracts or unexpired leases shall be filed on the later of (a) one hundred and eighty (180) days following the Effective Date or

(b) the date that is ninety (90) days after the Liquidating Trustee receives actual notice of the filing of such Claim.

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

The Liquidating Trustee shall take actions regarding the administration, reconciliation and settlement of Claims, and shall object to Claims and prosecute Claims actions, until such time as the Liquidating Trustee determines that further pursuit of litigation or actions objecting to Claims is no longer cost efficient, and will be of no further benefit to the Estates and their creditors. **THE FAILURE TO OBJECT TO ANY CLAIM PRIOR TO THE COMMENCEMENT OF THE HEARING ON CONFIRMATION OF THE PLAN SHALL NOT BE DEEMED TO BE A WAIVER OF THE RIGHT TO OBJECT THEREAFTER TO SUCH CLAIM IN WHOLE OR IN PART FOR THE PURPOSE OF DISTRIBUTION.**

#### **5.11 Preservation of Rights of Action**

Except as otherwise expressly provided in the Plan, any rights or Causes of Action accruing to or held by the Debtors or their Estates prior to the Effective Date shall be deemed Assets of, and vest in, the Liquidating Trust on the Effective Date. The Liquidating Trustee may pursue those Causes of Action, as deemed appropriate. The Plan, Disclosure Statement and Schedules do not set forth an exhaustive list of all Causes of Action preserved under the Plan and vesting in the Liquidating Trust and the failure to identify or list any particular Cause of Action therein shall not constitute a waiver or release of such Cause of Action. **ALL CAUSES OF ACTIONS NOT EXPRESSLY RELEASED OR WAIVED IN THE PLAN OR THE CONFIRMATION ORDER SHALL SURVIVE CONFIRMATION, AND THE ASSERTION OF CAUSES OF**

**ACTIONS SHALL NOT BE BARRED OR LIMITED BY ANY ESTOPPEL, WHETHER JUDICIAL, EQUITABLE OR OTHERWISE.**

**ARTICLE VI  
DISTRIBUTION TO HOLDERS OF CLAIMS**

**6.1 Date of Distributions**

As soon as is reasonably practicable following the Effective Date, as determined by the Liquidating Trustee in his or her sole discretion, the Liquidating Trustee shall use the Liquidation Proceeds to make Distributions with respect to Allowed Claims in Classes 1 through 7, as and to the extent provided for in the Plan or as ordered by the Court. Subsequent to the Effective Date, the Liquidating Trustee shall use the Liquidation Proceeds to make Distributions, on each Distribution Date or as soon thereafter as is reasonably practicable, with respect to Allowed Claims as contemplated by and to the extent set forth in the Plan. The Liquidating Trustee shall continue to make Distributions out of the Liquidation Proceeds up to and including the Consummation Date, on which date the Liquidating Trustee will make the final Distribution under the Plan.

**6.2 Address for Distributions**

All Cash payments required to be made under the Plan will be sent to Holders of Allowed Claims at the addresses listed in the Debtors' schedules or stated in any Proof of Claim filed by a Holder of a Claim or to such other address as the Holder of a Claim shall provide in writing to the Liquidating Trustee. The proceeds of any payment properly sent to the Holder of an Allowed Claim but returned because of unknown or insufficient address, and the proceeds of any check not cashed within ninety (90) days of sending will become property of the Liquidating Trust, and the rights of the original payee shall be extinguished. Return of mail by the United States Post Office as "undeliverable and without forwarding address" shall be conclusive evidence of an attempt to deliver to the address shown.

**6.3 Payments by Cash**

All payments made pursuant to the Plan shall be in Cash and by any means reasonably selected by the Liquidating Trustee, as applicable, including check or wire transfer. If a Cash payment to be received by any Holder of an Allowed Claim in Class 6 on any Distribution Date (except the final Distribution) would be \$100 or less in the aggregate, notwithstanding any contrary provision of the Plan, in the Liquidating Trustee's sole discretion, no such payment will be made to such Holder, and such Cash, if applicable, shall be held for such Holder until the next Distribution Date, at which time such Cash payment shall be made to the Holder. The Liquidating Trustee shall include an additional amount in the Unpaid Claims Reserve for unpaid Distributions resulting from such undistributable small amounts.

**6.4 Rounding**

Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction down to the nearest whole cent.



## **6.5 No Interest on Claims**

Except as provided in a Final Order entered in these Cases or as provided in Article V, Section 5.08 of the Plan, (a) no holder of any Unsecured Claim (except Priority Tax Claims) shall be entitled to interest accruing on or after the Petition Date on such Claim, and (b) interest shall not accrue or be paid upon any Disputed Claim with respect to the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim, or any part thereof, becomes an Allowed Claim.

## **6.6 One Distribution Per Holder**

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

## **6.7 Effect of Preconfirmation Distributions**

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

## **6.8 Disputed Claims**

Notwithstanding any other provisions of the Plan, no payments or other Distribution of any kind will be made on account of any Claim until such Claim becomes an Allowed Claim and then only to the extent that such Claim is an Allowed Claim. The Liquidating Trustee shall establish and maintain the Disputed Claims Reserve sufficient to fund Disputed Claims that may subsequently become Allowed Claims, as determined by the Liquidating Trustee's prudent judgment. To the extent a Disputed Claim becomes an Allowed Claim after any initial Distributions, a Distribution as calculated above shall be made in respect of such Allowed Claim, but only to the extent necessary to equal the percent previously distributed to other Holders of Allowed Claims, within thirty (30) days after such claim becomes an Allowed Claim by Final Order of the Bankruptcy Court. Notwithstanding the foregoing, any holder of both an Allowed Claim(s) and a Disputed Claim(s) shall receive the appropriate payment or Distribution on the Allowed Claim(s), although, except as otherwise agreed by the Liquidating Trustee in its sole discretion, no payment or distribution shall be made on the Disputed Claim(s) until such dispute is resolved by settlement or Final Order. Should any Holder of a Disputed Claim not assert a liquidated amount which can be used for purposes of the Liquidating Trustee being able to make necessary and prudent reserves for such Claim, as necessary for making interim Distributions to

Allowed Claimants, the Liquidating Trustee may include a prudent amount in the Disputed Claims Reserve for such claim or may request the Bankruptcy Court to estimate the amount of the Claim, either for purposes of (i) allowance, (ii) determining a maximum amount of such Claim, or (iii) otherwise the amount to reserve so as to enable the Liquidating Trustee to make the appropriate reserve to proceed with an interim Distribution. The Liquidating Trustee, in his or her sole discretion and as part of the reconciliation, objection, resolution and compromise of objected Claims, may agree to make a distribution in full to such Holder of a Disputed Claim as part of a compromise and resolution of such Disputed Claim. The Liquidating Trustee may reserve funds in addition to the total Disputed Claims to the extent the Liquidating Trustee deems such extra reserve to be prudent. To the extent that any Claim is estimated for any purpose other than for voting, then in no event will such Claim be Allowed in an amount greater than the estimated amount.

### **6.9 Procedures for Resolving Disputed Claims**

Subsequent to the Effective Date, the Liquidating Trustee shall have the authority to settle and resolve a Disputed Claim that was originally asserted in an amount equal to or less than One Hundred Fifty Thousand Dollars (\$150,000.00) upon such terms and conditions as the Liquidating Trustee deems appropriate and in the best interests of the Estates. Any such compromise and settlement shall be deemed final and binding upon all parties in interest in the Cases. The Liquidating Trustee shall not have any obligation to provide notice to or file and serve pleadings upon any such parties in interest, and shall not have any requirement to obtain Court approval, in connection with compromising these Claims.

With respect to any Disputed Claim that was originally asserted in an amount that exceeds One Hundred Fifty Thousand Dollars (\$150,000.00), the Liquidating Trustee shall have the authority to compromise and settle any such Claim on such terms as the Liquidating Trustee deems appropriate and in the best interests of the Estates, subject to providing Designated Notice of any such proposed compromise and a reasonable opportunity to object thereto. If a party in interest files a written objection with the Court in the Cases with respect to any proposed compromise of any Disputed Claim, and serves a copy of said objection upon the Liquidating Trustee and his or her counsel, within ten (10) days from the service of Designated Notice of the proposed compromise, then the Court shall schedule a hearing with respect to said objection. If no objection is timely filed and served, the Liquidating Trustee may compromise and settle any Disputed Claim without further authorization. The Liquidating Trustee may file motions which seek to compromise more than one Claim.

### **6.10 Unclaimed Property**

Unclaimed Property shall be held in the Unpaid Claims Reserve to be held for the benefit of the Holders of Allowed Claims entitled thereto under the terms of the Plan. For a period of the later of one year following the first Distribution to a Class of Claims or 180 days after a Distribution is made to a Claimant on account of which Unclaimed Property first results (said period being hereinafter referred to as the “**Claiming Period**”), Unclaimed Property shall be held in the Unpaid Claims Reserve solely for the benefit of the Holders of Allowed Claims which have

failed to claim such property. During the Claiming Period, Unclaimed Property due the Holder of an Allowed Claim shall be released from the Unpaid Claims Reserve and delivered to such Holder upon presentation of proper proof by such Holder of its entitlement thereto. In the event that there is Unclaimed Property in the Unpaid Claims Reserve with regard to any Claim, the Liquidating Trustee shall, until such Unclaimed Property is claimed or the Claiming Period with regard to the Holder of such Claim has expired, make all subsequent Distributions due with regard to such Claim to the Unpaid Claims Reserve. After the Claiming Period with regard to such Holder has expired, no subsequent Distributions shall be made on account of such Claim, and such Claim shall be treated as being disallowed, waived, and satisfied; provided, however, that the Claiming Period may be extended for the Holder of any Allowed Claim by agreement between the Liquidating Trustee. At the end of the Claiming Period, the Holder of an Allowed Claim theretofore entitled to Unclaimed Property shall cease to be entitled thereto and the Unclaimed Property shall be Liquidation Proceeds. Notwithstanding the foregoing, if there is any Unclaimed Property in the Unpaid Claims Reserve as a result of the final Distribution and such Unclaimed Property remains in the Unpaid Claims Reserve after expiration of the Claiming Period, and if, in the sole judgment of the Liquidating Trustee, the Unclaimed Property is not sufficient to make a meaningful Distribution, such Unclaimed Property shall be used to satisfy any unpaid Liquidating Trust fees and expenses, and the balance shall be paid to the registry of the Bankruptcy Court or donated to a charitable organization. These provisions shall apply without regard to any applicable non-bankruptcy laws with respect to unclaimed property. The Unpaid Claims Reserve may, but need not be, maintained as an interest bearing account. All interest earned thereon shall be Liquidation Proceeds, and no Claimant entitled to funds from the Unpaid Claims Reserve shall be entitled to interest with regard to the amounts due to such Claimant.

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

### **7.1 Rejection of Executory Contracts and Unexpired Leases**

Any Executory Contract, including but not limited to, personal service or employment agreement, or Unexpired Lease that has not been expressly rejected or assumed by the Debtors with the Bankruptcy Court's approval on or prior to the Confirmation Date will be deemed rejected by the Debtors as of the Effective Date unless there is pending before the Bankruptcy Court on the Confirmation Date a motion to assume such Executory Contract or Unexpired Lease. The Confirmation Order will constitute an order of the Bankruptcy Court, pursuant to Section 365 of the Bankruptcy Code, approving the rejection of Executory Contracts and Unexpired Leases which do not constitute Assumed Contracts. Notwithstanding anything to the contrary in the Plan or Disclosure Statement, all insurance policies in force as of the Effective Date shall remain in effect following the Effective Date unless and until rejected by separate motion and/or terminated in accordance with their terms.

### **7.2 Approval of Rejection of Executory Contracts and Unexpired Leases**

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

of the rejection of the Executory Contracts and Unexpired Leases rejected pursuant to Article XI, Section 11.01 of the Plan.

### **7.3 Inclusiveness**

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

### **7.4 Claims under Rejected Executory Contracts and Unexpired Leases**

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

## **ARTICLE VIII CONDITIONS PRECEDENT TO EFFECTIVENESS OF PLAN**

Each of the following conditions must occur and be satisfied on or before the Effective Date for the Plan to be effective on the Effective Date, provided that the Plan Proponents may agree to waive any one or more of the following conditions:

### **8.1 Confirmation Order Must Be Entered**

The Confirmation Order must have been signed by the Bankruptcy Court and duly entered on the docket for these Cases by the clerk of the Bankruptcy Court, in form and substance acceptable to the Debtors and the Committee.

### **8.2 Confirmation Order Must Not Be Stayed, Reversed, Modified or Amended**

There must not be any stay in effect with respect to the Confirmation Order, and the Confirmation Order must not have been reversed, modified or amended in any material respects prior to the Effective Date without the written consent of the Plan Proponents.

### **8.3 Provisions of the Confirmation Order**

The Confirmation Order must be satisfactory in form and substance to the Debtors and the Committee. Among other things, the Confirmation Order must:

- (a) Authorize and direct the Debtors to take, or cause to be taken, all such actions as are necessary to enable the Debtors to implement the provisions of the Plan;
- (b) Authorize and direct the Liquidating Trustee to perform his or her obligations under the Plan, and to take all actions and execute all documents and instruments reasonably necessary to consummate the transactions contemplated by the Plan;
- (c) Approve the Liquidating Trust Agreement; and
- (d) Provide that no holder of a Claim, Lien or Interest will be permitted to execute against or receive Distributions except in accordance with the express provisions of the Plan.

#### **8.4 Confirmation Order Must Be Final**

The Confirmation Order shall have become a Final Order.

### **ARTICLE IX VOTING ON THE PLAN AND THE CONFIRMATION PROCESS**

#### **9.1 Classes Entitled to Vote**

Only a Holder of a Claim classified in an Impaired Class is entitled to vote on the Plan. Under Section 1124 of the Bankruptcy Code, a Class of Claims or Interests is “impaired” by the Plan if the legal, equitable or contractual rights attaching to the Claims or Interests of that Class are modified. Modification for purposes of determining impairment, however, does not include the curing of defaults and the reinstating of maturity.

In order to have a Claim entitled to vote, a Claimant must have (1) timely filed a Proof of Claim or (2) if no Proof of Claim was filed, been listed in the Schedules as having a Claim that is not contingent, unliquidated or disputed. If such a Claim was scheduled as contingent, unliquidated or disputed, and if Claimant does not file proof of such Claim on or before the Bar Date, or if such Claim is the subject of an objection, Claimant does not have a Claim, entitled to vote, and will not participate in any Distributions under the Plan until such time as the Claim becomes an Allowed Claim.

The Claims and Interests of the Debtors are divided by the Plan into Classes 1 through 8. The Claims in Classes 1 through 5 are unimpaired. Consequently, the Holders of such Claims and are conclusively presumed to have accepted the Plan and will not be entitled to vote on the Plan. The Claims and Interests in Classes 6 and 7 are impaired and may vote on the Plan. Holders of Class 8 Equity Interests will not receive or retain any Property or equity interest under the Plan on account of such Equity Interests, and, therefore, Class 8 is deemed not to have accepted the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Accordingly, votes of Holders of Class 8 Equity Interests are not being solicited.

## **9.2 Impairment Controversies**

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

## **9.3 Voting**

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

## **9.4 Voting Instructions**

Each Holder of an Allowed Claim or Interest in a voting Class may cast its vote to accept or reject the Plan by completing, dating, signing and returning the Ballot accompanying this Disclosure Statement to:

### **By U.S. Postal Service:**

**Beaulieu Group, LLC, et al.  
c/o ALCS  
P.O. Box 23650  
Jacksonville, FL 32241**

### **By Private Delivery Service/Hand Delivery:**

**Beaulieu Group, LLC, et al.  
c/o ALCS  
5985 Richard St., Suite 3  
Jacksonville, FL 32216**

**With a copy to:**

**Ashley R. Ray, Esq.  
Scroggins & Williamson, P.C.  
One Riverside  
4401 Northside Parkway  
Suite 450  
Atlanta, Georgia 30327**

Any Ballot received which does not indicate either an acceptance or rejection of the Plan shall be deemed to constitute an acceptance of the Plan. Ballots submitted by facsimile will not

be accepted. A Ballot shall not constitute a Proof of Claim or Proof of Interest or an amendment to a Proof of Claim or Proof of Interest.

If a Creditor has a Claim in more than one Class under the Plan, that Creditor should receive a separate Ballot for each such claim. If Claimant needs additional Ballots, or believes it has a Claim that is in Class 6 or 7 and did not receive a Ballot, please contact the Debtors' counsel, Ashley R. Ray, at the address set forth above, sufficiently in advance of the Voting Deadline to obtain the Ballot and return the Ballot before the Voting Deadline.

## **9.5 Requirements of Confirmation**

The Bankruptcy Court will confirm the Plan only if it determines that all of the requirements of the Bankruptcy Code have been met. The Bankruptcy Code requires, among other things, that (i) the Plan be accepted by at least one impaired Class, (ii) the Bankruptcy Court make a determination that the Plan is in the "best interests" of all Holders of Claims and Interests (that is, dissenting Creditors and Interest Holders will receive at least as much under the Plan as they would receive in a liquidation under Chapter 7 of the Bankruptcy Code), (iii) the Bankruptcy Court make a determination that the Plan is feasible, and (iv) the Plan has classified Claims and Interests in a permissible manner. In order to confirm the Plan, the Bankruptcy Court must find that all of these and certain other requirements have been met. Thus, even if the requisite vote is achieved for each impaired Class, the Bankruptcy Court must make independent findings regarding the Plan's conformity with these requirements of the Bankruptcy Code before it may confirm the Plan. Additionally, if the requisite vote will not be achieved for each impaired Class, the Bankruptcy Court must also make independent findings regarding the Plan's conformity with the requirements of Section 1129(b) of the Bankruptcy Code. The various statutory requirements are discussed below.

### **(a) Acceptance by at Least One Impaired Class**

In order for the Plan to be confirmed, the Plan must be accepted by at least one impaired Class that is entitled to vote on the Plan. A Class of Impaired Claims will have accepted the Plan if at least two-thirds in amount and more than one-half in number of the Claims actually voting in the Class have accepted it.

### **(b) Best Interests Test**

The Plan cannot be confirmed unless the Bankruptcy Court determines that the Plan is in the "best interests" of the Debtors' Creditors and Interest Holders. The Plan will be deemed to have satisfied the "best interests" test if the Plan provides to each dissenting or nonvoting member of each impaired Class a recovery that has a value that is at least equal to the distribution that such member would receive if the assets of the Debtors were liquidated on the Effective Date in a hypothetical case under Chapter 7 of the Bankruptcy Code by a Chapter 7 trustee. If all members of an impaired Class of Claims or Equity Interest Holders vote to accept the Plan, the "best interests" test does not apply with respect to that Class.

In applying the “best interests” test, the Bankruptcy Court would ascertain the hypothetical recoveries in a Chapter 7 liquidation to the Debtors’ Creditors and Interest Holders. These hypothetical Chapter 7 liquidation recoveries would then be compared with the distributions offered to each impaired Class of Claims or Interests under the Plan in order to determine if the Plan satisfies the “best interests” test.

In applying the “best interests” test, it is likely that Claims and Interests in the Chapter 7 case would not be classified in the same manner that such Claims and Interests are classified under the Plan. In the absence of a contrary determination by the Bankruptcy Court, all pre-bankruptcy Unsecured Claims which have the same rights upon liquidation would be treated as one Class for the purposes of determining the potential distribution of the liquidation proceeds resulting from the Debtors’ Chapter 7 cases. The distributions from the liquidation proceeds would be calculated ratably according to the amount of the Claim held by each Creditor. The Plan Proponents believe that the most likely outcome of liquidation proceedings under Chapter 7 would be the application of the rule of absolute priority of distributions. Under that rule, no junior Creditor receives any distribution until the Allowed Claims of all senior Creditors are paid in full, and no Equity Interest Holder receives any distribution until the Allowed Claims of all Creditors are paid in full.

As discussed in more detail in Article XII of this Disclosure Statement, the Plan Proponents’ analysis indicates that confirmation of the Plan will provide each Creditor and Interest Holder holding a Claim or Interest in an impaired Class with a recovery that is at least equal to the recovery that such Creditor or Interest Holder would receive pursuant to a liquidation and distribution of the Assets under Chapter 7 of the Bankruptcy Code.

**(c) Feasibility of the Plan**

In order for the Plan to be confirmed, the Bankruptcy Court must determine that the Plan is feasible; that is, as a practical matter, that the Debtors will be able to meet their obligations under the Plan on a timely basis and according to its terms. The Plan Proponents believe that the Plan is feasible as a liquidating plan.

**(d) Classification of Claims**

The Plan Proponents believe that the Plan meets the classification requirements of the Bankruptcy Code, which require that a Plan of Liquidation place each Claim or Interest in a Class with other Claims or Interests that are “substantially similar.”

**9.6 Additional Requirements of Section 1129(b) of the Bankruptcy Code**

In the event the Plan does not satisfy the requirements of Section 1129(a) of the Bankruptcy Code, the Plan Proponents will seek confirmation of the Plan pursuant to the so-called “cramdown” provisions of Section 1129(b) of the Bankruptcy Code. Pursuant to Section 1129(b), the Bankruptcy Court must determine whether the Plan is fair and equitable and does not discriminate unfairly against each impaired Class of Claims or Interests that has not accepted the Plan. The Plan will not discriminate unfairly if no Class receives more than it is legally entitled to receive



for its Claims. “Fair and equitable” has different meanings for Secured Claims, Unsecured Claims and Equity Interests.

With respect to a Secured Claim, “fair and equitable” means either (i) the impaired Secured Creditor retains its liens to the extent of its Allowed Secured Claim and receives deferred Cash payments at least equal to the allowed amount of its Claim with a present value as of the Effective Date of the Plan at least equal to the value of its interest in the property securing its liens, (ii) if property subject to the lien of the impaired Secured Creditor is sold free and clear of its lien, the impaired Secured Creditor receives a lien attaching to the proceeds of the sale, or (iii) the impaired Secured Creditor realizes the “indubitable equivalent” of its Claim under the Plan. Under certain circumstances, a Secured Creditor is entitled under Section 1111(b) of the Bankruptcy Code to elect to have its entire Claim, including any deficiency, treated as a Secured Claim.

With respect to an Unsecured Claim, “fair and equitable” means either (i) the impaired Unsecured Creditor receives property of a value equal to the amount of its Allowed Claim, or (ii) the Holders of Claims or Interests that are junior to the Claims of the dissenting Class will not receive any property under the Plan.

With respect to a Class of Equity Interests, “fair and equitable” means either (i) each Holder of an Interest of such Class receives or retains on account of such Interest property with a value equal to the greater of the allowed amount of any fixed liquidation preference to which such Holder is entitled, any fixed redemption price to which such Holder is entitled or the value of such Interest, or (ii) the Holder of any Interest that is junior to the Interests of such Class will not receive or retain any property on account of such junior Interest.

The Debtors and the Committee believe the Plan meets the fair and equitable test with respect to each Holder of an impaired Claim or Interest.

## **9.7 Objections to Confirmation**

As will be set forth in the Order Approving Disclosure Statement and Notice of Confirmation Hearing, any objections to confirmation of the Plan must be in writing, must set forth the objector’s standing to assert any such objection, and must be filed with the Bankruptcy Court and served on counsel for the Debtors and counsel for the Committee. The Order Approving Disclosure Statement and Notice of Confirmation of Hearing will contain all relevant procedures relating to the submission of objections to confirmation and should be reviewed in its entirety by any party who has an objection to confirmation.

## **9.8 Confirmation of Plan Without Acceptance of All Impaired Classes**

Even if one or more impaired Classes do not vote to accept the Plan, the Bankruptcy Court may, pursuant to Section 1129(b) of the Bankruptcy Code, confirm the Plan without the acceptance of all impaired Classes. Confirmation under Section 1129(b) requires that the Plan be fair and equitable with respect to each impaired Class of Claims that has not accepted the Plan. The Plan proponents reserve their right to seek Confirmation of the Plan under Section 1129(b) if one or more Classes of Impaired Claims does not accept or is deemed not to have accepted the Plan.

## **9.9 Hearing on Confirmation of the Plan**

Section 1128 of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. At that time, the Plan Proponents will present the results of the vote by each impaired Class of Creditors entitled to vote in favor of or in opposition to the Plan. The Bankruptcy Court will consider whether the requirements for confirmation of the Plan under the Bankruptcy Code have been satisfied, as well as any objections to the Plan that are timely filed. Any Creditor may object to the confirmation of the Plan, regardless of whether it is entitled to vote on the Plan.

## **ARTICLE X DISCHARGE, RELEASE, LIMITATIONS OF LIABILITY, AND GENERAL INJUNCTION**

### **10.1 General Injunction**

**PURSUANT TO SECTIONS 105, 1123, 1129 AND 1141 OF THE BANKRUPTCY CODE, IN ORDER TO PRESERVE AND IMPLEMENT THE VARIOUS TRANSACTIONS CONTEMPLATED BY AND PROVIDED FOR IN THE PLAN, AS OF THE EFFECTIVE DATE, AND THROUGH THE CONSUMMATION DATE, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER, ALL PERSONS OR ENTITIES THAT HAVE HELD, CURRENTLY HOLD OR MAY HOLD A CLAIM, DEBT, OR LIABILITY AGAINST THE DEBTORS, THE ESTATES, OR ANY OF THEIR RESPECTIVE PROPERTY ARE AND SHALL BE ENJOINED AND BARRED TO THE FULLEST EXTENT PERMITTED BY LAW FROM TAKING ANY OF THE FOLLOWING ACTIONS ON ACCOUNT OF ANY SUCH CLAIMS, DEBTS, OR LIABILITIES, OTHER THAN ACTIONS BROUGHT TO ENFORCE ANY RIGHTS OR OBLIGATIONS UNDER THE PLAN OR THE PLAN DOCUMENTS: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING AGAINST THE LIQUIDATING TRUST, THE DEBTORS, THE ESTATES, OR THEIR RESPECTIVE PROPERTY; (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST THE LIQUIDATING TRUST, THE DEBTORS, THE ESTATES, OR THEIR RESPECTIVE PROPERTY; (C) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE AGAINST THE LIQUIDATING TRUST, THE DEBTORS, THE ESTATES, OR THEIR RESPECTIVE PROPERTY; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO THE LIQUIDATING TRUST, THE DEBTORS OR THE ESTATES; (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN OR THE CONFIRMATION ORDER; OR (F) INTERFERING WITH OR IN ANY MANNER WHATSOEVER DISTURBING THE RIGHTS AND REMEDIES OF THE LIQUIDATING TRUST, THE DEBTORS OR THE ESTATES UNDER THE PLAN AND THE PLAN DOCUMENTS AND THE OTHER**

**DOCUMENTS EXECUTED IN CONNECTION THEREWITH. THE LIQUIDATING TRUSTEE SHALL HAVE THE RIGHT TO INDEPENDENTLY SEEK ENFORCEMENT OF THIS GENERAL INJUNCTION PROVISION. THIS GENERAL INJUNCTION PROVISION IS AN INTEGRAL PART OF THE PLAN AND IS ESSENTIAL TO ITS IMPLEMENTATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PROVISIONS OF THIS ARTICLE X, SECTION 10.1 SHALL NOT RELEASE, OR BE DEEMED A RELEASE OF, ANY OF THE CAUSES OF ACTION.**

#### **10.2 Exculpation From Liability**

**THE DEBTORS, THEIR CURRENT OFFICERS, AND THEIR PROFESSIONALS (ACTING IN SUCH CAPACITY) AND THE MEMBERS OF THE CREDITORS COMMITTEE AND THEIR PROFESSIONALS (ACTING IN SUCH CAPACITY) (COLLECTIVELY, THE “EXCULPATED PARTIES”) SHALL NEITHER HAVE NOR INCUR ANY LIABILITY WHATSOEVER TO ANY PERSON OR ENTITY FOR ANY ACT TAKEN OR OMITTED TO BE TAKEN IN GOOD FAITH IN CONNECTION WITH OR RELATED TO THE FORMULATION, PREPARATION, DISSEMINATION, OR CONFIRMATION OF THE PLAN, THE DISCLOSURE STATEMENT, ANY PLAN DOCUMENT, OR ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO, OR ANY OTHER ACT TAKEN OR OMITTED TO BE TAKEN, IN CONNECTION WITH THE PLAN OR THE CASES, IN EACH CASE FOR THE PERIOD ON AND AFTER THE PETITION DATE AND THROUGH THE EFFECTIVE DATE; PROVIDED, HOWEVER, THAT THIS EXCULPATION FROM LIABILITY PROVISION SHALL NOT BE APPLICABLE TO ANY LIABILITY FOUND BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM FRAUD OR THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF ANY SUCH PARTY. THE RIGHTS GRANTED UNDER THIS ARTICLE X, SECTION 10.2 ARE CUMULATIVE WITH (AND NOT RESTRICTIVE OF) ANY AND ALL RIGHTS, REMEDIES, AND BENEFITS THAT THE EXCULPATED PARTIES HAVE OR OBTAIN PURSUANT TO ANY PROVISION OF THE BANKRUPTCY CODE OR OTHER APPLICABLE LAW. IN FURTHERANCE OF THE FOREGOING, THE EXCULPATED PARTIES SHALL HAVE THE FULLEST PROTECTION AFFORDED UNDER SECTION 1125(E) OF THE BANKRUPTCY CODE AND ALL APPLICABLE LAW FROM LIABILITY FOR VIOLATION OF ANY APPLICABLE LAW, RULE OR REGULATION GOVERNING THE SOLICITATION OF ACCEPTANCE OR REJECTION OF A PLAN OR THE OFFER, ISSUANCE, SALE OR PURCHASE OF SECURITIES. THIS EXCULPATION FROM LIABILITY PROVISION IS AN INTEGRAL PART OF THE PLAN AND IS ESSENTIAL TO ITS IMPLEMENTATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PROVISIONS OF THIS ARTICLE X, SECTION 10.2 SHALL NOT RELEASE, OR BE DEEMED A RELEASE OF, ANY OF THE CAUSES OF ACTION.**

### 10.3 Release

**ON THE EFFECTIVE DATE, THE EXCULPATED PARTIES SHALL BE UNCONDITIONALLY AND ARE HEREBY DEEMED TO BE UNCONDITIONALLY RELEASED FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, LOSSES, RIGHTS, REMEDIES, CAUSES OF ACTION, CHARGES, COSTS, DEBTS, INDEBTEDNESS, OR LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE TAKING PLACE BETWEEN THE PETITION DATE AND THE EFFECTIVE DATE, WHICH IS IN ANY WAY RELATING TO THE DEBTORS, THE CASES, ANY PROPERTY OF THE DEBTORS, THE BUSINESS OR OPERATIONS OF THE DEBTORS, ANY PLAN DOCUMENTS, THE PLAN, OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY; PROVIDED, HOWEVER, THAT THIS RELEASE PROVISION SHALL NOT BE APPLICABLE TO ANY LIABILITY FOUND BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM FRAUD OR THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF ANY SUCH EXCULPATED PARTY. THE CONFIRMATION ORDER SHALL ENJOIN THE PROSECUTION BY ANY PERSON OR ENTITY, WHETHER DIRECTLY, DERIVATIVELY OR OTHERWISE, OF ANY CLAIM, OBLIGATION, SUIT, JUDGMENT, DAMAGE, LOSS, RIGHT, REMEDY, CAUSE OF ACTION, CHARGE, COST, DEBT, INDEBTEDNESS, OR LIABILITY WHICH AROSE OR ACCRUED DURING SUCH PERIOD OR WAS OR COULD HAVE BEEN ASSERTED AGAINST ANY OF THE EXCULPATED PARTIES, EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER. EACH OF THE EXCULPATED PARTIES SHALL HAVE THE RIGHT TO INDEPENDENTLY SEEK ENFORCEMENT OF THIS RELEASE PROVISION. THIS RELEASE PROVISION IS AN INTEGRAL PART OF THE PLAN AND IS ESSENTIAL TO ITS IMPLEMENTATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PROVISIONS OF THIS ARTICLE X, SECTION 10.4 SHALL NOT RELEASE, OR BE DEEMED A RELEASE OF, ANY OF THE CAUSES OF ACTION.**

### 10.4 Barton Doctrine

The “Barton Doctrine,” *e.g. Barton v. Barbour*, 104 U.S. 126, 26 L.Ed. 672 (1881) (Supreme Court held that a trustee cannot be sued without leave of the bankruptcy court), which prohibits a party from suing either a trustee, the officers of a debtor in possession, or their attorneys, in a non-appointing court for acts done in their official capacity, shall pertain to the provisions of Article VIIX of the Plan, and shall stand as one of the bases for enforcement of those provisions. *See, e.g., Carter v. Rodgers*, 220 F.3d 1249, 1252 (11<sup>th</sup> Cir. 2000) (“[j]oining the other circuits that have considered this issue, we hold that a debtor must obtain leave of the bankruptcy court before initiating an action in district court when that action is against the trustee or other bankruptcy-court-appointed officer, for acts done in the actor’s official capacity”); *Patco Energy Express v. Lambros*, 2009 U.S. App. LEXIS 25771 (11<sup>th</sup> Cir. 2009) (“[w]here a plaintiff neglects to obtain

leave from the appointing court, a suit filed [against a bankruptcy trustee] in another court must be dismissed for lack of subject matter jurisdiction”); *In the Matter of Linton*, 136 F.3d 544, 545 (7<sup>th</sup> Cir. 1998); *In re DeLorean Motor Co.*, 991 F.2d 1236, 1240-41 (6<sup>th</sup> Cir. 1993) (“[i]t is well settled that leave of the appointing forum must be obtained by any party wishing to institute an action in a nonappointing forum against a trustee, for acts done in the trustee’s official capacity and within the trustee’s authority as an officer of the court .... counsel for trustee, court appointed officers who represent the estate, are the functional equivalent of a trustee”); *In re Balboa Improvements, Ltd.*, 99 B.R. 966, 970 (9<sup>th</sup> Cir. BAP 1989) (holding that permission to sue debtor’s attorney for alleged misconduct in the administration of an estate must be obtained from the bankruptcy court.

### **10.5 Continuation of Automatic Stay**

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

### **10.6 No Liability for Tax Claims**

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

### **10.7 Regulatory or Enforcement Actions**

Nothing in this Plan shall restrict any federal government regulatory agency from pursuing any regulatory or police enforcement action or performing its statutory duties against any Person or Entity in any forum, but only to the extent not prohibited by the automatic stay of Section 362 of the Bankruptcy Code or discharged or enjoined pursuant to Section 524 or 1141(d) of the Bankruptcy Code. Nothing contained in this Article X, Section 10.7 is intended to, nor shall it, supersede or alter any applicable provisions of the Bankruptcy Code.

### **10.8 No Liability for Untimely Administrative Expense Claims**

Holders of Administrative Expense Claims (including Holders of any Claims for Postpetition federal, state or local taxes) that do not file an application or other Bankruptcy Court-approved pleading by the Administrative Expense Claims Bar Date will be forever barred from

asserting such Administrative Expense Claims against the Debtors, the Estates, or any of their respective Property.

## **ARTICLE XI FEDERAL TAX CONSIDERATIONS**

### **11.1 General**

A description of certain U.S. federal income tax consequences of the transactions proposed in the Plan is provided below. This description is based upon the Internal Revenue Code of 1986, as amended (the “**IRC**”), final and temporary Treasury Regulations promulgated thereunder, judicial decisions and administrative determinations of the Internal Revenue Service (“**IRS**”) in effect as of the date of this Disclosure Statement. Changes in these authorities, which may have retroactive effect, or new interpretations of existing authority may cause the U.S. federal income tax consequences of the Plan to differ materially from the consequences described below. No rulings have been requested from the IRS and no legal opinions have been requested from counsel with respect to any tax consequences of the Plan. No tax opinion is given by this Disclosure Statement.

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

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

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

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

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

## **11.2 Federal Income Tax Consequences To Holders Of Claims**

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

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

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

### **11.3 Tax Treatment of Liquidating Trust and Contribution of Assets**

The Liquidating Trust is intended to be treated as a “liquidating trust” pursuant to Treasury Regulation § 301.7701-4(d) and as a “grantor trust” for federal income tax purposes, pursuant to Section 671 through 679 of the Internal Revenue Code of 1986, as amended (the “**IR Code**”). However, no ruling has been sought from the IRS that the Liquidating Trust will meet the standard for classification as a “liquidating trust” and no assurance can be given that the IRS will not disagree with this conclusion that the Liquidating Trust is taxable as a grantor trust for federal income tax purposes. Assuming the Liquidating Trust is recognized as a grantor trust for federal income tax purposes, the claimants of the Debtors that are beneficiaries of the Liquidating Trust will be treated as the “grantors” of the Liquidating Trust, and the Liquidating Trust will be disregarded for tax purposes as an entity separate from the “grantors.” The grantors will report the income and loss from the Liquidating Trust as if they held their proportionate interest in the assets of the Liquidating Trust, and received the income and paid expenses of the Liquidating Trust, directly (instead of through the Liquidating Trust). Assuming the Liquidating Trust is a grantor trust, the Liquidating Trust will file annual information returns (a Form 1041, with attached informational statements) with the IRS reporting each “grantor’s” respective share of income received and expense paid by the Liquidating Trust.

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

If the Liquidating Trust is not treated as a grantor trust for federal income tax purposes, then the Liquidating Trust likely will be classified as a “partnership” for federal income tax purposes (so long as the Liquidating Trust does not make an election to be taxed as a corporation for federal income tax purposes), in which case the creditors of the Debtors that are Beneficiaries of the Liquidating Trust will be treated as “partners” of the “partnership” for federal income tax purposes. Unlike a grantor trust, the “partnership” would be treated as an entity required to compute income and loss, file tax returns, and make tax elections, but income and loss would pass through to the Beneficiaries of the Liquidating Trust (who are considered “partners” of the “partnership” for federal income tax purposes) to be reported by them on their separate income tax returns. If the Liquidating Trust is treated as a “partnership” for U.S. federal income tax purposes, the Beneficiaries of the Liquidating Trust will be treated for U.S. federal income tax purposes as



if the Debtors had distributed the interests in each of the assets so transferred directly to the Holders of Claims in exchange for their outstanding Claims against or stock of the Debtors and the Holders then contributed the interests in these assets to a “partnership” for federal income tax purposes in exchange for an interest in the “partnership.” No gain or loss is recognized upon the deemed exchange of the interests in these Assets for an interest as a “partner” in the “partnership.” Each Holder’s basis in its interest in the “partnership” will equal the aggregate basis in the assets deemed contributed to the “partnership” after taking into account any gain or loss recognized by a claimant or shareholder on the receipt of the interests in these assets from the Debtors (as discussed above). The partners of the partnership will be required to report their share of income, gain, loss, deduction or credit allocated to them by the partnership. Assuming the Liquidating Trust is a partnership, the Liquidating Trust will file annual returns (a Form 1065, with attached Schedule K-1s for each partner) with the IRS, and issue to each partner a K-1 reporting each “partner’s” respective share of income, gain, loss deduction or other item of the Liquidating Trust.

#### **11.4 Accrued Interest**

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

#### **11.5 Backup Withholding**

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

## **11.6 Not Intended As Tax Advice**

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

## **ARTICLE XII LIQUIDATION ANALYSIS**

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

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

## **ARTICLE XIII MISCELLANEOUS PLAN PROVISIONS**

### **13.1 No Admissions**

The Plan provides for the resolution, settlement and compromise of Claims against and Equity Interests in the Debtors. Nothing contained in the Plan or in the Disclosure Statement will

be construed to be an admission of any fact or otherwise binding upon the Debtors in any manner prior to the Effective Date.

### **13.2 Revocation or Withdrawal of the Plan**

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

### **13.3 Further Assurances**

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

### **13.4 Headings**

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

### **13.5 Designated Notice Sufficient**

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

### **13.6 Governing Law**

Except to the extent that federal law (including the Bankruptcy Code or the Bankruptcy Rules) is applicable, or to the extent that the Plan or a provision of any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan provides otherwise, the rights and obligations arising under the Plan will be governed by, construed, and

enforced in accordance with the laws of the State of Georgia, without giving effect to the principles of conflicts of law thereof.

### **13.7 Entire Agreement**

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

### **13.8 Closing of Case/ Charitable Contribution**

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

## **ARTICLE XIV RETENTION OF JURISDICTION**

The Bankruptcy Court shall retain jurisdiction, notwithstanding entry of the Confirmation Order and notwithstanding the occurrence of the Effective Date of the Plan, for the following purposes:

- (a) to enforce all causes of action which exist on behalf of the Debtors pursuant to the provisions of this Plan or applicable law;
- (b) to enter orders and injunctions and restraints to enforce the provisions of the Plan;
- (c) to determine claims asserted under Section 507(a)(2) of the Bankruptcy Code, including claims for compensation and reimbursement of expenses accruing prior to the Confirmation Date;
- (d) to determine any Disputed Claims or disputes concerning the validity of or the market value of any collateral underlying any Secured Claim;
- (e) to enter orders regarding interpretation of the Plan, or any document created in connection with the Plan, or any disputes with respect thereto;

(f) to conduct hearings and to enter orders modifying the Plan as provided herein or in the Bankruptcy Code;

(g) to determine any and all applications, claims, adversary proceedings, and contested or litigated matters pending on the Confirmation Date;

(h) to determine any applications for rejection or assumption of executory contracts or leases, and to determine Claims resulting from rejection of executory contracts and leases;

(i) to allow or disallow, and estimate, liquidate, or determine any Claims against the Debtors arising on or before the Effective Date, including tax claims, but excluding any Claims deemed Allowed by this Plan, and to enter or enforce any order requiring the filing of any such Claim before a particular date; and

(j) to enter orders required for the administration of the Plan, including, but not limited to:

- (i) resolution of disputes pertaining to the amounts of payments under the Plan to Claimants;
- (ii) conducting post-confirmation valuation hearings as required by the Plan or authorized by the Bankruptcy Code; and
- (iii) exercising jurisdiction over any other matter provided for or consistent with the provisions of Chapter 11 of the Bankruptcy Code.

Upon any default under the Plan, the Debtors and the Liquidating Trustee, as the case may be, consent to the jurisdiction of the Bankruptcy Court or any successor to the Bankruptcy Court and agree that it will be the preferred forum for all proceedings relating to any such default. Except as otherwise provided in the Plan or the Plan Documents, by accepting any Distribution or payment under or in connection with the Plan, by filing any Proof of Claim, by filing any Cure Claim, by voting on the Plan, or by entering an appearance in the Bankruptcy Cases, all Creditors and other parties in interest, including foreign Creditors and foreign parties in interest, have consented, and will be deemed to have expressly consented, to the jurisdiction of the Bankruptcy Court for all purposes with respect to any and all matters relating to, arising under or in connection with the Plan or the Bankruptcy Cases.

## **ARTICLE XV MODIFICATIONS AND AMENDMENTS**

The Plan Proponents reserve the right to alter, amend or modify the Plan as contemplated by Section 1127 of the Bankruptcy Code. The Plan may be modified, before or after Confirmation, without notice or hearing, or on such notice and hearing as the Court deems appropriate, if the Court finds that the proposed modification does not materially and adversely affect the rights of any parties in interest that have not had notice and an opportunity to be heard with regard to the proposed modification. Without limiting the foregoing, the Plan otherwise may be modified after


notice and hearing. In the event of any modification at or before Confirmation, any votes in favor of the Plan shall be deemed to be votes in favor of the Plan as modified, unless the Court finds that the proposed modification materially and adversely affects the rights of the parties in interest that cast said votes.

**ARTICLE XVI  
CONCLUSION**

The Debtors and the Committee urge all Holders of Claims to accept the Plan because the Debtors and the Committee believe the Plan will provide each such Holder more than it would receive pursuant to any alternative plan of liquidation or under Chapter 7 of the Bankruptcy Code. Accordingly, Debtors and the Committee urge all eligible members of Voting Classes to submit Ballots in favor of the Plan in accordance with the balloting procedures described herein.

This 9 day of February, 2018.

BEAULIEU GROUP, LLC, and  
BEAULIEU TRUCKING, LLC

By:   
Its: CEO

SCROGGINS & WILLIAMSON, P.C.

FOX ROTHSCHILD LLP

/s/ J. Robert Williamson

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Co- Counsel for the Official Committee of  
Unsecured Creditors



**Exhibit 1**

Joint Plan of Liquidation

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

**IN RE:** ) **CHAPTER 11**  
 )  
**BEAULIEU GROUP, LLC, et al.,** ) **Jointly Administered Under**  
 ) **CASE NO. 17-41677-mgd**  
 )  
**Debtors.** )

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**JOINT PLAN OF LIQUIDATION**

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**Co- Counsel for the Official Committee of  
Unsecured Creditors**

**Dated: February 9, 2018**

**NO MATERIALS OTHER THAN THE DISCLOSURE STATEMENT AND RELATED  
MATERIALS APPROVED BY THE BANKRUPTCY COURT HAVE BEEN  
AUTHORIZED FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THIS  
PLAN.**

PURSUANT TO SECTION 1125 OF TITLE 11 OF THE UNITED STATES CODE, NOTHING CONTAINED IN THIS PLAN SHOULD BE CONSTRUED AS CONSTITUTING A SOLICITATION OF ACCEPTANCES OF THIS PLAN UNTIL SUCH TIME AS THE DISCLOSURE STATEMENT (AS DEFINED IN THIS PLAN) HAS BEEN APPROVED BY THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ROME DIVISION, AND DISTRIBUTED, WITH APPROPRIATE BALLOTS, TO ALL HOLDERS OF IMPAIRED CLAIMS AGAINST AND IMPAIRED INTERESTS IN THE DEBTORS ENTITLED TO VOTE ON THIS PLAN. THE PROPONENTS RESERVE THE RIGHT TO FILE AN AMENDED OR AMENDED AND RESTATED PLAN AND DISCLOSURE STATEMENT FROM TIME TO TIME. REFERENCE IS MADE TO THE DISCLOSURE STATEMENT FOR A DISCUSSION OF VOTING INSTRUCTIONS, THE DEBTORS' HISTORY, BUSINESS, PROPERTIES, AND RESULTS OF OPERATIONS, A SUMMARY OF SIGNIFICANT EVENTS WHICH HAVE OCCURRED TO DATE IN THESE JOINTLY-ADMINISTERED CASES, AND THE MEANS OF FUNDING THIS PLAN. ALL HOLDERS OF CLAIMS AND INTERESTS ARE ADVISED AND ENCOURAGED TO READ THE DISCLOSURE STATEMENT AND THIS PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER ACTIONS OR THREATENED ACTIONS, THIS PLAN AND THE DISCLOSURE STATEMENT WILL NOT BE CONSTRUED AS AN ADMISSION OR STIPULATION, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.

## **JOINT PLAN OF LIQUIDATION**

Beaulieu Group, LLC and Beaulieu Trucking, LLC, debtors and debtors-in-possession in the above-styled, jointly administered Chapter 11 cases (collectively, the “**Debtors**”), and the Official Committee of Unsecured Creditors (the “**Committee**”) in the above-referenced cases, hereby jointly propose the following Plan of Liquidation (the “**Plan**”).<sup>1</sup> For a discussion of (a) the Debtors’ history, business, properties, and operations; (b) a summary of significant events which have occurred to date in these cases; (c) a summary of the means of funding the Plan; and (d) the procedures for voting on the Plan and certain related matters, all holders of claims should refer to the Disclosure Statement to Accompany Joint Plan of Liquidation filed on February 9, 2018 (the “**Disclosure Statement**”). The Debtors and the Committee are proponents of the Plan within the meaning of Section 1129 of the Bankruptcy Code. All Holders of Claims against and Equity Interests in the Debtors entitled to vote on the Plan are encouraged to read the Plan and the Disclosure Statement in their entirety before voting to accept or reject the Plan.

No materials other than the Disclosure Statement and any exhibits and schedules attached to or referenced in the Disclosure Statement have been approved by the Bankruptcy Court or the Proponents for use in soliciting acceptances or rejections of the Plan.

NOTWITHSTANDING ANYTHING IN THIS PLAN TO THE CONTRARY, UNLESS OTHERWISE STATED, ALL STATEMENTS IN THIS PLAN AND IN THE ACCOMPANYING DISCLOSURE STATEMENT CONCERNING THE HISTORY OF THE DEBTORS’ BUSINESS, THE PAST OR PRESENT FINANCIAL CONDITION OF THE DEBTORS, TRANSACTIONS TO WHICH THE DEBTORS WERE OR ARE A PARTY, OR THE EFFECT OF CONFIRMATION OF THE PLAN ON SECURED CREDITORS, UNSECURED CREDITORS, OR HOLDERS OF INTERESTS ARE ATTRIBUTABLE EXCLUSIVELY TO THE DEBTORS AND NOT TO ANY OTHER PARTY.

### **ARTICLE I DEFINED TERMS**

For purposes of this Plan, unless defined elsewhere herein, the following terms shall have the respective meanings ascribed to them below. Capitalized terms shall refer to the terms as defined in this Article. Unless otherwise indicated, the singular shall include the plural, the plural shall include the singular and the masculine shall include the feminine and the feminine shall include the masculine in gender. The term “including” shall mean “including, without

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<sup>1</sup> The Chapter 11 cases of Beaulieu Group, LLC (Case No. 17-41677-mgd) and Beaulieu Trucking, LLC (Case No. 17-41680-mgd) are currently jointly administered with the pending Chapter 11 case of Beaulieu of America, Inc. (Case No. 17-41678-mgd). Beaulieu of America, Inc. is not joining with the other two debtors as a proponent of this Plan. The Plan, *inter alia*, seeks to substantively consolidate the bankruptcy estates of Beaulieu Group, LLC and Beaulieu Trucking, LLC. As discussed in more detail below and in the Disclosure Statement accompanying this Plan, the Plan Proponents are not currently seeking to substantively consolidate the bankruptcy estate of Beaulieu of America, Inc. with the bankruptcy estates of the Debtors, but they are reserving the right to seek such relief in the future and to have Beaulieu of America, Inc. join as a proponent of this Plan.

limitation.” Any term in the Plan which is not defined below but which is used in the Bankruptcy Code, Title 11 U.S.C., shall have the meaning ascribed to it in the Bankruptcy Code.

**1.01 “ABL Lenders”** means those financial institutions which are parties to the Post-Petition Loan and Security Agreement dated July 19, 2017 (as at any time further amended) pursuant to which the Debtors received post-petition debtor in possession financing.

**1.02 “Administrative Expense”** means any cost or expense of administration of the Estates or the Cases that is allowable under Section 503(b) of the Bankruptcy Code, including, but not limited to, —

- (1) any actual and necessary cost or expense of preserving the Estates or operating the business of the Debtors (including wages, salaries, or commissions for services rendered) incurred on or after the Petition Date;
- (2) any Postpetition Trade Claim; and
- (3) any payment required to be made to cure a default under an executory contract or unexpired lease assumed by any of the Debtors under either section 365(a) of the Bankruptcy Code or the provisions of this Plan.

**1.03 “Administrative Expense Claim”** means any Claim for the payment of an Administrative Expense. The terms “Administrative Expense(s)” and “Administrative Expense Claim(s)” may be used interchangeably in this Plan.

**1.04 “Administrative Expense Claimant”** shall mean the holder of an Administrative Expense Claim.

**1.05 “Administrative Expense Claim Bar Date”** means the last day for filing an application or other Bankruptcy Court-approved pleading for allowance and/or payment of an Administrative Expense Claim other than (a) a Claim that arises pursuant to 11 U.S.C. §503(b)(9), (b) Professional Compensation Claims, (c) Post-Petition Health Claims, and (d) Post-Petition Georgia Workers Compensation Claims. The Administrative Expense Claim Bar Date will be thirty (30) days after the Effective Date.

**1.06 “Affiliate”** has the meaning ascribed to such term in Section 101(2) of the Bankruptcy Code.

**1.07 “Allowed Amount”** means the dollar amount in which a Claim is an Allowed Claim.

**1.08 “Allowed Claim”** means a Claim or that portion of a Claim against one or more of the Debtors that is not a Disputed Claim or a Disallowed Claim and (a) as to which a Proof of Claim was filed with the Clerk’s Office or with American Legal Claim Services on or before the Bar Date, or, by order of the Bankruptcy Court, was not required to be filed, or (b) as to which no Proof of Claim was filed with the Clerk’s Office on or before the Bar Date, but which has been or hereafter is listed by the Debtors in the Schedules as liquidated in amount and not disputed or

contingent, and, in the case of subparagraph (a) or (b) above, as to which either (x) no objection to the allowance thereof has been filed within the time allowed for the making of objections as fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or (y) any objection made has been determined and the Claim has been allowed by a Final Order (but only to the extent so allowed). “Allowed Claim” will also include a Claim that is allowed by the Bankruptcy Court (a) in any contract, instrument, or other agreement or document entered into in connection with the Plan; (b) in a Final Order; or (c) pursuant to the terms of the Plan. “Allowed,” when used as an adjective herein (such as Allowed Administrative Expense Claim, Allowed Priority Tax Claim, Allowed Priority Claim, Allowed Secured Claim, and Allowed Unsecured Claim) has a corresponding meaning. Notwithstanding any other provision of the Plan, the term Allowed Claim shall not include any Claim held by a creditor against which the Debtors have asserted a Cause of Action that has the effect of precluding a Distribution with respect to such Claim. An Allowed Claim shall not include any interest accrued after the Petition Date (on any Claim other than as provided for in the Bankruptcy Code) or any penalty. To the extent that the Holder of an Allowed Claim receives any payment on such Claim from a source other than the Liquidating Trust established under the Plan, the amount of such Allowed Claim shall be reduced by the amount of such payment.

**1.09** “*Allowed Class ... Claim*” means an Allowed Claim in the particular Class(es) or categories described.

**1.10** “*Assets*” or “*Property*” shall mean all property of the Estates as defined in Section 541 of the Bankruptcy Code, including without limitation all right, title, and interest in and to any Causes of Action that the Debtors, the Estates or the Liquidating Trustee (acting in such capacity) may have as of the Effective Date or any time thereafter.

**1.11** “*Ballot*” means the ballot accompanying the Disclosure Statement upon which Holders of Impaired Claims or Impaired Interests entitled to vote on the Plan will indicate their acceptance or rejection of the Plan in accordance with the Voting Instructions.

**1.12** “*Ballot Date*” shall mean the date set by the Bankruptcy Court for receipt of Ballots indicating acceptance or rejection of this Plan.

**1.13** “*Bank of America*” means Bank of America, N.A., a national banking association, in its capacity as administrative agent and collateral agent for the ABL Lenders.

**1.14** “*Bankruptcy Cases,*” or “*Cases*” shall mean the Chapter 11 cases of Beaulieu Group, LLC (Case No. 17-41677-mgd) and Beaulieu Trucking, LLC (Case No. 17-41680) currently pending before the Bankruptcy Court, both of which cases are jointly administered with the Chapter 11 case of Beaulieu of America, Inc. (Case No. 17-41678) under Case No. 17-41677-mgd, and including as such may be substantively consolidated under the Plan.

**1.15** “*Bankruptcy Code*” or “*Code*” means Title 11 of the United States Code (11 U.S.C. §§101 *et seq.*), as in effect on the Petition Date, together with all amendments and modifications to the Code that were subsequently made applicable to the Cases.

**1.16 “Bankruptcy Counsel”** means Scroggins & Williamson, P.C., in its Bankruptcy Court-approved capacity as Chapter 11 bankruptcy counsel to the Debtors.

**1.17 “Bankruptcy Court” or “Court”** means the United States Bankruptcy Court for the Northern District of Georgia, Rome Division, or, as the context requires, any other court of competent jurisdiction exercising jurisdiction over these Cases.

**1.18 “Bankruptcy Rules”** means the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court (N.D. Ga. L.B.R.), as in effect on the Petition Date, together with all amendments and modifications to the Bankruptcy Rules that were subsequently made applicable to the Cases.

**1.19 “Bar Date”** means 5:00 p.m. (Eastern) on November 21, 2017 for non-governmental entities or January 12, 2018 for governmental entities, the last date for the filing of Proofs of Claim and requests for payment of Administrative Expenses arising under 11 U.S.C. §503(b)(9) against any of the Debtors.

**1.20 “Bar Date Order”** means, as the context may require, either (a) the order entered by the Bankruptcy Court on September 20, 2017, establishing a Bar Date (Docket No. 274), or (b) the applicable order entered by the Bankruptcy Court establishing an Administrative Expense Claims Bar Date.

**1.21 “Business Day”** means any day other than a Saturday, Sunday, or “legal holiday” (as “legal holiday” is defined in Bankruptcy Rule 9006(a)) that commercial banks are open for business in Atlanta, Georgia.

**1.22 “Cash”** means legal tender of the United States of America. When used in the Plan with respect to a distribution under the Plan, the term “Cash” means lawful currency of the United States of America, a certified check, a Cashier’s check, a wire transfer of immediately available funds from any source, or a check from the Debtors drawn on a domestic bank.

**1.23 “Cash Collateral Agreement”** means that certain cash collateral agreement dated November 6, 2017, by and among Beaulieu Group, LLC, Beaulieu of America, Inc., and Beaulieu Trucking, LLC, the financial institutions party to the Post-Petition Loan Agreement from time to time as lenders, and Bank of America, N.A., a national banking association, in its capacity as administrative agent and collateral agent for lenders.

**1.24 “Causes of Action”** means any and all of the Estates’ and the Debtors’ actions, Claims, demands, rights, defenses, counterclaims, suits, causes of action, liabilities, obligations, debts, judgments, remedies, damages, recoupments, cross claims, counterclaims, third-party claims, indemnity claims, contribution claims, and any other claims, whether known or unknown, foreseen or unforeseen, direct or indirect/derivative, choate or inchoate in law, equity or otherwise, including all avoidance actions and rights to recover transfers voidable or recoverable under Sections 502, 542, 543, 544, 545, 547, 548, 549, 550, 551, and/or 553 of the Bankruptcy Code, and any and all other Claims or rights of any value whatsoever, at law or in equity, against any Creditor or other third party, including any and all Claims against any members, officers, directors,

managers or employees of the Debtors. Some of the Causes of Action may be described in further detail in the Disclosure Statement. A Cause of Action will not under any circumstances be waived as a result of the failure of the Debtors to describe such Cause of Action with specificity in the Plan or the Disclosure Statement. Causes of Action shall include, but not be limited to, those payments and other transactions identified in the Schedules. The Liquidating Trustee will not be estopped or precluded under any theory from pursuing the Causes of Action.

**1.25** “*Claim*” has the meaning ascribed to such term in Section 101(5) of the Bankruptcy Code. Notwithstanding anything to the contrary contained in the Plan, when used in the Plan, the term “Claim” will be given the broadest possible meaning permitted by applicable law and will include all manner and type of claim, whenever and wherever such claim may arise.

**1.26** “*Claimant*” shall mean the holder of a Claim.

**1.27** “*Claims Litigation*” shall mean any and all litigation or proceedings arising out of objections to Claims asserted against the Estate(s), or affirmative counterclaims or requests for setoff or recoupment that are raised with regard to Claims asserted against the Estate(s).

**1.28** “*Class*” means a category of Claims or Equity Interests classified together as described in Article III of the Plan, pursuant to Section 1122(a) of the Bankruptcy Code.

**1.29** “*Clerk*” means the Clerk of the Bankruptcy Court.

**1.30** “*Confirmation*” or “*Confirmation of the Plan*” means the approval of the Plan by the Bankruptcy Court at the Confirmation Hearing.

**1.31** “*Confirmation Date*” means the date on which the Confirmation Order is entered on the Docket pursuant to Bankruptcy Rule 5003(a).

**1.32** “*Confirmation Hearing*” means the hearing(s) held by the Bankruptcy Court pursuant to Section 1128(a) of the Bankruptcy Code to consider confirmation of the Plan pursuant to Section 1129 of the Bankruptcy Code, as such hearing may be continued from time to time.

**1.33** “*Confirmation Order*” means the final order entered by the Bankruptcy Court in the Cases confirming the Plan pursuant to Section 1129 and other applicable sections of the Bankruptcy Code, which order will be in form and substance reasonably satisfactory to the Debtors and the Committee, and will include any amendments, supplements or modifications thereto made with the consent of the Debtors, or as determined by the Bankruptcy Court.

**1.34** “*Consummation Date*” shall mean the date on which the Liquidating Trustee makes the final Distribution in accordance with the Plan.

**1.35** “*Contingent*” with reference to a Claim, shall mean a Claim that has not accrued and that is dependent on a future event that may or may not occur.



**1.36 “Convenience Class Claim”** means an Allowed Unsecured Claims equal to or less than five thousand dollars (\$5,000.00) and or an Allowed Unsecured Claim that exceeds five thousand dollars (\$5,000.00) and whose Holder has elected to voluntarily to reduce the Allowed Amount of such Claim to five thousand dollars (\$5,000.00), waive and release any excess amount of such Claim and any remaining Claims against the Debtors, their Estates, and the Liquidating Trustee, and participate in Class 7.

**1.37 “Creditor”** means the Holder of a Claim, within the meaning of Section 101(10) of the Bankruptcy Code, including Creditors with Administrative Expense Claims, Priority Tax Claims, Priority Claims, Secured Claims, Unsecured Claims, and any other Claims classified in the Plan.

**1.38 “Creditors Committee” or “Committee”** means the Official Committee of Unsecured Creditors, appointed by the United States Trustee in these Cases pursuant to Section 1102 of the Bankruptcy Code, as the membership of such committee has been or may be modified by the United States Trustee.

**1.39 “CT Lender”** means CT Lender, LLC.

**1.40 “Cygnet”** means Cygnets, LLC.

**1.41 “Debt”** has the meaning ascribed to such term in Section 101(12) of the Bankruptcy Code.

**1.42 “Debtors,” or “Debtors in Possession”** means collectively, Beaulieu Group, LLC and Beaulieu Trucking, LLC.

**1.43 “Designated Notice”** means notice and an opportunity for a hearing as defined in Section 102(a) of the Bankruptcy Code, with notice limited to the Liquidating Trustee and his or her counsel, the Office of the United States Trustee, and other parties in interest who, after entry of the Confirmation Order, file a request for notice with the clerk of the Court and serve a copy of such request on counsel to the Liquidating Trustee.

**1.44 “Disallowed Claim”** shall mean: (a) a Claim, or any portion thereof, that has been disallowed by a Final Order of the Court or otherwise in accordance with the Plan; (b) a Claim that has been listed in the Schedules in the amount of zero dollars or an unknown amount or as contingent, disputed or unliquidated, and as to which no Proof of Claim has been timely filed or deemed timely filed with the Court pursuant to the Bankruptcy Code, any Final Order of the Court or other applicable law; or (c) a Claim that has not been listed in the Schedules and as to which no proof of claim has been timely filed or deemed timely filed with the Court pursuant to the Bankruptcy Code, any Final Order of the Court or other applicable law.

**1.45 “Disclosure Statement”** means the Disclosure Statement to accompany the Plan, including all attached exhibits, appendices, and schedules, as jointly submitted and filed by the Debtors and the Committee pursuant to Section 1125 of the Bankruptcy Code in respect of the Cases and approved by the Bankruptcy Court as containing “adequate information” as that term is

defined by Section 1125(a)(1) of the Bankruptcy Code, in the Disclosure Statement Approval Order, as such Disclosure Statement has been and may be amended, supplemented, modified, or amended and restated from time to time.

**1.46 “Disclosure Statement Approval Order”** means the Order Approving Disclosure Statement entered in the Cases.

**1.47 “Disputed Claim”** means

(a) any Claim (other than a Disallowed Claim) that has not been Allowed by a Final Order of the Bankruptcy Court as to which:

(1) a Proof of Claim has been filed with the office of the Clerk (or as otherwise directed by a Final Order) or is deemed filed under applicable law or Final Order of the Bankruptcy Court or was listed on the Schedules as not being contingent, disputed or unliquidated, and

(2) an objection or adversary proceeding has been or may be timely filed by a party-in-interest with standing relating to such Claim or against the Holder of such claim, and any such objection or adversary proceeding has not been

(A) withdrawn,

(B) overruled or denied by a Final Order of the Bankruptcy Court, or

(C) sustained by a Final Order of the Bankruptcy Court or a judgement entered against the Holder of the Claim.

**1.48 “Distribution”** shall mean Cash, Property, interests in Property or other value distributed under this Plan to the Holders of Allowed Claims.

**1.49 “Distribution Date”** shall mean the date of any Distribution under the Plan. The initial Distribution Date shall occur as soon as reasonably practicable following the Effective Date, as determined by the Liquidating Trustee in his or her sole discretion. Subsequent Distribution Dates shall occur on the first Business Day of each calendar quarter thereafter, if sufficient Liquidation Proceeds are available to warrant Distribution in the reasonable judgment of the Liquidating Trustee and subject to the Liquidating Trustee’s right to delay Distributions as set forth in Article IX, Section 9.04 of the Plan.

**1.50 “Distribution Record Date”** shall mean the date that is fifteen (15) calendar days prior to a Distribution Date.

**1.51 “Docket”** means the docket or dockets in the Cases maintained by the Clerk.

**1.52 “Effective Date”** means the first business day following thirty (30) days after the Confirmation Date, or such later date as the Bankruptcy Court approves if implementation of the Plan is stayed by order of a court of competent jurisdiction.

**1.53** “*Entity*” has the meaning ascribed to such term in Section 101(15) of the Bankruptcy Code.

**1.54** “*Equity Interests*” or “*Interests*” means any equity interest of a member and/or shareholder in one or more of the Debtors.

**1.55** “*Estates*” means collectively, the estates created for the Debtors under Section 541 of the Bankruptcy Code upon the commencement of the Cases, as may be substantively consolidated under the Plan and controlled by the Liquidating Trustee on and after the Effective Date.

**1.56** “*Estimation Hearing*” means a hearing for the estimation of Claims under Section 502(c) of the Bankruptcy Code.

**1.57** “*Executory Contract*” means a contract to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

**1.58** “*Final Decree*” means the Final Order of the Bankruptcy Court entered pursuant to Bankruptcy Rule 3022 closing the Cases.

**1.59** “*Final Decree Date*” means the date on which a Final Decree has been entered closing the Cases.

**1.60** “*Final Order*” means—

(a) an order, judgment, ruling, or other decree (or any revision, modification, or amendment thereto) issued and entered by the Bankruptcy Court or by any state or other federal court that has jurisdiction over any proceeding in connection with the Cases for the purpose of such proceeding, which order, judgment, ruling, or other decree has not been reversed, vacated, stayed, modified, or amended and as to which:

(1) no appeal, petition for review, reargument, rehearing, reconsideration, or certiorari has been taken and is pending and the time for the filing of such appeal, petition for review, reargument, rehearing, reconsideration, or certiorari has expired, or

(2) such appeal or petition has been heard and dismissed or resolved and the time to further appeal or petition has expired with no further appeal or petition pending; or

(b) a stipulation or other agreement entered into which has the effect of any such order, judgment, ruling, or other decree with like finality.

**1.61** “*Governmental Authority*” means any agency, board, bureau, executive, court, commission, department, legislature, tribunal, instrumentality, or administration of the United

States, a foreign country, or any state, or any provincial, territorial, municipal, state, local, or other governmental Entity in the United States of America or a foreign country.

**1.62 “Health Plan”** means the Beaulieu Group, LLC Medical Plan in effect during the pendency of the Bankruptcy Cases.

**1.63 “Holder”** means:

(a) as to any Claim:

(1) the owner or Holder of such Claim as such is reflected on the Proof of Claim filed with respect to such Claim;

(2) if no Proof of Claim has been filed with respect to such Claim, the owner or Holder of such Claim as shown on the Schedules or books and records of the Debtors or as otherwise determined by order of the Bankruptcy Court; or

(3) if the owner or Holder of such Claim has transferred the Claim to a third party, advised the Debtors in writing of such transfer and transferee, and filed notice of the transfer and transferee with the Clerk of the Bankruptcy Court as required by Bankruptcy Rule 3001(e); and

(b) as to any Equity Interest, all owners of Equity Interests as of the Confirmation Date.

**1.64 “Impaired”** means, when used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of Section 1124 of the Bankruptcy Code.

**1.65 “Insurance Coverage”** means any insurance coverage under any Insurance Policy that is available for the payment of liability or damages arising out of any claim against the Debtors or any officer, directors, manager or employee of the Debtors.

**1.66 “Insurance Policy”** means any insurance policy in effect at any time on or before the Effective Date owned by the Debtors and/or naming one or more of the Debtors as an insured or additional insured, or otherwise affording the Debtors Insurance Coverage.

**1.67 “Intercompany Claim”** means any Claim asserted by any Debtor against another Debtor, including but not limited to, intercompany receivables and payments made in the ordinary course of the Debtors’ businesses.

**1.68 “Liabilities”** means any and all liabilities, obligations, judgments, damages, charges, costs, Debts, and indebtedness of any and every kind and nature whatsoever, whether heretofore, now, or hereafter owing, arising, due, or payable, direct or indirect, absolute or contingent, liquidated or unliquidated, known or unknown, foreseen or unforeseen, matured or unmatured, in law, equity or otherwise, of or relating to one or more of the Debtors, predecessor, successor or assign thereof, or otherwise based in whole or in part upon any act or omission,

transaction, event or other occurrence taking place prior to the Effective Date in any way relating to the Debtors or any predecessor, successor, or assign thereof, the Property, the business or operations of the Debtors, the Cases, or the Plan, including any and all liabilities, obligations, judgments, damages, charges, costs, Debts, and indebtedness based in whole or in part upon any Claim of or relating to successor liability, transferee liability, or other similar theory; provided, however, that, as used in the Plan, the term “Liabilities” does not include any post confirmation or post Effective Date payment obligation expressly set forth and preserved in the Plan.

**1.69** “*Lien*” has the meaning ascribed to it in section 101(37) of the Bankruptcy Code and, with respect to any asset or Property, includes any mortgage, pledge, security interest, lien, right of first refusal, option, or other right to acquire, assignment, charge, claim, easement, conditional sale agreement, title retention agreement, defect in title, or other encumbrance or hypothecation or restriction of any nature pertaining to or affecting such asset or Property, whether voluntary or involuntary and whether arising by law, contract, or otherwise. Any lien avoided in accordance with Sections 544, 545, 547, 548, or 549 of the Bankruptcy Code shall not constitute a Lien.

**1.70** “*Liquidating Trust*” shall mean the trust created pursuant to the Liquidating Trust Agreement and Article VI, Section 6.02 of this Plan.

**1.71** “*Liquidating Trust Agreement*” shall mean the agreement governing the formation and conduct of the Liquidating Trust, which is attached hereto as Schedule 6.02.

**1.72** “*Liquidating Trust Assets*” shall mean all Property transferred to the Liquidating Trust pursuant to the Plan and the Liquidating Trust Agreement.

**1.73** “*Liquidating Trust Beneficiaries*” means all individuals and entities entitled to Distributions from the Liquidating Trust under the Plan.

**1.74** “*Liquidating Trustee*” means the Person appointed to oversee and administer the Liquidating Trust pursuant to this Plan.

**1.75** “*Liquidation Proceeds*” shall mean any Cash received or generated by the Liquidating Trust from any source.

**1.76** “*Person*” means any person, individual, corporation, association, partnership, limited liability company, joint venture, trust, organization, business, government, governmental agency, or political subdivision thereof, or any other entity or institution of any type whatsoever, including any “person” as such term is defined in Section 101(41) of the Bankruptcy Code.

**1.77** “*Petition Date*” means July 16, 2017 the date on which the Debtors each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

**1.78** “*Plan,*” “*the Plan,*” or “*this Plan*” means this Joint Plan of Liquidation jointly proposed by the Debtors and the Official Committee of Unsecured Creditors, dated February 9, 2018 (together with all Exhibits to the Plan), as the Plan may be amended, supplemented, modified,

or amended and restated from time to time in accordance with the provisions of the Plan and the Bankruptcy Code.

**1.79 “Plan Documents”** means all documents that aid in effectuating the Plan, including, without limitation, all documents filed with the Bankruptcy Court at or before the Confirmation Hearing, and including the Confirmation Order.

**1.80 “Postconfirmation”** means arising or accruing on or after the Confirmation Date.

**1.81 “Post-Confirmation Committee”** shall mean the entity formed as of the Effective Date, pursuant to Article VI, Section 6.12 of this Plan, which shall have the rights and obligations provided under the Plan.

**1.82 “Postpetition”** means arising or accruing on or after the Petition Date and before the Effective Date.

**1.83 “Postpetition Health Claims”** means any obligation incurred post-petition for benefits provided under and pursuant to the Debtors’ self-insured Health Plan.

**1.84 “Postpetition Trade Claim”** shall mean any obligations incurred Postpetition in the ordinary course of business of the Debtors (such as trade and vendor claims), on ordinary course business terms, and which are unrelated to the administration of the bankruptcy estate, exclusive of any obligations to employees of the Debtors.

**1.85 “Postpetition Georgia Worker’s Compensation Claims”** means any obligation to employees incurred post-petition for workers compensation benefits pursuant to the worker’s compensation laws of the State of Georgia.

**1.86 “Prepetition”** means arising or accruing prior to the Petition Date.

**1.87 “Priority Claim”** means a Claim that is entitled to a priority in payment pursuant to subparagraphs (3) through (7) or subparagraph (9) of Section 507(a) of the Bankruptcy Code and that is not an Administrative Expense Claim, Priority Tax Claim, Secured Claim, or Unsecured Claim.

**1.88 “Priority Claimant”** shall mean the holder of a Priority Claim.

**1.89 “Priority Tax Claim”** means a Claim of a Governmental Unit that is entitled to a priority in payment pursuant to Section 507(a)(8) of the Bankruptcy Code and that is not an Administrative Expense, Secured Claim, or Unsecured Claim.

**1.90 “Proponents”** mean the Debtors and the Committee as the proponents of the Plan.

**1.91 “Property”** means all of the Debtors’ and/or the Estates’ interest in any property.

**1.92 “Pro Rata Share”** means, with respect to any distribution to the Holder of an Allowed Claim in a particular Class or otherwise, a fraction, the numerator of which will be the

amount of such Holder's Allowed Claim and the denominator of which will be the sum of all Allowed Claims and all Disputed Claims in such Class and, if applicable, other Classes. The term "Pro Rata Share" will also be applied in respect of Administrative Expense Claims, Priority Tax Claims, and Priority Claims, as the context requires in the Plan.

**1.93 "Professional"** means any professional person (a) employed in the Cases with the approval of the Bankruptcy Court pursuant to sections 327, 328 or 1103 of the Bankruptcy Code, or (b) employed by the Liquidating Trustee, pursuant to this Plan.

**1.94 "Professional Compensation Claim"** means any Claim by a Professional for compensation and/or reimbursement of expenses pursuant to 11 U.S.C. §330.

**1.95 "Proof of Claim"** means a proof of claim filed in these Cases pursuant to Bankruptcy Rules 3001, 3002, or 3003 in accordance with various orders of the Bankruptcy Court.

**1.96 "Purchase Agreement"** means that certain asset purchase agreement by and among Beaulieu Group, LLC; Engineered Floors, LLC and Pentz Street Holdings, LLC dated as of dated October 5, 2017, as amended, and all related documents and instruments executed in connection therewith, which was approved by the Sale Order.

**1.97 "Real Property" or "Real Properties"** means any possessory, leasehold, or other interest of the Debtors or the Estates in Property that constitutes real estate (including without limitation buildings, improvements, and appurtenances located at or on such real estate).

**1.98 "Reserve" or "Disputed Claim Reserve"** shall mean the amount of Cash held by the Liquidating Trustee following the Effective Date in reserve for amounts that are or are expected to become due and owing on or following the Effective Date, including without limitation amounts that may become payable, on account of Disputed Claims.

**1.99 "Retained Proceeds"** means, the Disputed Claims Reserve plus a portion of the Cash in the Estates, as determined by the Liquidating Trustee in his or her reasonable discretion, that shall be retained in the Estates as a reserve fund to cover, among other things, (a) pro rata payments to holders of Disputed Claims that are not Allowed Claims on the Effective Date or any applicable Distribution Date (assuming each Disputed Claim will be allowed in the amount asserted by the holder of such Disputed Claim); and (b) expenses accruing after the Effective Date, including, without limitation, tax obligations, professional fees, Liquidating Trustee fees, and other reasonable and necessary costs and expenses related to administering the Estates after the Effective Date. On the Consummation Date, any remaining Retained Proceeds shall be used to make the final Distribution under the Plan (or as otherwise set forth in the Plan).

**1.100 "Sale Order"** means the *Order (A) Approving Asset Purchase Agreement And Authorizing The Sale Of Assets Of The Debtors Outside The Ordinary Course Of Business, (B) Authorizing The Sale Of Assets Free And Clear Of All Liens, Claims, Encumbrances And Interests, (C) Authorizing The Assumption And Sale And Assignment Of Certain Executory Contracts And Unexpired Leases And Establishing Cure Costs In Connection Therewith, And (D) Granting Related Relief* which was docketed in the Cases on November 1, 2017 [Doc. No. 345].

**1.101 “Scheduled”** means, with respect to any Claim or Interest, the status and amount, if any, of such Claim or Interest, as set forth in the Debtors’ Schedules.

**1.102 “Schedules”** means, collectively, the Schedules and Statements of Financial Affairs filed by the Debtors in the Cases on August 18, 2017, pursuant to Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as amended or supplemented from time to time.

**1.103 “Section 6621 Interest Rate”** shall mean the rate of interest charged by the United States for delinquent tax obligations pursuant to 26 U.S.C. § 6621.

**1.104 “Secured Claim”** means any Claim that is—

(a) secured in whole or in part, as of the Petition Date, by a Lien which is valid, perfected and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable nonbankruptcy law; or

(b) subject to setoff under Section 553 of the Bankruptcy Code;

but, with respect to both paragraphs (a) and (b) of this section, only to the extent of the Estates’ interest in the value of the assets or Property securing any such Claim or the amount subject to setoff, as the case may be. Except as otherwise provided in the Plan, if the value of a Creditor’s interest in the Estates’ interest in the Property securing such Claim or the amount subject to setoff is less than the amount of the Allowed Claim, the resulting deficiency constitutes an Unsecured Claim, which Claim shall be treated as set forth in Article V of the Plan.

**1.105 “Secured Creditor”** means any Creditor holding a Secured Claim.

**1.106 “Subordinated Claims”** means Claims against the Debtors that are subordinated pursuant to section 510(b) or 510(c) of the Bankruptcy Code.

**1.107 “Tax Claim”** means any Allowed Claim entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

**1.108 “Taxes”** means all (i) federal, state, local or foreign taxes, including, without limitation, all net income, alternative minimum, net worth or gross receipts, sales, capital, value added, profits and estimated taxes and (ii) interest, penalties, fines, additions to tax or additional amounts imposed by any Governmental Authority or paid in connection with any item described in clause (i) hereof.

**1.109 “Unclaimed Property”** means any funds payable to Holders of Claims which are unclaimed. Unclaimed Property shall include (a) checks (and the funds represented thereby) which have been returned as undeliverable without a proper forwarding address, (b) funds for checks which have not been presented and paid within ninety (90) days of their issuance, (c) checks (and the funds represented thereby) which were not mailed or delivered because of the absence of a proper address to mail or deliver such Property and (d) checks (and the funds represented thereby)



which are not mailed due to the lack of required tax identification information, but only following at least one mailed requests for this tax identification information.

**1.110 “Unexpired Lease”** means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

**1.111 “Unimpaired Claim”** means a Claim that is not impaired within the meaning of Section 1124 of the Bankruptcy Code.

**1.112 “United States Trustee”** means the United States Trustee for Region 21, and the Office of the United States Trustee located in Atlanta, Georgia.

**1.113 “Unsecured Claim”** means any Claim that is not an Administrative Expense Claim, Priority Tax Claim, Priority Claim, Secured Claim, or Convenience Class Claim, including (a) any Claim arising from the rejection of an Executory Contract or Unexpired Lease under Section 365 of the Bankruptcy Code and (b) any portion of a Claim to the extent the value of the Holder’s interest in the Estates’ interest in the Property securing such Claim is less than the amount of the Claim, or to the extent that the amount of the Claim subject to setoff is less than the amount of the Claim, as determined pursuant to Section 506(a) of the Bankruptcy Code.

**1.114 “Unsecured Creditor”** means any Creditor holding an Unsecured Claim.

**1.115 “Voting Deadline”** means the date established by the Bankruptcy Court for the filing of Ballots to accept or reject the Plan.

## ARTICLE II TREATMENT OF ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

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

**2.02 Administrative Expense Claims.** Except as otherwise provided below, on or before the later to occur of (i) thirty (30) days following the Administrative Expense Claim Bar Date, or (ii) ten (10) business days following the date of entry of a Final Order allowing the Claim, each Holder of an Allowed Administrative Expense Claim shall be paid in full, in cash in an amount equal to the Allowed Amount of its Administrative Expense Claim, in accordance with Section 1129(a)(9)(A) of the Bankruptcy Code. In the case of Professional Compensation Claims which have been allowed by Final Order, to the extent not already paid, such Claims shall be paid in full, in cash, on or before the later of the Effective Date or ten business days following the date of a Final Order allowing such Claims. Postpetition Health Claims shall be paid as set forth in Article II, Section 2.03. Postpetition Georgia Worker’s Compensation Claims shall be paid as set forth in Article II, Section 2.04. Notwithstanding the foregoing, each Holder of an Allowed Administrative Expense Claim may be paid (a) on such other terms as may be agreed upon by the

Holder of such Allowed Administrative Expense Claim and the Liquidating Trustee or (b) as otherwise ordered by a Final Order of the Bankruptcy Court.

**2.03 *Postpetition Health Claims.*** Following the Effective Date, the Liquidating Trustee or his or her designee shall be authorized to administer and pay Postpetition Health Claims in accordance with the terms of the Health Plan. The Liquidating Trustee, in his or her discretion, shall be allowed to retain or continue to retain a third party administrator to handle the administration of Postpetition Health Claims. The Liquidating Trustee shall be entitled to rely upon information provided by such third party administrator. Additionally, the Liquidating Trustee shall be authorized to establish one or more reserves to fund payment of estimated future Postpetition Health Claims. Liquidating Trustee shall be entitled but not required to seek entry of a Court order approving the amount of such reserve(s).

**2.04 *Postpetition Georgia Worker's Compensation Claims.*** Following the Effective Date, the Liquidating Trustee or his or her designee shall be authorized to administer and pay Postpetition Georgia Worker's Compensation Claims in accordance with applicable laws and regulations governing self-insured employers in Georgia.

**2.05 *Fees and Charges.*** All fees and charges assessed against the Estate under Chapter 123 of Title 28, United States Code, 28 U.S.C. §§1911-1930, which are incurred but unpaid for all periods through the Effective Date, will be paid on the Effective Date or as soon as reasonably practicable thereafter, by the Liquidating Trustee.

**2.06 *Applications for Allowance of Administrative Expenses.*** All Holders of Administrative Expense Claims (other than Claims pursuant to 11 U.S.C. § 503(b)(9)) that do not file an application or other Bankruptcy Court-approved pleading on or before the date which is thirty (30) days after the Effective Date (unless such date is extended by the Court) will be forever barred from asserting such Administrative Expense Claim against the Debtors, their Estates or the Liquidating Trustee. Claims arising under 11 U.S.C. §503(b)(9) were required to be filed by November 21, 2017 for non-governmental entities or January 12, 2018 for governmental entities pursuant to the Bar Date Order.

**2.07 *Priority Tax Claims.*** The Liquidating Trustee will pay all Allowed Priority Tax Claims in Cash in full on the Effective Date or as soon thereafter as is reasonably practicable, but in no event later than the end of five (5) years from the Petition Date. As to any Allowed Priority Tax Claim not paid in full on the Effective Date, the Holder of such Allowed Priority Tax Claim shall receive on account of such Allowed Priority Tax Claim regular quarterly installment payments in Cash in accordance with Section 1129(a)(9)(C) of the Bankruptcy Code through and including the date such Allowed Priority Tax Claim is paid in full. Holders of Allowed Priority Tax Claims shall receive interest on account of their Allowed Priority Tax Claims at the Section 6621 Interest Rate; provided, however, that if the Holder of such Allowed Priority Tax Claim is a city, county or state, such Holder shall receive interest on account of its Allowed Priority Tax Claim at the applicable statutory rate under state law. To the extent that any Allowed Priority Tax Claim is allowed after the Effective Date, it will be paid in full in Cash as soon after allowance as

is reasonably practicable over a period no later than the end of five (5) years from the Petition Date, including interest as calculated above.

### **ARTICLE III CLASSIFICATION OF CLAIMS AND INTERESTS**

**3.01 *In General.*** Pursuant to Section 1122 of the Bankruptcy Code, the Claims against and Equity Interests in the Debtors and the Property of the Debtors are classified as set forth in this Article. The rights of all Claimants, and the responsibilities of the Debtors with respect to those Claimants, shall be based upon their classification herein. A Claim or Equity Interest is classified (a) in a particular Class only to the extent the Claim or Equity Interest qualifies within the description of that Class and (b) in a different Class to the extent the Claim or Equity Interest qualifies within the description of that different Class. Unless otherwise expressly stated, the Classes of Claims set forth below include all Claims that qualify within the description of that Class. As of the Confirmation Hearing, any Class of Claims which does not contain any Creditor's Claims will be deemed deleted automatically from the Plan, and any Class of Claims which does not contain an Allowed Claim (or a Claim temporarily or provisionally Allowed by the Bankruptcy Court for voting purposes) will be deemed automatically deleted from the Plan with respect to voting on confirmation of the Plan.

**3.02 *Classes.*** The Claims of Creditors and Holders of Equity Interests under this Plan are divided into the following classes, which classes are mutually exclusive:

- (a) Class 1 shall consist of all Allowed Priority Claims.
- (b) Class 2 shall consist of Allowed Secured Claims of the ABL Lenders.
- (c) Class 3 shall consist of Allowed Secured Claims of Cygnets, LLC.
- (d) Class 4 shall consist of Allowed Secured Claims of CT Lender, LLC.
- (e) Class 5 shall consist of the Allowed Secured Claims against the Debtors that are not included in Class 2, Class 3, or Class 4.
- (f) Class 6 shall consist of the Allowed Unsecured Claims not included in Class 7.
- (g) Class 7 shall consist of all Allowed Convenience Class Claims.
- (h) Class 8 consists of all Allowed Equity Interests in the Debtors.

### **ARTICLE IV IMPAIRMENT OF CLAIMS AND INTERESTS UNDER THE PLAN**

**4.01 *Impaired Classes.*** Classes 6, 7 and 8 are impaired under the Plan. Holders of Equity Interests in Class 8 do not retain any property under the Plan on account of such Equity

Interests; therefore, under the provisions of Section 1126(g) of the Bankruptcy Code, Class 8 is deemed not to have accepted the Plan.

**4.02 Unimpaired Classes.** Classes 1, 2, 3, 4 and 5 are unimpaired under the Plan. These classes are deemed to have accepted the Plan under the provisions of Section 1126(f) of the Bankruptcy Code.

## **ARTICLE V TREATMENT OF CLASSES UNDER THE PLAN**

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

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

**5.03 Class 1: Priority Claims.** Each holder of an Allowed Priority Claim designated in Class 1 shall be paid as follows:

- (a) In full, in cash, on or before the later of the Effective Date or, if an objection to such Claim is asserted, five business days following the date of a Final Order allowing any such Claim; or
- (b) Upon such other terms as may be agreed to between the Liquidating Trustee and a Holder of an Allowed Priority Claim.

Class 1 is unimpaired by the Plan. Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan.

**5.04 Class 2: Allowed Secured Claims of ABL Lenders.** Class 2 consists of the Allowed Secured Claims of the ABL Lenders against the Debtors which survived the closing of the Purchase Agreement in accordance with the Cash Collateral Agreement. On and after the Effective Date, the ABL Lenders shall retain all rights and interests under the Cash Collateral Agreement, including without limitation, all rights with respect to Cash Collateral (as defined therein), in satisfaction of its Class 2 Claims. Class 2 is unimpaired by the Plan. Holders of Class 2 Claims are not entitled to vote to accept or reject the Plan.

**5.05 Class 3: Allowed Secured Claims of Cygnets.** Class 3 consists of the Allowed Secured Claims of Cygnets against the Debtors. On or before the later to occur of the Effective Date or entry of a Final Order allowing the Claim, Allowed Secured Claims of Cygnets shall be paid from net sale proceeds generated from the sale of certain Cygnets collateral, as

authorized by the Sale Order or other order of the Court. Class 3 is unimpaired by the Plan. Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan

**5.06 Class 4: *Allowed Secured Claims of CT Lender.*** Class 4 consists of the Allowed Secured Claims of CT Lender against the Debtors. On or before the later to occur of the Effective Date or entry of a Final Order allowing the Claim, Allowed Secured Claims of CT Lenders shall be paid from net sale proceeds generated from the sale of certain CT Lender collateral, as authorized by the Sale Order or other order of the Court. Class 4 is unimpaired by the Plan. Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan

**5.07 Class 5: *All Other Allowed Secured Claims.*** Each Allowed Secured Claim in Class 5 shall be satisfied, at the Liquidating Trustee's option, as follows (i) by the transfer, assignment and conveyance by the Liquidating Trustee of the collateral securing such Class 5 Claim to the Holder of such Allowed Secured Claim in full and final satisfaction of such Allowed Secured Claim, (ii) by the sale of the collateral securing such Allowed Secured Claim, following Designated Notice, and the payment by the Liquidating Trustee to the Holder of such Allowed Secured Claim of the net sale proceeds in an amount equal to the value of such Holder's interest in the collateral in full and final satisfaction of such Allowed Secured Claim, or (iii) by payment of Cash to the Holder of such Allowed Secured Claim in an amount equal to the value of such holder's interest in the collateral securing the Allowed Secured Claim. Class 5 is unimpaired under the Plan. Holders of Allowed Class 5 Secured Claims are not entitled to vote to accept or reject the Plan.

**5.08 Class 6: *Unsecured Claims.*** Class 6 consists of all Allowed Unsecured Claims which are not Class 7 Convenience Class Claims. As soon as is reasonably practicable following the Effective Date, as determined by the Liquidating Trustee in his or her sole discretion, the Liquidating Trustee shall make a pro-rata Distribution to the Holders of Allowed Class 6 Claims of the Liquidation Proceeds less the Retained Proceeds that remain in the Liquidating Trust after the payment and satisfaction of Allowed Claims in Classes 1 to 5 and Class 7. On each Distribution Date or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall make pro-rata Distributions to the holders of Allowed Class 6 Claims of any available Liquidation Proceeds less Retained Proceeds that remain in the Liquidating Trust (after the payment and satisfaction of any remaining unpaid Allowed Claims in Classes 1, 2, 3, 4 or 5), until the date on which all Allowed Class 6 Claims have been paid in full. If Liquidation Proceeds remain after payment and satisfaction of all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Claims in Classes 1 through 5 and Class 7, and all expenses of the Liquidating Trust and all Disputed Claims have either been reserved or an appropriate reserve established, Holders of Allowed Class 6 Claims shall be entitled to interest on their Allowed Class 6 Claim calculated at the post-judgment rate of interest for the State of Georgia. Class 6 is Impaired by the Plan. Each Holder of an Allowed Class 6 Unsecured Claim is entitled to vote to accept or reject the Plan.

**5.09 Class 7: *Convenience Class Claims.*** Class 7 consists of all Allowed Unsecured Claims equal to or less than five thousand dollars (\$5,000.00) and all Allowed Unsecured Claims that exceed five thousand dollars (\$5,000.00) and whose Holders have elected voluntarily to reduce

their Claims to five thousand dollars (\$5,000.00), waive and release any excess amount or remaining Claims against the Debtors, their Estates, and the Liquidating Trust and participate in Class 7. In the event Class 7 votes to reject the Plan, Class 7 will be eliminated and Holders of Claims that would otherwise be included in Class 7 will be treated as Holders of Class 6 Claims. On or before sixty days following the Effective Date or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall make a one-time Distribution to each Holder of an Allowed Class 7 Claim in an amount equal to five percent (5%) of such Holder's Allowed Claim in Class 7 in full and final satisfaction of such Allowed Claim. To the extent that any Class 7 Claim is allowed after the Effective Date, it will be paid five percent (5%) of the Allowed Claim in Cash within five (5) business days after the Claim is allowed or as soon thereafter as is reasonably practicable. Class 7 is Impaired by the Plan. Each Holder of an Allowed Class 7 Convenience Class Claim is entitled to vote to accept or reject the Plan.

**5.10 Class 8: Equity Interests.** Class 8 consists of all Equity Interests in the Debtors. All Equity Interests of the Debtors shall be cancelled on the Effective Date; provided, however, that if Assets remain in the Liquidating Trust following payment in full of all Allowed Claims of Classes 1 through 7 (including any interest provided for in the Plan), such remaining Assets shall be distributed Pro Rata to the Holders of Equity Interests as of the Effective Date. Because Holders of Equity Interests in Class 8 do not retain any property under the Plan on account of such Equity Interests; under the provisions of Section 1126(g) of the Bankruptcy Code, Class 8 is deemed not to have accepted the Plan.

## **ARTICLE VI MEANS FOR IMPLEMENTATION AND EXECUTION OF PLAN**

**6.01 Substantive Consolidation.** Entry of the Confirmation Order shall constitute the approval, pursuant to Section 105(a) of the Bankruptcy Code, of the substantive consolidation as of the Effective Date of Beaulieu Group, LLC and Beaulieu Trucking, LLC and their Estates for all purposes related to Claims and distribution of assets under the Plan. On and after the Effective Date (i) all assets and liabilities of both of the Debtors and their Estates shall be treated as though they were merged with and into Beaulieu Group, LLC as the substantively consolidated Debtor; (ii) no distributions shall be made under the Plan on account of any Claim held by either of the Debtors against any other Debtor; (iii) all guarantees of either Debtor of the obligations of the other Debtor shall be eliminated; and (iv) each and every Claim and Proof of Claim against either of the Debtors shall be deemed one Claim or Proof of Claim against both of the Debtors and a single obligation of the consolidated Debtors on and after the Effective Date. Notwithstanding the foregoing, the substantive consolidation effected pursuant hereto shall not affect or limit in any manner whatsoever (a) defenses to any Cause of Action; (b) requirements for any third party to establish mutuality in order to assert a right of setoff; (c) the legal and corporate structure of the Debtors; (d) any perfection of Lien issues, including rights to avoid Liens pursuant to Section 544 of the Bankruptcy Code or applicable state law; (e) valuation of any Secured Claims, including rights to challenge or object to alleged Secured Claims for any reason, including valuation issues under Section 506 of the Bankruptcy Code; or (f) any rights to challenge and object to any Claims that are Disputed Claims for any reason whatsoever, including any alleged Secured Claims.

**6.02 *Creation of Liquidating Trust.*** On the Effective Date, the Liquidating Trust shall be created. The Liquidating Trust shall be governed by the Liquidating Trust Agreement, the Plan and the Confirmation Order. A copy of the Liquidating Trust Agreement is attached hereto as Schedule 6.02.

**6.03 *Vesting of Liquidating Trust Assets.*** On the Effective Date, or such later dates as are specified in the Plan, the Debtors shall, pursuant to Section 1123(b) of the Bankruptcy Code, transfer all Property to the Liquidating Trust. All transfers to the Liquidating Trust shall be free and clear of all liens, claims, interests and encumbrances, except as otherwise set forth in the Plan. For the avoidance of doubt, nothing herein shall be construed to restrict or limit the ability or standing of the Liquidating Trustee to assert any Causes of Action transferred to the Liquidating Trust. In connection with any Causes of Action that are included in the Liquidating Trust, any attorney-client privilege, work-product privilege or protection, or other privilege or immunity attaching to any documents or communications thereto (whether written or oral) will also exist for the benefit of the Liquidating Trust and will vest in the Liquidating Trustee and his or her representatives, and will also be preserved for and as to the Debtors. The Liquidating Trustee is authorized to take all necessary actions to benefit from such privileges. For federal income tax purposes, the transfer of the Property to the Liquidating Trust will be deemed to be a transfer to the Holders of Allowed Claims (who are the Liquidating Trust Beneficiaries), followed by a deemed transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust.

**6.04 *Treatment of Liquidating Trust for Federal Income Tax Purposes; No Successor-in-Interest.*** The Liquidating Trust will be established for the primary purpose of liquidating the Liquidating Trust Assets, in accordance with Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Accordingly, the Liquidating Trustee will, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions to the Liquidating Trust Beneficiaries in accordance with the Plan and the Liquidating Trust Agreement and not unduly prolong its duration. The Liquidating Trust will not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Liquidating Trust Agreement.

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

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

**6.05 Appointment, Removal, and Resignation of the Liquidating Trustee.** The Liquidating Trust Agreement shall govern the selection, appointment, resignation and removal of the Liquidating Trustee. The initial Liquidating Trustee shall be PMCM 2, LLC.

**6.06 Rights and Obligations of the Liquidating Trustee.** The Liquidating Trustee shall have the rights, duties and obligations set forth in the Liquidating Trust Agreement and the Plan. Such rights, duties and obligations include, but are not limited to, exercising control and authority over the Liquidating Trust Assets and responsibility for liquidating and administering (or abandoning, as the case may be) the Liquidating Trust Assets and taking actions on behalf of, and representing, the Liquidating Trust. The Liquidating Trustee shall be the representative of the Estates as contemplated by Section 1123(b)(3)(B) of the Bankruptcy Code. The Liquidating Trustee shall have the rights and powers of a trustee appointed under Sections 702 and 1104 of the Bankruptcy Code to act on behalf of the Estates and the Liquidating Trust with regard to the administration of the Cases and the Property of the Estates and the Liquidating Trust. The Liquidating Trustee shall have the authority to bind the Liquidating Trust within the limitations set forth in the Liquidating Trust Agreement, the Plan and the Confirmation Order, but shall for all purposes hereunder be acting in the capacity of Liquidating Trustee and not individually. Within the limitations set forth in the Liquidating Trust Agreement and subject to the provisions of the Plan, the responsibilities and authority of the Liquidating Trustee, shall include, without limitation: (a) the making of Distributions to Holders of Allowed Claims as contemplated in the Plan; (b) establishing and maintaining disputed claim reserves to be determined in the discretion of the Liquidating Trustee; (c) conducting an analysis of Claims not already allowed by prior order of the Court, and prosecuting objections thereto or settling or otherwise compromising such Claims if necessary and appropriate in accordance with the Plan; (d) filing appropriate tax returns with respect to the Liquidating Trust in the exercise of its fiduciary obligations; (e) retaining the Liquidating Trust Professionals; (f) taking such actions as are necessary to prosecute, resolve or compromise, as appropriate, all Causes of Action assigned to the Liquidating Trust; (g) opening, closing and maintaining new or existing bank accounts, letters of credit and other financial instruments; and (h) taking such actions as are necessary and reasonable to carry out the purposes of the Liquidating Trust.

**6.07 Compensation of the Liquidating Trustee.** The Liquidating Trustee shall be compensated in accordance with the provisions of the Liquidating Trust Agreement.



**6.08 Liquidating Trust Expenses.** All Liquidating Trust Expenses will be charged against and paid from the proceeds of the Liquidating Trust Assets, and the Liquidating Trustee will pay the same as and when due and payable. The Liquidating Trustee will engage attorneys to prosecute Causes of Action, and represent the Liquidating Trustee as set forth in the Plan and the Liquidating Trust Agreement. The Professionals retained by the Liquidating Trustee will submit periodic statements for services rendered and costs incurred to the Liquidating Trustee for review and approval. The Liquidating Trustee will have ten (10) days to object to any such statement. In the event that any such objection is received by the relevant Professional and cannot be promptly resolved by such Professional and the objecting party, the dispute will be submitted by the Liquidating Trustee to the Bankruptcy Court for adjudication following Designated Notice. Any undisputed portion of such disputed invoice shall be promptly paid. The Bankruptcy Court will retain jurisdiction to adjudicate any such objection. In the event that no objection is raised to a statement within the ten (10) day period, such statement will be promptly paid by the Liquidating Trustee. Any compensation paid to Professionals and the Liquidating Trustee shall be set forth in the reports to be filed by the Liquidating Trustee as described in § 6.09 below.

**6.09 Post-Confirmation Report of Liquidating Trust.** The Liquidating Trustee shall file all required post-confirmation operating reports through the date the Cases are closed.

**6.10 Dissolution of Liquidating Trust.** The Liquidating Trust will be dissolved no later than six (6) years from the Effective Date unless the Bankruptcy Court, upon a motion filed prior to the sixth (6th) anniversary or the end of any extension period approved by the Bankruptcy Court (the filing of which will automatically extend the term of the Liquidating Trust pending the entry of an order by the Bankruptcy Court granting or denying the motion), determines that a fixed period extension (not to exceed two (2) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or opinion letter that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets. After (a) the final Distribution of the Disputed Claims Reserve and the balance of the Liquidating Trust Assets pursuant to this Plan, and (b) the filing by or on behalf of the Liquidating Trust of a certification of dissolution with the Bankruptcy Court in accordance with this Plan, the Liquidating Trust will be deemed dissolved for all purposes without the necessity for any other or further actions.

**6.11 Full and Final Satisfaction Against Liquidating Trust.** On and after the Effective Date, the Liquidating Trust will have no liability on account of any Claims or Equity Interests except as set forth in the Plan and in the Liquidating Trust Agreement. All payments and all Distributions made by the Liquidating Trustee under the Plan will be in full and final satisfaction, settlement, and release of and in exchange for all Claims or Equity Interests against the Liquidating Trust.

**6.12 The Committee and the Post-Confirmation Committee.** On the Effective Date, the Committee will be dissolved and Post-Confirmation Committee will be formed to serve as an advisory board to the Liquidating Trustee. The Post-Confirmation Committee will assume the rights and obligations set forth in the Plan and the Liquidating Trust Agreement. The initial

members of the Post-Confirmation Committee shall be identified on or before the Confirmation Date. Each member of the Post-Confirmation Committee must hold, at all times throughout their service on the Post-Confirmation Committee, an Unsecured Claim against the Estate (or be the legal nominee or designee of a holder of an Unsecured Claim against the Estate). Any member that sells all of its Unsecured Claim against the Estate shall be immediately removed from the Post-Confirmation Committee. The purchaser of an Unsecured Claim from a member of the Post-Confirmation Committee shall not automatically succeed to the member's position on the Post-Confirmation Committee by reason of the purchase of the Unsecured Claim but may be appointed pursuant to the bylaws of the Post-Confirmation Committee. A member's rights of membership on the Post-Confirmation Committee may not be transferred to or otherwise be assigned or delegated to another person or entity without the express consent of the Post-Confirmation Committee.

**6.13 Further Transactions.** The Liquidating Trustee shall be authorized to execute, deliver, file, and/or record such contracts, instruments, releases, indentures, and other agreements or documents, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. In order to facilitate the liquidation and distribution of the Estates and the wind-up of the Debtors' affairs, on the Effective Date the Liquidating Trustee shall be deemed, by operation of law and the Confirmation Order and without need for any action by any person affiliated with the Debtors or any officer or director of the Debtors, to hold an irrevocable power of attorney on behalf of the Debtors and the Estates and with respect to all assets of the Debtors and the Estates.

**6.14 Administration of Claims.** Subsequent to the Effective Date, the Liquidating Trustee shall review the filed Proofs of Claim and audit these Claims with regard to (i) the supporting documents evidencing the Claims; (ii) the appropriateness of the asserted priority of each Claim; (iii) the amount of the Claim as set forth in the Proof of Claim; (iv) the extent to which the Debtors originally scheduled the Claim as contingent, disputed or unliquidated; and (v) whether the Proof of Claim is otherwise valid, permissible, due and payable under the Bankruptcy Code and applicable state law. Following the Confirmation Date, the Liquidating Trustee shall complete his or her review of the Claims and shall initiate, file and prosecute any and all actions deemed necessary and appropriate to dispute, disallow, object to or otherwise quantify the Claims against the Debtors and/or their Estate(s). All Claims Litigation, including actions that arise out of the amount of a submitted Claim, or any objection to a submitted Claim, shall vest with the Liquidating Trust and shall be prosecuted by the Liquidating Trustee. The Liquidating Trustee shall take actions regarding the administration, reconciliation and settlement of Claims, and shall object to Claims and prosecute Claims actions, until such time as the Liquidating Trustee determines that further pursuit of litigation or actions objecting to Claims is no longer cost efficient, and will be of no further benefit to the Estates and their creditors. **THE FAILURE TO OBJECT TO ANY CLAIM PRIOR TO THE COMMENCEMENT OF THE HEARING ON CONFIRMATION OF THE PLAN SHALL NOT BE DEEMED TO BE A WAIVER OF THE RIGHT TO OBJECT THEREAFTER TO SUCH CLAIM IN WHOLE OR IN PART FOR THE PURPOSE OF DISTRIBUTION.**

**6.15 Preservation of Rights of Action.** Except as otherwise expressly provided herein, any rights or Causes of Action accruing to or held by the Debtors or their Estates prior to the Effective Date shall be deemed Assets of, and vest in, the Liquidating Trust on the Effective Date, including but not limited to those Causes of Action specifically identified in the Disclosure Statement. The Liquidating Trustee may pursue those rights of action, as deemed appropriate. The Plan, the Disclosure Statement and Schedules do not set forth an exhaustive list of all Causes of Action preserved under the Plan and vesting in the Liquidating Trust and the failure to identify or list any particular Cause of Action therein shall not constitute a waiver or release of such Cause of Action. **ALL CAUSES OF ACTIONS NOT EXPRESSLY RELEASED OR WAIVED IN THE PLAN OR THE CONFIRMATION ORDER SHALL SURVIVE CONFIRMATION, AND THE ASSERTION OF CAUSES OF ACTIONS SHALL NOT BE BARRED OR LIMITED BY ANY ESTOPPEL, WHETHER JUDICIAL, EQUITABLE OR OTHERWISE.**

**6.16 Retention of Employees and Agents.** After the Effective Date, the Liquidating Trustee shall have the authority, without the necessity of obtaining any approval from the Court or providing notice to any party in interest, to retain and compensate such employees, professional persons, and agents as the Liquidating Trustee may deem necessary or desirable to complete (i) the liquidation and administration of the Liquidating Trust Assets; (ii) the administration of Claims; and (iii) the Distribution of Liquidation Proceeds to the Liquidating Trust Beneficiaries. Without limiting the generality of the foregoing, the Liquidating Trustee shall be entitled to employ (i) Scroggins & Williamson, P.C., (ii) McGuireWoods, LLP, (iii) Armory Strategic Partners, LLC, (iv) Fox Rothschild (v) Thompson Hine LLP, and (vi) Phoenix Management Services. These agents will continue to work for the Estates, or the Liquidating Trustee, as appropriate, until such time as the Liquidating Trustee determines that the services of these agents are no longer necessary for the administration and wind-up of the Estates.

**6.17 Continued Corporate Existence.** The existence of each of the Debtors as legal entities shall continue on and after the Effective Date and until the Debtors are formally dissolved or administratively dissolved. Upon or promptly following the Consummation Date, the Liquidating Trustee may (but is not required to) take necessary steps to formally and affirmatively dissolve these Debtors, unless the Liquidating Trustee concludes that the continued existence of the Debtors is necessary, desirable or appropriate. From and after the Effective Date, the Liquidating Trustee shall have the sole right and authority to control and direct the activities of these Debtors and the Estates.

**ARTICLE VII  
DISCHARGE, RELEASE, LIMITATION  
OF LIABILITY, AND GENERAL INJUNCTION**

**7.01 GENERAL INJUNCTION. PURSUANT TO SECTIONS 105, 1123, 1129 AND 1141 OF THE BANKRUPTCY CODE, IN ORDER TO PRESERVE AND IMPLEMENT THE VARIOUS TRANSACTIONS CONTEMPLATED BY AND PROVIDED FOR IN THE PLAN, AS OF THE EFFECTIVE DATE AND THROUGH THE CONSUMMATION DATE, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER, ALL PERSONS OR ENTITIES THAT HAVE HELD, CURRENTLY HOLD OR MAY HOLD A CLAIM, DEBT, OR LIABILITY AGAINST THE DEBTORS, THE ESTATES OR ANY OF THEIR RESPECTIVE PROPERTY, ARE AND SHALL BE ENJOINED AND BARRED TO THE FULLEST EXTENT PERMITTED BY LAW FROM TAKING ANY OF THE FOLLOWING ACTIONS ON ACCOUNT OF ANY SUCH CLAIMS, DEBTS, OR LIABILITIES, OTHER THAN ACTIONS BROUGHT TO ENFORCE ANY RIGHTS OR OBLIGATIONS UNDER THE PLAN OR THE PLAN DOCUMENTS: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING AGAINST THE LIQUIDATION TRUST, THE DEBTORS, THE ESTATES, OR THEIR RESPECTIVE PROPERTY; (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING IN ANY MANNER ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST THE LIQUIDATING TRUST, THE DEBTORS, THE ESTATES, OR THEIR RESPECTIVE PROPERTY; (C) CREATING, PERFECTING OR ENFORCING ANY LIEN OR ENCUMBRANCE AGAINST THE LIQUIDATING TRUST, THE DEBTORS, THE ESTATES, OR THEIR RESPECTIVE PROPERTY; (D) ASSERTING A SETOFF, RIGHT OF SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO THE LIQUIDATING TRUST, THE DEBTORS OR THE ESTATES; (E) COMMENCING OR CONTINUING, IN ANY MANNER OR IN ANY PLACE, ANY ACTION THAT DOES NOT COMPLY WITH OR IS INCONSISTENT WITH THE PROVISIONS OF THE PLAN OR THE CONFIRMATION ORDER; OR (F) INTERFERING WITH OR IN ANY MANNER WHATSOEVER DISTURBING THE RIGHTS AND REMEDIES OF THE LIQUIDATING TRUST, THE DEBTORS OR THE ESTATES UNDER THE PLAN AND THE PLAN DOCUMENTS AND THE OTHER DOCUMENTS EXECUTED IN CONNECTION THEREWITH. THE LIQUIDATING TRUSTEE SHALL HAVE THE RIGHT TO INDEPENDENTLY SEEK ENFORCEMENT OF THIS GENERAL INJUNCTION PROVISION. THIS GENERAL INJUNCTION PROVISION IS AN INTEGRAL PART OF THE PLAN AND IS ESSENTIAL TO ITS IMPLEMENTATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PROVISIONS OF THIS § 7.01 SHALL NOT RELEASE, OR BE DEEMED A RELEASE OF, ANY OF THE CAUSES OF ACTION.**

**7.02 EXCULPATION FROM LIABILITY. THE DEBTORS, THEIR CURRENT OFFICERS, AND THEIR PROFESSIONALS (ACTING IN SUCH CAPACITY) AND THE MEMBERS OF THE CREDITORS COMMITTEE AND THEIR PROFESSIONALS**

(ACTING IN SUCH CAPACITY) (COLLECTIVELY, THE “EXCULPATED PARTIES”) SHALL NEITHER HAVE NOR INCUR ANY LIABILITY WHATSOEVER TO ANY PERSON OR ENTITY FOR ANY ACT TAKEN OR OMITTED TO BE TAKEN IN GOOD FAITH IN CONNECTION WITH OR RELATED TO THE FORMULATION, PREPARATION, DISSEMINATION, OR CONFIRMATION OF THE PLAN, THE DISCLOSURE STATEMENT, ANY PLAN DOCUMENT, OR ANY CONTRACT, INSTRUMENT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO, OR ANY OTHER ACT TAKEN OR OMITTED TO BE TAKEN, IN CONNECTION WITH THE PLAN OR THE CASES, IN EACH CASE FOR THE PERIOD ON AND AFTER THE PETITION DATE AND THROUGH THE EFFECTIVE DATE; PROVIDED, HOWEVER, THAT THIS EXCULPATION FROM LIABILITY PROVISION SHALL NOT BE APPLICABLE TO ANY LIABILITY FOUND BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM FRAUD OR THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF ANY SUCH PARTY. THE RIGHTS GRANTED UNDER THIS § 7.02 ARE CUMULATIVE WITH (AND NOT RESTRICTIVE OF) ANY AND ALL RIGHTS, REMEDIES, AND BENEFITS THAT THE EXCULPATED PARTIES HAVE OR OBTAIN PURSUANT TO ANY PROVISION OF THE BANKRUPTCY CODE OR OTHER APPLICABLE LAW. IN FURTHERANCE OF THE FOREGOING, THE EXCULPATED PARTIES SHALL HAVE THE FULLEST PROTECTION AFFORDED UNDER SECTION 1125(E) OF THE BANKRUPTCY CODE AND ALL APPLICABLE LAW FROM LIABILITY FOR VIOLATION OF ANY APPLICABLE LAW, RULE OR REGULATION GOVERNING THE SOLICITATION OF ACCEPTANCE OR REJECTION OF A PLAN OR THE OFFER, ISSUANCE, SALE OR PURCHASE OF SECURITIES. THIS EXCULPATION FROM LIABILITY PROVISION IS AN INTEGRAL PART OF THE PLAN AND IS ESSENTIAL TO ITS IMPLEMENTATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PROVISIONS OF THIS § 7.02 SHALL NOT RELEASE, OR BE DEEMED A RELEASE OF, ANY OF THE CAUSES OF ACTION.

**7.03 RELEASE.** ON THE EFFECTIVE DATE, THE EXCULPATED PARTIES SHALL BE UNCONDITIONALLY AND ARE HEREBY DEEMED TO BE UNCONDITIONALLY RELEASED FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, LOSSES, RIGHTS, REMEDIES, CAUSES OF ACTION, CHARGES, COSTS, DEBTS, INDEBTEDNESS, OR LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, EVENT OR OTHER OCCURRENCE TAKING PLACE BETWEEN THE PETITION DATE AND THE EFFECTIVE DATE, WHICH IS IN ANY WAY RELATING TO THE DEBTORS, THE CASES, ANY PROPERTY OF THE DEBTORS, THE BUSINESS OR OPERATIONS OF THE DEBTORS, ANY PLAN DOCUMENTS, THE PLAN, OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY; PROVIDED, HOWEVER, THAT THIS RELEASE PROVISION SHALL NOT BE APPLICABLE TO ANY LIABILITY FOUND BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM FRAUD OR THE WILLFUL

**MISCONDUCT OR GROSS NEGLIGENCE OF ANY SUCH EXCULPATED PARTY. THE CONFIRMATION ORDER SHALL ENJOIN THE PROSECUTION BY ANY PERSON OR ENTITY, WHETHER DIRECTLY, DERIVATIVELY OR OTHERWISE, OF ANY CLAIM, OBLIGATION, SUIT, JUDGMENT, DAMAGE, LOSS, RIGHT, REMEDY, CAUSE OF ACTION, CHARGE, COST, DEBT, INDEBTEDNESS, OR LIABILITY WHICH AROSE OR ACCRUED DURING SUCH PERIOD OR WAS OR COULD HAVE BEEN ASSERTED AGAINST ANY OF THE EXCULPATED PARTIES, EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR IN THE CONFIRMATION ORDER. EACH OF THE EXCULPATED PARTIES SHALL HAVE THE RIGHT TO INDEPENDENTLY SEEK ENFORCEMENT OF THIS RELEASE PROVISION. THIS RELEASE PROVISION IS AN INTEGRAL PART OF THE PLAN AND IS ESSENTIAL TO ITS IMPLEMENTATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE PROVISIONS OF THIS § 7.03 SHALL NOT RELEASE, OR BE DEEMED A RELEASE OF, ANY OF THE CAUSES OF ACTION.**

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

**7.05 *Continuation of Automatic Stay.*** The automatic stay arising out of Section 362(a) of the Bankruptcy Code shall continue in full force and effect until the Consummation Date, and the Debtors, the Estates, and the Liquidating Trust shall be entitled to all of the protections afforded thereby. The Court shall have the power to grant such additional and supplemental stays as may be necessary or appropriate to protect and preserve the Assets of the Debtors, the Estates and/or the Liquidating Trust or to permit the just and orderly administration of the Estates.

**7.06 *No Liability for Tax Claims.*** Unless a taxing Governmental Authority has asserted a Claim against the Debtors before the Bar Date or Administrative Expense Claim Bar Date

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

**7.07 *Regulatory or Enforcement Actions.*** Nothing in this Plan shall restrict any federal government regulatory agency from pursuing any regulatory or police enforcement action or performing its statutory duties against any Person or Entity in any forum, but only to the extent not prohibited by the automatic stay of Section 362 of the Bankruptcy Code or discharged or enjoined pursuant to Section 524 or 1141(d) of the Bankruptcy Code. Nothing contained in this Article VII, Section 7.07 is intended to, nor shall it, supersede or alter any applicable provisions of the Bankruptcy Code.

**7.08 *No Liability for Untimely Administrative Expense Claims.*** Holders of Administrative Expense Claims (including Holders of any Claims for Postpetition federal, state or local taxes) that do not file an application or other Bankruptcy Court-approved pleading by the Administrative Expense Claims Bar Date will be forever barred from asserting such Administrative Expense Claims against the Debtors, the Estates, or any of their respective Property.

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

If a Proof of Claim is filed by any Creditor asserting a Claim for the same obligation which had previously been listed for such Creditor by the Debtors on the Schedules, then the Scheduled Claim shall be deemed a Disallowed Claim without the need for the Debtors, the Liquidating Trustee or any party in interest to file an objection to such Scheduled Claim. The Claim asserted in the Proof of Claim shall be deemed to replace such Scheduled Claim and shall ultimately become an Allowed Claim, a Disputed Claim or a Disallowed Claim pursuant to the procedures set forth in this Plan.

Notwithstanding any other provisions of the Plan, no payments or distribution shall be made on account of a Disputed Claim until and unless such Claim becomes an Allowed Claim. In lieu of distributions under the Plan to holders of Disputed Claims, a Disputed Claims Reserve shall be maintained by the Liquidating Trustee for payment of any Disputed Claim which becomes an Allowed Claim. Distributions on account of any Disputed Claim that has become an Allowed Claim shall be made within the time periods provided above in Article V, or as soon as is reasonably practicable following allowance of the Claim.

Subsequent to the Effective Date, the Liquidating Trustee shall have the authority to settle and resolve a Disputed Claim that was originally asserted in an amount equal to or less than One

Hundred Fifty Thousand Dollars (\$150,000.00) upon such terms and conditions as the Liquidating Trustee deems appropriate and in the best interests of the Estates. Any such compromise and settlement shall be deemed final and binding upon all parties in interest in the Cases. The Liquidating Trustee shall not have any obligation to provide notice to or file and serve pleadings upon any such parties in interest, and shall not have any requirement to obtain Court approval, in connection with compromising these Claims.

With respect to any Disputed Claim that was originally asserted in an amount that exceeds One Hundred Fifty Thousand Dollars (\$150,000.00), the Liquidating Trustee shall have the authority to compromise and settle any such Claim on such terms as the Liquidating Trustee deems appropriate and in the best interests of the Estates, subject to providing Designated Notice of any such proposed compromise and a reasonable opportunity to object thereto. If a party in interest files a written objection with the Court in the Cases with respect to any proposed compromise of any Disputed Claim, and serves a copy of said objection upon the Liquidating Trustee and his or her counsel, within ten (10) days from the service of Designated Notice of the proposed compromise, then the Court shall schedule a hearing with respect to said objection. If no objection is timely filed and served, the Liquidating Trustee may compromise and settle any Disputed Claim without further authorization. The Liquidating Trustee may file motions which seek to compromise more than one Claim.

## **ARTICLE IX PROVISIONS REGARDING DISTRIBUTIONS**

**9.01 *Date of Distributions.*** As soon as is reasonably practicable following the Effective Date, as determined by the Liquidating Trustee in his or her sole discretion, the Liquidating Trustee shall use the Liquidation Proceeds to make Distributions with respect to Allowed Claims in Classes 1 through 7, as and to the extent provided for herein or as ordered by the Court. Subsequent to the Effective Date, the Liquidating Trustee shall use the Liquidation Proceeds to make Distributions, on each Distribution Date or as soon thereafter as is reasonably practicable, with respect to Allowed Claims as contemplated by and to the extent set forth in the Plan. The Liquidating Trustee shall continue to make Distributions out of the Liquidation Proceeds up to and including the Consummation Date, on which date the Liquidating Trustee will make the final Distribution under this Plan.

**9.02 *Interest on Claims.*** Except as provided in a Final Order entered in these Cases or as provided in Article V, Section 5.08, (a) no holder of any Unsecured Claim (except Priority Tax Claims) shall be entitled to interest accruing on or after the Petition Date on such Claim, and (b) interest shall not accrue or be paid upon any Disputed Claim with respect to the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim, or any part thereof, becomes an Allowed Claim.

**9.03 *Means of Payment.*** All payments made pursuant to this Plan shall be in Cash and by any means reasonably selected by the Liquidating Trustee, including check or wire transfer.



**9.04 Duties of Liquidating Trustee.** The Liquidating Trustee will make all Distributions under the Plan out of the Liquidation Proceeds (and, in the case of Distributions being made on the Consummation Date, out of Retained Proceeds). The Liquidating Trustee will have responsibility for determining pro rata Distributions (as necessary) and sending such Distributions to the appropriate holders of Claims. The duties of the Liquidating Trustee are limited to the ministerial functions set forth specifically in this Plan. The Debtors, the Liquidating Trustee, the Estates, and the officers, directors, attorneys and other agents of the foregoing shall incur no liability for their respective actions (or failures to act) or conduct pursuant to this Plan except to the extent attributable to their willful misconduct or gross negligence. Notwithstanding any other provision of this Plan to the contrary, Distributions may be deferred or delayed in the discretion of the Liquidating Trustee for a reasonable time in the event that such deferral is necessary to permit investments to reach maturity, in the event that additional time is needed to make a proper Distribution, or in the event that the receipt of additional funds is necessary to make meaningful payments.

**9.05 Rounding.** Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding of such fraction down to the nearest whole cent.

**9.06 No Payments of \$100 or Less on Allowed Class 6 Claims Prior to Final Distribution Date.** If a Cash payment to be received by any Holder of an Allowed Claim in Class 6 on any Distribution Date (except the final Distribution on the Consummation Date) would be \$100 or less in the aggregate, notwithstanding any contrary provision of this Plan, no such payment will be made to such Holder, and such Cash, if applicable, shall be held for such Holder until the next Distribution Date, at which time such Cash payment shall be made to the Holder (unless this Section 9.06 shall again apply). The Liquidating Trustee shall include an additional amount in the Reserve for unpaid Distributions resulting from this Section 9.06.

**9.07 Unclaimed Property.** “Unclaimed Property” means any funds payable to holders of Claims which are unclaimed. Unclaimed Property shall include (a) checks (and the funds represented thereby) which have been returned as undeliverable without a proper forwarding address, (b) funds for checks which have not been presented and paid within ninety (90) days of their issuance, and (c) checks (and the funds represented thereby) which were not mailed or delivered because of the absence of a proper address to mail or deliver such property. Unclaimed Property shall be held in an “Unpaid Claims Reserve” to be held for the benefit of the holders of Allowed Claims entitled thereto under the terms of the Plan. For a period of 180 days following the first Distribution to Holders of Allowed Claims (said period being hereinafter referred to as the “**Claiming Period**”), Unclaimed Property shall be held in the Unpaid Claims Reserve solely for the benefit of the Holders of Allowed Claims which have failed to claim such property. During the Claiming Period, Unclaimed Property due the Holder of an Allowed Claim shall be released from the Unpaid Claims Reserve and delivered to such holder upon presentation of proper proof by such holder of its entitlement thereto. In the event that there is Unclaimed Property in the Unpaid Claims Reserve with regard to any Claim, the Liquidating Trustee shall, until such Unclaimed Property is claimed or the Claiming Period with regard to the holder of such Claim has expired, make all subsequent Distributions due with regard to such Claim to the Unpaid Claims Reserve.

After the Claiming Period with regard to such holder has expired, no subsequent Distributions shall be made on account of such Claim, and such Claim shall be treated as being disallowed, waived, and satisfied. At the end of the Claiming Period, the Holder of an Allowed Claim theretofore entitled to Unclaimed Property shall cease to be entitled thereto and the Unclaimed Property shall be Liquidation Proceeds. The Unpaid Claims Reserve may be (but shall not be required to be) maintained as an interest-bearing account. All interest earned thereon shall be Liquidation Proceeds, and no claimant entitled to funds from the Unpaid Claims Reserve shall be entitled to interest with regard to the amounts due to such claimant.

**9.08 Withholding Taxes.** The Liquidating Trustee shall be entitled to deduct any federal or state withholding taxes from any Distributions made with respect to Allowed Claims, as appropriate, and shall otherwise comply with Section 346 of the Bankruptcy Code. Notwithstanding anything to the contrary herein, the Liquidating Trustee shall not be obligated to make any Distribution to any Creditor that has not provided requested tax identification information if such information is required to make a Distribution without withholding taxes from such creditor's Distribution. Holders of Allowed Claims that have not provided tax identification information will be solicited for such information on or before any Distribution Date and included in the Distribution or in a subsequent Distribution once tax identification information is received from the holder.

## **ARTICLE X BALLOTS**

Any ballot which is executed by the Holder of any Allowed Claim but does not indicate acceptance or rejection of the Plan shall be deemed to have accepted the Plan. Any other ballot not filed in accordance with the filing instructions on the ballot pertaining to this Plan shall not be counted for voting purposes.

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

**11.01 Executory Contracts and Unexpired Leases.** Any executory contract or unexpired lease to which the Debtors were a party that has not been assumed or rejected by the Debtors pursuant to a Final Order of the Court as of the Effective Date (unless a motion to assume or reject such executory contract or unexpired lease is pending as of the Effective Date) shall be deemed rejected by the Debtors on the Effective Date. Notwithstanding anything to the contrary herein or in the Disclosure Statement, all insurance policies in force as of the Effective Date shall remain in effect following the Effective Date unless and until rejected by separate motion and/or terminated in accordance with their terms.

**11.02 Rejection Damage Claims.** Claims arising from the rejection of any executory contracts or unexpired leases shall be filed within thirty (30) days following the rejection and shall be treated as Class 6 Claims to the extent Allowed. Any person seeking to assert such a Claim

who fails to file a proof of claim within this thirty (30) day period shall be deemed to have waived said Claim, and it shall be forever barred from asserting a Claim based on such rejection.

**ARTICLE XII  
MODIFICATION OF THE PLAN**

The Debtors and the Committee reserve the right, pursuant to Section 1127(a) of the Bankruptcy Code, to amend or modify the Plan prior to the Confirmation of the Plan. The Plan may be modified, without notice or hearing, or on such notice and hearing as the Court deems appropriate, if the Court finds that the proposed modification does not materially and adversely affect the rights of any parties in interest which have not had notice and an opportunity to be heard with regard to the proposed modification. Without limiting the foregoing, the Plan otherwise may be modified after notice and hearing. In the event of modification at or before Confirmation, any votes in favor of the Plan shall be deemed to be votes in favor of the Plan as modified, unless the Court finds that the proposed modification materially and adversely affects the rights of the parties in interest that cast such votes. After Confirmation of the Plan, the Debtors and/or the Liquidating Trustee, as applicable, reserve the right to modify the Plan as allowed by Section 1127(b) of the Bankruptcy Code, and applicable law.

**ARTICLE XIII  
RETENTION OF JURISDICTION**

The Bankruptcy Court shall retain jurisdiction, notwithstanding entry of the Confirmation Order and notwithstanding the occurrence of the Effective Date of the Plan, for the following purposes:

- a) to enforce all Causes of Action which exist on behalf of the Debtors, the Estates or the Liquidating Trust pursuant to the provisions of this Plan or applicable law;
- b) to enter orders and injunctions and restraints to enforce the provisions of the Plan;
- c) to determine Claims asserted under Section 507(a)(2) of the Bankruptcy Code, including claims for compensation and reimbursement of expenses accruing prior to the Confirmation Date;
- d) to determine any Disputed Claims or disputes concerning the validity of or the market value of any collateral underlying any Secured Claim;
- e) to enter orders regarding interpretation of the Plan, or any document created in connection with the Plan;
- f) to conduct hearings and to enter orders modifying the Plan as provided herein or in the Bankruptcy Code;

- g) to determine any and all applications, Claims, adversary proceedings, contested or litigated matters pending on the Confirmation Date or filed prior to entry of a Final Decree;
- h) to determine any motions for rejection or assumption of executory contracts or unexpired leases, and to determine Claims resulting from rejection of executory contracts and unexpired leases;
- i) to allow, disallow, and estimate, liquidate, or determine any Claims against the Debtors, including Claims for tax liability, but excluding any Claims deemed allowed by this Plan, and to enter or enforce any order requiring the filing of any such Claim before a particular date; and
- j) to enter orders required for the administration of the Plan, including, but not limited to:
  - (i) resolution of disputes pertaining to the amounts of payments under the Plan to Claimants;
  - (ii) conducting Postconfirmation valuation hearings as required by the Plan or authorized by the Bankruptcy Code; and
  - (iii) exercising jurisdiction over any other matter provided for or consistent with the provisions of Chapter 11 of the Bankruptcy Code.

#### **ARTICLE XIV CONDITIONS PRECEDENT TO CONFIRMATION**

**14.01 *Condition Precedent to Confirmation of the Plan.*** Entry of the Confirmation Order, effectiveness of Confirmation of the Plan, and the obligation of the Debtors to consummate this Plan are conditioned upon the Bankruptcy Court having made findings and determinations regarding the Plan as will enable the entry of the Confirmation Order in a manner consistent with the provisions of the Plan and in form and substance satisfactory to the Debtors and the Committee.

**14.02 *Condition Precedent to Effective Date.*** The Effective Date will not occur and the Plan will not be consummated until: (a) the Bankruptcy Court has entered the Confirmation Order on the Docket which is satisfactory in form and substance to the Debtors and the Committee; (b) all actions, documents, and agreements necessary to implement the Plan will have been effected or executed and delivered, as required under the Plan; and (c) the Confirmation Order has become a Final Order.

**14.03 *Waiver of Conditions Precedent.*** The Debtors and the Committee, may elect to waive any condition precedent set forth above (other than Section 14.02(c)).

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

**15.01 *Classes Entitled to Vote.*** Holders of Allowed Claims in each impaired Class shall be entitled to vote to accept or reject the Plan. Each unimpaired Class of Claims shall be deemed to have accepted the Plan, and Holder of Claims in such Classes shall not be entitled to vote to accept or reject the Plan.

**15.02 *Class Acceptance Requirement.*** Under Section 1126(c) of the Bankruptcy Code, an impaired Class of Claims has accepted the Plan if the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class who have voted on the Plan have voted to accept the Plan.

**15.03 *Cramdown.*** The Debtors and the Committee hereby request confirmation pursuant to the “cramdown” provisions of Section 1129(b) of the Bankruptcy Code with respect to any impaired Class that votes to reject the Plan.

**15.04 *Claim Designation.*** The Debtors and the Committee reserve the right to seek to designate, pursuant to Section 1126(e) of the Bankruptcy Code, any Holder of any Claim whose vote on the Plan was submitted for an improper purpose or was otherwise not submitted in good faith.

**ARTICLE XVI  
MISCELLANEOUS**

**16.01 *Objections to Claims.*** On and after the Effective Date, the Liquidating Trustee shall have the exclusive right to make, file and prosecute objections to Disputed Claims (whether scheduled or filed). All such objections shall be filed within one hundred eighty (180) days after the Confirmation Date (“**Claims Objection Deadline**”); however, the Liquidating Trustee may seek extensions of this one hundred eighty (180) day period following Designated Notice. If a party in interest files a written objection with the Court with respect to any proposed extension of time and serves a copy of said objection upon the Liquidating Trustee, and his or her counsel within ten (10) days from the service of Designated Notice of the proposed extension, then the Court shall schedule a hearing with respect to said objection and the deadline for the Liquidating Trustee to object to Claims as authorized under the Plan, shall be deemed extended through the conclusion of such hearing. If no objection is timely filed and served, the proposed extension is granted without further authorization. The failure to object to any Claim prior to the commencement of the hearing on Confirmation of the Plan shall not be deemed to be a waiver of the right to object thereafter to such Claim in whole or in part for the purpose of distribution.

**16.02 *Compliance with Tax and Securities Law Requirements.*** In connection with the Plan, the Liquidating Trustee will comply with all withholding and reporting requirements imposed by federal, state and local taxing authorities, and all distributions hereunder shall be subject to such withholding and reporting requirements. The effectuation of this Plan shall be subject to compliance with all applicable state and federal securities laws.

**16.03 Further Actions.** Pursuant to Bankruptcy Code Section 1142(b), the Confirmation Order shall act and operate as an order of the Court directing the Debtors, the Liquidating Trustee and/or any other necessary parties to execute and deliver or join in the execution and delivery of any instrument required to affect any transfer and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of this Plan. Any transfer taxes arising from transfers of property ordered or made pursuant to this Plan shall be treated in accordance with Section 1146 of the Bankruptcy Code.

**16.04 U.S. Trustee's Fees.** All fees due and owing under 28 U.S.C. § 1930 for periods prior to the Confirmation Date shall be paid on or before the Effective Date. Following confirmation of the Plan, the Liquidating Trustee shall continue to pay timely all Chapter 11 quarterly fees as required by 28 U.S.C. § 1930(a)(6), until a Final Decree is entered or the Cases are otherwise closed.

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

**16.06 Severability.** Should any provision in this Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

**16.07 Revocation.** The Debtors and the Committee reserve the right to revoke and withdraw this Plan prior to Confirmation.

**16.08 Effect of Withdrawal or Revocation.** If the Debtors and/or the Committee revoke or withdraw this Plan prior to Confirmation, then this Plan shall be deemed null and void.

**16.09 Retiree Benefits.** Following the Effective Date, the Debtors shall continue payment of any Retiree Benefits for the duration of the period the Debtors have obligated themselves to provide such benefits, if any, to the extent required by Sections 1114 and 1129(a)(13) of the Bankruptcy Code.

**16.10 Closing the Cases; Charitable Gift.** The Liquidating Trustee, with the approval of the Post-Confirmation Committee, shall be authorized to apply to the Bankruptcy Court for authority to close the Case at any time when the Plan has been substantially consummated or as otherwise appropriate. If, after all Causes of Action have been resolved and Liquidating Trust Assets liquidated or otherwise administered and the proceeds thereof distributed in accordance with the Plan, including by Distributions, the Liquidating Trustee determines that the expense of administering the Plan is likely to exceed the remaining amount of the Liquidation Proceeds, the Liquidating Trustee shall apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to close the Bankruptcy Case; (ii) donate any balance to a charitable organization

selected by the Liquidating Trustee and which is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code; and (iii) close the Bankruptcy Case in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. These provisions shall apply without regard to any applicable non-bankruptcy laws with respect to unclaimed property. Any Creditor, the Liquidating Trustee or the Debtors may petition to reopen the Cases at any time within the seven (7) year period immediately following the Effective Date of the Plan for the purpose of having the Bankruptcy Court interpret any provision of the Plan or enforce the rights of any party under the Plan or under the Bankruptcy Code.

**16.11 Headings.** Headings are utilized in this Plan for the convenience of reference only, and shall not constitute a part of this Plan for any other purpose.

**16.12 Extensions of Time.** The time for the Debtor or the Liquidating Trustee to take any action under this Plan may be extended by the Bankruptcy Court after notice and a hearing.

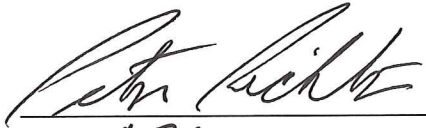
**16.13 Designated Notice.** Notwithstanding any other provision of this Plan, when notice and a hearing is required with regard to any action to be taken by the Debtors or the Liquidating Trustee, Designated Notice shall be sufficient. With respect to any proposed action to be taken as authorized under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

## **ARTICLE XVII REQUEST FOR CONFIRMATION**

The Debtors and the Committee, as proponents of this Plan, request Confirmation of the Plan in accordance with Section 1129(a) of the Bankruptcy Code or, if any impaired class fails to accept the Plan, the Debtors and the Committee reserve the right to request Confirmation in accordance with Section 1129(b) of the Bankruptcy Code.

This 9<sup>th</sup> day of February, 2018.

BEAULIEU GROUP, LLC, and  
BEAULIEU TRUCKING, LLC

By:   
Its: CRO



SCROGGINS & WILLIAMSON, P.C.

FOX ROTHSCHILD LLP

/s/ J. Robert Williamson

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**Schedule 6.02**

Liquidating Trust Agreement

## LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the “**Agreement**”) dated as of February \_\_\_, 2018, which pertains to the administration of the Liquidating Trust, is made effective as of the Effective Date<sup>1</sup> of the Plan, by and between Beaulieu Group, LLC and Beaulieu Trucking, LLC (collectively, the “**Debtors**”) on the one hand, and \_\_\_\_\_, not individually, but solely in his or her capacity as the Liquidating Trustee in accordance with the Plan, on the other hand.

### RECITALS:

(A) On July 16, 2017 (the “**Petition Date**”), the Debtors each filed voluntary petitions with the United States Bankruptcy Court for the Northern District of Georgia, Rome Division (the “**Court**”) under Chapter 11 of the Bankruptcy Code. The Cases are jointly administered under Case No. 17-41677-mgd.

(B) On July 21, 2017, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “**Committee**”).

(C) On February 9, 2018, the Debtors and the Committee filed their Joint Plan of Liquidation (the “**Plan**”) and Disclosure Statement to Accompany Joint Plan of Liquidation (the “**Disclosure Statement**”).

(D) On \_\_\_\_\_, 2018, the Bankruptcy Court entered the Confirmation Order confirming the Plan. A copy of the confirmed Plan is attached hereto as **Exhibit 1**.

(E) The Plan provides for the creation of a post-confirmation Liquidating Trust to hold and administer the Liquidating Trust Assets and to distribute the proceeds therefrom to the Liquidating Trust Beneficiaries, in accordance with the terms of this Agreement and the Plan. This Agreement is executed to establish the Liquidating Trust and to facilitate the Plan.

(F) The Liquidating Trust is created on behalf of, and for the benefit of, the Liquidating Trust Beneficiaries.

(G) The respective powers, authority, responsibilities and duties of the Liquidating Trustee shall be governed by this Agreement, the Plan, the Confirmation Order and other applicable orders issued by the Bankruptcy Court.

(H) This Agreement is intended to supplement, complement and implement the Plan which is incorporated herein by reference; *provided, however*, that except as otherwise expressly stated herein, if any of the terms and/or provisions of this Agreement conflict with the terms and/or provisions of the Plan, then the Plan shall govern.

(I) The Liquidating Trust is intended to be treated as a “liquidating trust” pursuant to Treasury Regulation § 301.7701-4(d) and as a “grantor trust” for federal income tax purposes,

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<sup>1</sup> Capitalized terms used herein and not otherwise defined in Article I shall have the meanings set forth in the Plan.

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

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein and in the Plan, the parties to this Agreement agree as follows:

**ARTICLE I**  
**DEFINITIONS:**

Any capitalized term used herein, but not otherwise defined, shall have the meaning set forth in the Plan. For purposes of this Agreement, the following terms will have the meanings set forth below:

“**Beneficial Interests**” shall have the meaning ascribed thereto in Section 10.1 hereof.

“**Confidential Party**” shall have the meaning ascribed thereto in Section 18.4 hereof.

“**Trust Register**” shall have the meaning ascribed thereto in Section 10.4 hereof.

**ARTICLE II**  
**NAME OF TRUST AND LIQUIDATING TRUSTEE**

The name of the Liquidating Trust is the Beaulieu Liquidating Trust. The Beaulieu Liquidating Trust shall receive all Liquidating Trust Assets on the Effective Date or such later date as specified in the Plan. The Liquidating Trust shall be entitled to liquidate any other Liquidating Trust Assets.

PMCM 2, LLC is hereby appointed to serve as the initial Liquidating Trustee under the Plan, and hereby accepts this appointment and agrees to serve in such capacity effective upon the Effective Date of the Plan and pursuant to the terms of the Plan and this Agreement. A successor Liquidating Trustee shall be appointed as set forth in Section 12.1 hereof in the event the Liquidating Trustee is removed or resigns pursuant to this Agreement or if the Liquidating Trustee otherwise vacates the position.

**ARTICLE III**  
**DUTIES AND POWERS OF THE LIQUIDATING TRUSTEE**

3.1 Generally

Except as otherwise provided in this Agreement, the Plan or the Confirmation Order, the Liquidating Trustee shall control and exercise authority over the Liquidating Trust Assets and shall be responsible for liquidating and administering (or abandoning, as the case may be) the Liquidating Trust Assets and taking actions on behalf of, and representing, the Liquidating Trust. The Liquidating Trustee shall have the authority to bind the Liquidating Trust within the limitations set forth herein, but shall for all purposes hereunder be acting in the capacity of Liquidating Trustee and not individually.

3.2 Scope of Authority of Liquidating Trustee

Within the limitations set forth herein and subject to the provisions of the Plan, the responsibilities and authority of the Liquidating Trustee, shall include, without limitation: (a) the making of Distributions as contemplated in the Plan; (b) establishing and maintaining the Disputed Claim Reserves to be determined in the discretion of the Liquidating Trustee; (c) conducting an analysis of Priority Tax Claims and Secured Claims not paid in full on the Effective Date or otherwise allowed by the Court, Unsecured Claims not already allowed by prior order of the Court, and prosecuting objections thereto or settling or otherwise compromising such Claims if necessary and appropriate in accordance with the Plan; (d) filing appropriate tax returns with respect to the Liquidating Trust in the exercise of its fiduciary obligations; (e) retaining the Liquidating Trust Professionals; (f) taking such actions as are necessary to prosecute, resolve or compromise, as appropriate, all Causes of Action assigned to the Liquidating Trust; and (g) taking such actions as are necessary and reasonable to carry out the purposes of the Liquidating Trust.

3.3 Liquidating Trust Expenses.

(a) All Liquidating Trust Expenses will be charged against and paid from the proceeds of the Liquidating Trust Assets, and the Liquidating Trustee will pay the same as and when due and payable.

(b) The Liquidating Trust Professionals retained by the Liquidating Trustee will submit periodic statements for services rendered and costs incurred to the Liquidating Trustee for review and approval. The Liquidating Trustee will have ten (10) days to object to any such statement. In the event that any such objection is received by the relevant Liquidating Trust Professional and cannot be promptly resolved by such Liquidating Trust Professional and the Liquidating Trustee, the dispute will be submitted by the Liquidating Trustee to the Bankruptcy Court for adjudication. The Bankruptcy Court will retain jurisdiction to adjudicate any such objection. In the event that no objection is raised to a statement within the ten (10) day period, such statement will be promptly paid by the Liquidating Trustee.

3.4 Fiduciary Duties of the Liquidating Trustee.

Pursuant to the Plan and this Agreement, the Liquidating Trustee will act in a fiduciary capacity on behalf of the Liquidating Trustee Beneficiaries.

3.5 Additional Powers of Liquidating Trustee

In connection with the administration of the Liquidating Trust, subject to and except as otherwise set forth in this Agreement or the Plan, the Liquidating Trustee is hereby authorized to perform those acts necessary to accomplish the purposes of the Plan and of the Liquidating Trust and to otherwise protect the interests of Liquidating Trust Beneficiaries as contemplated in the Plan. Other than the reports required by Section 6.15 of the Plan and 13.1 of this Agreement or as otherwise provided in the Plan, this Agreement, or the Confirmation Order, nothing in this Agreement shall require the Liquidating Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for managing any payment or distribution out of the Liquidating Trust Assets, although the Liquidating Trustee may seek approval of the Bankruptcy Court for any such action. Without limiting, but subject to, the foregoing, the Liquidating Trustee shall be authorized, in his or her sole discretion, and subject to the limitations contained herein and in the Plan to:

(a) hold legal title (on behalf of the Liquidating Trust as Liquidating Trustee, but not individually) to the Liquidating Trust Assets held by the Liquidating Trust and all assets transferred;

(b) receive and take such action as may be necessary to take possession, custody or control of all assets and property to be distributed to the Liquidating Trust pursuant to the Plan;

(c) protect and enforce the rights to the Liquidating Trust Assets vested in the Liquidating Trust by the Plan by any method deemed appropriate in his or her sole discretion, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(d) invest funds (in the manner set forth in Section 3.9, herein), make distributions and pay any other obligations owed by the Liquidating Trust from the Liquidating Trust Assets as provided herein and in the Plan;

(e) consult with the Post-Confirmation Committee on a regular basis and keep the Post-Confirmation Committee fully advised as to the status of the Liquidating Trust and the Liquidating Trustee's activities;

(f) prosecute, defend, compromise, adjust, arbitrate, abandon, estimate, avoid and recover or otherwise deal with and settle, in accordance with the terms set forth in the Plan and Article VII hereof, Claims and rights of action in favor of or against the Liquidating Trust, the Liquidating Trustee or the Liquidating Trust Assets, as the Liquidating Trustee shall deem advisable, and to take any action necessary or appropriate to the foregoing;

(g) pay expenses and make disbursements necessary to preserve, liquidate and enhance the Liquidating Trust Assets.

(h) purchase such insurance coverage as the Liquidating Trustee, in his or her sole discretion, deems necessary and appropriate with respect to the liabilities and obligations of the Liquidating Trustee with respect to the Liquidating Trust Assets (in the form of an errors and omissions policy, fiduciary policy or otherwise);

(i) purchase such insurance coverage as the Liquidating Trustee, in his or her sole discretion, deems necessary and appropriate with respect to real and personal property which may be or may become Liquidating Trust Assets;

(j) retain and pay, as applicable, professionals as provided in, and subject to the terms of, this Agreement;

(k) settle, subject to the terms and conditions set forth in the Plan and Article VII hereof, any and all Disputed Claims;

(l) incur any reasonable and necessary expenses in liquidating and converting the Liquidating Trust Assets to Cash, or otherwise administering the Liquidating Trust, as set forth in the Plan or this Agreement; and

(m) assume such other powers as may be vested in or assumed by the Liquidating Trustee pursuant to the Plan or Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Plan or this Agreement.

### 3.6 Authority of the Liquidating Trustee; Post-Confirmation Committee

(a) Unless specifically stated otherwise in this Agreement, the Plan, or the Confirmation Order, the Liquidating Trustee shall not be required to obtain Bankruptcy Court approval with respect to any proposed action or inaction: (a) authorized in this Agreement or (b) specifically contemplated in the Plan.

(b) The Liquidating Trustee shall have all the rights, powers and duties necessary to carry out his or her responsibilities under the Plan and this Agreement, subject to the advice of the Post-Confirmation Committee. The rights and powers of the Liquidating Trustee, including payment of compensation and reimbursement of expenses for the Liquidating Trustee or any professionals or employees employed by the Liquidating Trustee, shall only be limited to the extent, and in the manner provided in, the Plan and this Agreement. The Liquidating Trustee may obtain the Post-Confirmation Committee's advice for any action by email, without a meeting, and advice shall be deemed to have been provided pursuant to majority vote of the Post-Confirmation Committee upon the Liquidating Trustee's receipt of return emails from at least a majority of the Post-Confirmation Committee after a period of time reasonable under the circumstances. If the Liquidating Trustee determines, in his or her sole discretion, that a meeting of the Post-Confirmation Committee should be held or advice should be obtained on an emergency basis, the Liquidating Trustee shall be entitled to convene a meeting of the Post-Confirmation Committee

upon 24-hours' notice, and the Liquidating Trustee shall be entitled to obtain advice by email upon 24-hours' notice.

### 3.7 Limitation of Liquidating Trustee's Authority; No On-Going Business

Notwithstanding anything to the contrary under applicable law, this Agreement or the Plan, the authority of the Liquidating Trustee is limited as follows:

(a) For federal tax purposes, the Liquidating Trustee shall not be authorized to engage in any trade or business with respect to the Liquidating Trust Assets or any proceeds therefrom except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust.

(b) The Liquidating Trustee shall take such actions consistent with the prompt orderly liquidation of the Liquidating Trust Assets as required by applicable law and consistent with the treatment of the Liquidating Trust as a "liquidating trust" pursuant to Treasury Regulation § 301.7701-4(d) and as a "grantor trust" for federal income tax purposes, pursuant to the IRC Code to the extent such actions are permitted by this Agreement.

(c) The Liquidating Trustee shall not take, or fail to take, any action that would jeopardize treatment of the Liquidating Trust as a "liquidating trust" and as a "grantor trust" for federal income tax purposes.

### 3.8 Other Activities

The Liquidating Trustee shall be entitled to be employed by third parties while performing the duties required under the Plan and this Agreement, so long as such other employment does not involve holding or representing any interest adverse to the interests of the Liquidating Trust, or otherwise preclude or impair the Liquidating Trustee from performing his or her duties under the Plan and this Agreement.

### 3.9 Investment and Safekeeping of Liquidating Trust Assets

Except as otherwise provided in the Plan, all Cash held by the Liquidating Trust will be invested by the Liquidating Trustee with sole and absolute discretion in only (a) direct obligations of, or obligations guaranteed by, the United States; (b) obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States, as an agency or instrumentality thereof; (c) AAA rated tax-free securities issued by municipalities or state governments or agencies; or (d) such other obligations or instruments as may from time to time be approved for such investments by Final Order of the Bankruptcy Court; *provided, however*, that the Liquidating Trustee may, to the extent he or she deems necessary, deposit moneys in demand deposits (including, without limitation, money market funds) at any commercial bank, trust company or other financial institution organized under the laws of the United States or any state thereof which has, at the time of such deposit, a capital stock and surplus aggregating at least \$500,000,000. The investment powers of the Liquidating Trustee will be limited to powers to invest in demand and time deposits, such as short-term certificates of deposit, in banks or other savings or financial institutions or other temporary, liquid investments such as U.S. Treasury Bills. Such investments will mature in such amounts and at such times as may be



deemed necessary by the Liquidating Trustee, with sole and absolute discretion, to provide funds when needed to make Distributions and payments as required by the Plan.

The right and power of the Liquidating Trustee to invest the Liquidating Trust Assets transferred to the Liquidating Trust, the proceeds thereof, or any income earned by the Liquidating Trust, will be limited to the right and power to invest such Liquidating Trust Assets (pending distributions in accordance with the Plan), as set forth in the Plan; *provided, however*, that the scope of any such investments will be limited to include only those investments that a “liquidating trust” or “grantor trust”, as more particularly set forth herein, may be permitted to hold, pursuant to the Treasury Regulations, or any modification in the Internal Revenue Service guidelines, whether set forth in Internal Revenue Service rulings, other Internal Revenue Service pronouncements, or otherwise.

#### **ARTICLE IV**

#### **TERM AND COMPENSATION FOR LIQUIDATING TRUSTEE**

##### 4.1 Compensation

(a) The Liquidating Trustee shall be entitled to receive fair and reasonable compensation for services rendered on behalf of the Liquidating Trust on an hourly basis and reimbursement of all reasonable, out-of-pocket expenses which shall be charged against and paid out of the Liquidating Trust Assets pursuant to the normal hourly rates charged by the Liquidating Trustee and his or her staff. Provided, however, that the Liquidating Trustee shall submit monthly statements for compensation to the Post-Confirmation Committee. The Post-Confirmation Committee will have ten (10) days to object to any such statement. In the event that any such objection is received by the Liquidating Trustee and cannot be promptly resolved, the dispute will be submitted by the Liquidating Trustee to the Bankruptcy Court for adjudication. The Bankruptcy Court will retain jurisdiction to adjudicate any such objection. In the event that no objection is raised to a statement within the ten (10) day period, such statement will be promptly paid by the Liquidating Trustee.

(b) Fees and expenses incurred by the Liquidating Trustee shall be paid from the proceeds of the Liquidating Trust Assets in accordance with Article VI of this Agreement.

##### 4.2 Termination

The duties, responsibilities and powers of the Liquidating Trustee will terminate on the date the Liquidating Trust is dissolved under applicable law in accordance with the Plan, or by an order of the Bankruptcy Court.

##### 4.3 No Bond

The Liquidating Trustee shall not be obligated to obtain a bond but may do so, in his or her sole discretion, in which case the expense incurred by such bonding shall be paid by the Liquidating Trust.

#### 4.4 Removal

The Liquidating Trustee may be removed (i) at any time for cause by a Final Order of the Bankruptcy Court, after notice and a hearing; *provided however*, that the Liquidating Trustee may not be removed until a successor Liquidating Trustee has been named or is capable of being named immediately upon such removal, or (ii) the Post-Confirmation Committee may remove the Liquidating Trustee at its discretion upon unanimous vote of all members without approval of the Bankruptcy Court, provided, however, that the Post-Confirmation Committee shall provide the Liquidating Trustee with thirty (30) days written notice of its intent to remove the Liquidating Trustee. For purposes of removing the Liquidating Trustee, “cause” shall mean gross negligence, breach of fiduciary duty, breach of trust, and reckless or willful mishandling of the Liquidating Trust Assets. If the Liquidating Trustee believes that his or her removal is not in the best interests of the Liquidating Trust Beneficiaries, then the Liquidating Trustee may seek Bankruptcy Court approval to continue as Liquidating Trustee. If such authority is sought, the Bankruptcy Court shall hear the matter and issue an Order resolving whether the Liquidating Trustee shall continue or be replaced, or otherwise issue an appropriate order. All reasonable fees and expenses incurred by the Liquidating Trustee and the Post-Confirmation Committee in pursuit of the removal or continuation of the Liquidating Trustee shall be paid by the Liquidating Trust.

#### 4.5 Resignation

The Liquidating Trustee may resign at any time by filing a written notice of resignation with the Bankruptcy Court, and providing Designated Notice. Any such resignation shall become effective on the earlier to occur of (i) sixty (60) days after the filing date of such notice; or (ii) the appointment of a successor Liquidating Trustee, provided that such resignation shall not become effective until a successor agrees to serve as Liquidating Trustee and executes this trust instrument.

#### 4.6 Appointment of Successor Liquidating Trustee

In the event of the death (in the case of a Liquidating Trustee that is a natural person), dissolution (in the case of a Liquidating Trustee that is not a natural person), resignation, incompetency or removal of the Liquidating Trustee, the Post-Confirmation Committee shall designate a successor Liquidating Trustee. Every successor Liquidating Trustee appointed hereunder shall execute, acknowledge and deliver to the Bankruptcy Court and to the retiring Liquidating Trustee an instrument accepting the appointment under this Agreement and agreeing to be bound thereto, and thereupon the successor Liquidating Trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring Liquidating Trustee; provided, however, that a removed or resigning Liquidating Trustee shall, nevertheless, when requested in writing by the successor Liquidating Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Liquidating Trustee under the Liquidating Trust all the estates, properties, rights, powers, and trusts of such predecessor Liquidating Trustee.

**ARTICLE V**  
**PROVISIONS REGARDING DISPUTED CLAIMS RESERVE AND DISTRIBUTIONS**

5.1 Distribution Agent.

The Liquidating Trustee may act as the agent for making distributions to Liquidating Trust Beneficiaries under the Plan (the “**Distribution Agent**”) or may employ or contract with other Persons or Entities to serve as the Distribution Agent and assist in or make the Distributions required under the Plan.

5.2 Distributions Under the Plan.

Within the time periods provided in the Plan, the Liquidating Trustee will make periodic and final Distributions under the Plan from the Liquidating Trust, except such amounts as are necessary to maintain any reserve determined appropriate by the Liquidating Trustee, such amounts as are necessary to fund the Liquidating Trust Expenses and any such other amounts required to be withheld in accordance with the terms of the Plan or determined as necessary to withhold in the sole discretion of the Liquidating Trustee. The Distribution Agent will withhold from amounts distributable to any Person any and all amounts, determined in the Distribution Agent’s reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement. The Distribution Agent will require any Person receiving a Distribution hereunder to furnish to the Distribution Agent in writing an employer identification number or taxpayer identification number as assigned by the Internal Revenue Service, and the Distribution Agent may condition any Distribution to any Person hereunder on receipt of such identification number.

5.3 Timing of Distributions

Distributions to Holders of Allowed Claims shall be made as and when provided in the Plan.

5.4 Disputed Claims Reserve.

For each Class of Claims entitled to a Distribution from the Liquidating Trust, the Liquidating Trustee will estimate, on or before the Distribution Date, the anticipated aggregate amount of all Disputed Claims in such Class as of such date, and will establish a Disputed Claims Reserve for such Class in an amount sufficient to make the Distributions to Holders of such Disputed Claims (to the extent such Disputed Claims are eventually Allowed Claims at, in the aggregate, the amount estimated by the Liquidating Trustee) that would have been made to the Holders as of such date had the Claims been Allowed as of the Distribution Date. Any Cash remaining in the Disputed Claims Reserve after all Disputed Claims have been resolved, and have been issued the Distribution to which such Holders of Claims are due under the Plan and this Agreement, and the costs and expenses of the Liquidating Trust and Liquidating Trustee have been fully paid, will be available for Distribution to the other Liquidating Trust Beneficiaries, provided however that if there are funds in the Disputed Claims Reserve that no longer must be reserved due to the settlement or disallowance of a Disputed Claim, then such funds, to the extent not needed to pay the allowed amount of any previously Disputed Claim, must be distributed to holders of Allowed Claims at the next distribution date. After any and all Cash in the Disputed Claims

Reserve has been disbursed in accordance with the Plan, such Disputed Claims Reserve will be deemed dissolved.

#### 5.5 Unclaimed Property.

(a) Holding of Unclaimed Property. If a Distribution to any Holder of an Allowed Claim is Unclaimed Property, no additional Distributions will be made to such Holder unless and until the Liquidating Trustee is notified in writing of such Holder's then current address in accordance with the Plan. Nothing contained in the Plan will require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim. The Liquidating Trustee will hold all Unclaimed Property (and all interest, dividends and other distributions thereon) for the benefit of the Holders of Claims entitled thereto under the terms of the Plan. The Liquidating Trustee will make all Distributions of Unclaimed Property on or after the Distribution Date as soon as reasonably practicable after such Unclaimed Property has become deliverable or has been claimed in accordance with the Plan.

(b) Distribution of Unclaimed Property. Unclaimed Property shall be held in an "Unpaid Claims Reserve" to be held for the benefit of the Holders of Allowed Claims entitled thereto under the terms of the Plan.

#### 5.6 Distribution to Holders of Claims Generally.

(a) No Distribution in Excess of Allowed Claim. Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim will receive, in respect of such Claim, Distributions under the Plan in excess of the amount of its Allowed Claim; provided, however, if Liquidation Proceeds remain after payment and satisfaction of all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Claims in Classes 1 through 5 and Class 7, and all expenses of the Liquidating Trust and all Disputed Claims have either been reserved or an appropriate reserve established, Holders of Allowed Class 6 Claims shall be entitled to interest on their Allowed Class 6 Claim calculated at the post-judgment rate of interest for the State of Georgia.

(b) Disputed Payments. If any dispute arises as to the identity of a Holder of an Allowed Claim that is to receive any Distribution, the Distribution Agent may, in lieu of making such Distribution to such Person, make such Distribution into an escrow account or otherwise hold such Distribution until the disposition thereof is determined by Final Order of the Bankruptcy Court or by written agreement among the interested parties to such dispute, which written agreement is reasonably acceptable to the Liquidating Trustee.

(c) Withholding Taxes. Any federal or state withholding taxes or other amounts required to be withheld under any applicable law will be deducted and withheld from any Distributions made pursuant to the Plan. All Persons holding Claims will be required to provide to the Distribution Agent any information necessary to effect the withholding of such taxes. Notwithstanding the foregoing, each Holder of an Allowed Claim that is to receive a Distribution hereunder will have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit on account of such Distribution, including, without limitation, withholding tax obligations in respect of in-kind (non-

cash) Distributions. Any party issuing an instrument or making an in-kind (non-cash) Distribution under the Plan has the right, but not the obligation, to refrain from making such Distribution until the Person to which the Distribution is to be made has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligation.

(d) Timing of Distributions under the Plan. Payments and Distributions in respect of Allowed Claims under the Plan will be made as provided in the Plan.

(e) Distributions after the Effective Date. Distributions made after the Effective Date to Holders of Allowed Claims that are Disputed Claims as of the Effective Date will be deemed to have been made on the Effective Date. No interest will accrue or be payable on such Claims or any Distributions except as specifically provided herein.

(f) Manner of Payments. Any payments to be made by the Distribution Agent pursuant to the Plan will be made by checks drawn on accounts maintained by the Distribution Agent or its professionals, or by wire transfer if circumstances justify, at the option of the Distribution Agent.

(g) Delivery of Distribution. Distributions to Holders of Allowed Claims will be made to the Holder's address as listed in the Schedules or in its proof of claim.

(h) Record Date for Distributions. The Distribution Agent will have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute only to those Holders of Allowed Claims that are Holders of such Claims as of the close of business on the Distribution Record Date. The Distribution Agent will instead be entitled to recognize and deal for all purposes under the Plan with only those record holders stated on the official claims register as of the close of business on the Distribution Record Date.

(i) No Distributions Pending Allowance. Notwithstanding any other provision of the Plan, no payments or Distributions by the Distribution Agent will be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn by agreement of the parties or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim; provided however, that the Liquidating Trustee may, in his or her discretion, pay the Distribution due on account of any undisputed portion of a Disputed Claim.

#### 5.7 Setoffs.

Except as otherwise provided in the Plan, the Confirmation Order or in an agreement approved by a Final Order of the Bankruptcy Court, the Liquidating Trustee, with respect to any Liquidating Trust Assets, may, pursuant to applicable law (including, without limitation, section 553 of the Bankruptcy Code), set off against any Distribution amounts related to any Claim before any Distribution is made on account of such Claim by the Liquidating Trustee, any Bankruptcy Causes of Action against the Holder of such Claim; provided, however, that neither the failure to effect such a setoff, the allowance of any Claim hereunder, any other act or omission of the Liquidating Trustee, nor any provision of the Plan will constitute a waiver or

release by the Debtors or the Liquidating Trustee of any such Bankruptcy Cause of Action that the Debtors or the Liquidating Trustee may possess against such Holder. To the extent the Liquidating Trustee fails to set off against a Claim and seek to collect a Bankruptcy Cause of Action from such Holder after a Distribution to such Holder has been made pursuant to the Plan, the Liquidating Trustee, if successful in asserting such Bankruptcy Causes of Action, will be entitled to full recovery on the Bankruptcy Causes of Action against such Holder.

5.8 Control of Claims Resolution Process.

After the Effective Date, the Liquidating Trustee, on behalf of the Liquidating Trust, will have the power and authority to file and prosecute objections to, or negotiate, settle or otherwise resolve (upon obtaining each other's agreement), any and all Disputed Claims in accordance with the objection procedures set forth in the Plan and to prosecute or defend all appeals relating to such Disputed Claims. The Liquidating Trustee, on behalf of the Liquidating Trust, will have the power and authority to institute all Causes of Action which are Liquidating Trust Assets and not otherwise waived and/or released under the Plan, and to prosecute or defend all appeals relating to such Causes of Actions on behalf of the Debtors or their Estates.

5.9 Distributions Under One Hundred Dollars.

If a Cash payment to be received by any Holder of an Allowed Claim in Class 6 on any Distribution Date would be \$100 or less in the aggregate, notwithstanding any contrary provision of this Agreement or the Plan, no such payment will be made to such Holder, and such Cash, if applicable, shall be held for such Holder until the next Distribution Date, at which time such Cash payment shall be made to the Holder (unless this Section shall again apply). The Liquidating Trustee shall include an additional amount in the Reserve for unpaid Distributions resulting from this Section.

5.10 Fractional Distributions.

Notwithstanding any other provision of the Plan to the contrary, payments of fractions of dollars by the Distribution Agent will not be required. Whenever any Distribution of a fraction of a dollar would be required, the Distribution will reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

5.11 Final Distribution.

In accordance with the Plan and notwithstanding any other provision of the Plan to the contrary, in the event that: (a) in the discretion of the Liquidating Trustee, the Liquidating Trust, (i) has insufficient funds to make any further Distributions to the Liquidating Trust Beneficiaries and (ii) has no remaining potential sources of funds; (b) all Allowed Claims have been paid in full; or (c) it is impractical or impossible for the Liquidating Trustee to make further distributions under the Plan, the Liquidating Trustee shall either abandon the remaining Liquidating Trust Assets or make a final Distribution of all remaining Liquidating Trust Assets pursuant to the terms of the Plan; provided, however, that the Liquidating Trustee shall be permitted to establish a reserve sufficient to pay all of the expenses of such final distribution and to pay such expenses to either the Liquidating Trustee or Liquidating Trust Professionals.

5.12 Full and Final Satisfaction against Liquidating Trust.

On and after the Effective Date of the Plan, the Liquidating Trust will have no liability on account of any Claims or Equity Interests except as set forth in the Plan and in the Liquidating Trust Agreement. All final payments and Distributions made by the Liquidating Trustee under the Plan will be in full and final satisfaction, settlement and release of and in exchange for all Claims or Equity Interests against the Liquidating Trust.

5.13 Requirement of Undertaking.

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

5.14 Extensions of Time.

The Liquidating Trustee may file a motion to extend any deadlines for the making of Distributions or the establishment of the Disputed Claims Reserve hereunder prior to the occurrence of any such deadlines, to the extent necessary, which deadlines shall be deemed automatically extended after the filing of such motion, and pending the entry of an order by the Bankruptcy Court extending any such deadline.

**ARTICLE VI**  
**TRUST FUNDING**

6.1 Trust Funding

The Disputed Claims Reserve shall be established and funded in accordance with this Agreement and the Plan. The costs and expenses of the Liquidating Trust, including, without limitation, the compensation to and reimbursement of expense to the Liquidating Trustee and the fees, costs and expenses of all Liquidating Trust Professionals retained by the Liquidating Trustee in connection with the performance of the Liquidating Trustee's duties in connection with this Agreement, shall be paid from the proceeds of the Liquidating Trust Assets in accordance with the Plan and this Agreement.

6.2 Liquidating Trust Assets.

Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, on the Effective Date and periodically thereafter if additional Liquidating Trust Assets become available, the Debtors will be deemed to have automatically transferred to the Liquidating Trust all of its right, title, and interest in and to all of the Liquidating Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, all such Liquidating Trust Assets will automatically vest in the Liquidating Trust free and clear of all Claims, liens, encumbrances and other liabilities, subject only to the Claims of the Liquidating Trust Beneficiaries as set forth in the

Plan and the expenses of the Liquidating Trust and the Liquidating Trustee as set forth herein and in the Liquidating Trust Agreement, with all proceeds of the Liquidating Trust to be distributed in accordance with the provisions of the Plan. Thereupon, the Debtors will have no interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust.

**ARTICLE VII**  
**PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

7.1 Objections to Claims.

On and after the Effective Date, the Liquidating Trustee shall have the exclusive right to make, file and prosecute objections to Disputed Claims (whether scheduled or filed). All such objections shall be filed within one hundred eighty (180) days after the Confirmation Date (“**Claims Objection Deadline**”); however, the Liquidating Trustee may seek extensions of this one hundred eighty (180) day period following Designated Notice. If a party in interest files a written objection with the Court with respect to any proposed extension of time and serves a copy of said objection upon the Liquidating Trustee, and his or her counsel within ten (10) days from the service of Designated Notice of the proposed extension, then the Court shall schedule a hearing with respect to said objection and the deadline for the Liquidating Trustee to object to Claims as authorized under the Plan, shall be deemed extended through the conclusion of such hearing. If no objection is timely filed and served, the proposed extension is granted without further authorization. The failure to object to any Claim prior to the commencement of the hearing on Confirmation of the Plan shall not be deemed to be a waiver of the right to object thereafter to such Claim in whole or in part for the purpose of distribution.

The Liquidating Trustee may conduct a review of the applicable books and records of the Debtors, the Schedules and all Proofs of Claim filed in the Case and, except as provided hereunder, the Liquidating Trustee, on behalf of the Liquidating Trust and the Debtors will file objections to such Claims (if any) with the Clerk of the Bankruptcy Court on or before the Claim Objection Deadline, which may be extended as set forth in the Plan at Section 16.01. The Liquidating Trust, may compromise, settle or otherwise resolve any Disputed Claim without further order of the Bankruptcy Court to the extent authorized under the Plan, and such compromise, settlement or other resolution will constitute a Final Order of the Bankruptcy Court with respect to the allowance of such Claim for all purposes under the Plan.

7.2 Materiality of Dispute against Disputed Claims.

The Liquidating Trustee shall not be obligated to object to any Claim, but may consult with the Post-Confirmation Committee in deciding whether to object to any particular Claim. No Distribution will be made with respect to any Disputed Claim (or any portion of such Claim) unless and until a Final Order allowing such Claim has been entered, or unless so determined in the discretion of the Liquidating Trustee as set forth in Section 5.6(i) of this Agreement.



7.3 No Distribution In Respect of Disallowed Claims.

To the extent that a Disputed Claim is Disallowed in whole or in part, the Holder of such Claim will not receive any Distribution on account of the portion of such Claim (including, without limitation, the whole, if applicable) that is Disallowed.

**ARTICLE VIII**  
**LIABILITY AND EXCULPATION PROVISIONS**

8.1 Liability, Indemnification of the Liquidating Trustee, the Post-Confirmation Committee and the Liquidating Trustee Professionals

Except to the extent of any Bond provided by the Liquidating Trustee, if any, no recourse will ever be had, directly or indirectly, against the Liquidating Trustee, the Post-Confirmation Committee, the Liquidating Trustee Professionals and Liquidating Trustee Non-Professionals or any other representatives, agents, employees, successors or assigns of the Liquidating Trustee, by legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge or note, nor upon any promise, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Liquidating Trustee under the Plan or this Agreement or by reason of the creation of any indebtedness by the Liquidating Trustee under the Plan or this Agreement for any purpose authorized by the Plan or this Agreement. All such liabilities, covenants, and agreements of the Liquidating Trustee, the Liquidating Trustee Professionals, the Post-Confirmation Committee and Liquidating Trustee Non-Professionals or any other representatives, agents, employees, successors or assigns of the Liquidating Trustee, whether in writing or otherwise, under the Plan or this Agreement will be enforceable only against, and will be satisfied only out of any such Bond, if any, and the Liquidating Trust Assets or such part thereof as will, under the terms of any such agreement, be liable therefor, or will be evidence only of a right of payment out of the income and Liquidating Trust Assets, as the case may be. Every undertaking, contract, covenant or agreement entered into in writing by the Liquidating Trustee will provide expressly against the personal liability of the Liquidating Trustee.

Neither the Liquidating Trustee, the Post-Confirmation Committee, the Liquidating Trustee Professionals and Liquidating Trustee Non-Professionals nor any other representatives, agents, employees, successors or assigns of the Liquidating Trustee will be liable for any act or omission of one another, nor will the Liquidating Trustee, the Post-Confirmation Committee, the Liquidating Trust Professionals and Liquidating Trustee Non-Professionals or any other representatives, agents, employees, successors or assigns of the Liquidating Trustee be liable for any act or omission taken or not taken in such capacity other than for specific acts or omissions resulting from the Liquidating Trustee's, the Post-Confirmation Committee's, the Liquidating Trust Professionals' and Liquidating Trustee Non-Professionals' or any other representatives, agents, employees, successors or assigns of the Liquidating Trustee willful misconduct or fraud. The Liquidating Trustee and the Post-Confirmation Committee may, in connection with the performance of his or her or its functions, and in his or her or its sole and absolute discretion, consult with the Liquidating Trust Professionals and Liquidating Trustee Non-Professionals, and will not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinions rendered by such entities, regardless of whether such advice or opinions are

provided in writing. Notwithstanding such authority, neither the Liquidating Trustee nor the Post-Confirmation Committee will be under any obligation to consult with the Liquidating Trust Professionals and Liquidating Trustee Non-Professionals, and the determination not to do so will not result in the imposition of liability on the Liquidating Trustee, the Post-Confirmation Committee, the Liquidating Trust Professionals and Liquidating Trustee Non-Professionals or any other representatives, agents, employees, successors or assigns of the Liquidating Trustee, unless such determination is based on willful misconduct or fraud. The Liquidating Trust will indemnify and hold harmless the Liquidating Trustee, the Post-Confirmation Committee, the Liquidating Trustee Professionals and Liquidating Trustee Non-Professionals or any other representatives, agents, employees, successors or assigns of the Liquidating Trustee from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorney's fees, disbursements and related expenses), which such Persons may incur or to which such Persons may become subject to in connection with any action, suit, proceeding or investigation brought by or threatened against such Persons arising out of or due to their acts or omissions or consequences of such acts or omissions, with respect to the implementation or administration of the Liquidating Trust or the Plan or the discharge of their duties hereunder, to the extent such losses are not covered by a Bond, if any, or other applicable insurance, *provided, however*, that no such indemnification will be made to such Persons for actions or omissions as a result of their willful misconduct or fraud.

8.2 Reliance by Liquidating Trustee

Except as otherwise provided herein:

(a) the Liquidating Trustee may rely, and will be protected in acting or refraining from acting, upon any certificates, opinions, statements, instruments or reports believed by him or her to be genuine and to have been signed or presented by the proper Person or Persons.

(b) the Liquidating Trustee shall not be liable for any action reasonably taken or not taken by him or her in reasonable reliance upon the advice of a Liquidating Trustee Professional or Liquidating Trustee Non-Professional; and

(c) persons providing services to the Liquidating Trustee shall look only to the Liquidating Trust Assets to satisfy any liability incurred by the Liquidating Trustee to such person in carrying out the terms of this Agreement, and neither the Liquidating Trustee nor the Post-Confirmation Committee shall have any personal obligation to satisfy any such liability, except to the extent that actions taken or not taken after the Effective Date by the Liquidating Trustee are determined by a Final Order to be solely due to the Liquidating Trustee's own willful misconduct or fraud.

**ARTICLE IX**  
**ESTABLISHMENT OF THE LIQUIDATING TRUST**

9.1 Transfer of Assets to Liquidating Trust; Assumption of Liabilities

(a) Pursuant to the Plan, the Debtors and the Liquidating Trustee hereby establish the Liquidating Trust on behalf of the Liquidating Trust Beneficiaries to be treated as the grantors and deemed owners of the Liquidating Trust Assets, and the Debtors hereby transfer,

assign and deliver to the Liquidating Trust, on behalf of the Liquidating Trust Beneficiaries, all of their right, title and interest in the Liquidating Trust Assets, including Causes of Action of such Debtors, other than any waived, exculpated or released Causes of Action in accordance with the provisions of the Plan, notwithstanding any prohibition of assignability under applicable non-bankruptcy law. Such transfer includes, but is not limited to, all rights to assert, waive or otherwise exercise any attorney-client privilege, work product protection or other privilege, immunity, or confidentiality provision vested in, or controlled by, the applicable Debtor. The Liquidating Trustee agrees to accept and hold the Liquidating Trust Assets for the benefit of the Liquidating Trust Beneficiaries, subject to the terms of the Plan and this Agreement.

## 9.2 Title to Assets

(a) Notwithstanding any prohibition of assignability under applicable non-bankruptcy law, on the Effective Date and periodically thereafter if additional Liquidating Trust Assets become available, the Debtors shall be deemed to have automatically transferred to the Liquidating Trust all of their right, title, and interest in and to all of the Liquidating Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Liquidating Trust free and clear of all Claims and liens, subject only to the Allowed Claims of the Liquidating Trust Beneficiaries as set forth in the Plan and the expenses of the Liquidating Trust as set forth in the Plan and in this Agreement. Thereupon, the Debtors shall not have any interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust.

(b) For all federal income tax purposes, all parties to this Agreement and the Liquidating Trust Beneficiaries shall treat the transfer of the Liquidating Trust Assets by the Debtors to the Liquidating Trust, as set forth herein and in the Plan, as a transfer of such assets by the Debtors to the Liquidating Trust Beneficiaries entitled to Distributions under this Agreement, followed by a transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust. Thus, the Liquidating Trust Beneficiaries shall be treated as the grantors and owners of a grantor trust for federal income tax purposes.

## 9.3 Valuation of Assets

As soon as reasonably practicable after the Effective Date, the Liquidating Trustee (to the extent that the Liquidating Trustee deems it necessary or appropriate in his or her sole discretion) will value the Liquidating Trust Assets based on the good faith determination of the value of such Liquidating Trust Assets, provided that such valuation can be based on reasonable estimates of the Liquidating Trustee, and the Liquidating Trustee does not need to obtain formal appraisals of any Liquidating Trust Assets. The valuation will be used consistently by all parties (including the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) for all federal income tax purposes. The Bankruptcy Court will resolve any dispute regarding the valuation of the Liquidating Trust Assets.

**ARTICLE X**  
**BENEFICIAL INTERESTS**

10.1 Allocation of Beneficial Interests to Holders of Claims.

On the Effective Date or as soon thereafter as practicable, each Holder of an Allowed Claim which is a Liquidating Trust Beneficiary shall be allocated its Pro Rata Share of beneficial interests in the Liquidating Trust (the “**Beneficial Interests**”) on account of its Allowed Claim. Provided, however, that the Liquidating Trustee shall have the discretion to establish such pro-rata interests taking into account (i) the value of assets held in the Liquidating Trust; (ii) the outstanding amounts and priorities of the Allowed Claims; (iii) the amounts at issue for any Disputed Claims and (iv) such other factors as the Liquidating Trustee may determine appropriate. The Liquidating Trustee shall be further permitted to modify interests of Liquidating Trust Beneficiaries, from time to time, to take into account (i) changes in the value of Liquidating Trust Assets held in the Liquidating Trust; (ii) the satisfaction or resolution of Disputed Claims and (iii) such other factors as the Liquidating Trustee may determine appropriate.

10.2 Allocation of Beneficial Interests to Holders of Disputed Claims or Interests.

No Beneficial Interest shall be allocated to the Holder of a Disputed Claim unless and until such Claim is an Allowed Claim.

10.3 Transfer of Beneficial Interests.

The Beneficial Interests shall not be transferable except by operation of law. No transfer of a Beneficial Interest shall be effective or binding upon the Liquidating Trust for any purpose, unless and until written notification of such transfer is sent by certified mail to the Liquidating Trustee and received by the Liquidating Trustee.

10.4 Register Entries Regarding Beneficial Interests.

The Liquidating Trustee shall create, maintain and make appropriate notations in a trust register (the “**Trust Register**”) and calculate the following ratios prior to each Distribution to the Liquidating Trust Beneficiaries:

(a) the Beneficial Interest and Allowed Claim held by each Liquidating Trust Beneficiary; and

(b) the Beneficial Interest that would otherwise be attributable to the Holder of a Disputed Claim were such claim to become an Allowed Claim.

10.5 Representation of Beneficial Interest.

The Beneficial Interests shall be uncertificated. The Beneficial Interests shall be represented by appropriate book entries in the Trust Register.

10.6 Trust Register.

(a) Register of Beneficial Interests. The Liquidating Trustee shall cause the Trust Register to be kept at the office of the Liquidating Trustee or at such other place or places that shall be designated by the Liquidating Trustee from time-to-time.

(b) Access to Register by Liquidating Trust Beneficiaries. The Liquidating Trust Beneficiaries and their duly authorized representatives shall have the right, upon reasonable prior written notice to the Liquidating Trustee, and in accordance with reasonable regulations prescribed by the Liquidating Trustee, to inspect and at the expense of the Liquidating Trust Beneficiary make copies of the Trust Register, in each case only for a purpose reasonable and related to such Liquidating Trust Beneficiary's Beneficial Interest in the Liquidating Trust. The Post-Confirmation Committee may obtain a copy of the Trust Register upon reasonable written notice to the Liquidating Trustee.

(c) Absolute Owners. The Liquidating Trustee may deem and treat each Liquidating Trust Beneficiary of record as determined pursuant to this Agreement as the absolute owner of such Liquidating Trust Beneficiary's Beneficial Interests for the purpose of receiving Distributions and payment thereon or on account thereof and for all other purposes whatsoever.

(d) Changes to the Trust Register. The Trust Register shall be amended to reflect the resolution of a Disputed Claim.

10.7 Identification of Liquidating Trust Beneficiaries.

In order to determine the actual names and addresses of the Liquidating Trust Beneficiaries, the Liquidating Trustee shall be entitled to conclusively rely on the names and addresses as determined in accordance with Sections [5.6(g) and (h)] herein.

**ARTICLE XI**  
**ADMINISTRATION**

11.1 Purpose of the Liquidating Trust.

The Liquidating Trust will be established for the primary purpose of liquidating the Liquidating Trust Assets, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Accordingly, the Liquidating Trustee will, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely distributions to the Liquidating Trust Beneficiaries and not unduly prolong its duration. The Liquidating Trust will not be deemed a successor-in-interest of the Debtors for any purpose other than as specifically set forth herein or in the Plan.

11.2 Books and Records

The Liquidating Trustee shall maintain books and records relating to the administration of the Liquidating Trust Assets and the distribution by the Liquidating Trustee of the proceeds therefrom in such detail and for such period of time as may be necessary to make full

and proper accounting in respect thereof and to comply with applicable provisions of law. The Liquidating Trustee shall also maintain books and records relating to the income and expenses of the Liquidating Trust, and the payment of expenses of and liabilities of, claims against or assumed by, the Liquidating Trust in such detail and for such period of time as may be necessary to make full and proper accounting in respect thereof and to comply with applicable provisions of law. Except as otherwise provided herein or in the Plan, nothing in this Agreement requires the Liquidating Trustee to file any accounting or seek approval of any court with respect to the administration of the Liquidating Trust, or as a condition for making any payment or distribution out of the Liquidating Trust Assets. Subject to all applicable privileges, the Liquidating Trust Beneficiaries shall have the right, in addition to any other rights they may have pursuant to this Agreement, under the Plan or otherwise, upon twenty (20) days' prior written notice to the Liquidating Trustee, to request a reasonable inspection of the books and records held by the Liquidating Trustee, *provided that*, all costs associated with such inspection shall be paid in advance by such requesting Liquidating Trust Beneficiary, and further, if so requested, such Liquidating Trust Beneficiary shall have entered into a confidentiality agreement satisfactory in form and substance to the Liquidating Trustee, and make such other arrangements as may be reasonably requested by the Liquidating Trustee. The Post-Confirmation Committee may obtain information relating to the management of the Liquidating Trust Assets upon reasonable written notice to the Liquidating Trustee, subject to applicable privileges, confidentiality requirements and applicable law.

### 11.3 Compliance with Laws

Any and all distributions of Liquidating Trust Assets shall comply with all applicable laws and regulations, including, but not limited to, applicable federal and state tax and securities laws.

## **ARTICLE XII** **SUCCESSOR LIQUIDATING TRUSTEE**

### 12.1 Successor Liquidating Trustee

In the event the Liquidating Trustee is removed or resigns pursuant to this Agreement or the Liquidating Trustee otherwise vacates his or her position, a successor Liquidating Trustee shall be appointed as set forth herein and in the Plan. Thereupon, such successor Liquidating Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts and duties of his/her predecessor in the Liquidating Trust with like effect as if originally named herein; *provided, however*, that a removed or resigning Liquidating Trustee shall, nevertheless, when requested in writing by the successor Liquidating Trustee, execute and deliver any reasonable instrument or instruments conveying and transferring to such successor Liquidating Trustee all the estates, properties, rights, powers, and trusts of such removed or resigning Liquidating Trustee.

**ARTICLE XIII**  
**REPORTING**

13.1 Post-Confirmation Report of Liquidating Trust

The Liquidating Trustee shall file all required post-confirmation operating reports through the date the Cases are closed.

13.2 Federal Income Tax

(a) Grantor Trust Status. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to Treas. Reg. § 1.671-4(a).

(b) Allocations of Liquidating Trust Taxable Income. Subject to the provisions of Section [13.2(a)] hereof, allocations of Liquidating Trust taxable income shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (without regard to any restriction on distributions described herein) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of its other assets (valued for this purpose at their tax book value) to Liquidating Trust Beneficiaries (treating any Holder of a Disputed Claim, for this purpose, as a current Liquidating Trust Beneficiary entitled to distributions), taking into account all prior and concurrent distributions from the Liquidating Trust (including any distributions held in reserve pending the resolution of Disputed Claims). Similarly, taxable losses of the Liquidating Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for this purpose shall equal their fair market value on the Effective Date or, if later, the date such assets were acquired by the Liquidating Trust, adjusted in either case in accordance with tax accounting principles prescribed by the Internal Revenue Code, the Treasury Regulations and other applicable administrative and judicial authorities and pronouncements.

13.3 Other

The Liquidating Trustee shall file (or cause to be filed) any other statement, returns or disclosures relating to the Liquidating Trust or the Liquidating Trust Assets, that are required by any governmental unit.

**ARTICLE XIV**  
**TRANSFER OF TRUST BENEFICIARIES' INTERESTS**

14.1 Transfer of Liquidating Trust Beneficiaries' Interests

The interests of the Liquidating Trust Beneficiaries in the Liquidating Trust, which are reflected only on the records of the Liquidating Trust maintained by the Liquidating Trustee, are not negotiable and shall not be assignable voluntarily. In the case of a deceased individual

Liquidating Trust Beneficiary, his or her executor or administrator shall succeed to such decedent's interests. The Liquidating Trustee shall not be required to record any transfer in favor of any transferee that, in the sole discretion of the Liquidating Trustee, is or might be construed to be ambiguous or to create uncertainty as to the Holder of the Interest in the Liquidating Trust. Until a transfer is in fact recorded on the Trust Register, the Liquidating Trustee, whether or not in receipt of documents of transfer or other documents relating to the transfer, may nevertheless make Distributions and send communications to Liquidating Trust Beneficiaries, as though he or she has no notice of any such transfer, and in so doing the Liquidating Trustee shall be fully protected and incur no liability to any purported transferee or any other Entity.

**ARTICLE XV**  
**LIQUIDATING TRUSTEE PROFESSIONALS AND NON-PROFESSIONALS**

15.1 Retention of Liquidating Trustee Professionals and Liquidating Trust Non-Professionals.

(a) The Liquidating Trustee shall have the right to retain his or her own professionals including, without limitation, claims, disbursing and transfer agents, legal counsel, accountants, experts and other agents or advisors, as the Liquidating Trustee deems appropriate (the "**Liquidating Trustee Professionals**") and on such terms as the Liquidating Trustee deems appropriate. The Liquidating Trustee Professionals shall be compensated in accordance with Section 15.2 hereof and the Plan. The Liquidating Trustee Professionals so retained need not be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of the Debtors and of the Committee.

(b) The Liquidating Trustee shall have the right to retain non-professionals including, without limitation, employees, independent contractors or other agents as the Liquidating Trustee deems appropriate (the "**Liquidating Trustee Non-Professionals**") and on such terms as the Liquidating Trustee deems appropriate. Such Liquidating Trustee Non-Professionals shall be compensated in accordance with Section 15.2 hereof and the Plan. The Liquidating Trustee Non-Professionals so retained need not be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, employees, independent contractors or agents of the Debtors and of the Committee.

15.2 Payment to Liquidating Trustee Professionals and Liquidating Trust Non-Professionals

(a) After the Effective Date, the Liquidating Trustee Professionals shall be required to submit reasonably detailed invoices on a monthly basis to the Liquidating Trustee (or on such other periodic basis as is agreed between the Liquidating Trust Professional and the Liquidation Trustee), including in such invoices a description of the work performed, who performed such work, and if billing on an hourly basis, the hourly rate of each such person, plus an itemized statement of expenses. The Liquidating Trustee shall pay those invoices promptly following the expiration of a ten (10) days objection period, without Bankruptcy Court approval, unless the Liquidating Trustee objects. If there is a dispute as to a part of an invoice, the Liquidating Trustee shall pay the undisputed portion and the Bankruptcy Court shall resolve any



disputed amount if the Liquidating Trustee Professionals and the Liquidating Trustee cannot otherwise reach agreement.

(b) After the Effective Date, the Liquidating Trustee Non-Professionals shall be required to submit to the Liquidating Trustee periodic invoices containing information with sufficient detail to assess the reasonableness of the fees and charges. The Liquidating Trustee shall pay those invoices promptly following the expiration of a ten (10) days objection period, without Bankruptcy Court approval, unless the Liquidating Trustee objects. If there is a dispute as to a part of an invoice, the Liquidating Trustee shall pay the undisputed portion and the Bankruptcy Court shall resolve any disputed amount if the Liquidating Trustee Non-Professionals and the Liquidating Trustee cannot otherwise reach agreement.

(c) All payments to Liquidating Trustee Professionals and Liquidating Trustee Non-Professionals shall be paid out of the Liquidating Trust Assets.

## **ARTICLE XVI**

### **TERMINATION OF LIQUIDATING TRUST**

#### 16.1 Duration and Extension.

The Liquidating Trust will be dissolved the earlier of (i) the date on which all Liquidating Trust Assets have been liquidated and distributed in accordance with the terms of the Plan, or (ii) six (6) years from the Effective Date unless the Bankruptcy Court, upon a motion filed prior to the sixth (6<sup>th</sup>) anniversary or the end of any extension period approved by the Bankruptcy Court (the filing of which will automatically extend the term of the Liquidating Trust pending the entry of an order by the Bankruptcy Court granting or denying the motion), determines that a fixed period extension (not to exceed two (2) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service or opinion letter that any further extension would not adversely affect the status of the Liquidating Trust) is necessary to facilitate or complete the recovery and liquidating of the Liquidating Trust Assets. After (a) the final Distribution of the Disputed Claims Reserve and the balance of the Liquidating Trust Assets pursuant to the Plan, and (b) the filing by or on behalf of the Liquidating Trust of a certification of dissolution with the Bankruptcy Court in accordance with the Plan, the Liquidating Trust will be deemed dissolved for all purposes without the necessity for any other or further actions.

#### 16.2 Diligent Administration

The Liquidating Trustee shall (a) not unduly prolong the duration of the Liquidating Trust; (b) at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Liquidating Trust Assets; (c) consult and confer with the Post-Confirmation Committee and keep it fully advised of his or her activities; and (d) effect the liquidating and distribution of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries in accordance with the terms of the Plan and this Agreement.

**ARTICLE XVII**  
**AMENDMENT AND WAIVER**

17.1 Amendment and Waiver

Any substantive provision of this Agreement may be materially amended or waived only by order of the Bankruptcy Court if necessary to implement the Plan; *provided, however*, that no change may be made to this Agreement that would adversely affect the federal income tax status of the Liquidating Trust as a “grantor trust.” Technical or non-material amendments to or waivers of portions of this Agreement may be made as necessary to clarify this Agreement or to enable the Liquidating Trust to effectuate the terms of this Agreement, with the consent of the Liquidating Trustee.

**ARTICLE XVIII**  
**MISCELLANEOUS PROVISIONS**

18.1 Intention of Parties to Establish Grantor Trust

This Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as a grantor trust.

18.2 Preservation of Privilege

In connection with the vesting and transfer of the Liquidating Trust Assets, including rights and Bankruptcy Causes of Action, any attorney-client privilege, work-product protection, or other privilege or immunity attaching or relating to any documents or communications (of any kind, whether written or oral, electronic or otherwise) held by the Debtors shall be transferred to the Liquidating Trust and shall vest in the Liquidating Trust. The Debtors and the Liquidating Trustee shall take all necessary actions to protect the transfer of such privileges, protections and immunities.

18.3 Prevailing Party

The prevailing party in a dispute regarding the provisions of this Agreement or the enforcement thereof shall be entitled to collect any and all costs, expenses and fees, including attorneys’ fees, from the non-prevailing party incurred in connection with such dispute or enforcement action.

18.4 Confidentiality

The Liquidating Trustee and each of his or her respective employees, members, agents, professionals and advisors, including the Liquidating Trustee Professionals and Liquidating Trustee Non-Professionals, (each a “**Confidential Party**” and collectively the “**Confidential Parties**”) shall hold strictly confidential and not use for personal gain any material, non-public information of which they have become aware in their capacity as a Confidential Party, of or pertaining to any Entity to which any of the Liquidating Trust Assets relates; *provided, however*, that such information may be disclosed if (a) it is now or in the future becomes generally

available to the public other than as a result of a disclosure by the Confidential Parties, or (b) such disclosure is required of the Confidential Parties pursuant to legal process, including, but not limited to, subpoena or other court order or other applicable laws or regulations. In the event that any Confidential Party is requested to divulge confidential information pursuant to clause (b) above, such Confidential Party shall promptly, in advance of making such disclosure, provide reasonable notice of such required disclosure to the Liquidating Trustee and the Debtors to allow them sufficient time to object to or prevent such disclosure through judicial or other means and shall cooperate reasonably with the Liquidating Trustee and/or the Debtors in making any such objection, including but not limited to appearing in any judicial or administrative proceeding in support of any objection to such disclosure.

18.5 Laws as to Construction

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without giving effect to rules governing the conflict of law.

18.6 Severability

Except with respect to provisions herein that are contained in the Plan, if any provision of this Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

18.7 Notices

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, on the third (3<sup>rd</sup>) Business Day after such notice is delivered by (i) facsimile (at the number set forth below with proof of confirmation), (ii) overnight delivery, (iii) electronic mail, or (iv) certified mail, with return receipt requested at the address as set forth below, or such other addresses as may be filed with the Bankruptcy Court:

**As to the Debtors:**

Beaulieu Group, LLC  
Beaulieu Trucking, LLC  
Beaulieu of America, Inc.  
c/o Ashley R. Ray  
Scroggins & Williamson, P.C.  
4401 Northside Parkway  
Suite 450  
Atlanta, GA 30327

**As to the Liquidating Trustee:**

**As to the Post-Confirmation Committee:**

18.8 Notices if to a Liquidating Trust Beneficiary

Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, on the fifth (5<sup>th</sup>) Business Day after deposited, first class postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended to the name and address as determined in accordance with the Trust Register.

18.9 Survivability

Notwithstanding any provision of the Plan to the contrary, the terms and provisions of this Agreement shall remain fully binding and enforceable notwithstanding any vacancy in the position of the Liquidating Trustee.

18.10 Headings

The section headings contained in this Agreement are solely for the convenience of reference and shall not affect the meaning or interpretation of this Agreement or of any term or provision hereof.

18.11 Conflicts with Plan Provisions

Except as otherwise expressly stated herein, if any of the terms and/or provisions of this Agreement conflict with the terms and/or provisions of the Plan, then the Plan shall govern.

IN WITNESS WHEREOF, the Parties hereto have either executed and acknowledged this Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

Dated: February \_\_\_\_, 2018

BEAULIEU GROUP, LLC and  
BEAULIEU TRUCKING, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

LIQUIDATING TRUSTEE

By: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a true and correct copy of the attached **DISCLOSURE STATEMENT TO ACCOMPANY JOINT PLAN OF LIQUIDATION** by causing it to be deposited in the United States Mail in a properly addressed envelope with adequate postage affixed thereon to the following:

Martin P. Ochs  
OFFICE OF THE UNITED STATES TRUSTEE  
Suite 362, Richard B. Russell Building  
75 Ted Turner Drive, SW  
Atlanta, GA 30303

This 9<sup>th</sup> day of February, 2018.

Respectfully submitted,

SCROGGINS & WILLIAMSON, P.C.

/s/ J. Robert Williamson  
J. ROBERT WILLIAMSON  
Georgia Bar No. 765214  
ASHLEY REYNOLDS RAY  
Georgia Bar No. 601559

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