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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	Chapter 11
In re:)	
_____)	Case No. 12-14300 (ALG)
HMX ACQUISITION CORP., <i>et al.</i> , ¹)	
)	
Debtors.)	(Jointly Administered)
_____)	

**DISCLOSURE STATEMENT PURSUANT TO 11 U.S.C. § 1125
WITH RESPECT TO THE DEBTORS' JOINT PLAN OF LIQUIDATION**

THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.

Dated: February 1, 2013

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

THIS DISCLOSURE STATEMENT AND ITS RELATED DOCUMENTS ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ACCEPTING OR REJECTING THE DEBTORS' JOINT PLAN OF LIQUIDATION, DATED FEBRUARY 1, 2013 (AS IT MAY BE AMENDED, THE "PLAN"). NO REPRESENTATIONS HAVE BEEN AUTHORIZED BY THE COURT CONCERNING THE DEBTORS, THEIR BUSINESS OPERATIONS OR THE VALUE OF THEIR ASSETS, EXCEPT AS EXPLICITLY SET FORTH IN THIS DISCLOSURE STATEMENT.

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. THE DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN, BUT RATHER TO AID AND SUPPLEMENT SUCH REVIEW. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED PROVISIONS SET FORTH IN THE PLAN (WHICH IS INCLUDED AS EXHIBIT A TO THIS DISCLOSURE STATEMENT). IN THE EVENT OF A CONFLICT BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE PROVISIONS OF THE PLAN WILL GOVERN. ALL HOLDERS OF CLAIMS IN CLASSES ENTITLED TO VOTE ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND TO READ CAREFULLY THIS ENTIRE DISCLOSURE STATEMENT, INCLUDING ALL EXHIBITS ANNEXED HERETO, BEFORE DECIDING WHETHER TO VOTE TO ACCEPT THE PLAN.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME SUBSEQUENT TO THE DATE HEREOF.

HOLDERS OF CLAIMS AND INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH SUCH HOLDER SHOULD, THEREFORE, CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE SOLICITATION, THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

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

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I. INTRODUCTION

A. General

On October 19, 2012 (the “HMXAC Petition Date”), HMX Acquisition Corp. and HMX Poland Sp. z o. o. each filed with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) their voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and, on October 21, 2012 (the “HMX Petition Date” and, together with the HMXAC Petition Date, respectively, the “Petition Date”), HMX, LLC, Quartet Real Estate, LLC, and HMX, DTC Co. each filed with the Bankruptcy Court their voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby commencing the Debtors’ chapter 11 cases (the “Chapter 11 Cases”). Since the Petition Date, the Debtors have continued in possession of their respective properties as debtors in possession and have commenced the orderly liquidation of their assets, subject to the control and supervision of the Bankruptcy Court. The Debtors hereby submit this Disclosure Statement, dated February 1, 2013 (as may be amended from time to time, the “Disclosure Statement”), pursuant to section 1125 of the Bankruptcy Code, in connection with the solicitation of acceptances or rejections of the Plan from certain holders of Claims against the Debtors. A copy of the Plan is annexed hereto as Exhibit A.²

Following a hearing held on [_____], 2013, this Disclosure Statement was approved by the Bankruptcy Court as containing “adequate information” in accordance with section 1125 of the Bankruptcy Code. Pursuant to section 1125(a)(1) of the Bankruptcy Code, “adequate information” is defined as “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and the history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.”

B. Disclosure Statement Enclosures

Accompanying this Disclosure Statement are copies of:

1. the Plan (which is annexed hereto as Exhibit A);
2. the Liquidation Analysis (which is annexed hereto as Exhibit B);
3. the Notice (a) fixing the time for casting Ballots either accepting or rejecting the Plan, (b) fixing the deadline for filing objections to Confirmation of the Plan and (c) scheduling a hearing on Confirmation of the Plan (the “Confirmation Hearing Notice”);
4. the Order approving this Disclosure Statement;

² Capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed to them in the Plan.

- 5a. for impaired Creditors entitled to vote to accept or reject the Plan, a ballot for acceptance or rejection of the Plan (the “Ballot”); and
- 5b. for unimpaired Creditors not entitled to vote on the Plan, a Notice of Non-Voting Status (Unimpaired Classes).

C. Voting

Pursuant to the provisions of the Bankruptcy Code, only classes of claims and interests that are “impaired” and are receiving distributions under the Plan may vote to accept or reject the Plan. Generally, a claim or interest is impaired under a plan if the holder’s legal, equitable or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an impaired class do not receive or retain any property under a plan on account of such claims or interests, such impaired class is deemed to have rejected the plan under section 1126(g) of the Bankruptcy Code and holders of the claims in such impaired class are not entitled to vote.

Under the Plan, claims in Classes 2, 3 and 4 and claims and interests in Classes 5 and 6 are impaired. Holders of Class 5 Claims and Class 6 Interests will receive no distribution and, accordingly, such holders are deemed to reject the Plan. Therefore, their votes are not being solicited. Under the Plan, Claims in Class 1 are unimpaired and the holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. **ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASSES 2, 3 AND 4.**

For a summary of the treatment of each class of claims and interests, see “Overview of the Plan” below.

The Bankruptcy Court has fixed 5:00 p.m. (prevailing Eastern time) on [_____, 2013 as the “Record Date.” Only persons who hold Claims or Interests on the Record Date are entitled to receive a copy of this Disclosure Statement and related materials. Only persons who hold Claims or Interests that are impaired under the Plan and are not deemed to have rejected the Plan are entitled to vote whether to accept the Plan.

The ballots have been specifically designated for the purpose of soliciting votes on the Plan from each Class entitled to a vote with respect thereto. Accordingly, in voting on the Plan, please use only the Ballot sent to you with this Disclosure Statement. Please complete and sign your Ballot and return it in the enclosed, pre-addressed enveloped to the Debtors’ Balloting Agent:

If by First-Class Mail:
HMX Acquisition Corp. Balloting Center
c/o Epiq Bankruptcy Solutions, LLC
FDR Station, P.O. Box 5015
New York, NY 10150-5015

If by Hand Delivery or Overnight Mail:
HMX Acquisition Corp. Balloting Center

**c/o Epiq Bankruptcy Solutions, LLC
757 Third Avenue, 3rd Floor
New York, NY 10017**

ALL PROPERLY COMPLETED BALLOTS RECEIVED BY THE BALLOTING AGENT PRIOR TO 5:00 P.M. (PREVAILING EASTERN TIME) ON [_____, 2013 (THE “VOTING DEADLINE”) WILL BE COUNTED FOR PURPOSES OF DETERMINING WHETHER EACH CLASS OF IMPAIRED CLAIMS ENTITLED TO VOTE ON THE PLAN HAS ACCEPTED THE PLAN. ANY BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED, NOR WILL ANY BALLOTS RECEIVED BY FACSIMILE BE ACCEPTED. Ballots may not be transmitted via facsimile. The Debtors will prepare and file with the Bankruptcy Court a certification of the results of the balloting with respect to the Plan on a class-by-class basis.

Your vote on the Plan is important. The Bankruptcy Code requires as a condition to confirmation of a chapter 11 plan that each class that is impaired under such plan vote to accept such plan, unless the “cramdown” provisions of the Bankruptcy Code are invoked. The Debtors have reserved their right to seek to “cramdown” the Plan on certain non-accepting Classes of creditors and interest holders. See Section VIII.G. below.

D. Confirmation Hearing

The Bankruptcy Court has scheduled a hearing to consider confirmation of the Plan for [_____, 2013, at __: __ .m. (prevailing Eastern Time) in the United States Bankruptcy Court for the Southern District of New York, Courtroom 617, One Bowling Green, New York, New York 10004 (the “Confirmation Hearing”). The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and filed on or before [_____, 2013, at 5:00 p.m. (prevailing Eastern Time) in the manner described in the Notice accompanying this Disclosure Statement. The date of the Confirmation Hearing may be adjourned from time to time without further notice except for an in-court announcement at the Confirmation Hearing of the date and time as to which the Confirmation Hearing has been adjourned.

E. Recommendation

THE PLAN IS PROPOSED BY THE DEBTORS. THE DEBTORS BELIEVE THE PLAN PROVIDES THE GREATEST POSSIBLE RECOVERY TO CREDITORS AND URGE ALL IMPAIRED CREDITORS TO VOTE IN FAVOR OF THE PLAN.

F. Overview of the Plan

THE FOLLOWING IS A BRIEF SUMMARY OF THE TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN. THE DESCRIPTION OF THE PLAN SET FORTH BELOW CONSTITUTES A SUMMARY ONLY. CREDITORS AND OTHER PARTIES IN INTEREST ARE URGED TO REVIEW THE MORE DETAILED DESCRIPTION OF THE PLAN CONTAINED IN THIS DISCLOSURE STATEMENT AND THE PLAN ITSELF, WHICH IS ANNEXED AS EXHIBIT A TO THIS DISCLOSURE STATEMENT.

Under the Plan, the Debtors will liquidate and otherwise dispose of their remaining assets and dissolve as legal entities.

Set forth below is a table summarizing the classification and treatment of Claims and Interests under the Plan and the estimated distributions to be received by the holders of such Claims and Interests thereunder. The actual distributions may differ from the estimates set forth in the table depending on, among other things, variations in the amounts of Allowed Claims and the existence of Disputed Claims.

SUMMARY OF ESTIMATED DISTRIBUTIONS UNDER THE PLAN:

DESCRIPTION/CLASS	ESTIMATED ALLOWED AMOUNTS	TREATMENT UNDER THE PLAN
Unclassified Administrative Claims – postpetition claims for costs and expenses of administration of the estates, including professional fees and postpetition ordinary business payables.	\$5,500,000 (Estimated unpaid balance as of the Effective Date, including accrued but unpaid professional fee and expense claims.)	Except to the extent the holder of an Allowed Unclassified Administrative Claim agrees otherwise, on, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, each Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Allowed Administrative Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative Claim or (ii) such other less favorable treatment to the Holder of an Allowed Administrative Claim as to which the Debtors or Liquidating Trustee and the Holder of such Allowed Administrative Claim shall have agreed upon in writing. Estimated Recovery – 100%
Unclassified Priority Tax Claims	\$750,000 ³	Except to the extent the holder of an Allowed Unclassified Priority Tax Claim agrees otherwise, on, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an

³ The estimated allowed amounts and estimated recoveries are approximations based upon the amounts reflected in the Debtors’ schedules and are subject to change based upon the actual amount of Filed and Allowed Claims.

DESCRIPTION/CLASS	ESTIMATED ALLOWED AMOUNTS	TREATMENT UNDER THE PLAN
		<p>Allowed Priority Tax Claim against a Debtor shall receive in full satisfaction, settlement and release of, and in exchange for, such Allowed Priority Tax Claim, (i) Cash equal to the amount of such Allowed Priority Tax Claim, or (ii) such other less favorable treatment to the Holder of an Allowed Priority Tax Claim as to which the Debtors or Liquidating Trustee and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing; <u>provided, however</u>, that, at the election of the Debtors prior to the Effective Date, any or all Allowed Priority Tax Claims may be paid by the Liquidating Trust in regular installments over a period ending not later than five (5) years after the Petition Date and in a manner no less favorable than the treatment provided on account of General Unsecured Claims.</p> <p>Estimated Recovery – 100%</p>
<p>Class 1 Non-Tax Priority Claims – any Claims the estates entitled to priority pursuant to 11 U.S.C. § 507(a) or (b), except for Priority Tax Claims.</p>	<p>\$0</p>	<p>To the extent that these Claims have not already been paid pursuant to prior order of the Bankruptcy Court, each Holder of an Allowed Class 1 Non-Tax Priority Claim shall receive in full satisfaction, settlement, release and extinguishment of such Claim: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date; (ii) the date on which such Class 1 Claim becomes Allowed; and (iii) a date agreed to by the Debtors or the Liquidating Trustee and the Holder of such Class 1 Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Liquidating Trustee or as the Bankruptcy Court may order.</p>

DESCRIPTION/CLASS	ESTIMATED ALLOWED AMOUNTS	TREATMENT UNDER THE PLAN
		Estimated Recovery – 100%
<p>Class 2 General Unsecured Claims (Class 2A - General Unsecured Claims Against HMX; Class 2B – General Unsecured Claims against HMXAC; Class 2C – General Unsecured Claims against HMX Poland; Class 2D – General Unsecured Claims against Quartet; and Class 2E – General Unsecured Claims against DTC)</p>	\$23,562,468.43	<p>On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Liquidating Trustee shall, in full satisfaction, settlement and release of, and in exchange for, each and every Allowed Class 2A Claim, distribute Pro Rata to or for the benefit of Holders of Allowed Class 2A Claims the ratable portion of the proceeds of assets transferred into the Liquidating Trust (exclusive of funds in the Professional Fee Escrow unless and until all Professional Fee Claims are paid in full).</p> <p>Proceeds of Liquidating Trust assets distributable to Class 2 shall be allocated to Holders in sub-Classes 2A, 2B, 2C, 2D and 2E based upon the value of the assets of each respective Debtor (sold in the sale of substantially all of the Debtors’ assets) as set forth in the Schedules as follows: Class 2A (96%); Class 2B (.04%); Class 2C (.01%); Class 2D (.54%); and Class 2E (3.4%). To the extent that any of Class 2A, 2B, 2C, 2D and 2E does not have any Holder of an Allowed Class 2 Claim, any amount allocated to such sub-Class shall be reallocated Pro Rata for the benefit of the other sub-Classes that have Holders of at least one Allowed Class 2 Claim.</p> <p>Estimated Recovery – 0% - 5%</p>

DESCRIPTION/CLASS	ESTIMATED ALLOWED AMOUNTS	TREATMENT UNDER THE PLAN
Class 3 General Unsecured Claims	\$18,490,000	<p>On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Liquidating Trustee shall, in full satisfaction, settlement and release of, and in exchange for, each and every Allowed Class 3 Claim, distribute Pro Rata to or for the benefit of Holders of Allowed Class 3 Claims the ratable portion of the proceeds of assets transferred into the Liquidating Trust (exclusive of funds in the Professional Fee Escrow unless and until all Professional Fee Claims are paid in full).</p> <p>Estimated Recovery – 0% - 5%</p>
Class 4 General Unsecured Claims	Unknown	<p>On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Liquidating Trustee shall, in full satisfaction, settlement and release of, and in exchange for, each and every Allowed Class 4 Claim, distribute Pro Rata to or for the benefit of Holders of Allowed Class 4 Claims the ratable portion of the proceeds of assets transferred into the Liquidating Trust (exclusive of funds in the Professional Fee Escrow unless and until all Professional Fee Claims are paid in full).</p> <p>Estimated Recovery – 0% - 5%</p>
Class 5 Intercompany Claims	n/a	<p>On the Effective Date, all Intercompany Claims shall be, and shall be deemed, Disallowed and no distribution shall be made on account of such claims and the Holders of such Intercompany Claims shall not receive or retain any property or distribution on account of such Class 5 Claims.</p>

DESCRIPTION/CLASS	ESTIMATED ALLOWED AMOUNTS	TREATMENT UNDER THE PLAN
Class 6 Equity Interests	n/a	On the Effective Date, the Class 6 Interests will be cancelled and the Holders of such Interests shall not receive or retain any property or distribution on account of such Class 6 Interests.

II. HISTORICAL INFORMATION

A. Description of the Debtors' Business

The Debtors, headquartered in New York City, were leading American designers, manufacturers, licensors, and licensees of men's and women's business and leisure apparel focused primarily on the luxury, bridge, and better price points. The Debtors were the largest manufacturer and marketer of U.S.-made men's tailored clothing, with an attractive portfolio of owned and licensed brands sold primarily through upscale department stores, specialty stores, and boutiques. The Debtors also sold their brands directly to consumers through their e-commerce site and retail locations.

The Debtors sold a wide selection of high-quality men's tailored clothing, sportswear, and dress furnishings under some of the most highly recognized brands in the industry, including Hickey Freeman and Hart Schaffner Marx. The Debtors also sold women's career apparel, designer knitwear, sportswear, and denim under brand names such as Exclusively Misook, Christopher Blue and Bobby Jones.

The Debtors manufactured their Hickey Freeman and Hart Schaffner Marx premium tailored clothing and slacks at three Debtor-operated facilities in North America. The Debtors utilized a network of domestic and foreign contract manufacturers to produce a substantial portion of its moderately-priced tailored clothing, non-tailored clothing (principally men's sportswear), and women's career apparel and sportswear.

B. The Debtors' Prior Bankruptcy Cases

On January 23, 2009, Hartmarx Corporation and certain of its affiliates (collectively, "Hartmarx"), the Debtors' predecessor in interest, filed for chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Hartmarx Cases"). In the Hartmarx Cases, a Bankruptcy Code section 363 sale took place in the summer of 2009 and the Debtors were acquired by their existing equity owners against the backdrop of a U.S. recession, a difficult retail environment, and a need to improve the Debtors' operations.

C. The Debtors' Capital Structure

Debtor HMX, LLC and its non-debtor Canadian affiliate Copley Corp. ("Copley") were the U.S. and Canadian borrowers, respectively, under that certain Loan and Security Agreement, dated as of August 7, 2009 (as amended, the "Prepetition Credit Agreement"), with Wachovia Capital Finance Corporation (Central), predecessor in interest to Salus Capital Partners, LLC, as agent (the "Prepetition Agent") for the lenders (the "Prepetition Secured Lenders"). Debtor HMX and Copley were jointly and severally liable for all obligations arising under the Prepetition Credit Agreement. Pursuant to the Prepetition Credit Agreement, the Prepetition Secured Lenders extended to the Debtors: (a) a senior secured revolving credit facility in the original committed amount of up to \$95,000,000⁴ (the "Prepetition Revolver"); and (b) a senior secured term loan in the original principal amount of \$10,000,000 (the "Prepetition Term Loan" and, together with the Prepetition Revolver, the "Prepetition Credit Facility"). Debtors HMX Acquisition Corp., HMX Poland sp. z o.o. and Quartet Real Estate, LLC were guarantors under the Prepetition Credit Facility.

The obligations owed under the Prepetition Credit Facility were secured by valid, properly perfected, first priority, security interests in and liens upon substantially all of the assets (including, without limitation, real property, machinery, equipment, fixtures, inventory, accounts receivable, and intellectual property) owned by the borrowers and guarantors (including Copley) under the Prepetition Credit Agreement (the "Prepetition Collateral"). Borrowings under the Prepetition Credit Facility were subject to a borrowing base tied to the Debtors' eligible inventory and accounts receivable. As of the Petition Date, the aggregate principal amount outstanding under the Prepetition Credit Facility was approximately \$60,000,000, including certain outstanding letters of credit.

Throughout 2012, certain defaults and events of default occurred under the Prepetition Credit Facility. Based upon the default and events of default, the Debtors and the Prepetition Agent entered into numerous forbearance agreements and amendments to the Prepetition Credit Agreement.

In 2010, Debtor HMX, LLC entered into that certain Loan Agreement, dated as of April 1, 2010 (the "SKNL Loan Agreement"), with SKNL North America B.V. ("SKNL"), as lender. SKNL is an insider and the ultimate owner of 95% of the equity of the Debtors' ultimate parent company. As of the Petition Date, the aggregate principal amount outstanding under the SKNL Loan Agreement was approximately \$2,490,000, plus accrued interest, costs, expenses, fees (including attorneys' fees and legal expenses), other charges and other obligations (the "SKNL Loan Obligations").

Debtor HMX, LLC was also the maker under seven Promissory Notes (each, an "SKNL Note" and, collectively, the "SKNL Notes"), dated March 9, 2010 (in principal amount of \$5,000,000), September 29, 2010 (in principal amount of \$5,000,000), January 14, 2011 (in principal amount of \$1,000,000), March 9, 2011 (in principal amount of \$1,000,000), March 14, 2011 (in principal amount of \$1,000,000), March 5, 2012 (in principal amount of \$1,000,000),

⁴ The Prepetition Credit Facility provided Debtor HMX, LLC with up to \$87 million and non-debtor Copley Corp. with up to \$8 million, in each case subject to borrowing base limitations.

and April 19, 2012 (in principal amount of \$2,000,000), under which, in exchange for value received, it promised to pay to SKNL Global Holdings, B.V., as holder, an aggregate principal amount of \$16,000,000, plus accrued interest, costs, expenses, fees (including attorneys' fees and legal expenses) other charges and other obligations, all of which remained outstanding as of the Petition Date (the "SKNL Note Obligations" and, together with the SKNL Loan Obligations, the "SKNL Debt Obligations"). The SKNL Debt Obligations are general unsecured claims against Debtor HMX LLC's estate.

In 2010, Debtor HMX Poland Sp. z o. o. entered into three separate Loan Agreements dated as of 2012 (the "Remala Loan Agreements") with Remala Trading B.V. ("Remala"), as lender. Remala is an insider and the owner of 100% of the equity of HMX Poland Sp. z o. o. The Remala Loan Agreements reflect that Remala loaned to Debtor HMX Poland Sp. z o. o. various amounts in various foreign currencies (the "Remala Loan Obligations"). The Remala Loan Obligations are general unsecured claims against Debtor HMX Poland Sp. z o. o.'s estate.

As of the Petition Date, the Debtors only other long-term debt consisted of mortgages on two of their owned manufacturing facilities, with approximately \$7,000,000 million of total principal owing under those mortgages. In addition, the Debtors had approximately \$23,000,000 million of trade debt outstanding. Finally, the Debtors have intercompany, unsecured claims against each other.

D. The Debtors' Corporate Structure

Debtor HMX Poland Sp. z o. o. is 100% owned by Remala. Debtor HMX Poland Sp. z o. o. owns 100% of the stock of Debtor HMX Acquisition Corp. Debtor HMX Acquisition Corp., in turn, owns 100% of the equity interests in Debtors HMX, LLC, Quartet Real Estate, LLC and HMX, DTC Co.

E. The Debtors' Historical Operations and Recent Developments

The Debtors' history spans over 140 years in the clothing and design industry. The Debtors' lineage traces back to 1872 when brothers Harry and Max Hart opened a small men's clothing store in Chicago called Harry Hart and Brother. The Harts initially ran their store as a family business, enlisting the aid of their brothers-in-law, Levi Abt and Marcus Marx, and their cousin, Joseph Schaffner. In or about 1887, the Harts renamed their business Hart Schaffner & Marx. During the ensuing decades, the focus of the business shifted from retail to wholesale when the business won contracts to produce clothing for the U.S. military. The partners' success in prefabricated off-the-rack clothing for the military gave them expertise to become one of the first major marketers of ready-made suits.

With hopes to continue to grow and expand the business, in 1897, Hart Schaffner & Marx undertook a national advertising campaigns for its products and began selling off-the-rack suits through a variety of distributors. Hart Schaffner & Marx commissioned well-known illustrators to paint pictures for style books and retail posters. These advertisements portrayed the company's latest fashions in rich surroundings, establishing Hart Schaffner & Marx as a premium brand with an innovative but accessible product line.

The business grew both organically and by acquisition, always maintaining a focus on superb tailoring, workwear, and innovation. Leading up to and after the Petition Date, the Debtors' brands enjoyed considerable publicity. For example, during the 2008 Presidential campaign, then Senator Barack Obama wore the Debtors' men's tailored clothing extensively, including suits tailored especially for his acceptance speech and his tuxedo worn at the 2009 Presidential inaugural balls. Former Republican presidential candidate, Mitt Romney, was also a supporter of the Debtors' men's tailored clothing and was often seen wearing their brands.

The Debtors' manufacturing facilities employed union workers pursuant to collective bargaining agreements.

As of the Petition Date, the Debtors continued to operate manufacturing facilities in Rochester, New York and Des Plaines, Illinois. The Debtors also had employees working at administrative offices in New York City and employees working at warehouse, distribution and retail facilities throughout the country. As of the Petition Date, the Debtors employed approximately 1,185 people⁵ on a full-time, part-time or temporary basis (collectively, the "Employees") to operate the Debtors' day-to-day business. Approximately sixty-nine percent (69%) of the Debtors' workforce was unionized.

F. The Decision to Seek Bankruptcy Protection

In the year leading up to the Petition Date, the Debtors struggled financially, incurring substantial operating losses and suffering negative cash flow and negative EBITDA. Despite significant prepetition cost savings initiatives undertaken by the Debtors, due in part to changing trends in the clothing market, revenues dropped based upon strategic removal of unprofitable business lines and, therefore, the Debtors' liquidity deteriorated.

Starting in 2011, the Debtors sought to replace the Prepetition Credit Facility with one that would provide improved advance rates and an increase in overall liquidity to implement the next stage of the Debtors' turnaround. Specifically, the Debtors attempted to take advantage of favorable terms in their Prepetition Credit Agreement pursuant to which they could refinance their lenders. As a result of a refinancing process initiated by the Debtors in 2011, the Debtors received and negotiated a definitive refinancing proposal that, among other things, would have provided the Debtors with a material increase in liquidity. The refinancing proposal, however, required certain credit enhancements from the Debtors' equity owner. After extensive negotiations, the Debtors' equity owner declined to satisfy this condition to the financing on terms satisfactory to the potential lender. Accordingly, negotiations regarding this refinancing terminated.

The Debtors reinitiated their refinancing efforts in early 2012 in anticipation of the upcoming maturity date of the Prepetition Credit Agreement. As of July 2012, the Debtors were on target to complete a refinancing of the Prepetition Credit Facility. This refinancing, if

⁵ Debtor HMX Poland Sp. z o. o. employed at its Luxembourg branch one person, whom it was statutorily obligated to employ.

consummated, would have generated substantial incremental liquidity for the Debtors' operations. Leading up to the closing, the Debtors were forced to curtail inventory purchases and other expenses to preserve the limited liquidity they had under the Prepetition Credit Agreement, with the reasonable expectation of greater availability upon closing. The proposed refinancing required a new, third party credit facility and a substantial equity infusion from SKNL. The third party credit facility was ready to close on the required closing date of July 16, 2012. Prior to the closing, however, SKNL stated that it did not have the required equity infusion and requested more time to raise the required funds. The failure to close on July 16, 2012 triggered a default under the Prepetition Credit Agreement, an acceleration of all obligations owed thereunder, and severely limited the Debtors' ability to use cash receipts and to borrow under the Prepetition Credit Facility. The failure to close materially and adversely affected the Debtors' ability to timely fill orders or to otherwise maintain the orderly flow of goods.

On August 14, 2012, the Debtors entered into a Forbearance Agreement and Amendment No. 7 with respect to the Prepetition Credit Agreement. Concurrently therewith, a new financing source bought the claims of the existing lenders under the Prepetition Credit Agreement. Amendment 7: (a) set forth certain Corporate Governance Provisions, including the appointment by the Debtors of an Independent Director and Independent Manager (Mr. Michael O'Hara) who was "irrevocably" granted the "sole and exclusive power" and authority to make all decisions and execute all documents with respect to a "Sale Process" and a "Bankruptcy Process"; (b) required that the Debtors retain an investment banker to run a marketing and sale process; (c) required the Debtors to produce indications of interest by September 17, 2012 and signed transaction documents by September 28, 2012; (d) provided SKNL more time, through August 22, 2012, to provide the required equity infusion and provided that, upon the timely new equity investment, the Corporate Governance Provisions would unwind; (e) contained SKNL's signature acknowledging and agreeing to not, under any circumstances, contest any of the provisions in Amendment 7, including the Corporate Governance Provisions; (f) provided the Debtors with much needed additional liquidity and access to funds; and, (g) set a termination date of September 29, 2012. The required equity infusion was not made and SKNL requested more time to raise the needed funds. Amendment 7, however, enabled the Debtors to access additional liquidity to pursue a sale or recapitalization of the Debtors. To that end, the Debtors' engaged William Blair & Company, L.L.C. ("Blair") to pursue a sale of the Debtors' business on an integrated or disaggregated basis or a recapitalization

The Debtors were not able to comply with their obligations under Amendment 7; therefore, on September 28, 2012, the Debtors and the Prepetition Secured Lenders entered into a Forbearance Agreement and Amendment No. 8 to the Prepetition Credit Agreement. Amendment 8, among other things, provided: (a) an extension of the termination date to October 9, 2012; (b) an extension of the deadline to obtain signed transaction documents to October 8, 2012; and (c) additional liquidity and funding for the Debtors. In Amendment 8, the Debtors also acknowledged the existence of numerous defaults, including the failure to pay the entirety of the matured obligations and the existence of Material Budget Deviations for the weeks ended September 7, 14, and 21, 2012.

The Debtors also were not able to comply with their obligations under Amendment 8; therefore, on October 15, 2012, the Debtors and the Prepetition Secured Lenders entered into a

Forbearance Agreement and Amendment No. 9 to the Prepetition Credit Agreement. Amendment 9, among other things, provided: (a) an extension of the termination date to October 19, 2012; and, (b) an extension of the deadline to obtain signed transaction documents to October 19, 2012. In Amendment 9, the Debtors also acknowledged the existence of numerous defaults, including the existence of a Material Budget Deviation for the week ended September 28, 2012.

Mr. O'Hara, the Debtors' management, and Blair developed a strategy for pursuing a sale of the Debtors' business. Blair compiled a comprehensive list of close to 200 potential strategic and financial buyers in the United States, Canada, Asia, and Europe. Mr. O'Hara, Blair and the Debtors' management team reviewed and analyzed the list, notably with respect to identifying key strategic buyers in the apparel industry. After these discussions, Blair finalized the buyer list, which included 181 parties, approximately 30% of which were strategic buyers and 70% of which were financial buyers (the "Buyer List").

Blair began to market the Debtors' assets on or about August 15, 2012. Blair contacted the parties on the Buyer List to gauge interest in a potential transaction. The initial contact with the parties on the Buyer List resulting in 150 parties receiving a "teaser" letter, which set forth an overview of the Debtors, pictures of the Debtors' product portfolio, select sales information, investment highlights, and growth strategies. Thereafter, on or about August 28, 2012, 60 parties executed confidentiality agreements and received a 42-page confidential information memorandum which included an executive summary, investment highlights, growth opportunities, company overview, corporate information, and financial overview.

Also, on or about August 28, 2012, Blair distributed instructions for submissions of initial indications of interest (the "IOI Instructions"). The IOI Instructions indicated that initial indication of interest could contemplate the purchase of all of the Debtors' assets (including the Copley assets) or certain of the Debtors' brands. The IOI Instructions established September 17, 2012 as the deadline for submission of initial indications of interest, which was later extended to September 21, 2012 to allow parties additional time to conduct diligence. By close of business on September 24, 2012, ten initial indications of interest had been submitted by nine different parties.

After a review and analysis of the initial indications of interests, Mr. O'Hara and Blair determined it would be best to pursue a stand-alone sale of Copley's assets. This determination was based upon, among other things, the specialized interest of buyers in the Copley assets as compared to general interest of buyers in the Debtors' other brands. Copley is a much smaller business than the Debtors. The Copley revenues were approximately \$20 million each year, whereas the Debtors' revenues were approximately \$200 million each year. Copley's working capital assets (accounts receivable and inventory) were approximately \$8 million, whereas the Debtors' working capital assets were approximately \$76 million. The Debtors and Blair negotiated a sale of Copley's business, hard assets and the Copley trademarks and intellectual property (the "Copley IP"), which was owned by Debtor HMX, LLC, subject to an exclusive, global license in favor of Copley. Copley's business and hard assets were sold pursuant a Canadian receivership proceeding and the Copley IP was sold pursuant to an order entered by the Bankruptcy Court in the Debtors' Chapter 11 Cases. The net proceeds from the sale of Copley's business and assets were used to pay down the Prepetition Credit Facility.

Mr. O'Hara, Blair and the Debtors determined that the value of the estates would best be maximized and preserved through an orderly, going concern sale of substantially all the Debtors' assets, including their manufacturing facilities, real estate, intellectual property, and other assets. Accordingly, the Debtors solicited bids from interested parties and, in the event that the Debtors received any such bids, intended to conduct an auction for the going-concern sale of all of the Debtors' business and assets in one or more sale transactions to be implemented pursuant to section 363 of the Bankruptcy Code.

On October 17, 2012, the Debtors' entered into a Stalking Horse Asset Purchase Agreement with Authentic Brands Group LLC (the "Stalking Horse Purchase Agreement"), which agreement is described in detail in a sale and bidding procedures motion filed with the Bankruptcy Court. In sum, the Stalking Horse Purchase Agreement provided for a going concern sale and, only if certain conditions were not met, the Stalking Horse Purchase Agreement would "toggle" to a liquidation bid; ultimately, those conditions were met and the "toggle" was eliminated. The Stalking Horse Purchase Agreement provided a purchase price that paid the secured lender in full in cash and provided additional funds to the Debtors' estates.

After the Petition Date, the Debtors, in conjunction with the Committee and its professionals, commenced marketing efforts through a court-approved bid and auction process. In the end, no qualified competing bidders emerged from this auction process and the Debtors cancelled the auction. On December 20, 2012, the Bankruptcy Court approved the sale of substantially all of the Debtors' assets (the "Sale") to Authentic Brands Group LLC. The Sale closed on December 21, 2012. As of that date, the Debtors ceased all operations and terminated all of their remaining employees.

III. THE CHAPTER 11 CASES

A. Commencement of the Cases

On the HMXAC Petition Date, HMX Acquisition Corp. and HMX Poland Sp. z o. o. each filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code, and, on the HMX Petition Date, HMX, LLC, Quartet Real Estate, LLC, and HMX, DTC Co. each filed their chapter 11 petitions. The Debtors have continued in the management and possession of their businesses and properties as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed. On or about November 14, 2012, the United States Trustee appointed an official committee of unsecured creditors (the "Committee") comprised of the following members: Trisula Corporation, HMS International Fabrics Corp., Amalgamated National Health Fund, Conde Nast and Pacificways Limited, and, on November 26, 2012, added to the Committee Workers United, SEIU and The Doolittle Company, Inc. The Committee retained Leonard, Street and Deinard and ASK LLP as its counsel and Zolfo Cooper as its financial advisor.

B. Limited Continuation of Business After the Petition Date

Under the Bankruptcy Code, the Debtors were authorized to continue to operate their businesses in the ordinary course. On the Petition Date, the Debtors also filed a number of "first day motions" with the Court, seeking various forms of relief that the Debtors deemed essential to

facilitating their transition into the Chapter 11 Cases. Among the orders sought by the Debtors were, without limitation, the following: (i) an order approving the payment of various forms of compensation and other benefits due and owing to the Debtors' employees; (ii) an order directing the joint administration of the Debtors' Chapter 11 Cases, for procedural purposes, pursuant to Bankruptcy Rule 1015(b); (iii) an order permitting the Debtors to continue to honor certain customer programs; (iv) an order authorizing the Debtors to maintain their cash management system, their bank accounts and to continue the use of their business forms; (v) an order permitting the Debtors to pay accrued pre-petition sales and use taxes; (vi) an order authorizing the Debtors' use of cash collateral and postpetition financing; and (vii) an order providing utilities with adequate assurance of payments. These requests were approved with certain modifications by the Bankruptcy Court.

C. Retention of Professionals

1. Retention of Bankruptcy Counsel

By application dated October 23, 2012, the Debtors sought court approval to retain Proskauer Rose LLP to serve as their bankruptcy counsel. The Bankruptcy Court approved this application on November 29, 2012.

2. Retention of Financial Advisor

By application dated October 23, 2012, the Debtors sought court approval to retain CDG Group, LLC as their financial advisor in these Chapter 11 Cases. The Bankruptcy Court approved this application on November 29, 2012.

3. Retention of Investment Banker

By application dated October 23, 2012, the Debtors sought court approval to retain William Blair & Company, L.L.C. as their investment banker in these Chapter 11 Cases. The Bankruptcy Court approved this application on November 29, 2012. Following the close the Sale, the Debtors and Blair terminated Blair's engagement.

4. Retention of Notice, Claims and Balloting Agent

By applications dated October 21, 2012 and October 23, 2012, the Debtors sought to retain Epiq Bankruptcy Solutions, LLC as their claims, noticing, balloting and administrative agent in these Chapter 11 Cases. These applications were approved by the Bankruptcy Court on October 23, 2012 and November 29, 2012, respectively.

5. Retention of Ordinary Course Professionals

By motion dated October 21, 2012, the Debtors sought to retain certain ordinary course professionals ("OCPs") in these Chapter 11 Cases. This motion was granted on November 29, 2012. The Debtors are authorized to continue to use the OCPs in the ordinary course of business and to pay fees up to \$50,000 per month without leave of Bankruptcy Court.

D. Motion to Sell Substantially All Assets and Establish Bid Procedures

On October 21, 2012, the Debtors filed a motion to approve bid and auction procedures and the sale of substantially all of their assets under the terms of the Stalking Horse Purchase Agreement or any higher or better offer received as a result of the auction process. The Court approved the Debtors' bid procedures by order entered on November 7, 2012 and entered orders approving revised bid procedures on November 21, 2012 and November 29, 2012. No qualified competing offers were received prior to the auction scheduled for December 17, 2012, which auction ultimately was cancelled, and, on December 20, 2012, the Court entered an order (the "Sale Order") approving the Sale to ABG HMX, LLC ("ABG"), as purchaser, and W Diamond Group Corp., as licensee (the "Licensee"), and authorized the assumption and assignment to ABG and/or the Licensee certain specified executory contracts and leases.

E. Rejection of Leases and Executory Contracts

Certain of the Debtors' unexpired leases of real property and executory contracts were assumed and assigned to ABG and the Licensee as part of the Sale. In connection with the Sale, the Debtors, certain of their non-debtor affiliates and the Licensee entered into a certain Transition Services Agreement dated as of December 21, 2012 (the "TSA"). The TSA provides the Licensee, during a limited transitional period in order to facilitate the orderly transfer of assets from the Debtors to the Licensee, with access to certain agreements utilized by the Debtors in connection with the operation of their business prior to the Sale closing (and which are not "Assumed Contracts" under the Sale Order).

On December 21, 2012, the Debtors filed (i) a motion seeking the rejection of all remaining executory contracts and unexpired leases that either were not assumed and assigned as part of the Sale or that are not subject to the TSA and (ii) a motion (the "TSA Contract Rejection Motion") seeking the rejection of all executory contracts and unexpired leases subject to the TSA. As set forth in the TSA Contract Rejection Motion, the Debtors intend to adjourn the relief sought in the TSA Contract Rejection Motion for any executory contract or unexpired lease subject thereto, provided that (a) the Licensee requests that any such contract or lease remains active and (b) the Licensee is not in default under the TSA.

On January 7, 2013, the Debtors adjourned the relief sought in the TSA Contract Rejection Motion for certain executory contracts and unexpired leases. On January 8, 2013, the Court entered orders authorizing the rejection of (i) all remaining executory contracts and unexpired leases that were not assumed and assigned as part of the Sale or that are not subject to the TSA; and (ii) those executory contracts and unexpired leases subject to the TSA that were not adjourned. The TSA Contract Rejection Motion remains pending with respect to the contracts and leases set forth therein that have not been rejected.

F. Debtor-in-Possession Financing

Pursuant to a motion dated October 21, 2012, the Debtors sought Court approval of a debtor-in-possession financing facility (the "DIP Facility") that provided the Debtors with \$5,000,000 in new, postpetition financing, subject to availability and a borrowing base. The funds borrowed under the DIP Facility and the Debtors' cash collateral were used to fund the Debtors' wind down of operations and sale of their assets in an orderly manner. The Court entered interim and bridge orders approving the DIP Facility on October 23, 2012, November 7,

2012, November 14, 2012 and November 16, 2012, and a final order approving the DIP Facility on November 29, 2012. The DIP Facility and all claims of the DIP Lender have been paid in full from the Sale proceeds.

G. Prepetition Claims Bar Date

On December 20, 2012, the Court entered an order setting: (a) February 5, 2013, as the last day for non-governmental creditors to submit timely prepetition proofs of claim in these Chapter 11 Cases; and (b) April 19, 2013, as the last day governmental creditors to submit timely prepetition proofs of claim in these Chapter 11 Cases.

H. Administrative Claims Bar Date

On February [___], 2013, the Court entered an order setting March [___], 2013, as the last day for creditors to submit timely requests for allowance of administrative expenses in these Chapter 11 Cases.

IV. REMAINING ASSETS

The remaining assets of the Debtors estates are comprised of:

1. The remaining proceeds from the Sale, after the pay down of the DIP Facility, indebtedness owed to the Prepetition Lender, and certain other parties in accordance with the Sale Order, in the amount of \$10,376,839.18.
2. Causes of Action (see VI. Below).

V. LITIGATION

Investigations are ongoing into whether potential voidable transfers which were made by the Debtors during the ninety (90) days preceding the Petition Date (and with regard to insiders, within one (1) year preceding the Petition Date). Whether any one or more of any of the above payments is voidable will depend upon a number of complex legal and factual issues concerning the amount and timing of such payments. All Causes of Action will be retained by the Liquidating Trustee and preserved for the benefit of the Estates after the Effective Date.

Any holder of a claim that also holds property that is recoverable by the Debtors through an avoidance action may have its claim disallowed, unless the holder has turned over to the Debtors any such property or has paid the amount for which such holder or transferee is liable in accordance with section 502(d) of the Bankruptcy Code.

Pursuant to the terms of the Plan, the Liquidating Trustee will have the power and authority to bring or continue all Causes of Action, including avoidance actions, after the Effective Date.

The Liquidating Trustee shall maintain reasonable records relating to the avoidance actions (including proceeds generated from settlement or judgment and expenses). The Plan

provides for the Bankruptcy Court to retain jurisdiction to resolve any disputes that may arise in connection with the distribution of proceeds from avoidance actions.

VI. SUMMARY OF THE PLAN

THE FOLLOWING IS A SUMMARY OF SOME OF THE SIGNIFICANT ELEMENTS OF THE PLAN. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED INFORMATION SET FORTH IN THE PLAN.

A. General

The Plan is a plan of liquidation which contemplates the orderly disposition of the Debtors' assets for the benefit of their creditors. All assets of the Debtors shall remain property of and be consolidated into the Liquidating Trust and shall continue to be subject to the jurisdiction of the Bankruptcy Court. The Liquidating Trustee shall make distributions on the Initial Distribution Date and each Subsequent Distribution Date to holders of Allowed Claims, as provided in the Plan.

The Plan incorporates the compromise and settlement of certain issues that were resolved through negotiations among the Debtors, the Committee and the Licensee.

1. Description, Classification and Treatment of Claims and Interests.

Among the various categories of Claims and Interests asserted against the Debtors are: (i) Administrative Claims; (ii) Priority Tax Claims; (iii) Non-Tax Priority Claims; (iv) General Unsecured Claims (Classes 2, 3 and 4); (v) Intercompany Claims; (vi) Equity Interests.

a. Unclassified Administrative Claims.

Administrative Claims are Claims for costs or expenses of the Chapter 11 Cases that are allowed under sections 503(b) and 507(a)(1) of the Bankruptcy Code, including all actual and necessary costs and expenses relating to the preservation of the Estates or the operation of the Debtors' business, all allowances of compensation or reimbursement of expenses to the extent Allowed by the Bankruptcy Court, and all Allowed Claims for cure payments arising from the assumption of executory contracts pursuant to section 365(b)(1) of the Bankruptcy Code to the extent such cure payments have not already been paid and are the liability of the Debtors.

Administrative Claims also include claims for fees ("Fee Claims") and expenses ("Expense Claims") of Professionals employed in the Chapter 11 Cases, salaries, bonuses, and benefits of employees of the Debtors, and other ongoing expenses of operation, during the wind down and liquidation process.

Administrative Claims (other than Professional Fee Claims) representing an undisputed, unpaid liability incurred on and after the Petition Date in the ordinary course of business by the Debtors may be paid by the Debtors as and when due in the ordinary course of business without an order of the Bankruptcy Court. Unless an Administrative Claim is paid as aforesaid as an ordinary course obligation, an Administrative Claim shall become an Allowed Administrative

Claim only to the extent Allowed by Final Order of the Bankruptcy Court. Any such request for the allowance of an Administrative Claim must be submitted on or before the Administrative Claims Bar Date for administrative claimants covered by the Administrative Claims Bar Date Order. Objections to the allowance of an Administrative Claim shall be filed with the Bankruptcy Court and served on the Administrative Claimant on or before one hundred twenty (120) days after the Effective Date. Any objection to the allowance of an Administrative Claim shall be resolved by the Bankruptcy Court following notice and a hearing.

Professional Fee Claims for services rendered or expenses incurred prior to or on the Effective Date shall be Allowed Claims to the extent approved by a Final Order of the Bankruptcy Court. Any such Professional Fee Claim, in the form of an application, must be filed on or before 45 days after the Effective Date. Objections to Professional Fee Claims shall be filed with the Bankruptcy Court and served on the Debtors and their counsel, and the requesting party and its counsel (if any) by the later of (1) 65 days after the Effective Date or (2) 20 days after the filing of the applicable request. All Allowed Professional Fee Claims shall be paid by the Liquidating Trustee from the Cash Reserve to be established under the Plan.

Under the Plan, on, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which an Administrative Claim becomes an Allowed Administrative Claim, each Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Allowed Administrative Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative Claim or (ii) such other less favorable treatment to the Holder of an Allowed Administrative Claim as to which the Debtors or Liquidating Trustee and the Holder of such Allowed Administrative Claim shall have agreed upon in writing.

b. Unclassified Priority Tax Claims.

Priority Tax Claims are Claims against the Debtors that are entitled to priority in accordance with section 507(a)(8) of the Bankruptcy Code ("Priority Tax Claims").

Under the Plan, On, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim against a Debtor shall receive in full satisfaction, settlement and release of, and in exchange for, such Allowed Priority Tax Claim, (i) Cash equal to the amount of such Allowed Priority Tax Claim, or (ii) such other less favorable treatment to the Holder of an Allowed Priority Tax Claim as to which the Debtors or Liquidating Trustee and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing; provided, however, that, at the election of the Debtors prior to the Effective Date, any or all Allowed Priority Tax Claims may be paid by the Liquidating Trust in regular installments over a period ending not later than five (5) years after the Petition Date and in a manner no less favorable than the treatment provided on account of General Unsecured Claims under the Plan; and provided further that the Liquidating Trust may prepay remaining Allowed amounts of any Priority Tax Claim at any time without penalty or further interest; and provided further that any Priority Tax Claim that is not an Allowed Claim, including any Allowed Priority Tax Claim not due and owing on the Effective Date, will be paid in accordance with the Plan when such Claim becomes Allowed and due and owing; and provided further, however, that any Claim or demand

for payment of a penalty (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be Disallowed pursuant to the Plan, and the Holder of an Allowed Priority Tax Claim shall not be allowed to assess or attempt to collect such penalty from the Debtors or their Estates.

c. Class 1: Non-Tax Priority Claims.

Class 1 consists of Claims against the Debtors that are entitled to priority in accordance with sections 507(a)(2) through 507(a)(8) of the Bankruptcy Code, other than Priority Tax Claims. Class 1 Non-Tax Priority Claims include, by way of example, unsecured Claims of employees for wages, salaries, commissions or benefits (including vacation, severance and sick leave pay), to the extent such claims have not already been satisfied pursuant to an order of the Bankruptcy Court, and, potentially, certain unsecured pre-Petition Date Claims for contributions to employee benefits plans.

Under the Plan, to the extent that these Claims have not already been paid pursuant to prior order of the Bankruptcy Court, each Holder of an Allowed Class 1 Non-Tax Priority Claim shall receive in full satisfaction, settlement, release and extinguishment of such Claim: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date; (ii) the date on which such Class 1 Claim becomes Allowed; and (iii) a date agreed to by the Debtors or the Liquidating Trustee and the Holder of such Class 1 Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Liquidating Trustee or as the Bankruptcy Court may order.

Class 1 Claims are unimpaired under the Plan.

d. Class 2: General Unsecured Claims.

Class 2 shall consist of all General Unsecured Claims, as follows: Class 2A - General Unsecured Claims Against HMX; Class 2B – General Unsecured Claims against HMXAC; Class 2C – General Unsecured Claims against HMX Poland; Class 2D – General Unsecured Claims against Quartet; and Class 2E – General Unsecured Claims against DTC.

On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Liquidating Trustee shall, in full satisfaction, settlement and release of, and in exchange for, each and every Allowed Class 2 Claim, distribute Pro Rata to or for the benefit of Holders of Allowed Class 2 Claims the ratable portion of the proceeds of assets transferred into the Liquidating Trust (exclusive of funds in the Professional Fee Escrow unless and until all Professional Fee Claims are paid in full); provided, however, that such proceeds of Liquidating Trust assets shall be allocated to Holders in sub-Classes 2A, 2B, 2C, 2D and 2E based upon the value of the assets of each respective Debtor (sold in the sale of substantially all of the Debtors' assets) as set forth in the Schedules as follows: Class 2A (96%); Class 2B (.04%); Class 2C (.01%); Class 2D (.54%); and Class 2E (3.4%). To the extent that any of Class 2A, 2B, 2C, 2D and 2E does not have any Holder of an Allowed Class 2 Claim, any amount allocated to such sub-Class shall be reallocated Pro Rata for the benefit of the other sub-Classes that have Holders of at least one Allowed Class 2 Claim.

Class 2 Claims are impaired and are entitled to vote on the Plan.

e. Class 3: General Unsecured Claims (SKNL).

Class 3 shall consist of all SKNL Claims.

On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Liquidating Trustee shall, in full satisfaction, settlement and release of, and in exchange for, each and every Allowed Class 3 Claim, distribute Pro Rata to or for the benefit of Holders of Allowed Class 3 Claims the ratable portion of the proceeds of assets transferred into the Liquidating Trust (exclusive of funds in the Professional Fee Escrow unless and until all Professional Fee Claims are paid in full).

Class 3 Claims are impaired and are entitled to vote on the Plan.

f. Class 4: General Unsecured Claims (Remala).

Class 4 shall consist of all Remala Claims.

On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Liquidating Trustee shall, in full satisfaction, settlement and release of, and in exchange for, each and every Allowed Class 4 Claim, distribute Pro Rata to or for the benefit of Holders of Allowed Class 4 Claims the ratable portion of the proceeds of assets transferred into the Liquidating Trust (exclusive of funds in the Professional Fee Escrow unless and until all Professional Fee Claims are paid in full).

Class 4 Claims are impaired and are entitled to vote on the Plan.

g. Class 5: Intercompany Claims.

Class 5 shall consist of all Intercompany Claims.

On the Effective Date, all Intercompany Claims shall be, and shall be deemed, Disallowed and no distribution shall be made on account of such claims and the Holders of such Intercompany Claims shall not receive or retain any property or distribution on account of such Class 5 Claims. Accordingly, the holders of the Class 5 Intercompany Claims are impaired, shall be deemed to have rejected the Plan, and shall not be entitled to vote on the Plan.

h. Class 6: Equity Interests.

Class 6 shall consist of all Interests of Holders of Equity Interests.

On the Effective Date, the Class 6 Interests will be cancelled and the Holders of such Interests shall not receive or retain any property or distribution on account of such Class 6 Interests. Accordingly, the holders of the Class 5 Intercompany Claims are impaired, shall be deemed to have rejected the Plan, and shall not be entitled to vote on the Plan.

B. Implementation of the Plan; Distributions

1. Prior to the Effective Date.

Except as may be otherwise ordered by the Bankruptcy Court, Michael A. O'Hara, Independent Director for Debtors HMX, LLC, HMX Acquisition Corp., HMX, DTC Co. and Quartet Real Estate, and Authorized Signatory for Debtor HMX Poland Sp. z o. o., shall continue to serve in such capacities until the Effective Date.

2. On the Effective Date.

On and as of the Effective Date, pursuant to section 1141(b) of the Bankruptcy Code, property of the estates of each of the Debtors shall become vested in the Liquidating Trust, as set forth in the Plan, free and clear of all claims, interests, liens and other encumbrances, except as provided in the Plan. This property includes: (i) all of the Debtors' unencumbered assets; (ii) the Litigation Claims; and (iii) all Cash; provided, however, that the funds in the Professional Fee Escrow Account shall only be used to pay Professional Fee Claims until all Professional Fee Claims are paid in full. In the event that all Professional Fee Claims are paid in full, any remaining funds in the Professional Fee Escrow Account may be added to the Creditor Fund.

On or prior to the Effective Date, the initial Liquidating Trustee shall be appointed by the Debtors and the Creditors' Committee. Should the Liquidating Trustee become unable or unwilling to carry out the functions of the Liquidating Trustee, the Trust Oversight Board (as established under, and whose duties and responsibilities are set forth in, the Liquidating Trust Agreement) shall designate a successor Liquidating Trustee. The Liquidating Trustee may resign at any time without penalty or liability therefor; provided, however, that notice of the resignation shall be filed with the Court not less than twenty-five (25) Business Days prior to the effective date of such resignation, and such resignation shall not be effective until a successor Liquidating Trustee is designated and approved.

The Liquidating Trustee shall be compensated in accordance with the relevant provisions of the Liquidating Trust Agreement and any other applicable orders of the Bankruptcy Court.

3. Distributions Under the Plan.

As soon as practicable after the Effective Date, the Liquidating Trustee shall make, or shall make adequate reserve for, the Distributions required to be made under the Plan.

Distributions to Holders of Allowed Claims shall be made by the Liquidating Trustee (i) at the addresses set forth on the proofs of claim filed by such Claim Holders (or at the address set forth in any applicable notice of assignment of claim or notice of change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related proof of claim, (iii) at the addresses reflected in the Schedules if no proof of claim has been filed and the Liquidating Trustee have not received a written notice of a change of address, or (iv) as to any defendant to a Litigation Claim who has not otherwise filed a proof of claim, at the address of such defendant's counsel of record or to such party as counsel of record directs or specifies.

a. Disputed Claim Reserves

On and after the Effective Date, the Liquidating Trustee shall withhold the Disputed Claims Reserve to be distributed to particular classes under the Plan. The Disputed Claims Reserve shall be equal to 100% of distributions to which Holders of Disputed Claims in Classes 2, 3 or 4 would be entitled under the Plan as of such date if such Disputed Claims in Classes 2, 3 or 4 were Allowed Claims in their (a) Face Amount (or if a Disputed Claim is unliquidated with no Face Amount, then based upon the good faith estimate of such Disputed Claim as estimated by the Liquidating Trustee), or (b) estimated amount of such Disputed Claim as approved in an Order by the Bankruptcy Court. The Debtors or the Liquidating Trustee may request estimation for any Disputed Claim including, without limitation, any Disputed Claim that is contingent or unliquidated. Nothing in the Plan or the Disclosure Statement shall be deemed to entitle the holder of a Disputed Claim to postpetition interest on such Claim.

b. Claims Objection Deadline.

Objections to Claims shall be filed with the Bankruptcy Court and served upon Creditors no later than 180 days after the Effective Date; provided however, that this deadline may be extended by the Bankruptcy Court upon motion of the Liquidating Trustee, without notice or a hearing. Notwithstanding the foregoing, unless an order of the Bankruptcy Court specifically provides for a later date, any proof of claim filed after the claim Bar Date shall be automatically disallowed as a late-filed claim, without any action by the Liquidating Trustee, unless and until the party filing such Claim obtains the written consent of the Liquidating Trustee to file such Claim late or obtains an order of the Bankruptcy Court upon notice to the Liquidating Trustee that permits the late filing of the Claim, in which event the Liquidating Trustee shall have 120 days from the date of such written consent or order to object to such Claim, which deadline may be extended by the Bankruptcy Court upon motion of the Liquidating Trustee, without notice or a hearing.

c. Undeliverable Distributions.

If any Claim Holder's distribution is returned as undeliverable, no further distributions to such Claim Holder shall be made unless and until the Liquidating Trustee is notified of such Claim Holder's then current address, at which time all missed distributions shall be made to such Claim Holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Liquidating Trustee until such distributions are claimed. All claims for undeliverable distributions shall be made on the later of the first (1st) anniversary of the Effective Date or ninety (90) days from the date the Claim becomes an Allowed Claim. After such date, all unclaimed property relating to distributions to be made on account of such Claims shall revert to the Liquidating Trust, free of any restrictions thereon or Claims of such Holder and notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim.

4. Causes of Action.

Pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, the Liquidating Trustee, on behalf of itself and holders of Allowed Class 2, 3 and 4 Claims, shall retain all Litigation Claims,

including Avoidance Actions, that the Debtors had or had power to assert immediately prior to the Effective Date, and the Liquidating Trustee may commence or continue in any appropriate court or tribunal any suit or other proceeding with respect to such Causes of Action. Nothing contained in the Plan shall constitute a waiver of the rights, if any, of the Debtors or the Liquidating Trustee to a jury trial with respect to any Causes of Action or objection to any Claim or Interest. The proceeds, if any, of the Causes of Action shall be retained by, used by and, as appropriate, distributed by the Liquidating Trustee for operational needs, including payment of professional fees.

5. Authorization of Independent Director

Mr. O'Hara, or such other persons as the Bankruptcy Court may designate at the request of the Debtors, is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, including the Liquidating Trust Agreement, and to certify or attest to any of the foregoing actions.

C. Unexpired Leases and Executory Contracts

Pursuant to sections 365 and 1123(b) of the Bankruptcy Code, all prepetition executory contracts and unexpired leases that exist between the Debtors and any third party shall be deemed rejected by the Debtors effective as of the Effective Date subject to the occurrence of the Effective Date, except for executory contracts and unexpired leases which: (a) have been assumed, assumed and assigned, or rejected (including rejection with a delayed effective date), as applicable, pursuant to an order of the Court entered prior to the Effective Date; or (b) as of the Effective Date, are subject to a pending motion for approval of the assumption, assumption and assignment, or rejection, as applicable.

If the rejection by a Debtor of an executory contract or unexpired lease pursuant to the Plan results in a Claim, then such Claim shall be forever barred and shall not be enforceable against any Debtor or their Estates unless a proof of claim is filed with the Debtors' Claims agent, Kurtzman Carson Consultants LLC, and served upon counsel to the Debtors, and counsel to the Creditors' Committee, within thirty (30) days after service of the later of (a) notice of the Effective Date or (b) other notice that the executory contract or unexpired lease has been rejected. The bar date for filing a Claim with respect to an executory contract or unexpired lease other than pursuant to the Plan shall be as set forth in the Bar Date Order or the Final Order approving such rejection.

D. Retention of Jurisdiction

Following the Effective Date and until such time as all payments and distributions required to be made and all other obligations required to be performed under the Plan have been made and performed by the Liquidating Trustee and all Causes of Action are resolved, the Bankruptcy Court shall retain jurisdiction as is legally permissible, including, without limitation, for the following purposes:

- (i) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of

any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

- (ii) Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;
- (iii) Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which either Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;
- (iv) Resolve any matters relating to the pre- and post-confirmation sales of the Debtors' assets, including, without limitation, the Debtors' owned real property;
- (v) Enforce, implement or clarify all orders, judgments, injunctions, and rulings entered by the Bankruptcy Court;
- (vi) Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
- (vii) Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;
- (viii) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan, this Disclosure Statement or the Confirmation Order;
- (ix) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is executed or created pursuant to the Plan, or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;
- (x) Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify this Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, this Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, this Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, this Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

- (xi) Hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), 1103 and 1129(c)(9) of the Bankruptcy Code.
- (xii) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of the Plan or the Confirmation Order;
- (xiii) Hear and determine the Litigation Claims and any other Causes of Action by or on behalf of the Debtors or the Estates;
- (xiv) Hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (xv) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to the Plan are enjoined or stayed;
- (xvi) Determine any other matters that may arise in connection with or relate to the Plan, this Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, this Disclosure Statement or the Confirmation Order;
- (xvii) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
- (xviii) Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date and (ii) the winding up of the Debtors' affairs;
- (xix) Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code;
- (xx) Adjudicate any and all Causes of Action, adversary proceedings, applications and contested matters that have been or hereafter are commenced or maintained in or in connection with the Chapter 11 Cases or the Plan, including, without limitation, any adversary proceeding or contested matter, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;
- (xxi) Hear and determine all matters involving Claims or Causes of Action involving any of the Debtors or their property;
- (xxii) Hear and determine all matters relating to the enforcement and interpretation of Section 12.06 of the Plan; and
- (xxiii) Enter an order closing the Chapter 11 Cases.

E. Conditions to Effectiveness

The effectiveness of the Plan is subject to each of the following conditions:

a. The Confirmation Order shall be in form and substance acceptable to the Debtors and shall have been entered by the Bankruptcy Court and shall be a Final Order, and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending;

b. All relevant transactions set forth in Article VI of the Plan shall have been entered into and all conditions precedent to the consummation thereof shall have been satisfied; and

c. Any order necessary to satisfy any condition to the effectiveness of the Plan shall have become a Final Order and all documents provided for under the Plan shall have been executed and delivered by the parties thereto.

F. Modification or Revocation of the Plan

1. **Pre-Confirmation Modification.** The Debtors reserve the right, in accordance with the Bankruptcy Code, to amend or modify the Plan at or any time prior to the Confirmation Date, as provided in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. If the Plan, as altered, amended or modified, is not consummated on or before the Effective Date or such other date as the Bankruptcy Court fixes, all holders of Claims and Interests shall be returned to the status quo ante, as if the Plan had not been filed, and the Confirmation Order shall be deemed vacated ab initio.

2. **Post-Confirmation Immaterial Modification.** The Liquidating Trustee may, with the approval of the Bankruptcy Court and without notice to all holders of Claims and Interests, insofar as it does not materially and adversely affect the interests of holders of Claims, correct any defect, omission or inconsistency in the Plan in such manner and to such extent as may be necessary to expedite consummation of the Plan.

3. **Post-Confirmation Material Modification.** The Plan may be altered or amended after the Confirmation Date by the Liquidating Trustee in a manner which, in the opinion of the Bankruptcy Court, materially and adversely affects holders of Claims, provided that such alteration or modification is made after a hearing as provided in section 1127 of the Bankruptcy Code.

4. **Withdrawal or Revocation of the Plan.** The Debtors reserve the right to revoke or withdraw the Plan prior to the Effective Date. If the Debtors revoke or withdraw the Plan, then the result shall be the same as if the Confirmation Order had not been entered and the Effective Date had not occurred.

G. Miscellaneous.

1. **The Committee.** The Committee shall cease operating and dissolve on the Effective Date.

2. **Successors and Assigns.** The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such Entities.

H. Releases, Exculpations and Injunctions.

1. **No Discharge.**

Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided, however, that no Holder of a Claim against any Debtor may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, any Debtor, their respective successors or their respective Estates, except as expressly provided in the Plan.

2. **Termination of Subordination Rights and Settlement of Related Claims and Controversies.**

The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, arising under section 510 of the Bankruptcy Code, or otherwise. Except as provided in the Plan, all such subordination rights that a Holder of a Claim or Interest may have with respect to any distribution to be made pursuant to the Plan will be cancelled and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined. Accordingly, distributions pursuant to the Plan to Holders of Allowed Claims or Allowed Interests will not be subject to payment to a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment or other legal process by a beneficiary of such terminated subordination rights. Nothing in this Section 12.02 shall be deemed to release the rights, if any, that the Debtors, the Creditors' Committee or the Liquidating Trustee or any other party in interest may have to seek to equitably subordinate any Claim pursuant to section 510 of the Bankruptcy Code or to otherwise seek to recharacterize any Claim as an equity interest.

3. **Exculpation.**

The Debtors, the Creditors' Committee, the members of the Creditors' Committee in their representative capacity, and any of such parties' respective present or former members, officers, directors, employees, advisors, counsel, representatives, Professionals or agents, and any of all such parties' predecessors, successors and assigns, and all of their respective officers, directors, agents, employees and attorneys, shall not have or incur, and are hereby released from, any claim, obligation, Cause of Action or liability to one another or to any Holder of any Claim or Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Notwithstanding any other provision of the Plan, no Claim Holder or Interest Holder, or other party in interest, none of their respective agents,

employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against the Debtors, the Creditors' Committee, the members of the Creditors' Committee in their representative capacity, and any of such parties' respective present or former members, officers, directors, employees, advisors, counsel, representatives, Professionals or agents, and DIP Lender and its agents and professionals and any of such parties' predecessors, successors and assigns, and all of their respective officers, directors, agents, employees and attorneys, for any act or omission in connection with, relating to or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct. Confirmation of the Plan shall release the Debtors' independent director, Michael A. O'Hara, from any and all claims or Causes of Action that the Debtors, the Estates or creditors might have to seek recovery of, avoidance of, disgorgement of, or clawback of any payments received by Mr. O'Hara from the Debtors.

The Liquidating Trust shall be bound, to the same extent the Debtors are bound, by all of the exculpation provisions set forth above.

4. Releases by Holders of Claims.

On the Effective Date (a) each Person that votes to accept the Plan, and (b) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all Holders of Claims, in consideration for the obligations of the Debtors under the Plan and the Cash and other contracts, instruments, releases, agreements or documents to be delivered in connection with the Plan, each entity (other than a Debtor) that has held, holds or may hold a Claim, as applicable, (each, a "Release Obligor") shall have conclusively, absolutely, unconditionally, irrevocably and forever, released each Released Party from any direct, non-derivative claim or Cause of Action existing as of the Effective Date arising from, based on or relating to, in whole or in part, the subject matter of, or the transaction or event giving rise to, the Claim of such Release Obligor, and any act, omission, occurrence or event in any manner related to such subject matter, transaction or obligation; provided, however, that this Section 12.05 shall not release any Released Party from any Cause of Action existing as of the Effective Date, (i) held by the Debtors or their Estates; (ii) based on the Internal Revenue Code or other domestic state, city or municipal tax code; (iii) based on the environmental laws of the United States or any domestic state, city or municipality; (iv) based on any criminal laws of the United States or any domestic state, city or municipality; (v) based on the Securities Exchange Act of 1934, as now in effect or hereafter amended, the Securities Act of 1933, as now in effect or hereafter amended, or other securities laws of the United States or any domestic state, city, or municipality; or (vi) Sections 1104-1109 and 1342(d) of the Employee Retirement Income Security Act of 1974, as amended.

5. Injunction of Claims Against and Covenant Not to Sue, Third Party Releasees.

The Confirmation order shall also act as a permanent injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset or recover any Claim or Cause of Action satisfied or released under the Plan. Subject to the occurrence of

the Effective Date and rights in the Plan, the entry of the Confirmation Order shall permanently enjoin all persons that have held, currently hold or may hold a Claim or Interest in the Debtors from taking any of the following actions in respect of such Claim or Interest: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against any or all of the Debtors, the Liquidating Trust, the Released Parties or their respective property or assets; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, device or order against any or all of the Debtors, the Liquidating Trust, the Released Parties or their respective property or assets; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any lien against any or all of the Debtors, the Liquidating Trust, the Released Parties or their respective property or assets; (d) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors, the Liquidating Trust, or the Released Parties; and (e) proceeding in any manner in any place whatsoever that does not conform to or comply with or is inconsistent with the provisions of the Plan. All injunctions or stays provided for in the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the closing of the Cases.

6. Term of Injunctions and Stays.

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Cases pursuant to section 105 or 362 of the Bankruptcy Code or otherwise and in effect on the Confirmation Date shall remain in full force and effect until the Effective Date.

7. Preservation of Insurance.

The Debtors' release from all Claims as provided in the Plan shall not diminish or impair the enforceability of any insurance policy that may cover claims by or against the Debtors (including, without limitation, their officers or directors) or any other Person or Entity.

VII. VOTING REQUIREMENTS, ACCEPTANCE AND CONFIRMATION OF THE PLAN

The Bankruptcy Code requires that, in order to confirm the Plan, the Bankruptcy Court must make a series of findings concerning the Plan and the Debtors, including that (i) the Plan has classified Claims and Interests in a permissible manner, (ii) the Plan complies with applicable provisions of the Bankruptcy Code, (iii) the Debtors have complied with applicable provisions of the Bankruptcy Code, (iv) the Debtors have proposed the Plan in good faith and not by any means forbidden by law, (v) the disclosure required by section 1125 of the Bankruptcy Code has been made, (vi) the Plan has been accepted by the requisite votes of creditors (except to the extent that cramdown is available under section 1129(b) of the Bankruptcy Code) (see "Acceptance of Plan" and "Confirmation Without Acceptance of All Impaired Classes" herein); (vii) the Plan is feasible and confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors, (viii) the Plan is in the "best interests" of all holders of Claims or Interests in an impaired Class by providing to such holders on account of their Claims or Interests property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain in a Chapter 7 liquidation, unless each holder of

a Claim or Interest in such Class has accepted the Plan, and (ix) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the hearing on confirmation, have been paid or the Plan provides for the payment of such fees on the Effective Date.

A. Parties in Interest Entitled to Vote.

Pursuant to the Bankruptcy Code, only Classes of Claims and Interests that are “impaired” (as defined in section 1124 of the Bankruptcy Code) under the Plan are entitled to vote to accept or reject the Plan. A Class is impaired if the legal, equitable or contractual rights to which the Claims or Interests of that Class entitled the holders of such Claims or Interests are modified, other than by curing defaults and reinstating the debt. Classes of Claims and Interests that are not impaired are not entitled to vote on the Plan and are conclusively presumed to have accepted the Plan. In addition, Classes of Claims and Interests that receive no distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan.

B. Classes Impaired Under the Plan

The following Classes of Claims and Interests are or may be impaired under the Plan:

Class 2: General Unsecured Claims

Class 3: General Unsecured Claims (SKNL)

Class 4: General Unsecured Claims (Remala)

Acceptances of the Plan are being solicited only from those holders of Claims in Impaired Classes that will or may receive a distribution under the Plan. Accordingly, the Debtors are soliciting acceptances from holders of Claims in Classes 2, 3 and 4 only. The holders of Class 5 Claims and Class 6 Interests are deemed to reject the Plan and are not entitled to vote.

C. Voting Procedures and Requirements

VOTING ON THE PLAN BY EACH HOLDER OF AN IMPAIRED CLAIM ENTITLED TO VOTE ON THE PLAN IS IMPORTANT. IF YOU HOLD CLAIMS IN MORE THAN ONE CLASS, YOU MAY RECEIVE MORE THAN ONE BALLOT. YOU SHOULD COMPLETE, SIGN AND RETURN EACH BALLOT YOU RECEIVE.

1. Ballots

In voting for or against the Plan, please use only the Ballot or Ballots sent to you with this Disclosure Statement. If you are a member of Class 2, 3 or 4 and did not receive a Ballot, if your Ballot is damaged or lost or if you have any questions concerning voting procedures, please contact Debtors’ Balloting Agent, HMX Acquisition Corp. Balloting Center, c/o Epiq Bankruptcy Solutions, LLC, FDR Station, P.O. Box 5015, New York, NY 10150-5015.

In most cases, each ballot enclosed with this Disclosure Statement has been encoded with the amount of your Claim for voting purposes (if your Claim is a Disputed Claim this amount

may not be the amount ultimately allowed for purposes of distributions under the Plan) and the Class in which your Claim has been classified. **PLEASE FOLLOW THE DIRECTIONS CONTAINED ON THE ENCLOSED BALLOT CAREFULLY.**

2. Returning Ballots

YOU SHOULD COMPLETE AND SIGN YOUR BALLOT AND RETURN IT IN THE ENCLOSED ENVELOPE TO: HMX ACQUISITION CORP. BALLOTING CENTER, C/O EPIQ BANKRUPTCY SOLUTIONS, LLC, FDR STATION, P.O. BOX 5015, NEW YORK, NY 10150-5015, IF BY FIRST-CLASS MAIL, AND HMX ACQUISITION CORP. BALLOTING CENTER, C/O EPIQ BANKRUPTCY SOLUTIONS, LLC, 757 THIRD AVENUE, 3RD FLOOR, NEW YORK, NY 10017, IF BY HAND DELIVERY OR OVERNIGHT MAIL. VOTES CANNOT BE TRANSMITTED ORALLY. FACSIMILE BALLOTS WILL NOT BE ACCEPTED. TO BE COUNTED, ORIGINAL SIGNED BALLOTS MUST BE RECEIVED ON OR BEFORE APRIL [___], 2013, AT 5:00 P.M., PREVAILING EASTERN TIME. IT IS OF THE UTMOST IMPORTANCE TO THE DEBTORS THAT YOU VOTE PROMPTLY TO ACCEPT THE PLAN.

D. Confirmation Hearing

The Bankruptcy Code requires the Bankruptcy Court, after notice, to conduct a hearing regarding whether the Debtors and the Plan have fulfilled the confirmation requirements of section 1129 of the Bankruptcy Code. The Confirmation Hearing has been scheduled for **April [___], 2013, at _: __.m. (prevailing Eastern Time)**, before the Honorable Allan L. Gropper in the United States Bankruptcy Court for the Southern District of New York, Courtroom 617, One Bowling Green, New York, New York 10004. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement at the Confirmation Hearing of the date to which the Confirmation Hearing has been adjourned.

E. Confirmation

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for Confirmation are that the Plan (i) is accepted by the requisite holders of Claims and Interests or, if not so accepted, is “fair and equitable” and “does not discriminate unfairly” as to the non-accepting Class of Claims or Interests, (ii) is in the “best interests” of each holder of a Claim or Interest that does not vote to accept the Plan in each impaired Class under the Plan, (iii) is feasible, and (iv) complies with the applicable provisions of the Bankruptcy Code.

F. Acceptance of Plan

As a condition to confirmation, the Bankruptcy Code requires that each class of impaired claims or interests vote to accept the Plan, except under certain circumstances. See “Confirmation Without Acceptance of All Impaired Classes” herein. A plan is accepted by an impaired class of claims if holders of at least two-thirds in dollar amount and more than one-half in number of claims of that class vote to accept the plan. A plan is accepted by an impaired class

of interests if holders of at least two-thirds of the number of shares in such class vote to accept the plan. Only those holders of claims or interests who actually vote count in these tabulations. Holders of claims who fail to vote are not counted as either accepting or rejecting a plan.

In addition to this voting requirement, section 1129 of the Bankruptcy Code requires that a plan be accepted by each holder of a claim or interest in an impaired class or that the plan otherwise be found by the bankruptcy court to be in the best interests of each holder of a claim or interest in such class. See “Best Interests Test” herein. In addition, each impaired class must accept the plan for the plan to be confirmed without application of the “fair and equitable” and “unfair discrimination” tests in section 1129(b) of the Bankruptcy Code discussed below. See “Confirmation Without Acceptance of All Impaired Classes” herein.

G. Confirmation Without Acceptance of All Impaired Classes

The Bankruptcy Code contains provisions for confirmation of the Plan even if the Plan is not accepted by all Impaired Classes, as long as at least one Impaired Class of Claims has accepted it. These so-called “cramdown” provisions are set forth in section 1129(b) of the Bankruptcy Code.

A plan may be confirmed under the cramdown provisions if, in addition to satisfying all other requirements of section 1129(a) of the Bankruptcy Code, it (a) “does not discriminate unfairly” and (b) is “fair and equitable,” with respect to each class of claims or interests that is impaired under, and has not accepted, the Plan. As used by the Bankruptcy Code, the phrases “discriminate unfairly” and “fair and equitable” have specific meanings unique to bankruptcy law.

In general, the cramdown standard requires that a dissenting class receive full compensation for its allowed claim or interests before any junior class receives any distribution. More specifically, section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed under that section if: (a) with respect to a secured class (i) the holders of such claims retain the liens securing such claims to the extent of the allowed amount of such claims and that each holder of a claim of such class receive deferred cash payments equaling the allowed amount of such claim as of the plan’s effective date, or (ii) such holders realize the indubitable equivalent of such claims; (b) with respect to an unsecured claim, either (i) the impaired unsecured creditor must receive property of a value equal to the amount of its allowed claim, or (ii) the holders of claims and interests that are junior to the claims of the dissenting class may not receive any property under the plan; or (c) with respect to a class of interests, either (i) each holder of an interest of such class must receive or retain on account of such interest property of 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 interest of such class may not receive or retain any property on account of such junior interest.

The “fair and equitable” standard, also known as the “absolute priority rule,” requires, among other things, that unless a dissenting unsecured class of claims or a class of interests receives full compensation for its allowed claims or allowed interests, no holder of claims or interests in any junior class may receive or retain any property on account of such claims or

interests. With respect to a dissenting class of secured claims, the “fair and equitable” standard requires, among other things, that holders either (i) retain their liens and receive deferred cash payments with a value as of the plan’s effective date equal to the value of their interest in property of the estate or (ii) otherwise receive the indubitable equivalent of these secured claims. The “fair and equitable” standard has also been interpreted to prohibit any class senior to a dissenting class from receiving under a plan more than 100% of its allowed claims. The requirement that a plan not “discriminate unfairly” means, among other things, that a dissenting class must be treated substantially equally with respect to other classes of equal rank.

AS CLASS 5 CLAIMS AND CLASS 6 INTERESTS ARE DEEMED TO REJECT THE PLAN, THE DEBTORS INTEND TO SEEK CONFIRMATION OF THE PLAN UNDER THE CRAMDOWN PROVISIONS OF SECTION 1129(b) OF THE BANKRUPTCY CODE WITH RESPECT TO SUCH CLASSES. IN ADDITION, IF A CLASS OR CLASSES OF CLAIMS VOTING ON THE PLAN VOTE TO REJECT THE PLAN, THE DEBTORS RESERVE THE RIGHT TO SEEK CONFIRMATION OF THE PLAN UNDER THE CRAMDOWN PROVISIONS OF THE BANKRUPTCY CODE WITH RESPECT TO SUCH CLASSES.

H. Best Interests Test

In order to confirm the Plan, the Bankruptcy Court must independently determine that the Plan is in the best interests of each holder of a Claim or Interest in any impaired Class who has not voted to accept the Plan. Accordingly, if an impaired Class does not unanimously accept the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides to each member of such impaired Class a recovery on account of the Class member’s Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the distribution that each such member would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date.

To calculate what holders of Claims would receive if the Debtors were hypothetically liquidated under Chapter 7 of the Bankruptcy Code, the Bankruptcy Court must first determine the dollar amount that would be realized from such liquidation (the “Liquidation Fund”) of the Debtors. The Liquidation Fund would consist of the net proceeds from the disposition of the Debtors’ assets (after satisfaction of all valid liens) and recoveries on Causes of Action, if any. The Liquidation Fund would then be reduced by the cost of the liquidation. The costs of liquidation under Chapter 7 would include the fees and expenses of a trustee, as well as those of counsel and other professionals that might be retained by the trustee, selling expenses and wind-down costs, any unpaid expenses incurred by the Debtors during their cases (such as fees for attorneys, financial advisors and accountants) which would be allowed in the Chapter 7 proceedings, interest expense on secured debt and claims incurred by the Debtors during the pendency of the cases. These claims would be paid in full out of the Liquidation Fund before the balance of the Liquidation Fund, if any, would be made available to holders of General Unsecured Claims. In addition, other claims that would arise upon conversion to a Chapter 7 case would dilute the balance of the Liquidation Fund available to holders of Claims. Moreover, additional claims against the Debtors’ estates would arise as a result of the establishment of a new Bar Date for the filing of Claims in the Chapter 7 cases for the Debtors. The present value of the distributions out of the Liquidation Fund (after deducting the amounts described above)

must then be compared with the present value of the Property offered to each of the Classes of Claims under the Plan, to determine if the Plan is in the best interest of each holder of a claim.

The Debtors believe that a Chapter 7 liquidation of the Debtors' remaining assets would result in a diminution of the value to be realized under the Plan by holders of Claims. That belief is based upon, among other factors: (a) the reduced value of Debtors' remaining assets in a Chapter 7 proceeding; (b) the additional administrative expenses involved in the appointment of a trustee, attorneys, accountants, and other Chapter 7 professionals; (c) the substantial time that would elapse before creditors would receive any distribution in respect of their Claims, due to a trustee's need to become familiar with the Debtors' books and records and the trustee's administration of the cases; and (d) the additional Claims that may be asserted against the Debtors.

The Debtors have prepared a liquidation analysis (the "Liquidation Analysis") that estimates the proceeds that may be generated as a result of a hypothetical Chapter 7 liquidation. The Liquidation Analysis was based on a number of significant assumptions that may not be realized in an actual liquidation. The Liquidation Analysis, including a description of the underlying assumptions used by the Debtors, is attached as Exhibit B to this Disclosure Statement. The Debtors have considered the effect that conversion of the Chapter 11 Cases to Chapter 7 would have on distributions to various Classes of Claims. The comparison of recoveries for impaired Classes indicates that recoveries under the Plan are at least equal to, and in most cases better than, those expected in a liquidation under Chapter 7, therefore satisfying the best interests test.

I. Feasibility

In connection with confirmation of the Plan, the Bankruptcy Court will have to determine that the Plan is feasible pursuant to section 1129(a)(11) of the Bankruptcy Code, which means that the confirmation of the Plan is not likely to be followed by need for liquidation or further financial reorganization of the Debtors, except as proposed in the Plan.

The Plan itself proposes liquidation, and thus meets the feasibility test of section 1129(a)(11). In addition, the Debtors believe that the fact that the Plan contemplates the retention of a reserve to fund the Debtors' ongoing efforts to realize the value of their assets for the benefit of creditors and the Estates ensures that no further financial restructuring will be necessary. The Debtors should have sufficient cash to fund their activities during liquidation as contemplated by the Plan. Accordingly, the Debtors believe that the Plan complies with the financial feasibility standard of section 1129(a)(11) of the Bankruptcy Code; however, as noted, the Debtors caution that no representations can be made as to the Debtors' ability to achieve the projected recoveries. Therefore, the actual results may vary from the projected results and the variations may be material and adverse. See Section VII of this Disclosure Statement entitled "Risk Factors Affecting Plan," for a discussion of certain risk factors that may affect financial feasibility of the Plan.

J. Compliance with the Applicable Provisions of the Bankruptcy Code

Section 1129(a)(1) of the Bankruptcy Code requires that the Plan comply with the applicable provisions of the Bankruptcy Code. The Debtors have considered each of these issues in the development of the Plan and believe that the Plan complies with all applicable provisions of the Bankruptcy Code.

VIII. RISK FACTORS

A. Objection to Classifications

Section 1122 of the Bankruptcy Code provides that a Plan may place a Claim or Interest in a particular class, only if such Claim or Interest is substantially similar to the other claims or interests of such Class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

B. Plan May Not Be Accepted or Confirmed

Even if all voting Classes accept the Plan, the Plan might not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of the Plan. The Debtors believe that the Plan satisfies all of the requirements for confirmation of a Plan of Liquidation under the Bankruptcy Code. There can be no assurance, however, that the Bankruptcy Court will also conclude that such requirements have been satisfied.

Additionally, the Plan as drafted requires acceptance by any of Class 2, 3 or 4. If Classes 2, 3 and 4 vote to reject the Plan, the Plan cannot be confirmed without modification.

IX. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion addresses certain United States federal income tax consequences of the Plan to Holders of Claims who are entitled to vote to accept or reject the Plan. This discussion is for informational purposes only and, due to a lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various tax consequences of the Plan as discussed herein. No opinion of counsel has been obtained with respect to any tax consequences of the Plan, and no rulings or determinations of the Internal Revenue Service (the "IRS") nor any other tax authorities have been or are expected to be obtained with respect to any tax consequences discussed herein. This discussion is not a representation concerning the particular tax consequences of the confirmation or implementation of the Plan as to any Holder of a Claim. Furthermore, no assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein. The discussion of certain United States federal income tax consequences below is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), Treasury Regulations promulgated thereunder, judicial authorities, and current administrative rules and practice, all as in effect on the date hereof and all of which are subject to change or differing interpretation, possibly with retroactive effects that could adversely affect the United States federal income tax consequences described below.

The following discussion does not address all aspects of United States federal income taxation that may be relevant to a particular Holder of a Claim in light of its particular facts and circumstances, nor does it purport to address the United States federal income tax consequences of the Plan to certain classes of taxpayers subject to special treatment under the Tax Code (e.g., banks and certain other financial institutions, insurance companies, broker-dealers, tax-exempt organizations, Holders of Claims who are, or who hold their Claims through, a partnership or other pass-through entity, persons whose functional currency is not the United States dollar, foreign persons, dealers in securities or foreign currency and persons holding Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale or conversion transaction). Furthermore, the following discussion does not address United States federal taxes other than income taxes or the state, local or foreign income and other tax consequences of the Plan.

To ensure compliance with IRS Circular 230, (a) any discussion of United States federal tax issues in this Disclosure Statement is not intended or written to be relied upon, and cannot be relied upon by Holders, for purposes of avoiding penalties that may be imposed on such Holders under the Code; (b) such discussion is written to support the promotion of the Plan; and (c) each Holder of a claim should seek advice based on such Holder's particular circumstances from an independent tax advisor.

NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE PLAN TO ANY HOLDER OF A CLAIM OR INTEREST. EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT A TAX ADVISOR REGARDING THE UNITED STATES FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.

A. United States Federal Income Tax Consequences to Holders of Claims and Interests

1. Holders of Claims

A Holder of a Claim should generally recognize gain (or loss) to the extent that the amount realized under the Plan in respect of the Claim exceeds (or is exceeded by) the Holder's tax basis in the Claim. The Holder's amount realized for this purpose will generally equal the amount of cash the Holder receives under the Plan in respect of its Claim. The timing and amount of income, gain or loss recognized as a consequence of the distributions provided for by the Plan will depend on, among other things, whether the Holder receives multiple distributions pursuant to the Plan and whether the Debtors' obligation to make such payments is treated as a new debt obligation for United States federal income tax purposes. It is possible that any loss, or a portion of any gain, realized by a Holder of a Claim may have to be deferred until the Holder has received all of the distributions to which such Holder is entitled under the Plan. In addition, a portion of any subsequent distribution to a Holder with respect to its Claim may be treated as a payment under a contract for the sale or exchange of such Claim to which section 483 of the Tax Code applies. Under Tax Code section 483, a portion of the subsequent distribution made pursuant to the Claim may be treated as interest which would be ordinary income to the Holder.

The character of any gain or loss that is recognized will depend upon a number of factors, including the status of the Holder of a Claim, the nature of the Claim in its hands, whether the Claim was purchased at a discount, whether and to what extent the Holder has previously claimed a bad debt deduction with respect to the Claim, and the Holder's holding period of the Claim. If the Claim in the Holder's hands is a capital asset, the gain or loss realized will generally be characterized as a capital gain or loss. For noncorporate taxpayers, capital gain on a Claim held by the Holder for more than one year, generally will be subject to tax at a maximum rate of 20 percent. Capital losses generally may be used by a corporate taxpayer only to offset capital gains, and by an individual taxpayer only to the extent of capital gains plus \$3,000 (\$1,500 in the case of a married individual filing a separate return) of other income.

A Holder of an Allowed Claim who received, in respect of its Claim, an amount that is less than its tax basis in such Claim may be entitled to a bad debt deduction (rather than a loss) if either: (i) the Holder is a corporation; or (ii) the Claim constituted (a) a debt created or acquired (as the case may be) in connection with a trade or business of the Holder or (b) a debt the loss from the worthlessness of which is incurred in the Holder's trade or business.

Holders of Claims who were not previously required to include any accrued but unpaid interest as gross income may have a portion of their distributions with respect to Claims treated as taxable interest income. The Plan provides that, to the extent that any Claim entitled to a distribution under the Plan is composed of indebtedness and accrued but unpaid interest on such indebtedness, such distribution will, to the extent permitted by applicable law, be allocated first to the principal amount of the Claim and second, to the extent the distribution exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest. The law is unclear on this point and no assurance can be given that the IRS will not challenge this position. If, contrary to the Debtors' intended position, a distribution were treated as allocated first to accrued but unpaid interest, a Holder of a Claim would realize ordinary income with respect to such distribution in an amount equal to the accrued but unpaid interest not already taken into income under the Holder's method of accounting, regardless of whether the Holder otherwise would realize a loss as a result of the Plan.

Under the Tax Code, amounts earned by an escrow account, settlement fund or similar fund must be subject to current tax. The proper tax treatment of such funds in a bankruptcy context is uncertain. Depending on the facts and the relevant law, such funds could be treated as grantor trusts to the Debtors, grantor trusts to Holders of Claims, separately taxable trusts or otherwise. The Debtors expect the assets held in the Liquidation Trust to be treated as held by grantor trusts, the grantors and beneficiaries of each of which are the Holders of Claims with rights to receive a pro rata share thereof. Thus, the Holders will generally recognize and report any income generated by such assets on their United States federal income tax returns.

Under backup withholding rules, a holder of an Allowed Claim may be subject to backup withholding with respect to payments made pursuant to the Plan unless such Holder (a) is a corporation or is otherwise exempt from backup withholding and, when required, provides sufficient documentation to establish such exemption, or (b) provides, under penalties of perjury, a certificate containing, among other things, the Holder's name, address, correct taxpayer identification number and a statement that the Holder is not subject to backup withholding. Any income withheld under these rules will be remitted to the IRS as a credit against the Holder's

federal income tax liability. Holders of Allowed Claims may be required to establish an exemption from backup withholding or to make arrangements with regard to payment thereof.

HOLDERS OF ALLOWED CLAIMS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS CONCERNING THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE SATISFACTION OF THEIR ALLOWED CLAIMS.

2. Holders of Interests

Holders of Interests in the Debtors will be extinguished. Whether the Holders of such Interests will recognize a loss, a deduction for worthless securities or any other tax treatment will depend upon facts and circumstances that are specific to the nature of the Holder and its Interests. **HOLDERS OF INTERESTS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS CONCERNING THE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE EXTINGUISHMENT OF THEIR INTERESTS.**

B. Importance of Obtaining Professional Tax Assistance

The foregoing is intended to be only a summary of certain of the United States federal income tax consequences of the Plan and is not a substitute for careful tax planning with a tax professional. Holders of Claims or Interests are strongly urged to consult with their own tax advisors regarding the federal, state, local and foreign income and other tax consequences of the Plan.

THE FOREGOING DISCUSSION OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. ACCORDINGLY, HOLDERS OF CLAIMS OR INTERESTS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES OF THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX LAWS.

X. RECOMMENDATION

The Debtors strongly recommend that all Creditors receiving a Ballot vote in favor of the Plan. The Debtors believe that the Plan is in the best interests of Creditors. The Plan as structured, among other things, allows Creditors to participate in distributions believed to be in excess of those which would otherwise be available were the Chapter 11 Cases dismissed or converted under Chapter 7 of the Bankruptcy Code and minimizes delays in recoveries to Creditors.

XI. CONCLUSION

FOR ALL OF THE REASONS SET FORTH IN THIS DISCLOSURE STATEMENT, THE DEBTORS BELIEVE THAT THE CONFIRMATION AND CONSUMMATION OF THE PLAN IS PREFERABLE TO ALL OTHER ALTERNATIVES. THE DEBTORS URGE ALL CREDITORS ENTITLED TO VOTE TO ACCEPT THE PLAN AND TO EVIDENCE SUCH

ACCEPTANCE BY RETURNING THEIR BALLOTS SO THAT THEY WILL BE RECEIVED
BY 5:00 P.M. PREVAILING EASTERN TIME ON APRIL [____], 2013.

Exhibit A

[Debtors' Joint Plan of Liquidation]

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Counsel for the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
HMX ACQUISITION CORP., <i>et al.</i> , ¹)	Case No. 12-14300 (ALG)
)	
Debtors.)	(Jointly Administered)
)	

**JOINT PLAN OF LIQUIDATION OF HMX ACQUISITION CORP.,
HMX POLAND SP. Z O. O., HMX, LLC, QUARTET REAL ESTATE, LLC,
AND HMX, DTC CO. (COLLECTIVELY, THE “DEBTORS”)**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

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INTRODUCTION

HMX Acquisition Corp. (“HMXAC”) and its affiliates HMX Poland Sp. z o. o. (“HMX Poland”), HMX, LLC (“HMX”), Quartet Real Estate, LLC (“Quartet”) and HMX, DTC Co. (“DTC”), the debtors and debtors in possession in the above-captioned jointly administered chapter 11 cases, hereby propose the following joint plan for the liquidation of the Debtors and the distribution of the proceeds received pursuant to the Bankruptcy Court approved sale of substantially all of the Debtors’ assets in resolution of the outstanding claims against and interests in the Debtors. Capitalized terms used herein shall have the meanings ascribed to such terms in Article I of this Plan.

At this time, these Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of the Bankruptcy Court entered on October 23, 2012 [*Docket No.* 29]. Each Debtor is a proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

Under section 1125(b) of the Bankruptcy Code, a vote to accept or reject this Plan cannot be solicited from the Holder (as defined in Section 1.01 of this Plan) of a Claim or Interest until such time as the Disclosure Statement has been approved by the Bankruptcy Court and distributed to Claim and Interest Holders. The Disclosure Statement was approved by the Bankruptcy Court by order entered on [_____, 2013], and has been distributed simultaneously with this Plan to all parties whose votes are being solicited. The Disclosure Statement contains, among other things, a discussion of the Debtors’ history, business, properties, former and current operations, a summary and analysis of this Plan and certain related matters. ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Article XIV of this Plan, each of the Debtors expressly reserves its respective rights to alter, amend, modify, revoke or withdraw this Plan with respect to such Debtor, one or more times, prior to its substantial consummation.

ARTICLE I
DEFINED TERMS AND RULES OF INTERPRETATION

Section 1.01 *Definitions*. For purposes of this Plan, except as otherwise provided or unless the context otherwise requires, all capitalized terms not otherwise defined herein shall have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, will have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. As used herein:

“Administrative Claim” means a Claim for payment of an administrative expense of a kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to section 507(a)(1) of the Bankruptcy Code, including, but not limited to, (a) any actual and necessary costs and expenses, incurred after the Petition Date, of preserving the Estates and operating and liquidating the business of the Debtors, (b) Professional Fee Claims and (c) all fees and charges assessed against the Estates under chapter 123 of title 28, United States Code.

“Administrative Claims Bar Date” means, except as modified by Section 10.1 of this Plan, the deadline for filing proofs of Administrative Claims as established by the Bankruptcy Court.

“Administrative Claims Bar Date Order” means an order entered by the Bankruptcy Court establishing the Administrative Claims Bar Date.

“Administrative Claims Reserve” means the reserve established by the Debtors and the Creditors’ Committee, and held in the Liquidating Trust, to pay Administrative Claims, Priority Tax Claims and Non-Tax Priority Claims under this Plan.

“Allowed” means, with respect to a Claim, an Allowed Claim in a particular Class or category specified.

“Allowed Claim” means a Claim or any portion thereof: (a) that has been allowed by a Final Order; (b) as to which no proof of claim has been timely filed with the Bankruptcy Court and (i) the liquidated and noncontingent amount of which is Scheduled other than at zero, in an unknown amount or as disputed and (ii) no objection to its allowance has been filed, or shall be filed, within the periods of limitation fixed by this Plan, the Bankruptcy Code or by any order of the Bankruptcy Court; (c) as to which a proof of claim has been timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code, but only to the extent that such claim is identified in such proof of claim in a liquidated and noncontingent amount, and either (i) no objection to its allowance has been filed, or shall be filed, within the periods of limitation fixed by this Plan, the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order; or (d) that is expressly allowed in a liquidated amount in this Plan.

“Avoidance Actions” means Causes of Action arising under sections 502, 510, 541, 542, 544, 545, 547 through 551 or 553 of the Bankruptcy Code, or under similar or related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced to prosecute such Causes of Action.

“**Ballot**” means each of the ballot form or forms distributed to each Holder of an Impaired Claim, on which the Holder is to indicate acceptance or rejection of this Plan.

“**Bankruptcy Code**” means the Bankruptcy Reform Act of 1978, as amended and codified in title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the Southern District of New York or any other court with jurisdiction over the Chapter 11 Cases.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended.

“**Bar Date**” means the deadline for filing proofs of claim established by the Bankruptcy Court pursuant to the Bar Date Order and any supplemental bar dates established by the Bankruptcy Court pursuant to the Bar Date Order or other Final Order.

“**Bar Date Order**” means the order entered by the Bankruptcy Court establishing the Bar Date.

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

“**Cash**” means legal tender of the United States of America and equivalents thereof.

“**Cash Reserve**” means the cash reserved by the Liquidating Trust, as determined by the Debtors and the Creditors’ Committee, for the funding of the Administrative Claims Reserve.

“**Causes of Action**” means any and all actions, causes of action, suits, controversies, rights to legal remedies, rights to equitable remedies and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed or undisputed, and whether asserted or assertable directly or derivatively, in law, equity or otherwise, including the Avoidance Actions.

“**Chapter 11 Cases**” means (a) when used with reference to a particular Debtor, the chapter 11 case pending for that Debtor in the Bankruptcy Court and (b) when used with reference to all Debtors, the chapter 11 cases pending for the Debtors in the Bankruptcy Court.

“**Claim**” means a “claim,” as defined in section 101(5) of the Bankruptcy Code and pertaining to the Chapter 11 Cases.

“**Claims Objection Deadline**” means as applicable (except for Administrative Claims) (a) the day that is the later of (i) the first Business Day that is one hundred eighty (180) days after the Effective Date, and (ii) as to proofs of claim Filed after the Bar Date, the first Business Day that is one hundred eighty (180) days after a Final Order is entered deeming the late Filed Claim to be treated as timely filed, or (b) such later date as may be established by the Bankruptcy Court.

“**Class**” means a category of Holders of Claims or Interests, as described in Articles II and III of this Plan.

“**Collateral**” means any property or interest in property of the Debtors’ Estates that is subject to a valid, enforceable and unavoidable lien to secure a Claim.

“**Confirmation Date**” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

“**Confirmation Hearing**” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

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

“**Creditor Fund**” means all funds transferred from the Debtors to the Liquidating Trust pursuant to the terms of this Plan.

“**Creditors’ Committee**” means the statutory committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code, as reconstituted from time to time.

“**Debtor(s)**” means, individually, HMXAC, HMX Poland, HMX, Quartet and DTC and, collectively, all of the foregoing debtors and debtors in possession.

“**Disallowed Claim**” means a Claim, or any portion thereof, that: (a) has been disallowed by either a Final Order or pursuant to a settlement; or (b) (i) is Scheduled at zero or as contingent, disputed or unliquidated and (ii) as to which a Bar Date has been established but no proof of claim has been filed or deemed timely Filed pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

“**Disclosure Statement**” means the written disclosure statement (including all schedules and exhibits thereto or referenced therein) that relates to this Plan, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code, as the same may be amended, modified or supplemented.

“**Disclosure Statement Hearing**” means the hearing before the Bankruptcy Court held to consider the adequacy of the Disclosure Statement as such hearing may be adjourned or continued from time to time.

“**Disputed Claim**” means a Claim, or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim, and includes, without limitation, Claims that: (a) have not been Scheduled by the Debtors or have been Scheduled at zero, or as contingent, unliquidated or disputed; or (b) are the subject of an objection filed in the Bankruptcy Court that has not been withdrawn or overruled by a Final Order of the Bankruptcy Court.

“Disputed Claims Reserve” means one or more reserves of Cash established and maintained by the Liquidating Trustee for Holders of Class 2, 3 or 4 Claims on account of Disputed Class 2, 3 or 4 Claims.

“Effective Date” means the Business Day this Plan becomes effective as provided in Section 11.02 of this Plan.

“Estate(s)” means, individually, the estate of HMXAC, HMX Poland, HMX, Quartet or DTC and, collectively, the estates of all of the Debtors created under section 541 of the Bankruptcy Code.

“Exhibit” means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement.

“Exhibit Filing Date” means the date by which all Exhibits and Plan Schedules shall be filed with the Bankruptcy Court, which date shall be at least seven (7) days prior to the deadline for filing objections to confirmation of this Plan.

“Face Amount” means: (a) when used in reference to a Disputed Claim or Disallowed Claim, the full stated amount of the Claim claimed by the Holder in any proof of claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law; and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

“File, Filed or Filing” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

“Final Order” means an order or judgment, the operation or effect of which has not been stayed, reversed or amended and as to which order or judgment (or any revision, modification or amendment thereof) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing was timely filed or, if timely filed, remains pending.

“General Unsecured Claim” means a Claim that is not an Administrative Claim, Priority Tax Claim, Non-Tax Priority Claim or Intercompany Claim.

“Governmental Claim” means a Claim against the Debtors by a governmental entity.

“Governmental Claims Bar Date” means the deadline for filing Governmental Claims established by the Bankruptcy Court pursuant to the Bar Date Order.

“Holder” means any Person who or entity that has a Claim or Interest.

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

“Indemnification Rights” means any obligations or rights of any of the Debtors to indemnify or contribute to the losses, liabilities or expenses of an Indemnitee pursuant to such Debtor’s charter, bylaws or policy of providing indemnification, or applicable state law or

specific agreement in respect of any claims, demands, suits, causes of action or proceedings against an Indemnitee based upon any act or omission related to an Indemnitee's service with, for or on behalf of such Debtor.

"Indemnitee" means all present and former directors, officers, employees, agents or representatives of a Debtor who are entitled to assert Indemnification Rights.

"Initial Distribution" means the distribution occurring on the Initial Distribution Date.

"Initial Distribution Date" means the date occurring as soon as possible after the Effective Date as determined by the Liquidating Trustee upon which distributions are made with respect to Allowed Claims in Classes 2, 3 and 4.

"Intercompany Claim" means (a) any account reflecting intercompany book entries by one (1) Debtor with respect to any other Debtor or (b) any Claim that is not reflected in such book entries and is held by a Debtor against any other Debtor.

"Interest" means the legal, equitable, contractual and other rights of the Holders of equity interests.

"IRC" means the Internal Revenue Code of 1986, as amended.

"IRS" means Internal Revenue Service of the United States of America.

"Liquidating Trust" means the trust established pursuant to that certain Liquidating Trust Agreement.

"Liquidating Trust Agreement" means the trust agreement establishing and governing the Liquidating Trust, substantially in the form of the document attached as Exhibit A to the Disclosure Statement and incorporated herein by reference.

"Liquidating Trustee" means the individual or entity initially appointed by the Creditors' Committee or subsequently named by the Trust Oversight Board, who shall have the responsibility of administering the Liquidating Trust as set forth more fully in the Liquidating Trust Agreement, or any successor appointed by the Trust Oversight Board.

"Litigation Claims" means the Causes of Action, claims, rights of action, suits, or proceedings for which the applicable statute of limitations has not expired, whether in law or in equity, whether known or unknown, that any or all of the Debtors or their Estates may hold against any Person.

"Net Proceeds" means all proceeds from the sale or other disposition of an asset minus all reasonable out-of-pocket direct costs, fees and expenses incurred in connection with such sale or other disposition, provisions for any sales or other tax due and owing as a consequence of such sale or other disposition, and other customary prorations in connection with such sale or other disposition.

“Non-Tax Priority Claim” means a Claim, other than an Administrative Claim or Priority Tax Claim, that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code.

“Participation Payments Agreement” means the agreement between W Diamond Corporation, the stockholders of W Diamond Corporation, Authentic Brands Group, LLC, Debtors, and the Creditors’ Committee, which is intended to effectuate the interest provided to the holders of allowed unsecured claims in Exhibit D to the Court Order in the Chapter 11 Cases dated December 20, 2012.

“Participation Payments Interest” means the interest each Holder of a Class 2 Allowed Claim has in the Participation Payments Agreement.

“Person” means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization or other entity.

“Petition Date” means October 19, 2012 for HMXAC and HMX Poland and means October 21, 2012 for HMX, Quartet and DTC.

“Plan” means this joint chapter 11 plan for the Debtors as herein proposed, including all supplements, appendices and schedules thereto, either in its present form or as the same may be further altered, amended or modified from time to time in accordance with the Bankruptcy Code.

“Plan Schedule” means a schedule annexed to either this Plan or as an appendix to the Disclosure Statement.

“Plan Supplement” means the form of documents specified in Section 14.14 of this Plan, which are incorporated herein by reference.

“Priority Tax Claim” means a Claim of a governmental unit of the kind specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

“Pro Rata” means, with respect to a distribution regarding a particular Class, the proportion that (a) the Face Amount of a Claim in a particular Class bears to (b) the aggregate Face Amount of all Claims in such Class, unless this Plan provides otherwise.

“Professional” means any professional employed in the Chapter 11 Cases pursuant to section 327 or 1103 of the Bankruptcy Code.

“Professional Fee Claim” means an Administrative Claim under section 330(a), 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional or other entity for services rendered or expenses incurred on behalf of the Debtors or the Creditors’ Committee in the Chapter 11 Cases on or prior to the Effective Date (including expenses of the members of the Creditors’ Committee incurred as members of the Creditors’ Committee in discharge of their duties as such).

“Professional Fee Escrow” means the Professional Fee Carve-Out Account funded pursuant to the Final DIP Order [*Docket No. 168*], which funds solely are to be used to pay Professional Fee Claims, until all Professional Fee Claims are paid in full; and, after all Professional Fee Claims are paid in full, the balance of the Professional Fee Escrow, if any, shall become part of the Creditor Fund.

“Professional Fee Order” means the Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals [*Docket No. 194*] entered by the Bankruptcy Court.

“Record Date” means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date.

“Released Party” means, collectively, pursuant to section 1123(b)(3) of the Bankruptcy Code, effective as of the Effective Date, all officers of each of the Debtors, all directors of each of the Debtors, and all employees of each of the Debtors serving as such as of the Petition Date, the Creditors’ Committee and its counsel, all members of the Creditors’ Committee and the Professionals.

“Remala” means Remala Trading B.V.

“Remala Claim” means all Claims of Remala against the Debtors, including all claims against HMX Poland arising under the Remala Loan Agreements. Remala Claims are Class 4 Claims, but will receive the same treatment as Class 2C Claims.

“Remala Loan Agreements” means, collectively, three separate loan agreements dated as of 2012 between Remala, as lender, and Debtor HMX Poland, as borrower. The Remala Loan Agreements reflect that Remala loaned to Debtor HMX Poland various amounts in various foreign currencies.

“Scheduled” means, with respect to any Claim, the status and amount, if any, of such Claim as set forth in the Schedules.

“Schedules” means the schedules of assets and liabilities and the statements of financial affairs Filed by the Debtors in the Chapter 11 Cases, as such schedules have been or may be further modified, amended or supplemented in accordance with Bankruptcy Rule 1009 or Orders of the Bankruptcy Court.

“Secured Claim” means a Claim that is secured by a lien on property in which an Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim Holder’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code. For purposes of this section, “*lien*” means a charge against or interest in property to secure payment of a debt or performance of an obligation.

“SKNL” means, collectively, SKNL North America B.V. and SKNL Global Holdings, B.V.

“**SKNL Claims**” means all Claims of SKNL against the Debtors, including all Claims against HMX arising under: (a) the SKNL Loan Agreement; and (b) all SKNL Promissory Notes. SKNL Claims are Class 3 Claims, but will receive the same treatment as Class 2A Claims.

“**SKNL Loan Agreement**” means that certain loan agreement, dated as of April 1, 2010, between Debtor HMX, as borrower, and SKNL, as lender.

“**SKNL Promissory Notes**” means those Promissory Notes dated March 9, 2010 (in principal amount of \$5,000,000), September 29, 2010 (in principal amount of \$5,000,000), January 14, 2011 (in principal amount of \$1,000,000), March 9, 2011 (in principal amount of \$1,000,000), March 14, 2011 (in principal amount of \$1,000,000), March 5, 2012 (in principal amount of \$1,000,000), and April 19, 2012 (in principal amount of \$2,000,000), under which, in exchange for value received, Debtor HMX, as issuer, promised to pay to SKNL, as holder, an aggregate principal amount of \$16,000,000, plus accrued interest, costs, expenses, fees (including attorneys’ fees and legal expenses) other charges and other obligations, all of which remained outstanding as of the Petition Date.

“**Solicitation Order**” means the order entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject this Plan.

“**Subordinated Claims**” means any Claim subordinated pursuant to section 510 of the Bankruptcy Code, or otherwise subordinated including, without limitation, through any “recharacterization” of a debt claim as an equity interest.

“**Subsequent Distribution**” means any distribution after the Initial Distribution.

“**Subsequent Distribution Date**” means the date upon which the Liquidating Trustee determines, in accordance with this Plan, to conduct a Subsequent Distribution.

“**Treasury Regulations**” means the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder.

“**Trust Oversight Board**” means the board to be appointed in accordance with, and to exercise the duties set forth in, the Liquidating Trust Agreement, which duties shall include (i) to oversee the liquidation and distribution of all tangible and intangible rights transferred to the Liquidation Trust pursuant to the Plan, all in accordance with the Liquidating Trust Agreement, the Plan and the Confirmation Order, (ii) to approve (or withhold approval) of those matters submitted to it for approval in accordance with the terms of the Liquidating Trust Agreement, and (iii) to remove and appoint any successor to the Liquidating Trustee as provided for in the Liquidating Trust Agreement.

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

“**Unsecured Claim**” means collectively the General Unsecured Claims.

“*Voluntary Petition*” means each voluntary petition for reorganization relief under chapter 11 of the Bankruptcy Code filed by the Debtors on October 19, 2012 and October 21, 2012 in the Bankruptcy Court.

“*Voting Deadline*” means [_____], 2013, at 5:00 p.m. (prevailing Eastern time), as the last day and time for submitting Ballots to accept or reject this Plan in accordance with section 1126 of the Bankruptcy Code as specified in the Solicitation Order.

“*Voting Record Date*” means the date and time established by the Bankruptcy Court in the Solicitation Order for determining those Holders of Claims against the Debtors entitled to vote on the Plan.

Section 1.02 *Rules of Interpretation.* For purposes of this Plan, unless otherwise provided herein: (a) whenever it appears appropriate for the context, each term stated in the singular or the plural includes the singular and the plural, and each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and neuter; (b) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) any reference in this Plan to an existing document or schedule Filed or to be Filed means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to this Plan; (d) any reference to an entity as a Holder of a Claim or Interest includes that entity’s successors and assigns; (e) all references in this Plan to Sections, Articles and Plan Schedules are references to Sections, Articles and Plan Schedules of or to this Plan; (f) the words “herein,” “hereunder” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (h) subject to the provisions of any contract, instrument, release or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and Bankruptcy Rules; and (i) the rules of construction set forth in section 102 of the Bankruptcy Code will apply.

Section 1.03 *Computation of Time.* In computing any period of time prescribed or allowed by this Plan, unless otherwise expressly provided for, the provisions of Bankruptcy Rule 9006(a) shall apply.

Section 1.04 *Exhibits and Plan Schedules.* All Exhibits and Plan Schedules are incorporated into and are a part of this Plan as if set forth in full herein and, to the extent not annexed hereto, such Exhibits and Plan Schedules shall be filed with the Bankruptcy Court on or before the Exhibit Filing Date.

ARTICLE II ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS

Section 2.01 *Administrative Claims.* On, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which an Administrative Claim becomes an

Allowed Administrative Claim, each Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Allowed Administrative Claim, (i) Cash equal to the unpaid portion of such Allowed Administrative Claim or (ii) such other less favorable treatment to the Holder of an Allowed Administrative Claim as to which the Debtors or Liquidating Trustee and the Holder of such Allowed Administrative Claim shall have agreed upon in writing.

Section 2.02 *Priority Tax Claims.* On, or as soon as reasonably practicable after, the later of (a) the Effective Date, or (b) the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim against a Debtor shall receive in full satisfaction, settlement and release of, and in exchange for, such Allowed Priority Tax Claim, (i) Cash equal to the amount of such Allowed Priority Tax Claim, or (ii) such other less favorable treatment to the Holder of an Allowed Priority Tax Claim as to which the Debtors or Liquidating Trustee and the Holder of such Allowed Priority Tax Claim shall have agreed upon in writing; provided, however, that, at the election of the Debtors prior to the Effective Date, any or all Allowed Priority Tax Claims may be paid by the Liquidating Trust in regular installments over a period ending not later than five (5) years after the Petition Date and in a manner no less favorable than the treatment provided on account of General Unsecured Claims hereunder; and provided further that the Liquidating Trust may prepay remaining Allowed amounts of any Priority Tax Claim at any time without penalty or further interest; and provided further that any Priority Tax Claim that is not an Allowed Claim, including any Allowed Priority Tax Claim not due and owing on the Effective Date, will be paid in accordance with this Section 2.02 when such Claim becomes Allowed and due and owing; and provided further, however, that any Claim or demand for payment of a penalty (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be a Disallowed Claim pursuant to the Plan, and the Holder of an Allowed Priority Tax Claim shall not be allowed to assess or attempt to collect such penalty from the Debtors or their Estates.

ARTICLE III CLASSIFICATION OF CLAIMS AND INTERESTS

Section 3.01 *Generally.* Set forth below is a designation of classes of Claims against and Interests in each of the Debtors. All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and their treatment is set forth in Article II above. This Plan constitutes a single plan for all Debtors. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of voting on, and receiving distributions pursuant to, this Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released or otherwise settled prior to the Effective Date.

Section 3.02 *Unimpaired Classes.* The Plan classifies the following Unimpaired Claims that are not entitled to vote on this Plan. Pursuant to section 1126(f) of the Bankruptcy Code, each holder of a Claim in the following Classes is conclusively presumed to have accepted this Plan in respect of such Claims. Accordingly, Holders of Claims in such Classes are not

entitled to vote to accept or reject this Plan and the votes of such Holders are not being solicited in connection with this Plan. Such Claims against the Debtors are classified as follows:

- (a) Class 1 shall consist of all Non-Tax Priority Claims (“Class 1 Claims” or “Class 1 Non-Tax Priority Claims”).

Section 3.03 *Impaired Classes Entitled to Vote.* This Plan classifies the following Impaired Claims that shall receive a distribution under this Plan that are entitled to vote to accept or reject this Plan:

- (a) Class 2 shall consist of all General Unsecured Claims (“Class 2 Claims” or “Class 2 General Unsecured Claims”).
- (b) Class 3 shall consist of all SKNL Claims (“Class 3 Claims” or “Class 3 General Unsecured Claims”).
- (c) Class 4 shall consist of all Remala Claims (“Class 4 Claims” or “Class 4 General Unsecured Claims”).

Section 3.04 *Impaired Classes Not Entitled to Vote.* This Plan classifies the following Impaired Claims and Impaired Interests that are not entitled to vote on this Plan. Pursuant to section 1126(g) of the Bankruptcy Code, each Holder of a Claim or Interest in the following Classes is conclusively presumed to have rejected this Plan in respect of such Claims or Interests. Accordingly, such Holders of Claims or Interests are not entitled to vote to accept or reject this Plan and the votes of such Holders are not being solicited in connection with this Plan. Such Claims against and Interests in the Debtors are classified as follows:

- (a) Class 5 shall consist of all Intercompany Claims (“Class 5 Claims” or “Class 5 Intercompany Claims”).
- (b) Class 6 shall consist of all Interests of Holders of Equity Interests (“Class 6 Interests” or “Class 6 Equity Interests”).

ARTICLE IV PROVISIONS FOR TREATMENT OF CLAIMS AND INTERESTS

Section 4.01 *Class 1 Non-Tax Priority Claims.* Class 1 Non-Tax Priority Claims are Unimpaired Claims. To the extent that these Claims have not already been paid pursuant to prior order of the Bankruptcy Court, each Holder of an Allowed Class 1 Non-Tax Priority Claim shall receive in full satisfaction, settlement, release and extinguishment of such Claim: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date; (ii) the date on which such Class 1 Claim becomes Allowed; and (iii) a date agreed to by the Debtors or the Liquidating Trustee and the Holder of such Class 1 Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or the Liquidating Trustee or as the Bankruptcy Court may order.

Section 4.02 *Class 2 General Unsecured Claims.* (Class 2A - General Unsecured Claims Against HMX; Class 2B – General Unsecured Claims against HMXAC; Class 2C – General Unsecured Claims against HMX Poland; Class 2D – General Unsecured Claims against Quartet; and Class 2E – General Unsecured Claims against DTC). Class 2 General Unsecured Claims are Impaired. On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Liquidating Trustee shall, in full satisfaction, settlement and release of, and in exchange for, each and every Allowed Class 2 Claim, distribute Pro Rata to or for the benefit of Holders of Allowed Class 2 Claims the ratable portion of the proceeds of assets transferred into the Liquidating Trust (exclusive of funds in the Professional Fee Escrow unless and until all Professional Fee Claims are paid in full); provided, however, that such proceeds of Liquidating Trust assets shall be allocated to Holders in sub-Classes 2A, 2B, 2C, 2D and 2E based upon the value of the assets of each respective Debtor (sold in the sale of substantially all of the Debtors' assets) as set forth in the Schedules as follows: Class 2A (96%); Class 2B (.04%); Class 2C (.01%); Class 2D (.54%); and Class 2E (3.4%). To the extent that any of Class 2A, 2B, 2C, 2D and 2E does not have any Holder of an Allowed Class 2 Claim, any amount allocated to such sub-Class shall be reallocated Pro Rata for the benefit of the other sub-Classes that have Holders of at least one Allowed Class 2 Claim.

Section 4.03 *Class 3 General Unsecured Claims.* Class 3 General Unsecured Claims are Impaired. On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Liquidating Trustee shall, in full satisfaction, settlement and release of, and in exchange for, each and every Allowed Class 3 Claim, distribute Pro Rata to or for the benefit of Holders of Allowed Class 3 Claims the ratable portion of the proceeds of assets transferred into the Liquidating Trust (exclusive of funds in the Professional Fee Escrow unless and until all Professional Fee Claims are paid in full).

Section 4.04 *Class 4 General Unsecured Claims.* Class 4 General Unsecured Claims are Impaired. On the Initial Distribution Date, or as soon thereafter as is reasonably practicable, and on each Subsequent Distribution Date, the Liquidating Trustee shall, in full satisfaction, settlement and release of, and in exchange for, each and every Allowed Class 4 Claim, distribute Pro Rata to or for the benefit of Holders of Allowed Class 4 Claims the ratable portion of the proceeds of assets transferred into the Liquidating Trust (exclusive of funds in the Professional Fee Escrow unless and until all Professional Fee Claims are paid in full).

Section 4.05 *Class 5 Intercompany Claims.* Class 5 Intercompany Claims are Impaired. On the Effective Date, all Intercompany Claims shall be, and shall be deemed, Disallowed Claims and no distribution shall be made on account of such Claims and the Holders of such Intercompany Claims shall not receive or retain any property or distribution on account of such Class 5 Claims.

Section 4.06 *Class 6 Equity Interests.* Class 6 Equity Interests are Impaired. On the Effective Date, the Class 6 Interests will be cancelled and the Holders of such Interests shall not receive or retain any property or distribution on account of such Class 6 Interests.

Section 4.07 *Payments Pursuant to the Participation Payments Agreement.* The Participation Payments Agreement contemplates payments to Holders of Participation Payments Interests. Any payments made in accordance with the Participation Payments Agreement shall

not be considered an Initial Distribution or a Subsequent Distribution pursuant to the Plan. The payments to Holders of Participation Payments Interests shall not trigger any distribution rights of other Classes pursuant to the Plan, and no Class is entitled to receive distributions pursuant to the Participation Payments Agreement except for the Holders of Participation Payments Interests. Payments pursuant to the Participation Payments Agreement will be provided to the Liquidating Trust, which will in turn distribute to Holders of Participation Payments Interests pursuant to the terms and conditions of the Participation Payments Agreement.

Section 4.08 *Special Provision Regarding Unimpaired Claims.* Except as otherwise provided in this Plan, nothing shall affect the Debtors' rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including, but not limited to, all rights with respect to legal and equitable defenses to, setoffs or recoupments against, Unimpaired Claims.

ARTICLE V ACCEPTANCE OR REJECTION OF THE PLAN

Section 5.01 *Classes Entitled to Vote.* Subject to Sections 5.03 and 5.04 of this Plan, Claim Holders in Impaired Classes of Claims are entitled to vote as a class to accept or reject this Plan.

Section 5.02 *Acceptance by an Impaired Class of Claims or Interest.* In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the Holders of at least two-thirds ($\frac{2}{3}$) in dollar amount and more than one-half ($\frac{1}{2}$) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

Section 5.03 *Presumed Acceptances by Unimpaired Classes.* Class 1 holds Unimpaired under this Plan. Under section 1126(f) of the Bankruptcy Code, such Claim Holders are conclusively presumed to accept this Plan, and the votes of such Claim Holders will not be solicited.

Section 5.04 *Classes Deemed to Reject Plan.* Classes 5 and 6 are not entitled to receive or retain any property under this Plan. Under section 1126(g) of the Bankruptcy Code, Holders of Claims and Interests in these Classes are deemed to reject this Plan and their votes will not be solicited.

Section 5.05 *Summary of Classes Voting on the Plan.* As a result of the provisions of Sections 5.01, 5.03 and 5.04 of this Plan, the votes of Holders of Claims in Class 2, Class 3 and Class 4 will be solicited with respect to this Plan.

Section 5.06 *Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.* To the extent that any Impaired Class entitled to vote rejects this Plan or is deemed to have rejected this Plan, the Debtors will request confirmation of this Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code.

Section 5.07 *Confirmation of All Cases.* This Plan shall not be deemed to have been confirmed as to any Debtor unless and until this Plan has been confirmed in each of the Debtor's Chapter 11 Cases.

ARTICLE VI MEANS FOR IMPLEMENTATION OF THE PLAN

Section 6.01 *Establishment of the Liquidating Trust.* On the Effective Date, a trust will be established to administer and distribute certain property of the Debtors' Estates and will be known as the "Liquidating Trust." In the event of any conflict between the terms of this Plan and the terms of the Liquidating Trust, the terms of this Plan shall govern. On the Effective Date, the Debtors shall execute the Liquidating Trust Agreement and shall take all other steps necessary to establish the Liquidating Trust.

(a) *Purpose of the Liquidating Trust.* The Liquidating Trust shall be established for the sole purpose of liquidating its assets, in accordance with Treasury Regulation section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. For the avoidance of doubt, the Liquidating Trust is permitted to and shall take any actions reasonably required to exercise the Participation Payments Interests of Holders pursuant to the Participation Payments Agreements, provided that such actions are consistent with the purpose of the Liquidating Trust.

(b) *Appointment of the Liquidating Trustee.* On or prior to the Effective Date, the initial Liquidating Trustee shall be appointed by the Debtors and the Creditors' Committee. The Liquidating Trustee may resign at any time without penalty or liability therefor; provided, however, that notice of the resignation shall be Filed not less than twenty-five (25) Business Days prior to the effective date of such resignation, and such resignation shall not be effective until a successor Liquidating Trustee is designated and approved.

(c) *Compensation to Liquidating Trustee.* The Liquidating Trustee shall be compensated in accordance with the relevant provisions of the Liquidating Trust Agreement and any other applicable orders of the Bankruptcy Court.

(d) *Assets.* On the Effective Date, or as soon thereafter as is practicable, all of the property of the Estates shall be transferred and distributed to and shall vest in the Liquidating Trust without further action or Court order, including, without limitation, (i) all of the Debtors' unencumbered assets; (ii) the Litigation Claims; and (iii) all Cash; provided, however, that the funds in the Professional Fee Escrow Account shall only be used to pay Professional Fee Claims until all Professional Fee Claims are paid in full. In the event that all Professional Fee Claims are paid in full, any remaining funds in the Professional Fee Escrow Account may be added to the Creditor Fund. The Liquidating Trust shall have the power to act with respect to the aforementioned assets being assigned and distributed to the Liquidating Trust, and shall have the right and power, as representative and attorney in fact for the Estates, to prosecute the aforementioned

rights, claims and causes of action, including, without limitation, objections to Claims and Avoidance Actions, without further Bankruptcy Court approval. The Estates shall retain the right, title and interest in and to all rights, claims and Causes of Action against third parties in order to preserve such rights, claims and Causes of Action; and the Liquidating Trustee, as representative of the Estates appointed for such purpose, pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, may enforce such claims as he deems appropriate.

(e) *Tax Treatment of Transfer of Property to Liquidating Trust.* The transfer of property from the Debtors to the Liquidating Trust shall be treated for all purposes of the IRC as a transfer to the beneficiaries of the Liquidating Trust (*i.e.*, the holders of Claims in Classes 2, 3 and 4 to the extent such Claims are Allowed as of the Effective Date), followed by a deemed transfer by such beneficiaries to the Liquidating Trust. The beneficiaries of the Liquidating Trust shall be treated as the grantors and deemed owners of the Liquidating Trust. The Liquidating Trustee shall file returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulations section 1.671-4(a). The Liquidating Trustee and the beneficiaries of the Liquidating Trust shall value the property transferred to the Liquidating Trust consistently, and such valuation shall be used for all federal income tax purposes. The Debtors may request the Court to value the property transferred to the Liquidating Trust at confirmation of the Plan. The beneficiaries of the Liquidating Trust shall be responsible for payment of any taxes due with respect to the operations of the Liquidating Trust.

(f) *Responsibilities of the Liquidating Trustee.* The Liquidating Trustee shall have the responsibilities set forth in the Liquidating Trust Agreement.

(g) *Oversight of Liquidating Trustee.* The Trust Oversight Board shall be responsible for oversight of the Liquidating Trustee as described in the Liquidating Trust Agreement.

(h) *Beneficiaries.* The beneficiaries of the Liquidating Trust shall consist of Holders of Class 2 Claims, Class 3 Claims and Class 4 Claims.

(i) *Expenses Incurred on or After the Effective Date.* The Liquidating Trustee may incur Liquidating Trust Expenses as set forth more fully in the Liquidating Trust Agreement.

(j) *Distributions from the Liquidating Trust.* The Liquidating Trustee shall make all applicable distributions and deliveries required under the Plan as set forth more fully in the Liquidating Trust Agreement.

(k) *Liquidating Trust Quarterly Operating Reports.* As set forth more fully in the Liquidating Trust Agreement, a soon as practicable after the end of each calendar year and six (6) months thereafter, and as soon as practicable upon termination of the Liquidating Trust, the Liquidating Trustee shall File and serve on the United States Trustee and the parties appearing on the latest Master Service

List, an operating report reflecting the activities of the Liquidating Trust for the preceding six month period (or applicable portion thereof).

(l) *Termination of the Liquidating Trust and Filing of Final Report.* The Liquidating Trust shall terminate without any further action by the Liquidating Trustee upon the earlier of the docketing of a Final Order closing the Case and five (5) years after the Effective Date, unless such termination date is extended by order of the Court upon a finding that the extension is necessary to the liquidating purposes of the Liquidating Trust. Prior to such termination and within thirty (30) days after the Final Distribution Date, the Liquidating Trustee shall file with the Court, and serve on the United States Trustee and the parties appearing on the latest Master Service List, a final report containing a detailed, comprehensive and cumulative statement of all activities of the Liquidating Trust during its existence, as set forth more fully in the Liquidating Trust Agreement.

(m) *Exculpation.* The Liquidating Trustee is exculpated by Holders of Claims and Interests from any and all claims (but excluding claims for willful misconduct and gross negligence), causes of action and other assertions of liability (including breach of fiduciary duty) as set forth more fully in the Liquidating Trust Agreement.

Section 6.02 *Dissolution of Creditors' Committee.* The Creditors' Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Bankruptcy Court prior to the Effective Date. On the Effective Date, the Creditors' Committee shall be dissolved and its members shall be deemed released of all their duties, responsibilities and obligations in connection with the Chapter 11 Cases or this Plan and its implementation, and the retention or employment of the Creditors' Committee's attorneys, accountants, financial advisors, and other agents shall terminate. All expenses of Creditors' Committee members and the fees and expenses of their professionals through the Effective Date shall be paid in accordance with the terms and conditions of the Professional Fee Order, the Plan and any other Bankruptcy Court orders.

Section 6.03 *Funding of Cash Reserves.* On the Effective Date, the Liquidating Trust shall fund Cash Reserves in such amounts as determined by the Debtors and the Creditors' Committee as necessary in order to be able to make the required future payments under the Administrative Claims Reserve.

Section 6.04 *Cancellation of Existing Securities.* Except as otherwise provided in this Plan and in any contract, instrument or other agreement or document created in connection with this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article VIII of this Plan, all promissory notes, share certificates (including treasury stock), other instruments evidencing any Claims or Interests, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Claims or Interests shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under any such notes, share certificates and other agreements and instruments governing

such Claims and Interests shall be discharged. The Holders of or parties to such canceled notes, share certificates and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to this Plan.

Section 6.05 *Closing of Chapter 11 Cases.* When all Disputed Claims Filed against the Debtors have become Allowed Claims or have been disallowed by Final Order, and all remaining assets of the Debtors have been liquidated and converted into Cash, and such Cash has been distributed in accordance with this Plan, or at such earlier time as the Liquidating Trustee deems appropriate, the Liquidating Trustee shall seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

Section 6.06 *Substantive Consolidation.* Subject to the occurrence of the Effective Date, the Debtors shall be deemed consolidated under this Plan, solely for the limited purposes of voting and distributions under the Plan. Each and every Claim Filed or to be Filed against either of the Debtors shall be deemed Filed against the consolidated Debtors and shall be deemed one Claim against the Debtors and (a) any obligation of either Debtor and all guarantees thereof executed by one or more of the Debtors shall be deemed to be one obligation of all of the consolidated Debtors; (b) any Claims Filed or to be Filed in connection with any such obligation and such guarantees shall be deemed to be one Claim against the consolidated Debtors; (c) all duplicative Claims (identical in amount and subject matter) Filed against all Debtors shall be automatically expunged so that only one Claim survives against the consolidated Debtors; and (d) the consolidated Debtors shall be deemed, for purposes of determining the availability of the right of setoff under section 553 of the Bankruptcy Code, to be one entity, so that, subject to other provisions of section 553, the debts due to a particular Debtor may be offset against the Claims against both Debtors.

ARTICLE VII TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Section 7.01 *Rejection of Contracts.* Except as otherwise provided in this Article VII, pursuant to sections 365 and 1123(b) of the Bankruptcy Code, all prepetition executory contracts and unexpired leases that exist between the Debtors and any Person shall be deemed rejected by the Debtors effective as of the Effective Date subject to the occurrence of the Effective Date, except for executory contracts and unexpired leases which:

- (a) have been assumed, assumed and assigned, or rejected (including rejection with a delayed effective date), as applicable, pursuant to an order of the Bankruptcy Court entered prior to the Effective Date; or
- (b) as of the Effective Date, are subject to a pending motion for approval of the assumption, assumption and assignment, or rejection, as applicable.

Section 7.02 *Rejection Damages Bar Date.* If the rejection by a Debtor of an executory contract or unexpired lease pursuant to the Plan results in a Claim, then such Claim shall be forever barred and shall not be enforceable against any Debtor or their Estates unless a proof of claim is filed with the Debtors' Claims agent, Epiq Bankruptcy Solutions, LLC, and served upon

counsel to the Debtors and counsel to the Creditors' Committee, within thirty (30) days after service of the later of (a) notice of the Effective Date or (b) other notice that the executory contract or unexpired lease has been rejected. Nothing in this Section 7.02 shall revive or deem to revive a previously Disallowed Claim or extend a previously established bar date, if applicable. The bar date for filing a Claim with respect to an executory contract or unexpired lease other than pursuant to this Plan shall be as set forth in the Bar Date Order or the Final Order approving such rejection.

ARTICLE VIII PROVISIONS GOVERNING DISTRIBUTIONS

Section 8.01 *Distributions for Claims Allowed as of the Effective Date.* Except as otherwise provided herein or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as is practicable. Any distribution to be made on the Effective Date pursuant to this Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable. Any payment or distribution required to be made under this Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Articles VIII and IX of this Plan.

Section 8.02 *Disbursing Agent.* The Liquidating Trustee shall make all distributions required under this Plan from the proceeds of the respective assets transferred to the Liquidating Trust.

Section 8.03 *Subsequent Distributions.* The Liquidating Trustee shall determine, in accordance with this Plan, when to make a Subsequent Distribution based on the amount of Cash currently available in the Liquidating Trust, but shall make distributions at least annually.

Section 8.04 *Interest on Claims.* Unless otherwise specifically provided for in this Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on Claims, and no Claim Holder shall be entitled to interest accruing on or after the Petition Date on any Claim. To the extent otherwise provided for in this Plan, the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall accrue on Claims at the applicable non-default rate. Unless otherwise specifically provided for in this Plan, the Confirmation Order, or required by applicable bankruptcy law, interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim. Until the Effective Date, nothing herein shall waive the right of any creditor to seek postpetition interest.

Section 8.05 *Delivery of Distributions and Undeliverable or Unclaimed Distributions.*

- (a) Distributions to Holders of Allowed Claims shall be made by the Liquidating Trustee (i) at the addresses set forth on the proofs of claim filed by such Claim Holders (or at the address set forth in any applicable notice of

assignment of claim or notice of change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related proof of claim, (iii) at the addresses reflected in the Schedules if no proof of claim has been filed and the Liquidating Trustee have not received a written notice of a change of address, or (iv) as to any defendant to a Litigation Claim who has not otherwise filed a proof of claim, at the address of such defendant's counsel of record or to such party as counsel of record directs or specifies.

(b) If any Claim Holder's distribution is returned as undeliverable, no further distributions to such Claim Holder shall be made unless and until the Liquidating Trustee is notified of such Claim Holder's then current address, at which time all missed distributions shall be made to such Claim Holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Liquidating Trustee until such distributions are claimed. All claims for undeliverable distributions shall be made on the later of the first (1st) anniversary of the Effective Date or ninety (90) days from the date the Claim becomes an Allowed Claim. After such date, all unclaimed property relating to distributions to be made on account of such Claims shall revert to the Liquidating Trust, free of any restrictions thereon or Claims of such Holder and notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan shall require the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim.

Section 8.06 Record Date for Distributions. The Liquidating Trustee shall have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim or Interest that occurs after the Record Date, and will be entitled for all purposes herein to recognize and distribute only to those Holders of Allowed Claims who are Holders of such Claims, or participants therein, as of the Record Date. The Liquidating Trustee shall instead be entitled to recognize and deal with for all purposes under the Plan with only those record Holders stated on the official claims register or the official transfer ledger, as the case may be, as of the Record Date.

Section 8.07 Allocation of Plan Distributions Between Principal and Interest. To the extent that any Allowed Claim entitled to a distribution under this Plan is composed of indebtedness and accrued but unpaid interest thereon, such distribution shall be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

Section 8.08 Means of Cash Payment. Payments of Cash made pursuant to this Plan shall be in U.S. dollars and shall be made, at the option and in the discretion of the Liquidating Trustee, by (a) checks drawn on or (b) wire transfer from a domestic bank selected by the Liquidating Trustee, as applicable.

Section 8.09 Setoffs. The Debtors may, but shall not be required to, set off against any Claim and the payments or other distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim

hereunder shall constitute a waiver or release by the Debtors of any such claim that the Debtors may have against such Holder.

Section 8.10 *De Minimis Distributions*. Notwithstanding any other provision of this Plan, the Liquidating Trustee shall have no obligation to make a distribution on account of an Allowed Claim or account to a specific Holder of an Allowed Claim if the amount to be distributed to that Holder on the Initial Distribution Date or Subsequent Distribution Date (i) does not constitute a final distribution to such Holder, and (ii) is less than \$5.00. In addition, the Debtors reserve the right to request subsequent relief from the Bankruptcy Court to exclude Holders of smaller Claims from the final distribution under this Plan to the extent that the amounts otherwise distributable to such Holders in connection with such final distribution would be *de minimis* or create undue administrative expense.

Section 8.11 *Release of Liens*. Except as otherwise provided in this Plan or in any contract, instrument, release or other agreement or document created or assumed in connection with this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to this Plan, all mortgages, deeds of trust, liens, pledges or other security interests against the property of any Debtors' Estates shall be fully released and discharged, and all of the right, title and interest of any Holder of such mortgages, deeds of trust, liens, pledges or other security interests shall revert to the Debtors' Estates and its successors and assigns. To the extent that any termination statements, instruments of satisfaction, or other similar releases of interests necessary to terminate or otherwise remove from title or record any filed financing statements, mortgages, or other documents or agreements evidencing a security interest in the Debtors' assets shall not have been delivered to the Debtors in proper form for filing and executed by the appropriate parties prior to, or in connection with, the satisfaction of the Secured Claims, then the Liquidating Trustee is hereby authorized to (a) execute and file such statements, instruments, releases or other documents on behalf of the Holder of the Secured Claim with respect to the encumbered assets and (b) to file, register, or otherwise record a certified copy of the Confirmation Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all security interests in the Debtors' assets of any kind or nature whatsoever.

ARTICLE IX PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS

Section 9.01 *Objection Deadline; Prosecution of Objections*. The Liquidating Trustee shall retain responsibility for administering, disputing, objecting to, compromising or otherwise resolving and making distributions on account of the respective Claims against the Debtors. No later than the Claims Objection Deadline (unless extended by an order of the Bankruptcy Court), the Liquidating Trustee shall File objections to Claims with the Bankruptcy Court and serve such objections upon the Holders of each of the Claims to which objections are made. Moreover, notwithstanding the expiration of the Claims Objection Deadline and unless subsequently ordered for good cause shown to shorten time, the Liquidating Trustee shall continue to have the right to amend any objections and to File and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is Allowed. In accordance with Article VI of this Plan, the Liquidating Trustee shall be authorized to, and shall, resolve all

Disputed Claims by withdrawing or settling such objections thereto, or by litigating to judgment in the Bankruptcy Court or such other court having jurisdiction on the validity, nature and/or amount thereof. On motion to the Bankruptcy Court, the Claims Objections Deadline may be extended.

Section 9.02 *No Distributions Pending Allowance.* Notwithstanding any other provision of this Plan, no payments or distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim and the remainder has become a Disallowed Claim; provided, however, that Professional Fee Claims shall be governed by the Professional Fee Order and Article X below.

Section 9.03 *Disputed Claims Reserve.* The Liquidating Trustee shall withhold the Disputed Claims Reserve to be distributed to particular Classes under this Plan. The Disputed Claims Reserve shall be equal to 100% of distributions to which Holders of Disputed Claims in Classes 2, 3 or 4 would be entitled under this Plan as of such date if such Disputed Claims in Classes 2, 3 or 4 were Allowed Claims in their (a) Pro Rata Face Amount (or if a Disputed Claim is unliquidated with no Face Amount, then based upon the good faith estimate of such Disputed Claim as estimated by the Liquidating Trustee), or (b) estimated amount of such Disputed Claim as approved in an order by the Bankruptcy Court. The Debtors or the Liquidating Trustee may request estimation for any Disputed Claim including, without limitation, any Disputed Claim that is contingent or unliquidated. Nothing in this Plan or the Disclosure Statement shall be deemed to entitle the holder of a Disputed Claim to postpetition interest on such Claim.

Section 9.04 *Distributions After Allowance.* Payments and distributions from the Disputed Claims Reserve shall be made as appropriate to the Holder of any Disputed Claim that has become an Allowed Claim, as soon thereafter as is reasonably practicable after the date such Disputed Claim becomes an Allowed Claim. Such distributions shall be based upon the cumulative distributions that would have been made to the Holder of such Claim under the Plan if the Disputed Claim had been Allowed on the Effective Date (excluding any present value calculations) and shall not be limited by the Disputed Claim amounts previously reserved with respect to such Disputed Claim to the extent that additional amounts are available therefor, but only to the extent that such additional amounts have not yet been distributed to Holders of Allowed Claims. Upon such distribution, the reserve shall be reduced by an amount equal to the amount reserved with respect to such Disputed Claim. To the extent the amount reserved for such Disputed Claim exceeds the Allowed Amount, if any, of such Claim, the remainder shall be distributed to Holders of Allowed Class 2, 3 or 4 Claims in accordance with the provisions of Articles IV and VIII of this Plan.

ARTICLE X

ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS

Section 10.01 *Professional Fee Claims.*

- (a) On the Effective Date, the Debtors shall pay all amounts owing to Professionals for all outstanding amounts relating to prior periods through the

Effective Date approved by the Bankruptcy Court in accordance with the Professional Fee Order; provided, however, that Professionals shall continue to prepare fee applications in accordance with the Professional Fee Order up to the Effective Date. No later than fifteen (15) days prior to the Confirmation Hearing, each Professional shall estimate fees and expenses due for periods that have not been billed as of the anticipated Effective Date. Parties in interest shall have until three (3) days prior to the Confirmation Hearing to object to such estimate and any such objection shall be heard at the Confirmation Hearing; provided that failure to object to any such estimate shall not bar subsequent objection to allowance of any fee application. On the Effective Date, the Liquidating Trustee shall escrow funds equal to the aggregate amount of outstanding fee applications, of Professionals retained by the Debtors and the Creditors' Committee, not ruled upon by the Bankruptcy Court as of the Effective Date plus the aggregate amount of all estimated fees and expenses due for periods that have not been billed by such Professionals as of the Effective Date. Such escrow shall be used by the Liquidating Trustee to pay the remaining Professional Fee Claims owing to Professionals as and when Allowed by the Bankruptcy Court. When all such Professional Fee Claims have been paid in full, amounts remaining in such escrow account, if any, shall be returned to the Liquidating Trust for distribution to Allowed Claims in Classes 2, 3 or 4 in accordance with the provisions of Article IV and VIII of this Plan.

(b) All Professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for services rendered on or before the Effective Date (including compensation and expenses for making a substantial contribution in any of the Chapter 11 Cases) shall File and serve such applications on counsel for the Debtors, the United States Trustee and as otherwise required by the Bankruptcy Court and the Bankruptcy Code, an application for final allowance of compensation and reimbursement of expenses no later than forty-five (45) days after the Effective Date. Objections to applications of Professionals and other entities for compensation and reimbursement of expenses must be filed with the Bankruptcy Court no later than twenty (20) days after the filing and service of a Professional's application. All compensation and reimbursement of expenses allowed by the Bankruptcy Court shall be paid ten (10) days after the entry of an order allowing such fees and expenses, or as soon thereafter as practicable.

Section 10.02 *Other Administrative Claims*. All other requests for payment of an Administrative Claim (other than as set forth in Section 10.01 of this Plan), must be Filed with and served on counsel for the Debtors no later than the Administrative Claims Bar Date. Unless the Debtors object to an Administrative Claim within one hundred twenty (120) days after the Administrative Claims Bar Date, such Administrative Claim shall be deemed allowed in the amount requested. In the event that the Debtors, the Creditors' Committee or the Liquidating Trustee object to an Administrative Claim and the objector and such claimant are unable to resolve their dispute consensually, then the objector shall File a motion for determination thirty (30) days following the request of such claimant. Thereafter, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing,

the Debtors may pay, in their discretion, in accordance with the terms and conditions of any agreements relating thereto, any Administrative Claim as to which no request for payment has been timely Filed but which is paid or payable by a Debtor in the ordinary course of business.

ARTICLE XI CONFIRMATION AND CONSUMMATION OF THE PLAN

Section 11.01 *Conditions to Confirmation*. The following are conditions precedent to confirmation of the Plan that may be satisfied or waived in accordance with Section 11.03 of the Plan:

- (a) The Bankruptcy Court shall have approved by Final Order a Disclosure Statement with respect to the Plan in form and substance reasonably acceptable to the Debtors and the Creditors' Committee.
- (b) The Confirmation Order shall be in form and substance reasonably acceptable to the Debtors and the Creditors' Committee.

Section 11.02 *Conditions to Effective Date*. The following are conditions precedent to the occurrence of the Effective Date:

- (a) The Confirmation Order shall be in form and substance acceptable to the Debtors and the Creditors' Committee and shall have been entered by the Bankruptcy Court and shall be a Final Order, and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending.
- (b) All relevant transactions set forth in Article VI of this Plan shall have been entered into and all conditions precedent to the consummation thereof shall have been satisfied.
- (c) Any order necessary to satisfy any condition to the effectiveness of the Plan shall have become a Final Order and all documents provided for under the Plan shall have been executed and delivered by the parties thereto.

Section 11.03 *Waiver of Conditions*. The conditions set forth in Sections 11.01 and 11.02 of this Plan may be waived, in whole or in part, by the Debtors. The failure to satisfy or waive any condition to the Confirmation Date or the Effective Date may be asserted by the Debtors in their reasonable discretion based on the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtors to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

ARTICLE XII EFFECT OF PLAN CONFIRMATION ON CLAIMS AND INTERESTS

Section 12.01 *No Discharge of Claims Against Debtors*. Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation will not discharge Claims against the Debtors; provided,

however, that no Holder of a Claim against any Debtor may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, any Debtor, their respective successors or their respective Estates, except as expressly provided herein.

Section 12.02 *Termination of Subordination Rights and Settlement of Related Claims and Controversies*. The classification and manner of satisfying all Claims and Interests under the Plan take into consideration all subordination rights, arising under section 510 of the Bankruptcy Code, or otherwise. Except as provided in this Plan, all such subordination rights that a Holder of a Claim or Interest may have with respect to any distribution to be made pursuant to the Plan will be cancelled and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined. Accordingly, distributions pursuant to the Plan to Holders of Allowed Claims or Allowed Interests will not be subject to payment to a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment or other legal process by a beneficiary of such terminated subordination rights. Nothing in this Section 12.02 shall be deemed to release the rights, if any, that the Debtors, the Creditors' Committee or the Liquidating Trustee or any other party in interest may have to seek to equitably subordinate any Claim pursuant to section 510 of the Bankruptcy Code or to otherwise seek to recharacterize any Claim as an equity interest.

Section 12.03 *Exculpation and Limitation of Liability*. **The Debtors, the Creditors' Committee, the members of the Creditors' Committee in their representative capacity, and any of such parties' respective present or former members, officers, directors, employees, advisors, counsel, representatives, Professionals or agents, and any of all such parties' predecessors, successors and assigns, and all of their respective officers, directors, agents, employees and attorneys, shall not have or incur, and are hereby released from, any claim, obligation, Cause of Action or liability to one another or to any Holder of any Claim or Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, or any of their successors or assigns, for any act or omission in connection with, or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Notwithstanding any other provision of this Plan, no Claim Holder or Interest Holder, or other party in interest, none of their respective agents, employees, representatives, financial advisors, attorneys or affiliates, and no successors or assigns of the foregoing, shall have any right of action against the Debtors, the Creditors' Committee, the members of the Creditors' Committee in their representative capacity, and any of such parties' respective present or former members, officers, directors, employees, advisors, counsel, representatives, Professionals or agents, and DIP Lender and its agents and professionals and any of such parties' predecessors, successors and assigns, and all of their respective officers, directors, agents, employees and attorneys, for any act or omission in connection with, relating to or arising out of the Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence or willful misconduct. Confirmation of the Plan shall release the Debtors' independent director, Michael A. O'Hara, from any and all claims or Causes of Action that the Debtors, the Estates or**

creditors might have to seek recovery of, avoidance of, disgorgement of, or clawback of any payments received by Mr. O’Hara from the Debtors.

Section 12.04 *Indemnification Obligations.* In satisfaction and compromise of any obligations or rights of any of the Indemnitees’ Indemnification Rights, (a) all Indemnification Rights except (i) all Indemnification Rights of an Indemnitee who is also a Released Party; and (ii) those based solely upon any act or omission arising out of or relating to any Indemnitee’s service with, for or on behalf of a Debtor on or after the Petition Date (collectively, the “Continuing Indemnification Rights”), shall be released and terminated on and as of the Effective Date; provided that the Continuing Indemnification Rights shall remain in full force and effect on and after the Effective Date and shall not be modified, reduced, terminated or otherwise affected in any way by the Chapter 11 Cases. The Liquidating Trust hereby indemnifies the Indemnitees pursuant to the Continuing Indemnification Rights.

Section 12.05 *Releases by Holders of Claims.* **On the Effective Date (a) each Person that votes to accept this Plan, and (b) to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all Holders of Claims, in consideration for the obligations of the Debtors under the Plan and the Cash and other contracts, instruments, releases, agreements or documents to be delivered in connection with the Plan, each entity (other than a Debtor) that has held, holds or may hold a Claim, as applicable, (each, a “Release Obligor”) shall have conclusively, absolutely, unconditionally, irrevocably and forever, released each Released Party from any direct, non-derivative claim or Cause of Action existing as of the Effective Date arising from, based on or relating to, in whole or in part, the subject matter of, or the transaction or event giving rise to, the Claim of such Release Obligor, and any act, omission, occurrence or event in any manner related to such subject matter, transaction or obligation; provided, however, that this Section 12.05 shall not release any Released Party from any Cause of Action existing as of the Effective Date, (i) held by the Debtors or their Estates; (ii) based on the Internal Revenue Code or other domestic state, city or municipal tax code; (iii) based on the environmental laws of the United States or any domestic state, city or municipality; (iv) based on any criminal laws of the United States or any domestic state, city or municipality; (v) based on the Securities Exchange Act of 1934, as now in effect or hereafter amended, the Securities Act of 1933, as now in effect or hereafter amended, or other securities laws of the United States or any domestic state, city, or municipality; or (vi) Sections 1104-1109 and 1342(d) of the Employee Retirement Income Security Act of 1974, as amended.**

Section 12.06 *Injunction.* **The Confirmation Order shall also act as a permanent injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset or recover any Claim or Cause of Action satisfied or released under this Plan. Subject to the occurrence of the Effective Date and rights in this Plan, the entry of the Confirmation Order shall permanently enjoin all persons that have held, currently hold or may hold a Claim or Interest in the Debtors from taking any of the following actions in respect of such Claim or Interest: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against any or all of the Debtors, the Liquidating Trust, the Released Parties or their respective property or assets; (b) enforcing, levying, attaching, collecting or otherwise**

recovering in any manner or by any means, whether directly or indirectly, any judgment, award, device or order against any or all of the Debtors, the Liquidating Trust, the Released Parties or their respective property or assets; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any lien against any or all of the Debtors, the Liquidating Trust, the Released Parties or their respective property or assets; (d) asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors, the Liquidating Trust, or the Released Parties; and (e) proceeding in any manner in any place whatsoever that does not conform to or comply with or is inconsistent with the provisions of this Plan. All injunctions or stays provided for in the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the closing of the Chapter 11 Cases.

ARTICLE XIII RETENTION OF JURISDICTION

Section 13.01 *Exclusive Jurisdiction of Bankruptcy Court.* Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and this Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

- (a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;
- (b) Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan for periods ending on or before the Effective Date;
- (c) Resolve any matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which either Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom;
- (d) Resolve any matters relating to the pre- and post-confirmation sales of the Debtors' assets;
- (e) Enforce, implement or clarify all orders, judgments, injunctions, and rulings entered by the Bankruptcy Court;
- (f) Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;
- (g) Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;

- (h) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts, instruments, releases and other agreements or documents created in connection with this Plan, the Disclosure Statement or the Confirmation Order;
- (i) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of this Plan or any contract, instrument, release or other agreement or document that is executed or created pursuant to this Plan, or any entity's rights arising from or obligations incurred in connection with this Plan or such documents;
- (j) Modify this Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate this Plan;
- (k) Hear and determine all applications for compensation and reimbursement of expenses of Professionals under this Plan or under sections 330, 331, 503(b), 1103 and 1129(c)(9) of the Bankruptcy Code.
- (l) Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with consummation, implementation or enforcement of this Plan or the Confirmation Order;
- (m) Hear and determine the Litigation Claims and any other Causes of Action by or on behalf of the Debtors or the Estates;
- (n) Hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (o) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or distributions pursuant to this Plan are enjoined or stayed;
- (p) Determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order;
- (q) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;

- (r) Hear and determine all matters related to (i) the property of the Estates from and after the Confirmation Date and (ii) the winding up of the Debtors' affairs;
- (s) Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code;
- (t) Adjudicate any and all Causes of Action, adversary proceedings, applications and contested matters that have been or hereafter are commenced or maintained in or in connection with the Chapter 11 Cases or this Plan, including, without limitation, any adversary proceeding or contested matter, proceedings to adjudicate the allowance of Disputed Claims, and all controversies and issues arising from or relating to any of the foregoing;
- (u) Hear and determine all matters involving Claims or Causes of Action involving any of the Debtors or their property;
- (v) Hear and determine all matters relating to the enforcement and interpretation of Section 12.05 of this Plan; and
- (w) Enter an order closing the Chapter 11 Cases.

Notwithstanding anything contained herein to the contrary, the Bankruptcy Court retains exclusive jurisdiction to hear and determine disputes concerning (i) Claims or (ii) Causes of Action and any motions to compromise or settle such disputes. Despite the foregoing, if the Bankruptcy Court is determined not to have jurisdiction with respect to the foregoing, or if the Liquidating Trustee chooses to pursue any Claim or Cause of Action (as applicable) in another court of competent jurisdiction, the Liquidating Trustee will have authority to bring such action in any other court of competent jurisdiction.

ARTICLE XIV MISCELLANEOUS PROVISIONS

Section 14.01 *Binding Effect*. This Plan shall be binding upon and inure to the benefit of the Debtors, all present and former Holders of Claims and Interests, other parties in interest and their respective successors and assigns as of the entry of the Confirmation Order.

Section 14.02 *Payment of Statutory Fees*. All fees payable pursuant to section 1930 of title 28, United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on, or as soon as reasonably practicable after, the Effective Date, and neither the Debtors nor their Estates shall thereafter be liable for the payment of any additional fees under 28 U.S.C. § 1930. All such fees after the Effective Date shall be paid by the Liquidating Trust.

Section 14.03 *Amendment or Modification of this Plan*. Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123 and 1125 of the Bankruptcy Code, alterations, amendments or modifications of this Plan or Exhibits thereto may be proposed in writing by the Debtors at any time prior to or after the Confirmation Date but prior to the

substantial consummation of this Plan. A Holder of a Claim or Interest that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim or Interest of such Holder.

Section 14.04 *Revocation, Withdrawal or Non-Consummation.* The Debtors reserve the right to revoke or withdraw this Plan as to any or all of the Debtors prior to the Effective Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw this Plan as to any or all of the Debtors, or if Confirmation or Consummation as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) this Plan shall be null and void in all respects, (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases affected by this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void, and (c) nothing contained in this Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by the Debtors or any other Person.

Section 14.05 *Effectuating Documents and Further Transactions.* Each of the Debtors is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of this Plan.

Section 14.06 *Corporate Action.* Prior to, on or after the Effective Date (as appropriate), all matters provided for under this Plan that would otherwise require approval of the stockholders or directors of one (1) or more of the Debtors shall be deemed to have occurred and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to the applicable general corporation law of the states in which the Debtors are incorporated without any requirement of further action by the stockholders or directors of the Debtors.

Section 14.07 *Exemption from Transfer Taxes.* Pursuant to section 1146(c) of the Bankruptcy Code: (a) the creation of any mortgage, deed of trust, lien, pledge, or other security interest; (b) the making or assignment of any lease or sublease; (c) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including, without limitation, any restructuring, disposition, liquidation, or dissolution, deeds, bills of sale, transfers of tangible property or the transfers, sales, and assignments of the Debtors' owned and leased real property pursuant to this Plan or otherwise; or (d) any transfers from the Debtors to the Liquidating Trust pursuant to this Plan or otherwise will not be subject to any document recording tax, stamp tax, conveyance fee, personal property tax, real estate transfer tax, intangibles or similar tax, mortgage tax, stamp act, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

Section 14.08 *Severability of Plan Provisions.* If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void or

unenforceable, the Bankruptcy Court will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, but subject to Section 14.04 of this Plan, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

Section 14.09 *Successors and Assigns*. This Plan shall be binding upon and inure to the benefit of the Debtors, and their respective successors and assigns. The rights, benefits and obligations of any entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such entity.

Section 14.10 *Notice*. All notices, requests and demands to or upon the Debtors to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtors:

HMX ACQUISITION CORP.
c/o CDG Group, LLC
645 Fifth Avenue
New York, NY 10022
Telephone: (212) 813-9435
Facsimile: (212) 813-0580
Attn: Michael P. Healy

with copies to:

Counsel for the Debtors:

PROSKAUER ROSE LLP
70 West Madison, Suite 3800
Chicago, IL 60602
Telephone: (312) 962-3550
Facsimile: (312) 962-3551
Attn: Mark K. Thomas
Peter J. Young

If to the Liquidating Trust:

Telephone:
Facsimile:
Attn:

If to the Creditors' Committee:

Leonard, Street and Deinard, P.A.
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
Telephone: (612) 335-1645
Facsimile: (612) 335-1657
Attn: Robert T. Kugler
Edwin H. Caldie

Section 14.11 *Governing Law*. Except to the extent the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan and any agreements, documents and instruments executed in connection with this Plan shall be governed by, and construed and enforced in accordance with, the laws of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

Section 14.12 *Tax Reporting and Compliance*. The Debtors and the Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all payments and distributions hereunder shall be made subject to such withholding and reporting requirements. All persons or entities holding and reporting Claims or Interests shall be required to provide any information necessary to effect the withholding of such taxes or establish a valid exemption.

Section 14.13 *Filing of Additional Documents*. On or before substantial consummation of this Plan, the Debtors shall File such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

Section 14.14 *Plan Supplement*. Except as otherwise provided in the Plan, forms of the following documents shall be contained in the Plan Supplement and Filed with the Clerk of the Bankruptcy Court by the Exhibit Filing Date: the Liquidating Trust Agreement, the Plan schedules, and the lists of the initial members of the Trust Oversight Board. Upon its Filing, the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal Bankruptcy Court hours.

Section 14.15 *No Waiver or Estoppel*. Each Claim Holder or Interest Holder shall be deemed to have waived any right to assert that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtors and/or their counsel, the Creditors' Committee and/or its counsel, or any other party, if such agreement was not disclosed in this Plan, the Disclosure Statement or other Filings.

Section 14.16 *Request for Court Hearing*. Notwithstanding whether or not a matter requires the consultation of Creditors' Committee under this Plan, the Debtors and the Creditors' Committee shall have the right to request a hearing before the Bankruptcy Court on any and all matters raised in connection with or related to this Plan.

The Debtors hereby request Confirmation of the Plan pursuant to section 1129(a) or section 1129(b) of the Bankruptcy Code.

Dated: February 1, 2013

**HMX ACQUISITION CORP.,
HMX POLAND SP. Z O. O., HMX, LLC,
QUARTET REAL ESTATE, LLC,
AND HMX, DTC CO.**

/s/ Michael A. O'Hara

By: Michael A. O'Hara

Title: Independent Director or Authorized Signatory

Exhibit B

[Liquidation Analysis]

Hypothetical Chapter 7 Liquidation Analysis

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Assumes the Conversion from Chapter 11 on January 31, 2013

(\$ in thousands)

		\$ Value	Recovery	
			%	\$
Beginning Cash Balance @ Jan 31, 2013	(a)	\$ 8,580.5	NA	NA
Chapter 7 Administrative Claims:				
Chapter 7 Trustee Fees	(b)	\$ 280.7	100.0%	\$ 280.7
Chapter 7 Advisor Fees	(c)	3,300.0	100.0%	3,300.0
Wind Down Costs	(d)	700.0	100.0%	700.0
Priority Tax Claims	(e)	750.0	100.0%	750.0
Total Chapter 7 Administrative Expenses		\$ 5,030.7	100.0%	\$ 5,030.7
Chapter 11 Administrative Claims:				
Accrued But Unpaid Professional Fees Through 12/21		\$ 500.0	100.0%	\$ 500.0
Accrued But Unpaid Professional Fees In January 2013		540.0	100.0%	540.0
Accrued but Unpaid Employee Expenses Through 12/21	(f)	900.0	100.0%	900.0
503(b)(9) Claims		100.0	100.0%	100.0
Other Payables	(g)	750.0	100.0%	750.0
Total Chapter 11 Administrative Expenses		\$ 2,790.0	100.0%	\$ 2,790.0
Net Proceeds Available to Prepetition Unsecured Creditors		\$ 759.9		

Notes:

- (a) Based upon the Debtors bank balances as of 1/31/13
- (b) 25% of the first \$5k of cash + 10% of amounts greater than the first \$5k and less than \$50k + 5% of amounts greater than the first \$50k and less than \$1mm + 3% of amounts greater than \$1mm.
- (c) Fees for legal and financial advisors and claims agent for 20 weeks. Assumes that trustee would retain professionals to assist in administering the case
- (d) Represents the Debtor's estimate of administration costs necessary to effectuate the completion of a Chapter 7 liquidation. Costs include, but are not limited to, 1099 employees, software likenesses, filing fees, and storage expense.
- (e) Estimate from Debtor's tax advisors.
- (f) Includes commissions, non-union benefits, and accrued but unpaid vacation for employees terminated prior to close.
- (g) Represents the Debtor's estimate of outstanding post petition payables related to ordinary course operations of the business through 12/21.