

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re:

TOP TIER SITE DEVELOPMENT,
LLC,

Debtor.

Chapter 11

Case No. 17-14107-JNF

THIS FIRST AMENDED DISCLOSURE STATEMENT IS NOT A SOLICITATION OF AN ACCEPTANCE OR REJECTION OF THE PROPOSED CHAPTER 11 PLAN FOR TOP TIER SITE DEVELOPMENT, LLC, DEBTOR. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT FOR THE PLAN HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS PROPOSED FIRST AMENDED DISCLOSURE STATEMENT IS SUBMITTED FOR SUCH APPROVAL BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT. THE CONTENTS OF THIS FIRST AMENDED DISCLOSURE STATEMENT ARE SUBJECT TO CHANGE. THIS FIRST AMENDED DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.

FIRST AMENDED DISCLOSURE STATEMENT TO FIRST AMENDED
PLAN OF REORGANIZATION OF TOP TIER SITE DEVELOPMENT, LLC

INTRODUCTION

Pursuant to Section 1125 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the "*Bankruptcy Code*"), Top Tier Site Development, LLC, debtor and debtor-in-possession ("*Top Tier*" or the "*Debtor*" or the "*Company*") provides this first amended disclosure statement (the "*Disclosure Statement*") to all of the Debtor's known creditors, equity holders and parties in interest. The purpose of this Disclosure Statement is to provide the information deemed necessary for each creditor and equity holder to make an informed decision about the First Amended Joint Chapter 11 Plan of Top Tier Site Development, LLC (as may be amended, the "*Plan*") dated as of December 7, 2018. A copy of the Plan is attached hereto as *Exhibit A*. Capitalized terms not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan. A summary of the Plan and the

estimated Distributions to be made to each Class of Claims and Interests is set forth below.

I. OVERVIEW OF THE PLAN

The Plan is proposed by Top Tier and the Official Committee of Unsecured Creditors (the “*Committee*”). The Plan proposes to pay creditors as follows:

- Creditors with valid claims will be paid from the liquidation of their collateral, largely litigation claims against Shaw’s, Inc. (“*Shaw’s*”) and Thomas Tripp (“*Tripp*”). The claims against Shaw’s are “Collateral” for certain secured creditors, and thus the Net Proceeds of these “Encumbered Causes of Action” must be used to satisfy the liens of secured creditors holding valid liens. Any excess will be distributed next to holders of allowed general unsecured claims. Some or all of the claims against Tripp are “Avoidance Actions” (which are claims arising under Chapter 5 of the Bankruptcy Code) and are not “Collateral” for any secured creditors. Thus, the Net Proceeds of these “Unencumbered Causes of Action” are property available for distribution to holders of allowed unsecured claims without first distributing those proceeds to holders of secured claims.
- To fund the expenses of litigation and administration, and if available afterwards to fund an initial distribution to unsecured creditors with allowed claims, Top Tier’s principals (Robert J. Santoro and Charles R. Wing, Jr.) will contribute an “Initial Bonus Payment” equal to approximately \$245,347.53 (representing escrowed funds of 118,000.79 plus “Building Sale Proceeds” (as defined in the Plan) of \$127,346.74). This Initial Bonus Payment is new money, that when contributed will not subject to any liens or security interests and is money that is **ONLY** available to creditors under this Plan. Messrs. Santoro and Wing are not obligated to contribute the Bonus Payment if this Plan is not approved.
- In addition to payment of claims from the proceeds of litigation, the Plan also provides for payment to Holders of Allowed General Unsecured Claims potentially of more than the amount they are owed. To the extent of litigation recoveries, the Plan provides for payment from those recoveries of an additional “Second Bonus Payment” of up to twenty percent (20%) of claims. Thus, creditors holding Allowed Unsecured Claims will receive, from net litigation recoveries and other funds in the trust, the amounts owed, plus, if available, an additional twenty percent (20%) bonus, resulting in the potential recovery to holders of allowed general unsecured claims of 120% of the amounts they are owed.

- Although the Plan Proponents believe it is unlikely, nevertheless, there is a risk that the Initial Bonus Payment will be consumed by costs of administering the Liquidating Trust and litigation costs, resulting in no distribution from the Initial Bonus Payment to creditors.

Mechanically, the Plan establishes a Liquidating Trust for the benefit of creditors and equity holders as the means to pay creditors. The assets of the Liquidating Trust will include

- (i) the Initial Bonus Payment and any and all amounts distributable to Charles R. Wing, Jr. and Robert J. Santoro from or on account of their respective Class 7 Equity Interests equal to twenty percent (20%) of the amount of all Allowed Class 6 Claims (referred to in the Plan as the “**Second Bonus Payment**”), and
- (ii) all other property of Top Tier, including all Causes of Action (discussed below), remaining vehicles and accounts receivable with a notional amount of \$532,080.00 (discussed below). The Liquidating Trustee will liquidate these assets and all remaining (referred to in the Plan as the “**Liquidating Trust Assets**”) and then distribute the Net Proceeds after payment of, as applicable, expenses, secured claims and priority claims to holders of Allowed unsecured claims. Any amounts realized after payment in full to all creditors will be distributed to the members of Top Tier, except for the Second Bonus Payment, which will be paid to holders of Allowed Class 6 Claims on top of the amounts owed to them on account of their Allowed claims. The Liquidating Trustee will be charged with the responsibility to review all scheduled and filed claims and file objections to those the Liquidating Trustee believes are defective. The Bankruptcy Court will determine whether to sustain the Liquidating Trustee’s objection to Disputed Claims.

The principal Causes of Action are claims Top Tier believes it holds against Tripp and Shaw’s. The Causes of Action are described in greater detail below. The amounts to be distributed to creditors are unknown and depend upon (i) the amounts recovered by the Liquidating Trustee from the liquidation of the accounts receivable and prosecution of the Causes of Action, and (ii) the amounts of Allowed Claims and the Bankruptcy Court’s determination of objections to Disputed Claims.

The Liquidating Trustee will preserve the Net Proceeds from the liquidation of all Collateral securing all Allowed Claims for payment to holders of Allowed Secured Claims in order of priority. By contrast, the Bonus will be made available for costs and expenses of the Liquidating Trust and for distribution solely to holders of Allowed Class 6 general unsecured Claims.

The Plan Proponents (the Debtor and the Official Committee of Unsecured Creditors, representing the interests of unsecured creditors as a class) *solicit your vote to accept the Plan.* The principal difference between the Plan and a liquidation that would occur under chapter 7 of the Bankruptcy Code if the Plan is not confirmed is the Bonus. Creditors receive the benefit of the Bonus *ONLY* if the Plan is confirmed. The Plan Proponents believe creditors should receive the benefit of the Bonus, and thus the Plan should be confirmed.

II. INFORMATION ABOUT THE REORGANIZATION PROCESS

2.1 Purposes of Disclosure Statement

This Disclosure Statement includes background information about the Debtor, its Chapter 11 case, and a description of the Plan. The Disclosure Statement describes the proposed treatment of each Class of Claims and Equity Interests under the Plan. The Disclosure Statement contains information concerning the prospects for creditors and equity holders in the event of confirmation or, in the alternative, if confirmation is denied or the proposed Plan does not become effective.

As approved by the Bankruptcy Court, and in accordance with the provisions of the Bankruptcy Code, this Disclosure Statement and its exhibits contain adequate information of a kind and in sufficient detail that would enable a reasonable, hypothetical investor typical of a Holder of impaired Claims or Interests to make an informed judgment about the Plan. Approval of this Disclosure Statement by the Bankruptcy Court, however, does not constitute a recommendation by the Bankruptcy Court either for or against the Plan.

The information contained in the Disclosure Statement has been provided by the Debtor based upon the knowledge of its records, business and affairs. Except as otherwise expressly indicated, such information has not been subject to audit or independent review. Although great effort has been made to be accurate, neither the Plan Proponents nor their professional advisors warrant the accuracy of the information contained in this Disclosure Statement.

No representation concerning the Debtor, including the value of its assets or the aggregate dollar amount of Claims or Equity Interests which may be Allowed, are authorized other than as set forth in this Disclosure Statement. Descriptions of legal principles contained in this Disclosure Statement, if any, do not constitute legal opinions and may not be relied upon by any creditor or party in interest. All creditors, equity holders and parties in interest should consult with their own legal advisors

with respect to any legal principles described in this Disclosure Statement or relating to the Bankruptcy Case.

This Disclosure Statement contains forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended (the “*Exchange Act*”). All statements other than statements of historical facts included in this Disclosure Statement that address activities, events or developments that the Plan Proponents expect, project, believe or anticipate will or may occur in the future are forward-looking statements. These statements can be identified by the use of forward-looking terminology, including “may,” “believe,” “anticipate,” “estimate,” “continue,” “foresee,” “project,” “could,” or other similar words. These forward-looking statements may include, but are not limited to, (a) references to timing and procedures in which the Bankruptcy Case and the distribution of the Debtor’s assets pursuant to the Plan will be conducted, and (b) the Debtor’s financial projections and liquidation analysis. Forward-looking statements are not guaranties of performance. The Plan Proponents based these statements on the its assumptions and analysis in light of experience and perception of historical trends, current conditions, expected future developments and other factors the Debtor believes are appropriate in the circumstances. No assurance can be given that these assumptions are accurate. Moreover, these statements are subject to a number of risks and uncertainties. Important factors that could cause the actual results to differ materially from the expectations reflected in the Disclosure Statement’s forward-looking statements include, among others, those set forth elsewhere in this Disclosure Statement.

Other factors that are unknown or unpredictable could also have a material adverse effect on future results.

All subsequent written or oral forward-looking information attributable to the Debtor or to persons acting on the Debtor’s behalf are expressly qualified in their entirety by the foregoing. In light of these risks, uncertainties and assumptions, the events anticipated by the Debtor, forward-looking statements may not occur, and you should not place any undue reliance on any of the Debtor’s forward-looking statements. The Debtor’s forward-looking statements speak only as of the date made and the Debtor undertakes no obligation to update or revise its forward-looking statements, whether as a result of new information, future events or otherwise.

2.2 Voting

All holders of Claims and Equity Interests are impaired and are entitled to vote to accept or reject the Plan. Voting is tabulated by class. Each creditor and each equity holder are classified, based on certain characteristics of each Claim or Equity Interest. Under Bankruptcy Code section 1126(c), generally, with certain exceptions, a Class of Claims has accepted the Plan if the Plan has been accepted by creditors entitled to vote that hold at least two-thirds in amount and more than one-half in

number of the Allowed Claims of such class that have accepted or rejected the Plan. Under Bankruptcy Code section 1126(d), generally, with certain exceptions, a Class of Equity Interest holders has accepted the Plan if the Plan has been accepted by holders of such Equity Interests entitled to vote, that hold at least two-thirds in amount of the Allowed Equity Interests of such Class that have accepted or rejected the Plan. Additionally, the Plan Proponents seek Bankruptcy Court authority to deem any Class in which no votes have been cast as an accepting Class.

Ballots for accepting or rejecting the Plan are included with this Disclosure Statement sent to holders of Claims in Classes 2 and 3. Executed ballots must be received by the Balloting Agent no later than [_____,] 2019 in order to be counted.

2.3 The Disclosure Statement and Confirmation Hearing

Pursuant to the Bankruptcy Court's Order dated _____, this Disclosure Statement has been approved. The Bankruptcy Court has scheduled a hearing to consider confirmation of the Plan, to commence on _____, 2019 at _____ (Eastern Time) (the "**Confirmation Hearing**"). The Confirmation Hearing will be held before the Honorable Joan N. Feeney, United States Bankruptcy Judge, at the United States Bankruptcy Court located at Courtroom No. 1, 12th Floor of the John W. McCormack Post Office and Courthouse, 5 Post Office Square, Boston, Massachusetts. At the hearing, the Bankruptcy Court will consider whether Plan satisfies the various requirements of the Bankruptcy Code, including whether it is feasible and whether it is in the best interests of Holders of Claims and Equity Interests.

2.4 Confirmation of the Plan Without the Necessary Acceptances

The Plan may be confirmed under certain circumstances notwithstanding that one or more Impaired Classes of Claims have not accepted the Plan. As noted above, holders of Equity Interests are deemed to have rejected the Plan and, as such, the Plan may not be confirmed unless, among other things, the Plan Proponents show (1) that holders of those Equity Interests would not receive anything in a Chapter 7 liquidation; and (2) that no class junior to the Equity Holders will receive any distribution or retain any property on account of their former equity holdings in the Debtor. The Plan Proponents believe they can make this showing.

III. INFORMATION ABOUT THE DEBTOR

3.1 The Debtor's Business

In 2011, Robert Santoro, Charles Wing Jr. and Thomas Tripp formed Top Tier as a residential and commercial construction company with a special focus on wireless communications. Within just three years of operation moved into a 10,000 square foot facility with office space and a warehouse large enough to support our continuing

growth and expansion. Top Tier's business evolved from a four-person enterprise to a staff of over 75 professionals working across five divisions in two states, with a fleet of 40 vehicles.

In 2013, Top Tier added its Electrical Department which emerged as a leader in the local market. Housing three Master Electricians, three Journeyman Electricians, and multiple electrical apprentices, Top Tier was engaged in both small and large-scale projects throughout New England.

By 2015, Top Tier had become a full-service telecommunications contractor with a proven record of accomplishment for construction success throughout the northeast United States. After successfully completing a local project for T-Mobile, Top Tier was offered an opportunity to work and complete T-Mobile's territory in Florida. With that opportunity Top Tier opened our office in Lakeland, Florida, and expanded its operations to central and southern Florida. Also in 2015, Top Tier began a "Civil/Concrete and Landscape Design Division." With this, Top Tier was a one-stop shop with the ability to perform work in all aspects of construction projects it serviced.

3.2 Events Leading to Chapter 11 Filing; Causes of Action Against Shaw's and Mr. Tripp

Top Tier's demise resulted largely from two events. First, at the end of March 2015 Mr. Tripp approached Mr. Santoro and Mr. Wing and expressed that he wanted to leave Top Tier when it was at its height financially. The parties negotiated a buyout of Mr. Tripp, which was funded entirely by Top Tier. Mr. Tripp's activities harmed Top Tier significantly and led to expensive legal costs and ultimately a restructure of the buyout deal at the end of 2016. Top Tier funded significant payments to Mr. Tripp, in an amount of approximately \$950,000.

The Plan Proponents believe Top Tier has claims against Mr. Tripp arising from at least some of these transactions, including for the avoidance and recovery of the amounts paid to Mr. Tripp funded by Top Tier for his equity in Top Tier. Mr. Tripp, through counsel, has claimed he has complete defenses to all claims of Top Tier, and indeed, may have affirmative claims against Top Tier. Mr. Tripp's central defenses are set forth in his "*Objection of Thomas Tripp to Disclosure Statement*" [Dkt. 226] ("**Tripp Objection**"). Reference is made to the Tripp Objection for further information and detail regarding Mr. Tripp's defenses. In summary, Mr. Tripp contends he has complete defenses to all claims, because, he asserts, among other things, (i) the Debtor was solvent at all material times, and (ii) the separate payments made to him are not individual "transfers" under section 548 of the Bankruptcy Code or analogous state law. Mr. Tripp claims he has no liability whatsoever to the Debtor (and will have none to the Liquidating Trustee). Indeed, Mr. Tripp contends he holds a valid and enforceable secured claim against the Debtor, and objects to any usage of funds Mr. Tripp claims constitute his Collateral.

With respect to this secured claim, Thomas Tripp alleges that he holds a perfected security interest in all assets of the debtor, arising from various agreements by and between himself and the debtor, and by and among himself, the debtor and its principals. These agreements included a stock purchase agreement and amendment thereto, which also contained certain covenants to pay taxes and other company liabilities, releases, indemnities, and modifications of claims (including a stipulation and dismissal of litigation) whereby the debtor was obligated to make or otherwise guaranty payments to Mr. Tripp in the original amount \$2.375 million. These agreements originated in November 2015 and modified certain other agreements between the debtor and Mr. Tripp dating back to August of 2011. During the period prior to the bankruptcy filing, Mr. Tripp asserts that Top Tier failed to maintain payments that were required under these agreements, and further failed to indemnify Mr. Tripp from other company obligations that he was required to pay, in contravention of the agreements. Mr. Tripp has filed a proof of claim with respect to these matters. Finally, there is pending litigation prior to the Petition Date between and among Mr. Tripp, Mr. Santoro and Mr. Wing. Mr. Tripp has sought to attach funds held by counsel for the Committee, as escrow agent.

The Committee and the Debtor dispute Mr. Tripp's contentions, and believe (i) the Debtor was insolvent at most of the relevant times and continues to investigate whether the Debtor was solvent at any of the material times, (ii) each payment is a separate transfer under well-established law. The Plan Proponents anticipate the Liquidating Trustee will commence litigation against Mr. Tripp shortly after confirmation of the Plan if no settlement occurs beforehand. At a minimum, and without limiting the claims and defenses regarding Mr. Tripp, the Plan Proponents believe any claim and lien asserted by Mr. Tripp is not an allowable claim unless and until Mr. Tripp pays the full amounts for which he is liable pursuant to section 502(d) of the Bankruptcy Code.

The second factor was the problems and difficulties that developed between Top Tier and Shaw's. Shaw's owns and/or operates a number of grocery stores in the greater Boston, Massachusetts area, and was one of Top Tier's largest clients. Top Tier had been working with Shaw's since 2013 and was about to start a large string of construction projects beginning in May/June of 2016. During this period Top Tier was forced to work with a new construction manager for Shaw's. Over the next 18 months, the relationship between Top Tier and Shaw's deteriorated. Among other things, Top Tier believes it suffered repeated delay of issuance of purchase orders, repeated delay of submission of invoices from the new construction manager to Shaw's for payment, continuous change in invoice and payment procedures, refusal of payment for projects with no errors or claims of incomplete or substandard work, and purposeful omission of relevant job timeline information by Shaw's to Top Tier including, but not limited to, delivery and deadline dates.

After a vigorous work schedule of 10 months and the completion of a large project for Shaw's in March of 2017, Shaw's project manager refused payment for jobs

with no errors or claims of incomplete or substandard work. Shaw's failure and refusal to pay Top Tier devastated Top Tier's finances. Adding to Top Tier's difficulty was Shaw's decision to withdraw two awarded projects from Top Tier that were slated to start in May of 2017 with an estimated value of \$1.5 million. With these projects abruptly pulled from Top Tier and the money for completed work from Shaw's still past due, Top Tier suffered a major financial blow from which it was never able to recover.

Top Tier tried to find suitable work to keep its employees working through the summer of 2017 with Strickland Construction. While payment came on time for the first 45 days, Strickland then also began to miss committed payment dates. According to Top Tier's books and records, Strickland Construction still owes Top Tier \$75,000.

In late September, 2017, Top Tier was forced to lay off about 75% of its employees. Litigation with Mr. Tripp also continued. Consequently, Top Tier filed its bankruptcy case shortly thereafter, on November 2, 2017.

IV. POST-PETITION EVENTS

4.1 Postpetition Operations

Top Tier continued operations shortly after filing this bankruptcy case. However, Top Tier continued to struggle. Top Tier's inability to collect from Shaw's and Strickland Corporation particularly meant it had inadequate capitalization to operate properly. Top Tier had legacy overhead that it could not shed quickly enough, but nevertheless, Top Tier's postpetition operations were about break-even.

With reduced demand for Top Tier's services, high legacy overhead and inability to obtain capital (from collection of its prepetition accounts receivable), ultimately, Top Tier terminated its postpetition operations.

4.1 Remaining Assets

Top Tier's remaining assets, other than the Escrowed Funds and the other monies held by Mr. Sternklar (as discussed below), are largely the Causes of Action. Top Tier's other assets are nominal. Virtually all of its equipment and vehicles were subject to liens and security interests, and the various lenders received relief from the automatic stay to repossess and foreclose these items. The remaining assets are 2 enclosed trailers, 1 dump trailer and a 2001 Sterling boom truck. Top Tier estimates that the value of these items will not exceed \$25,000.

4.3 Formation of the Committee

The Office of the United States Trustee filed its "*Notice of Appointment of Creditors' Committee*" [Dkt. 45] on January 12, 2018. The members of the Committee

are Bay State Cooling, Inc., Michael Golden, and JM Caruso Electrical. Mr. Jeffrey Caruso of JM Caruso Electrical is the Chairman of the Committee.

On January 31, 2018, The Committee filed its Application to Employ Jeffrey D. Sternklar LLC as counsel [Dkt. 72], which the Bankruptcy Court allowed by order dated February 7, 2018 [Dkt. 76]. Jeffrey D. Sternklar continues to serve as counsel to the Committee.

On April 19, 2018, the Committee filed its Application to Employ Verdolino & Lowery, P.C. as its financial advisor [Dkt. 160]. The Court allowed this application by order dated April 30, 2018 [Dkt. 164].

4.4 Top Tier's Retention of Professionals

Top Tier hired as its bankruptcy counsel James P. Ehrhard and his law firm Ehrhard & Associates, P.C. ("**Ehrhard**") on the eve of its bankruptcy filing. Ehrhard continues to serve as the Debtor's bankruptcy counsel. It is estimated that Ehrhard will incur attorney's fees of approximately \$50,000.00. Ehrhard received a retainer of \$30,000.00 before the bankruptcy was filed and expects to receive no more than an additional \$30,000.00 through the Plan.

Top Tier also hired attorney Gary Hogan and his law firm Baker, Braverman & Barbadoro, P.C. ("**Hogan**") to handle collection of outstanding receivables soon after the bankruptcy was filed. Hogan is paid through a court-approved contingency fee agreement and, therefore, will only be paid a percentage of funds procured through such collection litigation. Hogan's continued employment for Top Tier will be determined by the Liquidating Trustee. Going forward the Liquidating Trustee may handle such collection of receivables himself or through newly hired counsel.

Top Tier also retained TG. Mayer & CO., P.C. as its accountant Top Tier believes all payments to T.G. Mayer & Co have been made and it is not owed any amounts that will be paid on the Effective Date.

No other professionals were hired by Top Tier prior to the filing of this Disclosure Statement.

4.5 210 Kenneth Welch Drive

The three original principals of Top Tier (Messrs. Santoro, Wing and Tripp) established a limited liability company named "210 Kenneth Welch Drive LLC" (the "**LLC**") to purchase and hold title to the commercial premises located at 210 Kenneth Welch Drive, Lakeville, Massachusetts (the "**Property**"). Top Tier's principal place of business was at the Property. According to the Top Tier's records, Top Tier loaned the LLC approximately \$130,000 for the down payment required to purchase the Property. The LLC borrowed the balance of the purchase price from Rockland Trust

Company (“**Rockland**”). Rockland had a first mortgage on the Property to secure its loan to the LLC. Top Tier also guaranteed the loan and granted Rockland a security interest in its assets as collateral for that guaranty.

On or about August 14, 2018, the LLC sold the Property. The LLC satisfied the Rockland debt and repaid the Rockland loan in full from the proceeds of the sale. The LLC also repaid Top Tier the sum of \$130,926.66, representing the outstanding balance owed to Top Tier for Top Tier’s loan to the LLC for the down payment on the Property (this is defined in the Plan as the “**Building Sale Proceeds**”). Counsel for the Committee (Mr. Sternklar) holds the remaining balance from this payment, in the amount of \$127,346.74, in his IOLTA client’s funds account.

Additionally, Messrs. Santoro, Wing and Tripp entered into an escrow agreement with Mr. Sternklar, as escrow agent, to hold the portion of the purchase price payable to them. Mr. Sternklar received the sum of \$177,001.19 into escrow. Mr. Sternklar holds this amount in escrow in his IOLTA account. As discussed above, it is contemplated that \$118,000.79 of the Bonus will be funded from the portion of these Escrowed Funds contributed by Messrs. Wing and Santoro. It is contemplated that the remaining portion of the Escrowed Funds (\$59,000.40) are allocable to Mr. Tripp and will be held in escrow pending resolution of Top Tier’s claims against Mr. Tripp, or by court order in the absence of an agreed settlement and resolution of those claims.

5 TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN OF REORGANIZATION

5.1 Administrative Expenses

As required by the Bankruptcy Code, the Plan provides for payment in full of all Administrative Claims on the later of the Effective Date of the Plan or the date such Administrative Claims are Allowed, in the ordinary course of business or in accordance with such agreements as may be reached with the holders of Administrative Claims.

The Plan Proponents estimate unpaid Allowed Administrative Claims payable on the Effective Date will be for Allowed Professional Fee Claims, in the aggregate amount of between \$50,000 and \$100,000.

5.2 Priority Claims

Section 507 of the Bankruptcy Code identifies a variety of claims that are entitled to priority and in a particular order as prescribed therein. The only priority claim that the Plan Proponents know of is a claim for unpaid prepetition taxes to the Massachusetts Department of Revenue (“**MDOR**”). On February 20, 2018, the MDOR filed an amended proof of claim asserting a priority claim for \$16,277.89. The

Plan contemplates that the MDOR will receive, on account of this amended claim, on the later to occur of the date such Allowed Priority Tax Claim becomes due in accordance with its terms or the date it is Allowed, cash equal to the allowed amount of such claim.

5.3 Classification and Treatment of Claims and Interests

To effectuate the contemplated transactions, as required by the Bankruptcy Code, the Plan classifies Claims and Equity Interests in separate Classes. Under the Plan, all classes are impaired and all holders of Claims and Interests in all Classes will vote to accept or reject the Plan. Please note that except for Class 1 Claims and Class 3 Claims, the Allowance or disallowance of Secured Claims largely will be deferred until after the liquidation of all Encumbered Assets by the Liquidating Trustee, and only thereafter, once the amount recovered on account of Encumbered Assets is known, will the Liquidating Trustee seek to disallow Secured Claims to which he believes an objection to Allowance is appropriate. The classification and treatment of Claims and Interests is summarized as follows:

CLASS	NAME	IMPA IRED	VOTIN G	TREATMENT	NOTES
1	Infinite Solutions Secured Claim	Yes	Yes	In full and complete satisfaction, settlement, discharge and release of the Infinite Solutions Secured Claim, the holder of the Infinite Solutions Secured Claim (a) on the Effective Date shall be deemed to have received and applied to reduce the amount of the Infinite Solutions Secured Claim, the Building Sale Proceeds, which shall be transferred to the Liquidating Trustee as a portion of the Initial Bonus Payment, and (b) on the later to occur of the Effective Date, the date such Claim becomes Allowed and the date the Collateral securing the Infinite Solutions Secured Claim is liquidated, either: (i) the amount of the Net Proceeds of the Collateral securing the Allowed Infinite Solutions	The principal amount of this Secured Claim allegedly is \$375,000. UCC-1 was recorded on April 2, 2014. The Collateral appears to be substantially all of the Encumbered Assets. NOTE: INFINITE SOLUTIONS IS OWNED BY CHARLES R. WING, JR., AN INSIDER OF THE DEBTOR. The Infinite Solutions Secured Claim shall be deemed an Allowed Secured Claim. This claim arose from Infinite Solutions sale of its business through an asset sale pursuant to an Asset Purchase Agreement and related documents dated as of February 11, 2014. A substantial portion of the consideration paid by Top Tier was in the form of notes (one in the amount of \$375,000 and

				Secured Claim in accordance with this Plan, less any Estate Setoff with respect to the Infinite Solutions Secured Claim, or (ii) treatment as agreed between the holder of the Infinite Solutions Secured Claim and the Committee or the Liquidating Trustee, as the case may be.	another in the amount of \$450,000) payable by Top Tier to Infinite Solutions (or its designee), which was secured by an “all asset” security interest in Top Tier’s assets that appears to cover substantially all of the Encumbered Assets.
2	Independence Bank Secured Claim	Yes	Yes	In full and complete satisfaction, settlement, discharge and release of the Independence Bank Secured Claim, the holder of the Independence Bank Secured Claim shall receive, on the later to occur of the Effective Date or the date such Claim becomes Allowed, either (i) after all Senior Allowed Claims have been paid in full, a Pro Rata beneficial interest in the Liquidating Trust, entitling such holder to receive a Pro Rata share of distributions from the Liquidating Trust, until such Allowed General Unsecured Claim has been paid in full, or (ii) treatment as agreed between the holder of the Allowed General Unsecured Claim and the Committee or the Liquidating Trustee, as the case may be.	The principal amount of this Secured Claim allegedly is \$113,000. UCC-1 recorded on July 8, 2014. Collateral appears to be substantially all of the Encumbered Assets.

3	Tripp Secured Claim	Yes	Yes	<p>The Debtor believes the Tripp Secured Claim should not be Allowed, and absent a consensual resolution with the holder of the Tripp Secured Claim otherwise, the Debtor intends to file an objections to Allowance of the Tripp Secured Claim. To the extent the Tripp Secured Claim becomes an Allowed Secured Claim, in full and complete satisfaction, settlement, discharge and release of the Tripp Secured Claim, the holder of the Tripp Secured Claim shall receive, either: (i) payment of the Net Proceeds of the Collateral securing the Allowed Tripp Solutions Secured Claim, after all Allowed Class 1 Claims and Allowed Class 2 Claims are paid and satisfied in full, in accordance with the Plan, less any Estate Setoff with respect to the Tripp Secured Claim, or (ii) treatment as agreed between the holder of the Tripp Secured Claim and the Committee or the Liquidating Trustee, as the case may be.</p>	<p>This is a Secured Claim held by Thomas Tripp and is disputed by the Plan Proponents. The Secured Claim allegedly arose from the buyout of Mr. Tripp funded by Top Tier. The UCC-1 for this Secured Claim was recorded on April 6, 2016. The Collateral appears to be substantially all of the Encumbered Assets.</p>
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4	Bond Street Secured Claim	Yes	Yes	<p>To the extent the Bond Street Secured Claim becomes an Allowed Secured Claim, in full and complete satisfaction, settlement, discharge and release of the Bond Street Secured Claim, the holder of the Bond Street Secured Claim shall receive, either: (i) payment of the Net Proceeds of the Collateral securing the Allowed Bond Street Secured Claim, after all Allowed Class 1 Claims, Allowed Class 2 Claims and Allowed Class 3 Claims are paid and satisfied in full, in accordance with the Plan, less any Estate Setoff with respect to the Bond Street Secured Claim, or (ii) treatment as agreed between the holder of the Bond Street Secured Claim and the Committee or the Liquidating Trustee, as the case may be.</p>	<p>The principal amount of this Secured Claim allegedly is \$133,000. UCC-1 was recorded on May 17, 2016. Collateral appears to be substantially all of the Encumbered Assets.</p>
5	Secured Lender Solutions Secured Claim	Yes	Yes	<p>To the extent the Secured Lender Solutions Secured Claim becomes an Allowed Secured Claim, in full and complete satisfaction, settlement, discharge and release of the Secured Lender Solutions Secured Claim, the holder of the Secured Lender Solutions Secured Claim shall receive, either: (i) payment of the Net Proceeds of the Collateral securing the Allowed Secured Lender Solutions Secured Claim, after all Allowed Class 1 Claims, Allowed Class 2 Claims, Allowed Class 3 Claims and Allowed Class 4 Claims are</p>	<p>The principal amount of this Secured Claim appears to be \$375,000. The UCC-1 for this Secured Claim was recorded on May 25, 2017. The Collateral appears to be substantially all of the Encumbered Assets.</p>

				paid and satisfied in full, in accordance with the Plan, less any Estate Setoff with respect to the Secured Lender Solutions Secured Claim or (ii) treatment as agreed between the holder of the Secured Lender Solutions Secured Claim and the Committee or the Liquidating Trustee, as the case may be.	
6	General Unsecured Claims	Yes	Yes	In full and complete satisfaction, settlement, discharge and release of their respective Allowed General Unsecured Claims, each holder of an Allowed General Unsecured Claim shall receive, on the later to occur of the Effective Date or the date such Claim becomes Allowed, either (i) a Pro Rata beneficial interest in the Liquidating Trust, entitling such holder to receive a Pro Rata share of distributions from the Liquidating Trust Assets, until such Allowed General Unsecured Claim has been paid in full, or (ii) treatment as agreed between the holder of the Allowed General Unsecured Claim and the Committee or the Liquidating Trustee, as the case may be.	Scheduled general unsecured Claims are in the amount of \$5,354,834.15 (excluding secured claims). The Committee has not reached a conclusion on the amount of Claims that will be Allowed after the all objections are filed and determined, but simply provides disclosure of the amount appearing on the Debtor's schedules. By order of the Bankruptcy Court dated December 15, 2017 [Dkt. 34], the Court established February 1, 2018 as the deadline for filing proofs of claim and interest (the " Bar Date "). With certain exceptions not relevant here, proofs of claim filed by the Bar Date are timely filed.

7	Equity Interests	Yes	Yes	In full and complete satisfaction, settlement, discharge and release of the Allowed Equity Interests, the holder of an Allowed Equity Interest shall receive, either: (1) after all Senior Allowed Claims and the Second Bonus Payment have been paid in full, a Pro Rata share of the proceeds of the Liquidating Trust, or (2) treatment as agreed between the holder of the Allowed Equity Interests and the Committee or the Liquidating Trustee, as the case may be.	Robert J. Santoro and Charles R. Wing, Jr., are the holders of Equity Interests.
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5.4 Class 1 Secured Claims.

According to the records of the Massachusetts Secretary of State, the holders of Claims in Classes 1 - 5 filed “all asset” UCC-1 financing statements purporting to perfect security interests in substantially all of the Debtor’s prepetition assets (i.e., the Encumbered Assets). The Plan Proponents intend to discuss with these Persons or Entities their alleged security interests and reserve the right to propose changes to the Plan based on the outcomes of those discussions. The Debtor’s assessment (which is subject to change at any time) is that the following Assets are the ones with potential value that serve as Collateral (i.e., are Encumbered Assets):

- Accounts receivable (notional amount of \$532,080.00);
- Causes of Action (other than Avoidance Actions); and
- Prepetition proceeds of any of the foregoing

The Assets that are “Unencumbered Assets” (i.e., **NOT** subject to any security interests) include the following:

- Avoidance Actions;
- The remaining vehicles;
- The Bonus; and
- Postpetition proceeds of any Collateral (such as postpetition collections on accounts receivable) that does not attach to security interests pursuant to 11 U.S.C. §552(b).

The Plan essentially provides for the Liquidating Trustee to hold Collateral separately from the unencumbered Assets described above. Allowed Liens and security interests will attach to the Collateral but will not attach to the unencumbered Assets. The Liquidating Trustee will hold the Collateral (subject to his rights under section 506(c) and the Plan to surcharge any such Collateral) pending collection of Causes of Action (other than Avoidance Actions). The Debtor anticipates the Net Proceeds of such Causes of Action (other than Avoidance Actions) will be sufficient to pay or satisfy Allowed Secured Claims in full. All amounts in excess of amounts necessary to pay Allowed Secured Claims in full will be used and held by the Liquidating Trustee as unencumbered Assets.

The prospects for meaningful recovery by holders of Allowed Secured Claims depends upon the Liquidating Trustee's success in litigation. The Debtor does not anticipate secured creditors will receive a meaningful dividend on account of their Allowed Secured Claims other than from the Net Proceeds of Causes of Action (other than Avoidance Actions, which are unencumbered Assets). The Debtor does not believe any remaining Assets serving as Collateral for Allowed Secured Claims have any material value. Thus, the holders of Allowed Secured Claims will have Deficiency Claims (in amounts, if any, that are difficult to predict) in Class 6 if the Liquidating Trustee does not succeed in litigation.

6 EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.1 Assumption of Executory Contracts and Unexpired Leases.

Pursuant to Sections 1123(b)(2) and 365(a) of the Bankruptcy Code, any executory contract or unexpired lease (excluding insurance policies) that (a) has not expired by its own terms on or prior to the Effective Date, (b) has not been assumed, assumed and assigned or rejected with the approval of the Bankruptcy Court on or prior to the Effective Date, (c) is not the subject of a motion requesting the authority to assume or reject the contract or lease that is pending at the time of the Effective Date, or (d) is not designated by the Plan Proponents as being an executory contract or unexpired lease to be assumed at the time of confirmation of the Plan, shall be deemed rejected on the Effective Date. The entry of the Confirmation Order by the Bankruptcy Court shall constitute the approval of the rejection of executory contracts and unexpired leases pursuant to this section of the Plan and Sections 365(a) and 1123(b)(2) of the Bankruptcy Code. The Debtor believes it has identified all such executory contracts and unexpired leases on its amended schedule G (Dkt. 74-1). The Debtor does not believe there are any accrued, unpaid administrative expenses owed to any counterparty to any executory contract that remain unpaid.

6.2 Payments Related to The Assumption of Executory Contracts and Unexpired Leases.

(a) Payment of Claims Arising from Assumed Contracts and Leases. Except as provided in any written agreement between the Debtor and a counter-party to an executory contract or unexpired lease, any Allowed Claims arising from the assumption of an executory contract or unexpired lease will receive, in full and complete satisfaction, settlement, release and discharge of such Claims, payment in the ordinary course of business as and when such Allowed Claims become due pursuant to such executory contract or unexpired lease.

(b) Disputed Claims and Bar Date. If there is a dispute regarding (i) the amount of any claim arising from the assumption of an executory contract or unexpired lease, (ii) the ability of the Debtor or any assignee to provide “adequate assurance of further performance” within the meaning of Section 365 of the Bankruptcy Code, under a contract or lease to be assumed, or (iii) any other matter pertaining to the assumption or assumption and assignment of any contract or lease, the payment of any Claim related to the foregoing will be made following entry of a Non-Appealable Order resolving the dispute and approving the assumption.

6.3 Rejection Damage Claims.

If the rejection of an executory contract or unexpired lease by the Debtor results in a Claim by the other party or parties to such contract or lease, any claim for damages, if not previously evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Estate, the Liquidating Trust or Liquidating Trustee, the Confirmed Debtor and their respective properties, agents, successors, or assigns, unless a proof of claim is filed with the Bankruptcy Court and served upon the Plan Proponents and the Liquidating Trustee on or before thirty (30) days following the later to occur of: (a) the rejection of such executory contract or unexpired lease, and (b) the Effective Date. Unless otherwise ordered by the Bankruptcy Court or provided in the Plan, all such Claims for which proofs of claim are timely filed will be treated as General Unsecured Claims subject to the provisions of the Plan. The Liquidating Trustee shall have the right to object to any such Claim for rejection damages.

7 MEANS FOR IMPLEMENTATION OF PLAN

7.1 Plan Implementation.

Confirmation of the Plan shall constitute authorization for the Debtor to effectuate the Plan and to enter into all documents, instruments and agreements reasonably necessary to effectuate the terms of the Plan. The Debtor shall remain in existence as the Confirmed Debtor until dissolved pursuant to the Plan. The Liquidating Trust Agreement is attached as an exhibit to the Plan.

7.2 Bonus.

- (a) Initial Bonus Payment. On the Effective Date, the Initial Bonus Payment shall be removed from escrow and Mr. Sternklar's IOLTA account and transferred to the Liquidating Trustee for disposition as part of the Liquidating Trust Assets pursuant to the Liquidating Trust Agreement and the Plan.
- (b) Second Bonus Payment. The Liquidating Trustee shall withhold any distributions to the extent of the Second Bonus Payment otherwise distributable to Robert J. Santoro and Charles Wing, Jr., on account of their Equity Interests, for disposition as part of the Liquidating Trust Assets pursuant to the Liquidating Trust Agreement and the Plan.
- (c) Effect of Confirmation Order. The Confirmation Order shall operate as authority for (i) Jeffrey D. Sternklar to remove the Initial Bonus from escrow and his IOLTA account and transfer the Initial Bonus Payment to the Liquidating Trustee, and (ii) for the Liquidating Trustee to withhold distributions to Robert J. Santoro and Charles Wing, Jr., to the extent of the Second Bonus Payment without any further consent, order or notice.

7.3 The Liquidating Trust

On the Effective Date, the Liquidating Trust shall be created and established. On the Effective Date the Debtor shall execute and deliver the Liquidating Trust Agreement to the Liquidating Trustee in accordance with the Plan, free and clear of any and all Claims, Equity Interests, Liens or encumbrances of any kind and character, except for Liens securing Allowed Secured Claims in Classes 1 – 5, *provided, however*, that the Committee shall have full authority to execute and deliver the Liquidating Trust Agreement on behalf of the Debtor without any liability of or recourse to the Committee, if for any reason the Debtor fails or refuses to execute and deliver the Liquidating Trust Agreement in accordance with the Plan. Following the Effective Date, the liquidation of the Liquidating Trust Assets shall be conducted by the Liquidating Trustee who shall liquidate the Liquidating Trust Assets, object to Disputed Claims and make distributions pursuant to the terms of the Plan and the Liquidating Trust Agreement. The Liquidating Trustee shall be under an obligation to make continuing efforts to dispose of the Liquidating Trust Assets, make timely distributions, and not unduly prolong the duration of the Liquidating Trust. The Liquidating Trust Agreement may provide powers, duties and authorities in addition to those explicitly stated herein, but only to the extent that such powers, duties and authorities do not affect the status of the Liquidating Trust as a "liquidating trust" for the United States federal income tax purposes. The Liquidating Trustee shall make distributions to holders of Allowed Claims in Classes 1 – 5 in full before any distribution is made on account of Allowed Class 6 Claims from the Net Proceeds of any Collateral.

7.4 Purpose of the Liquidating Trust.

The Liquidating Trust shall be established for the sole purpose of the liquidating and distributing 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.

7.5 Liquidating Trust Assets.

On the Effective Date, the Debtor shall be deemed to have distributed the Liquidating Trust Assets (including, without limitation, the Bonus) to holders of Claims and Equity Interests, who shall be deemed to have transferred the Liquidating Trust Assets to the Liquidating Trust. Such transfers shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax. In connection with the transfer of the Liquidating Trust Assets to the Liquidating Trust, all records relating to such Liquidating Trust Assets shall be transferred to the Liquidating Trustee. The Debtor and the Liquidating Trustee are authorized to take all necessary actions to effectuate the transfer of the Liquidating Trust Assets. All of the Debtor's rights, powers, immunities and privileges, including its attorney-client privilege, shall be deemed transferred to the Liquidating Trustee on the Effective Date. The Liquidating Trustee shall have full power and authority to use all Liquidating Trust Assets (including any Collateral, free and clear of any and all Liens), for purposes of the Liquidating Trust, without further order from the Bankruptcy Court or notice to any Person or Entity.

7.6 Governance of the Liquidating Trust.

The Liquidating Trust shall be governed by the Liquidating Trustee according to the Liquidating Trust Agreement and the Plan.

7.7 The Liquidating Trustee.

The Liquidating Trustee shall be Craig R. Jalbert. The Liquidating Trustee shall be deemed to have been appointed as the Estate's representative and otherwise, by the Bankruptcy Court pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

7.8 Removal of Liquidating Trustee.

The Liquidating Trustee may be removed only for cause upon a motion to the Court. If the Liquidating Trustee is removed for cause, the Liquidating Trustee shall not be entitled to any accrued but unpaid fees, reimbursements or other compensation. The term "cause" shall mean: (a) the Liquidating Trustee's gross negligence or willful failure to perform his duties under the Plan, (b) the Liquidating Trustee's misappropriation or embezzlement of any Assets or the proceeds of the Assets, or (c) the Liquidating Trustee's continued or repeated negligence or failure to perform his duties under the Plan. If a Liquidating Trustee is unwilling or unable to

serve by virtue of his inability to perform his duties due to death, illness, or other physical or mental disability, subject to a final accounting, such Liquidating Trustee shall be entitled to receive all accrued and unpaid fees, reimbursement of expenses, and other compensation incurred before his removal, and to any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties and all rights to any successor Liquidating Trustee.

7.9 Resignation of Liquidating Trustee.

A Liquidating Trustee may resign upon motion to the Bankruptcy Court, which resignation shall become effective at the time specified by the Court. If a Liquidating Trustee resigns from his position hereunder, subject to a final accounting, such Liquidating Trustee shall be entitled to receive all accrued unpaid fees, reimbursement of expenses, and other compensation incurred before his resignation, and any out-of-pocket expenses reasonably incurred in connection with the transfer of all powers and duties to the successor Liquidating Trustee.

7.10 Successor Liquidating Trustee.

In the event that a Liquidating Trustee is removed, resigns, or otherwise ceases to serve as Liquidating Trustee, a successor Liquidating Trustee may be appointed by motion of a party-in-interest, subject to approval by the Bankruptcy Court, or sua sponte by order of the Bankruptcy Court.

7.11 Third Parties.

There is no obligation on the part of any party transacting business with the Confirmed Debtor or any agent of the Confirmed Debtor (including the Liquidating Trustee) to: (a) inquire into the validity, expediency, or propriety of any transaction, (b) inquire into the authority of the Liquidating Trustee, or any agent of the Liquidating Trustee, to enter into or consummate the transaction, or (c) to monitor the application of money or other consideration paid or delivered to the Confirmed Debtor

7.12 Role of the Liquidating Trustee.

In furtherance of and consistent with the purpose of the Liquidating Trust and the Plan, the Liquidating Trustee shall, among other things, have the rights, powers and duties: (i) to hold, manage, convert to cash, and distribute the Liquidating Trust Assets, including prosecuting and resolving the Causes of Action belonging to the Liquidating Trust; (ii) to hold the Liquidating Trust Assets for the benefit of the Liquidating Trust beneficiaries who are entitled to distributions therefrom under the Plan, whether their Claims are Allowed on or after the Confirmation Date; (iii) in the Liquidating Trustee's reasonable business judgment to investigate, prosecute, compromise, settle, liquidate, dispose of, and/or abandon the Liquidating Trust Assets on behalf of the Estate, the Confirmed Debtor and/or Liquidating Trust,

including rights, Causes of Action or litigation of such Liquidating Trust for the purpose of distributing the proceeds of such rights, Causes of Action or litigation to the Liquidating Trust beneficiaries; (iv) to monitor and enforce the implementation of the Plan; (v) to file all Tax Returns and regulatory forms, returns, reports and other documents required with respect to the Liquidating Trust; (vi) in the Liquidating Trustee's reasonable business judgment, to reconcile and object to Claims, and manage, control, prosecute and/or settle on behalf of the Estate, Confirmed Debtor and/or Liquidating Trust objections to Claims on account of which the Liquidating Trustee (as Disbursing Agent) will be responsible (if Allowed) for making distributions under the Plan; (vii) to hold, manage, and distribute Cash or non-Cash Liquidating Trust Assets obtained through the exercise of its power and authority; (viii) to act as a signatory for the Debtor for all purposes, including those associated with the novation of contracts or other obligations arising out of the sales of the Debtor's assets; (ix) to take all necessary action and file all appropriate motions to obtain an order closing the Bankruptcy Case; and (x) to take such other and further actions as are not prohibited by the Plan and are not inconsistent with the Plan and the Liquidating Trust Agreement. In all circumstances, the Liquidating Trustee shall act in the best interest of all of the Liquidating Trust Beneficiaries and in furtherance of the purpose of the Liquidating Trust. Confirmation of the Plan and the occurrence of the Effective Date shall constitute authorization for the Liquidating Trustee, without a further order of the Bankruptcy Court, to sell, lease, exchange, transfer, convey or otherwise dispose of any Asset free and clear of all liens, claims and interests pursuant to Section 363(f) of the Bankruptcy Code, with all valid liens against the Asset attaching the Net Proceeds of the sale of the Asset to the same extent, priority and validity as existed at the time of the sale. The Liquidating Trustee shall not invest or reinvest any Assets other than in a Permitted Investment.

7.13 Liability of Liquidating Trustee.

- (a) Standard of Care. The Liquidating Trustee shall not be liable for any action taken or omitted to be taken by him in good faith and in the exercise of reasonable judgment and believed to be within the discretion or power conferred by the Plan or be responsible for the consequences of any act or failure to act, except for bad faith, gross negligence or willful misconduct. The Liquidating Trustee shall not have any fiduciary relationship with any party by virtue of the Plan except as specifically set forth in this Agreement:
- (i) The Liquidating Trustee shall not, solely by virtue of his position as Liquidating Trustee, be liable or in any way responsible for the acts or omissions of the Debtor, their boards of directors, officers, employees, or agents, that occurred prior to the Effective Date.
 - (ii) Unless indemnified to his satisfaction against liability and expense, the Liquidating Trustee shall not be compelled to do any act or to

take any action toward the execution or enforcement of the powers created under the Plan or to prosecute or defend any suit in respect of the Plan. If the Liquidating Trustee requests approval from the Bankruptcy Court with respect to any act or action in connection with the Plan, the Liquidating Trustee shall be entitled (but shall not be required) to refrain (without incurring any liability to any person by so refraining) from such act or action unless and until he has received such instructions or approval. In no event shall the Liquidating Trustee or any of his representatives be required to take any action which he reasonably determines could lead to criminal or civil liability.

- (iii) The Liquidating Trustee shall not be responsible in any manner to the Debtor, the Confirmed Debtor, the Estate, any holder of a Claim or Equity Interest, or any other Person or Entity for:
 - a. the creditworthiness of any party and the risks involved to the Confirmed Debtor or such holder or party-in-interest;
 - b. the effectiveness, enforceability, genuineness, validity, or any due execution of the Plan as to any person other than the Liquidating Trustee;
 - c. any representation, warranty, document, certificate, report, or statement made herein or furnished hereunder or in connection with the Plan that does not constitute a breach of the standard of care set forth in this section 5.13 of the Plan on the part of the Liquidating Trustee;
 - d. the existence, priority or perfection of any existing Lien;
 - e. the investment of the Assets, or their proceeds, in any Permitted Investments;
 - f. or to any retirement, employee benefit, or pension plan of the Debtor in excess of the amounts available to be distributed from such plans, or
 - g. the observation or compliance with any of the terms, covenants, or conditions of the Plan on the part of any Person or Entity other than the Liquidating Trustee.
- (iv) The holders of Claims or Equity Interests and parties-in-interest, by voting for the Plan and/or accepting the benefits of the Plan, have agreed not to sue or otherwise pursue or seek damages from the Liquidating Trustee except for actions or omissions which violate the

standard of care set forth in this section 5.13 of the Plan.

- (f) No Liability for Acts of Predecessor. No successor Liquidating Trustee shall be in any way responsible for the acts or omissions of any preceding Liquidating Trustee, nor shall he be obligated to inquire into the validity or propriety of any such act or omission unless such successor Liquidating Trustee expressly assumes such responsibility. Any successor Liquidating Trustee shall be entitled to accept as conclusive any final accounting and statement of Assets furnished to such successor Liquidating Trustee by any preceding Liquidating Trustee and shall be responsible only for those Assets included in such statement.
- (c) No Implied Obligations. The Liquidating Trustee's liability shall be limited to the performance of such duties and obligations as are specifically set forth in the Plan. The Liquidating Trustee shall not be responsible in any manner whatsoever for the correctness of any recitals, statements, representations, or warranties in the Plan, in the Disclosure Statement or in any documents or instrument evidencing or otherwise constituting a part of the Assets. The Liquidating Trustee makes no representations as to the value of the Assets.
- (d) Reliance by Liquidating Trustee on Documents or Advice of Counsel or Other Persons. The Liquidating Trustee may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel, statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Agent to be genuine and to be signed or presented by the proper persons. Subject to his obligation to meet the standard of care described in this section 5.13, the Liquidating Trustee shall have no liability for any act which he may do or omit to do in reliance upon the foregoing.
- (e) No Personal Obligation for the Debtor's Liabilities. Holders of Claims and Equity Interests, and other persons transacting business with the Liquidating Trustee in his capacity as Liquidating Trustee, shall be limited to the Assets to satisfy any liability incurred by the Liquidating Trustee to such person in carrying out the terms of the Plan, and the Liquidating Trustee shall have no personal obligation to satisfy any such liability.

7.14 Indemnification of Liquidating Trustee.

The Liquidating Trustee, or the individuals comprising the Liquidating

Trustee, as the case may be, and the Liquidating Trustee's agents and professionals, shall be held harmless and shall not be liable for actions taken or omitted in their capacity as, or on behalf of, the Liquidating Trustee, except those acts that are determined by Final Order to have arisen out of their own intentional fraud, willful misconduct or gross negligence, and each shall be entitled to be indemnified, held harmless and reimbursed for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Liquidating Trustee, except for any actions or inactions that are determined by Final Order to have arisen from intentional fraud, willful misconduct or gross negligence. Any claim of the Liquidating Trustee (and the other parties entitled to indemnification under this subsection) to be indemnified, held harmless or reimbursed shall be satisfied solely from the Liquidating Trust Assets. The Liquidating Trustee shall be entitled to rely, in good faith, on the advice of its retained professionals.

7.15 Vesting of Estate Powers.

Upon the Effective Date, the Liquidating Trustee shall be vested with the standing of and with all rights, powers and benefits afforded to a "trustee" under the Bankruptcy Code with respect to all of the Liquidating Trust Assets and rights belonging to the Estate and/or their capacity as Debtor-in-possession, including, without limitation the standing and authority to commence, prosecute and compromise objections to Claims and Causes of Action, whether initially filed as a debtor-in-possession or as may be filed as the Confirmed Debtor. The Liquidating Trustee shall stand in the same position as the Debtor did as Debtor-in-possession and/or as its Estate with respect to any right the Debtor-in-possession and/or the Estate may have had to an attorney-client privilege, the work product doctrine, or any other privilege against production, and the Liquidating Trustee shall succeed to all of the Debtor-in-possession's and/or the Estate's rights to preserve, assert or waive any such privilege. The Liquidating Trustee shall have the exclusive authority to exercise, among other things, all of the foregoing rights on behalf of the Debtor and the Confirmed Debtor.

7.16 Federal Income Tax Treatment of the Liquidating Trust.

For all United States federal income tax purposes and for state tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee and the Liquidating Trust beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the applicable Liquidating Trust as: (i) a transfer of the Liquidating Trust Assets (subject to any obligations relating to those assets) directly to those holders of Allowed Claims receiving Liquidating Trust Beneficial Interests relating thereto, followed by (ii) the transfer by such beneficiaries to the Liquidating Trust of the Liquidating Trust Assets in exchange for the Liquidating Beneficial Interests. Accordingly, those holders of Allowed Claims and Equity Interests receiving Liquidating Trust Beneficial Interests shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the

Liquidating Trust Assets (other than such Liquidating Trust Assets as are allocable to the Unresolved Claims Reserve). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

7.17 Tax Reporting.

- a. All Federal and state tax returns have been currently filed through 2017. In addition, the Debtor shall file the 2018 Federal and state tax returns on or before April 15, 2018 (or, if extended under applicable law, to the date such extension expires) and any tax due shall be promptly paid in full. Following the Effective Date, the Liquidating Trustee shall prepare and file (or cause to be prepared and filed), on behalf of the Debtor and the Liquidating Trust, all Tax Returns required to be filed or that the Liquidating Trustee otherwise deems appropriate, including the filing of amended Tax Returns or request for refunds. In furtherance thereof, the Debtor shall execute on or prior to the Effective Date a power of attorney authorizing the Liquidating Trustee to correspond with any taxing authorities on behalf of the Debtor and to sign, collect, negotiate, settle and administer tax payments and Tax Returns described in the Plan to the same extent as if the Liquidating Trustee was the Debtor, *provided, however*, the Liquidating Trustee shall not have or incur any liability for payment of taxes or other amounts that are or become due to state and federal taxing authorities as a result of the Liquidating Trustee's exercise of powers pursuant to this paragraph.
- b. The Liquidating Trustee shall file Tax Returns for the Liquidating Trust treating the Liquidating Trust as grantor trusts pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this section. The Liquidating Trustee shall also annually send to each Liquidating Trust Beneficiary a separate statement setting forth such holder's share of items of income, gain, loss, deduction or credit and will instruct all such holders to report such items on their United States federal income Tax Returns or to forward the appropriate information to their respective beneficial holders with instructions to report such items on the United States federal income Tax Returns. The Liquidating Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Liquidating Trust that are required by any governmental unit.

- c. As soon as practicable after the Effective Date, the Liquidating Trustee shall make a good faith valuation of the Liquidating Trust Assets, and such valuation shall be made available from time to time, to the extent relevant, and shall be used consistently by all parties (including the Debtor, the Liquidating Trustee and the Liquidating Trust Beneficiaries) for all United States federal income tax purposes.
- d. Allocations of the Liquidating Trust's taxable income among the Liquidating Trust Beneficiaries shall be determined by reference to the manner in which an amount of cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all its assets (valued at their tax book value) to the applicable Liquidating Trust Beneficiaries, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for this purpose shall equal their fair market value on the Confirmation Date, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.
- e. Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall (A) timely elect to treat any Liquidating Trust Assets allocable to the applicable Unresolved Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9; and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Liquidating Trustee, the Debtor and the Liquidating Trust Beneficiaries) shall report for United States federal, state and local income tax purposes consistently with

the foregoing.

- f. The Liquidating Trustee shall be responsible for the payment, out of the applicable Liquidating Trust Assets, of any taxes imposed on the Liquidating Trust or its assets.
- g. The Liquidating Trustee may request an expedited determination of taxes of the Liquidating Trust or the Debtor under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Liquidating Trust or the Debtor for all taxable periods through the dissolution of the Liquidating Trust.
- h. Notwithstanding the foregoing, Top Tier shall file all required state and federal tax returns for all periods prior to the Effective Date as and when such tax returns are due and shall pay all required amounts due pursuant to such tax returns (if any) to all taxing authorities.

7.18 Non-Transferability of the Liquidating Trust Beneficial Interests.

The Liquidating Trust Beneficial Interests shall not be certificated and shall not be transferable or assignable except by will, intestate succession or operation of law.

7.19 Distribution of the Liquidating Trust Assets.

The Liquidating Trustee in its sole and absolute discretion may, but shall not be obligated, to make an initial distribution and any interim distributions of all Cash in accordance with the Liquidating Trust Agreement. With respect to any distribution, the Liquidating Trustee may, in his sole and absolute discretion, establish and retain reserves (i) on account of Disputed Claims and any Estate Setoff; (ii) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Liquidating Trust Assets during liquidation; (iii) as are necessary to pay reasonably incurred and anticipated expenses (including any taxes imposed on the Liquidating Trust or in respect of the Liquidating Trust Assets, and any incurred or anticipated professional fees and expenses); and (iv) as are necessary to satisfy other liabilities incurred and anticipated by the Liquidating Trust or imposed on the Liquidating Trust in accordance with the Plan or the Liquidating Trust Agreement.

7.20 Costs and Expenses of the Liquidating Trust.

The costs and expenses of the Liquidating Trust, including the fees and expenses of the Liquidating Trustee and Liquidating Trust's retained professionals shall be paid out of the Liquidating Trust Assets. Professional and other fees and expenses incurred in connection with the prosecution and settlement of any Claims

shall be considered costs and expenses of the Liquidating Trust.

7.21 Compensation of the Liquidating Trustee.

The Liquidating Trustee shall be entitled to reasonable compensation in an amount consistent with that of similar functionaries in similar roles.

7.22 Retention of Professionals by the Liquidating Trustee.

The Liquidating Trustee may retain and compensate attorneys and other professionals to assist in its duties as the trustee of the Liquidating Trust on such terms as the Liquidating Trustee deems appropriate without Bankruptcy Court approval. Without limiting the foregoing, the Liquidating Trustee may retain any professional that represented parties in interest in the Bankruptcy Case.

7.23 Corporate Action.

All matters provided for in the Plan involving any corporate action required by the Debtor or the Confirmed Debtor in connection with the Plan shall be deemed to be authorized, and shall be in effect, without any requirement of further action by the Confirmed Debtor, their agents, representatives, members, managers, officers, directors or Affiliates. Confirmation of the Plan shall constitute authorization for the Liquidating Trustee to take, on behalf of each of the Confirmed Debtor, all action necessary to effectuate the terms of the Plan.

7.24 Organization Documents and Good Standing.

As of the Effective Date, the Debtor's Organization Documents shall be deemed amended as necessary to effectuate the terms of the Plan and shall become the Organization Documents of the Confirmed Debtor. To the extent that there is any inconsistency between the Plan and any of the Organization Documents, the terms of the Plan shall control. To the extent the Debtor is not in compliance as of the Effective Date with any state or local law requirements necessary to remain as an organized legal entity in good standing and/or remain authorized as organized legal entities to conduct business in any jurisdiction, the Debtor and/or the Confirmed Debtor, as the case may be, shall be deemed to be in compliance with any such laws if they comply with such laws on the later of six months after the Effective Date, or upon 30 days after notice of such alleged non-compliance by the applicable governmental authority. Upon Confirmation, the Organization Documents shall be deemed amended by the addition of the following provision: "Under no circumstances will the Debtor or the Confirmed Debtor issue any non-voting securities."

7.25 Preservation of Causes of Action.

Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order, any Non-

Appealable Order, or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, (a) the Liquidating Trustee will exclusively retain and may enforce, and the Debtor expressly reserves and preserves for these purposes, in accordance with sections 1123(a)(5)(A) of the Bankruptcy Code, any Claims, Causes of Action and demands and rights relating thereto that the Debtor or its Estate may hold against any person or entity, including any insiders, and (b) no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to them by virtue of or in connection with the confirmation, consummation of effectiveness of the Plan. Among the Causes of Action that are preserved are the following: (i) Avoidance Actions, including, without limitation, those set forth on the Debtor' respective Statement of Financial Affairs that have been filed with the Bankruptcy Court ; (ii) Rights of setoff, counterclaim and recoupment; (iii) claims and defenses on contracts or for breaches of duties imposed by law; (iv) the right to object to claims or interests; (v) claims and defenses pursuant to Section 362 of the Bankruptcy Code; (vi) claims and defenses for fraud, negligence, conversion, mistake, duress, indemnification and usury; (vii) claims and defenses for the violation of M.G.L. c. 93A; (viii) claims and defenses for unjust enrichment; (ix) claims for tax refunds; and (x) pre-petition litigation in which the Debtor was the plaintiff.

7.26 Compromises.

After the Effective Date and except as otherwise provided in the Plan, the Liquidating Trustee shall have the exclusive authority, without further Bankruptcy Court order or notice to creditors and/or parties in interest, to compromise, settle and/or otherwise dispose of any disputed Claim and/or Causes of Action.

7.27 Bond and Insurance Requirements.

On the Effective Date, or as soon as practicable thereafter, the Liquidating Trustee shall procure a bond in an amount equal to one hundred and fifty percent (150%) of the aggregate of the Debtor' Cash. The bond shall be written by an insurance company authorized to do business in the Commonwealth of Massachusetts and written on a standard and customary bond form. The Liquidating Trustee may adjust the amount of the Bond in his business judgment; provided that, in no event shall the amount of the bond be less than the aggregate of the Debtor' Cash on hand unless the amount of the Cash on hand is de-minimis.

7.28 Dissolution of the Committee.

The Committee shall dissolve automatically on the Effective Date. Upon such dissolution, its members, professionals, and agents shall be released from any further duties and responsibilities in the Bankruptcy Case, except with respect to applications for Professional Fee Claims or the reimbursement of expenses incurred

as a member of the Committee.

7.29 Dissolution of the Debtor.

Upon the completion of the administration of all of the Debtor's Assets pursuant to the Plan, the Confirmed Debtor shall be deemed to be dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Confirmed Debtor or payments to be made in connection therewith. The Confirmed Debtor shall not be required to file any documents, or take any other action, to withdraw their business operations from any states in which the Debtor were previously conducting business operations.

7.30 Dissolution of the Liquidating Trust.

The Liquidating Trust shall be dissolved at the earlier of (even if creditors have not been paid in full) (i) all of the Liquidating Trust Assets having been distributed pursuant to the Plan and the Liquidating Trust Agreement; (ii) the Liquidating Trustee determining, in its sole discretion, that the administration of the Liquidating Trust Assets is not likely to yield sufficient additional proceeds to justify further pursuit; or (iii) all distributions required to be made by the Liquidating Trustee under the Plan and the Liquidating Trust Agreement having been made; provided, however, that in no event shall any of the Liquidating Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion, determines that a fixed period extension (not to exceed two years, and without the need for a favorable no action letter from the United States Securities and Exchange Commission or a favorable private letter ruling from the United States Internal Revenue Service that any further extension would not adversely affect the status of the trust as a liquidating trust for United States federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets. If at any time the Liquidating Trustee determines, in reliance upon such professionals as the Liquidating Trustee may retain, that the expense of administering any of the Liquidating Trust so as to make a final distribution to its beneficiaries is likely to exceed the value of the assets remaining in the Liquidating Trust, the Liquidating Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to dissolve the Liquidating Trust; (ii) to donate such remaining balance to a charitable organization or a charitable trust that is unrelated to the Debtor, the Liquidating Trust, and any insider of the Liquidating Trustee; and (iii) dissolve the Liquidating Trust. Upon dissolution of the Liquidating Trust, the Liquidating Trustee shall be discharged from his role as trustee of the Liquidating Trust.

7.31 Final Decree.

The Liquidating Trustee shall prepare, file and prosecute a motion requesting that the Bankruptcy Court enter a Final Decree in the Bankruptcy Case.

8 DISTRIBUTIONS ON CLAIMS AND RESOLUTION OF DISPUTED CLAIMS

8.1 Method of Distributions Under the Plan.

- (a) In General. Subject to Bankruptcy Rule 9010, and except as otherwise provided in the Plan, all distributions under the Plan to be made by, or on behalf of, the Confirmed Debtor or the Liquidating Trustee to the holder of each Allowed Claim shall be mailed by first class mail, postage prepaid, to the address of such holder as listed on the Schedules or any proof of claim filed by or on behalf of such holder that provides an address for such holder different from the address reflected on the Schedules. The Liquidating Trustee shall have no obligation to locate such holders whose distributions or notices are properly mailed but nevertheless returned.
- (b) Form of Distributions. Except as otherwise provided in the Plan, any payment of Cash made by, or on behalf of, the Liquidating Trustee pursuant to the Plan shall be made by such instruments or acts as the Liquidating Trustee determines in its sole and absolute discretion, and may be, without limitation, by check or by wire transfer.
- (c) Distributions to be on Business Days. Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.
- (d) Fractional Dollars. Whenever any payment of a fraction of a dollar would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (rounding down in the case of \$0.50 or less and rounding up in the case of more than \$0.50).
- (e) Distributions to Holders as of the Distribution Record Date. As of the close of business on the Distribution Record Date, the claims register shall be closed. The Liquidating Trustee shall have no obligation to recognize any transfer of any Claims occurring after the close of business on the Distribution Record Date and shall instead be entitled to recognize and deal for all purposes under the Plan with only those holders of record as of the close of business on the Distribution Record Date.

8.2 **Objections to Disputed Claims.**

Prior to the Effective Date, any objections to Claims against the Debtor shall be prosecuted by the Plan Proponents, or either of them. On and after the Effective Date, any objections to Unsecured Claims shall be prosecuted exclusively by the Liquidating Trustee and filed within 60 days of the Effective Date, and any objections to Secured Claims shall be filed at such time as the Liquidating Trustee determines is appropriate.

8.3 Estimation of Claims.

The Proponents or the Liquidating Trustee, may, at any time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Confirmed Debtor have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall have jurisdiction to estimate a Disputed Claim at any time, including, without limitation, during litigation concerning such Claim or an objection to such Claim. In the event the Bankruptcy Court estimates any Disputed Claim, the estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the Bankruptcy Court determines the maximum limitation of a Disputed Claim, such determination shall not preclude the Proponents and/or the Liquidating Trustee from pursuing any supplemental proceedings to object to any payment of such Claim. All of the aforementioned Claims objections, estimation and resolution procedures are cumulative and not exclusive remedies. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

8.4 Disputed Claims and Disputed Equity Interest Reserve.

(a) Establishment. A reserve shall be maintained equal to 100% of the distributions to which holders of Disputed Claims and Disputed Equity Interests would be entitled under the Plan if such Disputed Claims and Disputed Equity Interests were Allowed Claims or Allowed Equity Interests, as applicable, or such lesser amount as required by a Non-Appealable Order. The Liquidating Trustee shall have and shall retain all rights with respect to any Estate Setoff applicable to funds in any Disputed Claims Reserve.

(b) Investment of Cash. Cash in the Disputed Claims Reserve may be invested only in Cash Equivalents having maturities sufficient to enable the holder of the Disputed Claims Reserve to make all necessary payments to holders of Disputed Claims if, and when, such Disputed Claims become Allowed Claims. Any interest, income, distributions or accretions on account of such investment in Cash Equivalents in the Disputed Claims Reserve shall be for the sole benefit and account of the Liquidating Trustee, and the Liquidating Trustee shall be solely responsible for the payment of any income or other taxes arising therefrom.

(c) Distributions Upon Allowance of Disputed Claims and Disputed Equity Interests. The holder of a Disputed Claim or Disputed Equity that becomes an Allowed Claim or Allowed Equity Interest, as applicable, after the Effective Date shall receive distributions of Cash (if any is owed after application of any Estate Setoff) from the Disputed Claims Reserve as soon as practicable following the date on which such Disputed Claim becomes an Allowed Claim or Allowed Equity Interest (as applicable) pursuant to a Non-Appealable Order. Such distributions shall be made in accordance with the Plan based upon the distributions that would have been made to the holder of such a Claim or Equity Interest under the Plan if the Disputed Claim or Disputed Equity Interest had been an Allowed Claim or Allowed Equity Interest on or prior to the Effective Date. No holder of a Disputed Claim or Disputed Equity Interest shall have any claim against the respective Disputed Claims Reserve or the Liquidating Trust with respect to such Claim until the Disputed Claim and/or Disputed Equity Interest, as applicable, shall become an Allowed Claim.

8.5 Reversion of Unclaimed Checks and Disputed Claims Reserve.

The following amounts shall revert to and be vested in the Liquidating Trustee: (a) the amount of any checks issued for distributions to the holders of Allowed Claims under the Plan that remain uncashed for a period of 120 days after the date of such distribution; and (b) to the extent that a Disputed Claim is not Allowed or becomes an Allowed Claim in an amount less than the Disputed Claim Amount, the excess of the amount of Cash or Cash Equivalents in the Disputed Claims Reserve attributable to such Disputed Claim over the amount of Cash actually distributed on account of such Disputed Claim.

8.6 Distribution Record Date

For all purposes under applicable law, the Distribution Record Date shall be the date and time for the purpose of determining which Persons and Entities are entitled to receive and retain any and all Distributions on account of any Equity Interests, regardless of the date of or number of Distributions, and the Distribution Record Date shall be, without limitation, the record date, the ex-date and the ex-dividend date as may be applicable with respect to Distributions for purposes of sections 11120 (d) and (f) of the “*Uniform Practice Code*” of the Financial Industry Regulatory Authority.

8.7 Liens

The Liens held by the holder of an Allowed Secured Claims shall be treated as follows:

- (a) Retention of Liens. Any Liens held by the holder of an Allowed Secured Claim shall be retained on the Encumbered Assets to secure the payment of the Allowed Secured Claim pursuant to the Plan, to the same extent, and with the same priority and validity,

as such Liens enjoyed with respect to property of the Debtor prior to the commencement of this Bankruptcy Case.

- (b) No Liens on Unencumbered Assets. None of the Liens of any Person or Entity shall extend to the Unencumbered Assets (including, without limitation, the Bonus). The Unencumbered Assets (including, without limitation, the Bonus) shall be and remain free and clear of any and all Liens held by holders of Allowed Secured Claims.
- (c) Discharge of Liens. Upon the payment provided for in the Plan to the holder of an Allowed Secured Claim: (i) all Liens securing the Allowed Secured Claim shall be deemed canceled, discharged and released, and (ii) the holder of the Allowed Secured Claim shall deliver to the Liquidating Trustee on behalf of the Confirmed Debtor, within five (5) Business Days of the payment provided for in the Plan, all UCC terminations, mortgage discharges and any other documents necessary to effect the discharge and release of such Liens.

8.8 Obligation to Provide Tax Forms.

No Person entitled to a payment or distribution under the Plan, from the Estate or from the Confirmed Debtor, shall receive such distribution or payment until the Person provides the Liquidating Trustee with: (a) a W-9 or similar federal or state tax form, and (b) such other tax forms as are reasonably requested by the Liquidating Trustee (collectively the “Tax Forms”). If any Person holding an Allowed Claim fails to provide a Tax Form to the Liquidating Trustee after two written requests for a Tax Form, such Person’s Allowed Claim shall be disallowed and expunged without further order of the Bankruptcy Court.

8.9 Effect of Estate Setoff

The Liquidating Trustee shall deduct from any distribution (including, without limitation, from the Disputed Claims Reserve) the amounts necessary to satisfy in full any applicable Estate Setoff. The holder of any Claim, Equity Interest or Lien subject to an Estate Setoff shall not receive anything under the Plan (including any distributions) unless and until the amount of the Estate Setoff is paid to the Liquidating Trustee or satisfied in full to the satisfaction of the Liquidating Trustee.

9 DISCHARGE AND RELEASE PROVISIONS

9.1 Satisfaction of Claims.

Except as otherwise provided in the Plan or in an agreement by the Plan Proponents or the Liquidating Trustee that has been approved by the Bankruptcy Court, the distributions made pursuant to and in accordance with the applicable terms and conditions of the Plan are in full and final satisfaction, settlement and release as against the Debtor and the Confirmed Debtor of any debt or obligation of the Debtor that arose before the Effective Date, and any debt of the Debtor of a kind specified in Section 502(g), 502(h), or 502(i) of the Bankruptcy Code, and all Claims against the Debtor or the Estate of any nature, including, without limitation, any interest accrued thereon from and after the Petition Date, whether or not (i) a proof of claim based on such debt, obligation or Equity Interest is filed or deemed filed under Section 501 of the Bankruptcy Code, (ii) such Claim is Allowed under Section 502 of the Bankruptcy Code, or (iii) the holder of such Claim has accepted the Plan.

9.2 Injunction Relating to the Plan.

As of the Effective Date, all Persons and Entities are hereby permanently enjoined from commencing, continuing or enforcing in any manner or in any place, any action or other proceeding, whether directly, indirectly, derivatively or otherwise against the Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee and/or the Confirmed Debtor, on account of, or respecting any Claims, debts, rights, obligations, Causes of Action or liabilities against the Debtor and/or the Estate, except to the extent expressly permitted under the Plan.

9.3 Releases.

Except as otherwise set forth in the Plan, as of the Effective Date, in consideration for, among other things, the obligations of the Debtor under the Plan and other contracts, instruments, releases, agreements or documents to be entered into or delivered in connection with the Plan, (a) each holder of a Claim or Equity Interest that votes in favor of 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, each Person that has held, holds or may hold a Claim or Equity Interest or at any time was a creditor or equity holder of the Debtor and that does not vote on the Plan or votes against the Plan, in each case will be deemed to forever release, waive and discharge the Debtor and the Estate of and from any and all Claims (including any derivative claims), obligations, suits, judgments, damages, demands, rights, causes of action and liabilities (other than the right to enforce the obligations of all Persons or Entities under the Plan and the contracts, instruments, releases, agreements and documents delivered under the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Committee, the Bankruptcy Case or the Plan that such Entity has, had

or may have against any Debtor, the Estate, the Assets, the Confirmed Debtor and/or the Confirmed Debtor's Assets.

9.4 Cancellation of Existing Indebtedness and Liens.

Except as may otherwise be provided in the Plan, on the Effective Date: (a) all credit agreements, promissory notes, mortgages, security agreements, invoices, contracts, agreements and any other documents or instruments evidencing Claims, together with any and all Liens securing same, shall be canceled and released without further act or action by any Person or Entity under any applicable agreement, law, regulation, order or rule, (b) the obligations of the Debtor thereunder shall be deemed cancelled and released, and (c) all of the right, title and interest of any holder of such mortgages, deeds of trust, liens or other security interests, including any rights to any collateral thereunder, will revert to the Liquidating Trustee. To the extent deemed necessary or advisable by the Liquidating Trustee, any holder of a Claim shall promptly provide the Confirmed Debtor and him, as applicable, with an appropriate instrument of cancellation or release, as the case may be, in suitable form for recording wherever necessary to evidence such cancellation or release, including the cancellation or release of any Lien securing such Claim.

9.5 Exculpation.

Except as otherwise set forth in the Plan, neither the Debtor, the Committee, the Committee's members, the Liquidating Trustee nor any of their respective employees, advisors, attorneys, agents, successors or assigns, shall have or incur any liability to any holder of a Claim or an Interest, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the administration of the Bankruptcy Cases, the pursuit of confirmation of the Plan, the Disclosure Statement, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan occurring prior to the Effective Date, provided that: (a) the terms of this Section 8.5 shall not apply to any liability for willful misconduct or ultra vires acts, and (b) nothing contained herein shall relieve any person, including the Liquidating Trustee, from their duties and responsibilities to perform under the Plan, including to make the payments required by the terms of the Plan.

9.6 Setoff.

Except as otherwise provided in the Plan, nothing contained in the Plan shall constitute a waiver or release by the Liquidating Trustee, the Estate and/or the Confirmed Debtor of any rights of setoff the Estate and/or the Confirmed Debtor may have against any Person or Entity.

10 CONDITIONS TO CONFIRMATION AND EFFECTIVENESS OF PLAN

10.1 Conditions Precedent to Effect Date of the Plan.

Subject to Section 9.2 of the Plan, the following are conditions precedent to the occurrence of the Effective Date:

- (a) The Confirmation Order, in form and substance reasonably acceptable to the Committee shall have been entered by the Bankruptcy Court and shall not be subject to any stay; and
- (b) The Confirmation Order shall have become a Non-Appealable Order.

10.2 Waiver of Conditions.

Except for the condition set forth in Sections 9.1(a) of the Plan, the Plan Proponents may waive the other condition precedent to the effectiveness of the Plan set forth in Section 9.1 without notice to any creditors or parties in interest and without Bankruptcy Court approval. The failure to satisfy or waive any condition precedent to the occurrence of the Effective Date may be asserted by the Liquidating Trustee, on behalf of the Confirmed Debtor, regardless of the circumstances giving rise to the failure of such condition to be satisfied.

10.3 Effect of Non-occurrence of Conditions to the Effective Date.

If the Effective Date does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor, or (b) prejudice in any manner the rights of the Debtor or constitute an admission, acknowledgement, offer or undertaking by the Debtor.

10.4 Default

If any Person or Entity fails or refuses to perform obligations imposed upon them pursuant to the Plan, then any other Person or Entity damaged by such failure or refusal shall have and retain the following rights and remedies:

- a. To seek to compel specific performance of the Plan,
- b. To seek to convert this case to a case under chapter 7 of the Bankruptcy Code, or to dismiss this case, and
- c. To seek an award of any other remedy to which such Person or Entity may be entitled under applicable law.

The Plan contains a number of miscellaneous provisions, including (1) provisions for retention by the Bankruptcy Court of jurisdiction for a laundry list of matters; (2) payment of any fees due to the U.S. Trustee; (3) a provision exempting the issuance of new stock from taxation; and (4) a provision exempting the New Stock from registration pursuant to statutes relating to the issuance of stock. The Plan provides that in the unlikely event of a default by the Debtor or any other Person or Entity in consummating the Plan that all other Persons and Entities reserve the right (i) to seek to compel specific performance of the Plan, and (ii) to seek to convert this case to a chapter 7 case, dismiss the case or otherwise assert any and all available rights and remedies at law.

The Liquidating Trustee will be responsible for timely payment of fees incurred pursuant to 28 U.S.C. § 1930(a)(6). After confirmation, the Liquidating Trustee will serve the United States Trustee with a monthly financial report for each month (or portion thereof) the case is open. The monthly financial report shall include the following:

- (1) a statement of all disbursements made during the course of the month, whether or not pursuant to the Plan;
- (2) a summary, by class, of amounts distributed or property transferred to each recipient under the plan, and an explanation of the failure to make any distributions or transfers of property under the plan;
- (3) Liquidating Trustee's projections as to its continuing ability to comply with the terms of the plan;
- (4) a description of any other factors which may materially affect the Liquidating Trustee's ability to consummate the plan; and
- (5) an estimated date when an application for final decree will be filed with the court (in the case of the final monthly report, the date the decree was filed).

12 FEASIBILITY

The Plan Proponents believe that confirmation of the Plan will not likely be followed by its liquidation or need for further rehabilitation, as Top Tier is liquidating. The funds necessary to pay the Initial Bonus Payment (from which all amounts required to be paid on the Effective Date will be paid) are held by Mr. Sternklar in his IOLTA account and are available on the Effective Date.

13 LIQUIDATION ANALYSIS

Perhaps the most significant factor that Class 6 creditors should weigh in deciding whether to accept or reject to Plan is the liquidation analysis, which compares recoveries from the reorganization of the Debtor with recoveries in a straight liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. The main difference is the Bonus. The Bonus is among the Liquidating Trust Assets that are available under the Plan. In contrast, in a hypothetical chapter 7 liquidation, the Bonus does not exist, and creditors are worse off because of it.

Otherwise, the Plan and a chapter 7 liquidation are similar. The Plan Proponents believe the costs associated with implementation of the Plan and the fees of the Liquidating Trustee likely will be incrementally smaller than would the fees and expenses of a chapter 7 trustee. The chapter 7 trustee would need additional time to familiarize himself or herself with this case, thereby delaying, and potentially increasing the costs, creditors will suffer in a chapter 7 liquidation.

In order to confirm the Plan, the Debtor must show that the holders of Claims and Interests will receive or retain value under the Plan property that is not less than the holder would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code. The Plan Proponents believe that the Plan satisfies this requirement, since under the Plan creditors receive the benefit of the Bonus, and under chapter 7, they do not.

14 CRAMDOWN

The Plan may be confirmed notwithstanding that one or more impaired Classes have not accepted the Plan if the Bankruptcy Court finds that the Plan does not discriminate unfairly against and is fair and equitable as to such Class or Classes. This provision is set forth in Section 1129(b) of the Bankruptcy Code and requires, among other things, that the claimants must either receive the full value of their claims or, if they receive less, no Class with junior liquidation priority may receive anything unless the junior class provides “new value” or other consideration to the Debtors. For example, if the holders of General Unsecured Claims (Class 6) are not paid in full, the holders of Equity Interests (Class 7) are not permitted to receive anything on account of their interests. This is known as the “absolute priority rule.”

The Plan Proponents believe the Plan may be confirmed under section 1129(b) and may, at their option, choose to rely on that section to seek nonconsensual “cramdown” confirmation of the Plan if it is not accepted by all impaired Classes of Creditors.

15 ALTERNATIVES TO CONFIRMATION OF PLAN


The Plan Proponents are unaware of any alternative to confirmation of the Plan other than the chapter 7 liquidation discussed above.

16 CONCLUSION

The Plan Proponents intend to seek confirmation of the Plan for the reasons stated in this Disclosure Statement, and to present such evidence to the Bankruptcy Court as is necessary and appropriate at the Confirmation Hearing to obtain such relief.

(Signature Page to Follow)

TOP TIER SITE DEVELOPMENT, LLC
Debtor and Debtor in Possession

By: 
Robert J. Santoro
Manager

Dated: December 6, 2018