

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>FRANK W. KERR COMPANY,</b>	)	<b>Case No. 16-51724</b>
	)	
<b>Debtor.</b>	)	
	)	<b>Judge Maria L. Oxholm</b>
	)	
	)	

**COMBINED PLAN OF LIQUIDATION  
AND DISCLOSURE STATEMENT**

**August 14, 2017**

Stephen M. Gross (P35410)  
Jayson B. Ruff (P69893)  
Joshua A. Gadharf (P76860)  
McDONALD HOPKINS LLC  
39533 Woodward Avenue  
Suite 318  
Bloomfield Hills, MI 48304  
Telephone: (248) 646-5070  
Facsimile: (248) 646-5075  
E-mail: [sgross@mcdonaldhopkins.com](mailto:sgross@mcdonaldhopkins.com)  
[jruff@mcdonaldhopkins.com](mailto:jruff@mcdonaldhopkins.com)  
[jgadharf@mcdonaldhopkins.com](mailto:jgadharf@mcdonaldhopkins.com)

**COUNSEL FOR THE DEBTOR  
AND DEBTOR IN POSSESSION**

## **II. PLAN OF LIQUIDATION OF FRANK W. KERRY COMPANY UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

### **ARTICLE 1**

#### **DEFINITIONS**

Unless the context otherwise requires, the following terms, when used in the Plan of Liquidation, shall have the meanings set forth below:

##### **1.0 Definitions**

**1.01 “Ad Hoc Committee”** means the ad hoc committee of unsecured creditors consisting of Allergan, PLC, Amneal Pharmaceuticals LLC, Ascend Laboratories, LLC, Par Pharmaceutical Inc., Rising Pharmaceuticals, Inc., Sun Pharmaceuticals Industries, Inc., and Teva Pharmaceuticals UCA, Inc., that, among other things, (i) filed an involuntary petition for relief against the Debtor under chapter 7 of the Bankruptcy Code on August 26, 2016 (and thereby preserved certain chapter 5 potential claims for the benefit of the Estate); (ii) commenced an investigation of the Debtor’s assets and perfection of the Lenders’ liens in the Debtor’s assets; and (iii) objected to certain relief sought by the Debtor prior to the appointment of the Committee [*see* Docket No. 63].

**1.02 “Administrative Claims Bar Date”** shall have the meaning ascribed to such term in section 3.5 of this Plan.

**1.03 “Administrative Expense Claim” or “Administrative Claim”** means any right to payment constituting a cost or expense of administration of the Case under Sections 503(b) and 507(a)(2) of the Bankruptcy Code, including without limitation: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the Debtor’s business; (b) Claims that have been determined by a Final Order to constitute an administrative expense of the Estate; (c) compensation Claims by Professionals; (d) any fees or charges assessed against and payable by the Debtor under Section 1930 of title 28 of the United States Code; (e) Claims asserted pursuant to Section 503(b)(9) of the Bankruptcy Code; and (f) any taxes due to governmental entities that the Debtor incurred after the Petition Date.

**1.04 “Agent”** means JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent on behalf of itself and Comerica Bank under the Credit Agreement.

**1.05 “Allowed”** means with reference to any Claim: any Claim (a) proof of which was filed within the applicable period of limitation fixed by the Court in accordance with Bankruptcy Rule 3003(c)(3) and as to which the Debtor, the Agent, the Lenders, the Plan Administrator, the Class 2 Liquidating Trustee or the Class 3 Liquidating Trustee have not filed an objection on or before the Claim Objection Deadline, or as to which, and to the extent, any objection has been determined by a Final Order in favor of the relevant Claim holder; (b) listed on the Schedules, as amended, as other than disputed, contingent, or unliquidated and for which no proof of claim has been filed in an amount that exceeds the amount listed on the Schedules; (c) that has been allowed by a Final Order of the Court (*provided, however*, that Claims allowed solely for the purpose of voting to accept or reject the Plan shall not be considered Allowed Claims hereunder); (d) the Lender Secured Claim; (e) the Lender Unsecured Claim; (f) expressly allowed under or pursuant to the terms of the Plan, including sections 3.7 and 7.11 of this Plan. For the avoidance of doubt, any Claim that has been or is hereafter satisfied or listed in the Schedules as contingent, unliquidated, or disputed, and/or for which no proof of claim is or has been timely filed by the Bar Date established by the Court (with respect to General Unsecured Claims) or the Administrative Claim Bar Date (with respect to Administrative Claims), is not considered Allowed and shall be deemed expunged and not entitled to receive any recovery from the Debtor’s Estate and/or the Class 3 Liquidation Trust Assets (as applicable) without further action by the Debtor or Class 3 Liquidating Trustee and without further notice to any party or action, approval, or order of the Court.

**1.06 “Antitrust Sale Order”** means the *Order (I) Authorizing the Sale of Certain of the Debtor’s Antitrust Claims Free and Clear of All Liens, Claims, Encumbrances, and Interests; and (II) Granting Related Relief*, entered on December 9, 2016 [Docket No. 196].

**1.07 “Antitrust Sale Proceeds”** means the proceeds from the sale of antitrust claims held by the Debtor as authorized by the Antitrust Sale Order.

**1.08 “Assets”** means all assets and property of the Debtor’s Estate, regardless of whether reflected in the financial records of the Debtor, including but not limited to: the Unencumbered Proceeds, the Tax Backstop, the Lenders’ Contribution, equipment, cash, deposits, refunds, rebates, abatements, fixtures, real property interests, contractual interests, intangibles, claims, Causes of Action, suits, setoffs, recoupments, equitable or legal rights, interests, and remedies, including the Billnat Equity Interest.

**1.09 “Bankruptcy Code”** means title 11 of the United States Code, as amended and in effect on the Petition Date.

**1.10 “Bankruptcy Rules”** means (a) the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under Section 2075 of title 28 of the United States Code and (b) the local rules of the Court, in each case, as in effect on the Petition Date.

**1.11 “Bar Date”** means January 25, 2017, the date set forth in the Scheduling Order as the deadline by which all creditors shall file a proof of Claim in this Chapter 11 Case; *provided, however*, the Bar Date for governmental units means February 20, 2017.

**1.12 “Billnat”** means Billnat Corporation d.b.a. Sav-On Drugs.

**1.13 “Billnat Equity Interest”** means (a) any capital stock or other ownership interest of the Debtor in Billnat; (b) any option, warrant, or right to purchase, sell, or subscribe of the Debtor for an ownership interest in, or other equity security of, Billnat; (c) any and all redemption, conversion, exchange, voting, participation, or dividend rights or liquidation preferences of the Debtor relating to any of the foregoing; as they exist prior to the Effective Date.

**1.14 “Business Day”** means any day other than: (a) a Saturday; (b) a Sunday and (c) a “legal holiday” as defined in Bankruptcy Rule 9006(a).

**1.15 “Cash”** means legal tender of the United States of America.

**1.16 “Cash Collateral”** has the meaning set forth in the Cash Collateral Order.

**1.17 “Cash Collateral Order”** means the Order Authorizing Use of Cash Collateral and Granting Adequate Protection [Docket No. 147] entered October 25, 2016, as subsequently amended from time to time including on December 6, 2016 [Docket #189], January 4, 2017 [Docket #232], January 23, 2017 [Docket #252], March 1, 2017 [Docket #283], March 20, 2017 [Docket #291], April 12, 2017 [Docket #311], May 8, 2017 [Docket #357], May 15, 2017 [Docket #367], June 8, 2017 [Docket #401], June 19, 2017 [Docket #413], and July 18, 2017 [Docket #451], and as it may be subsequently amended by further order of the Court following the date of this Plan.

**1.18 “Causes of Action”** means any and all proceedings, actions, causes of action, rights, suits, debts, sums of money, damages, judgments, claims, and demands whatsoever, whether known or unknown, existing or hereafter arising, in law, equity, or otherwise, that can be instituted or asserted by the Estate or by any party on behalf of or for the benefit of the Estate, or in which the Debtor has an interest, including, but not limited to, all rights and causes of action permitted or arising under chapter 5 of the Bankruptcy Code including preference claims, fraudulent conveyance claims or other avoidance actions, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Case, including through the Effective Date, in which the Debtor has an interest. For avoidance of doubt, Causes of Action include the ERW Lawsuit, Newman Lawsuit, Sav-Mor Lawsuit, the West Grange Lawsuit and the Insider Causes of Action.

**1.19 “Chapter 11 Case”** means the bankruptcy case of the Debtor (Bankruptcy Case No. 16-51724) pending in the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division – Detroit.

**1.20 “Chase”** means JPMorgan Chase Bank, N.A., in its capacity as a Lender under the Credit Agreement.

**1.21 “Claim”** means any claim against the Debtor, regardless of whether asserted and regardless of whether known, as the term “claim” is defined in Section 101(5) of the Bankruptcy Code, and shall include, but is not limited to: Administrative Expense Claims; Disputed Claims; any claims arising from or related to any Equity Interests and Equity Claims; General Unsecured Claims; Priority Claims; and Secured Claims.

**1.22 “Claim Objection Deadline”** shall have the meaning ascribed to such term in section 7.11 of this Plan.

**1.23 “Class”** means each of the groups of holders of Claims or Equity Interests described in Article 5 of the Plan.

**1.24 “Class 2 Assets”** means collectively, all of the assets transferred, granted or to be contributed by the Debtor on the Effective Date for the benefit of the Lenders in accordance with the mechanism elected by the Lenders, consisting of: (i) any Commercial Tort Claims held by the Debtor as of the Effective Date and any proceeds thereof; (ii) the ERW Properties and any ERW Proceeds; (iii) all other Cash Collateral (other than the Unencumbered Proceeds or other Class 3 Liquidating Trust Assets and the Billnat Equity Interest) held by the Debtor on the Effective Date;

(iv) all rights, title, and interests in any Assets of the Debtor (excluding the Unencumbered Proceeds or other Class 3 Liquidating Trust Assets and the Billnat Equity Interest) including Causes of Action (including but not limited to the right to pursue Shar, the Shar Insurance Policies and the Shar Receivable, but excluding any Causes of Action released pursuant to section 9.1 in this Plan); and (v) the Shar Receivable, provided that, to the extent Excess Shar Proceeds are recovered from Shar by the Debtor or Lenders prior to the Effective Date, such Excess Shar Proceeds shall be paid to the Class 3 Liquidating Trust on the Effective Date (and to the extent recovered after the Effective Date, shall be paid to the Class 3 Liquidating Trust as soon as reasonably practicable after the Effective Date) for the benefit of the Class 3 Liquidating Trust Beneficiaries. For the avoidance of doubt, the Class 2 Assets shall not include any of the Class 3 Liquidating Trust Assets or the Billnat Equity Interest.

**1.25 “Class 2 Liquidating Trust”** means, in the event that the Lenders elect the Class 2 Liquidating Trust Mechanism, the Liquidating Trust established pursuant to the Plan in which the Class 2 Assets shall vest as set forth in the Plan on the Effective Date.

**1.26 “Class 2 Liquidating Trust Agreement”** means, in the event that the Lenders elect the Class 2 Liquidating Trust Mechanism, the agreement that governs the operation and management of the Class 2 Liquidating Trust, which shall be a document in a form acceptable to the Lenders that shall be filed as a Plan Supplement on or before five (5) business days prior to the date of the Confirmation Hearing, and incorporated into the Plan as Appendix A to the Plan.

**1.27 “Class 2 Liquidating Trust Beneficiaries”** means, in the event that the Lenders elect the Class 2 Liquidating Trust Mechanism, the Lenders, as the sole parties entitled to receive distributions from the Class 2 Liquidating Trust under the Plan.

**1.28 “Class 2 Liquidating Trust Mechanism”** means a mechanism that may be elected by the Lenders on or before the Election Date and if so elected by the Lenders, the Debtor shall transfer all of its rights, title and interests in the Class 2 Assets to Class 2 Liquidating Trust.

**1.29 “Class 2 Liquidating Trustee”** means, in the event that the Lenders elect the Class 2 Liquidating Trust Mechanism, the person designated by the Lenders, vested with the authority under the Class 2 Liquidating Trust Agreement to manage, administer, expend, invest and reinvest all of the Class 2 Assets.

**1.30 “Class 3 Liquidating Trust”** means that Liquidating Trust established pursuant to the Plan in which the Class 3 Liquidating Trust Assets shall vest as set forth in the Plan on the Effective Date.

**1.31 “Class 3 Liquidating Trust Agreement”** means that agreement that governs the operation and management of the Class 3 Liquidating Trust, in a form substantially similar to Appendix B to the Plan.

**1.32 “Class 3 Liquidating Trust Assets”** means all of the assets (or proceeds thereof) transferred, granted or to be contributed to the Class 3 Liquidating Trust on the Effective Date (or after the Effective Date, as may be applicable with respect to the Lenders’ Contribution, any Excess Shar Proceeds, and the Tax Backstop), consisting of: (i) any remaining Unencumbered Proceeds as of the Effective Date, (ii) the Lenders’ Contribution, (iii) any Excess Shar Proceeds, and (iv) the Tax Backstop.

**1.33 “Class 3 Liquidating Trust Beneficiaries”** means the holders of Allowed Claims entitled to receive distributions from the Class 3 Liquidating Trust under the Plan.

**1.34 “Class 3 Liquidating Trust Committee”** means the committee that will be established pursuant to the Class 3 Liquidating Trust Agreement to provide input to the Class 3 Liquidating Trustee on certain matters and that shall have certain rights and authority as set forth in the Class 3 Liquidating Trust Agreement.

**1.35 “Class 3 Liquidating Trustee”** means the person selected by the Committee vested with the authority under the Class 3 Liquidating Trust to administer the Class 3 Liquidating Trust.

**1.36 “Collateral”** means any property or interest in property of the Estate subject to a Lien to secure the payment or performance of a Claim up to the Allowed amount of such Claim, which Lien is not subject to avoidance or otherwise invalid under the Bankruptcy Code or other applicable law.

**1.37 “Comerica”** means Comerica Bank, in its capacity as a Lender under the Credit Agreement.

**1.38 “Commercial Tort Claims”** means all commercial tort/antitrust claims that the Debtor has against any party, and the proceeds thereof, whether received by the Debtor pre- or post-petition.

**1.39 “Committee”** means the Official Committee of Unsecured Creditors in this Chapter 11 Case, appointed by the United States Trustee on September 28, 2016 [Docket No. 95].

**1.40 “Committee Released Parties”** has the meaning ascribed thereto in section 9.3 of the Plan.

**1.41 “Confirmation Hearing”** means the hearing held by the Court to consider the confirmation of the Plan, as it may be adjourned or continued from time to time.

**1.42 “Confirmation Order”** means an order of the Court confirming the Plan under Section 1129 of the Bankruptcy Code that has become a Final Order, which order shall be in form and substance acceptable to the Debtor, Committee and Lenders.

**1.43 “Conway MacKenzie”** means Conway MacKenzie Management Services, LLC.

**1.44 “Court”** means the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division – Detroit.

**1.45 “Credit Agreement”** means that certain Credit Agreement dated as of July 19, 2013, by and between the Debtor, as borrower, Chase, as administrative agent, for itself and Comerica, as lenders, as amended from time to time including by a First Amendment to Credit Agreement dated as of July 31, 2014, a Second Amendment to Credit Agreement dated as of July 31, 2015, a Third Amendment to Credit Agreement dated as of September 30, 2015, a Fourth Amendment to Credit Agreement dated as of October 30, 2015, a Joinder Agreement dated as of October 30, 2015, and a Joinder Agreement dated on or about May 27, 2016, and all other ancillary agreements relating to the Credit Agreement, including, but not limited to a Pledge and Security Agreement between Debtor and Agent, dated as of July 19, 2013, as amended from time to time including by an Amendment dated as of October 30, 2015.

**1.46 “CRO”** means Jeffrey K. Tischler of Conway MacKenzie.

**1.47 “Debtor”** means Frank W. Kerr Company.

**1.48 “Debtor Released Parties”** has the meaning ascribed thereto in section 9.1 of the Plan.



**1.49 “Disclosure Statement”** means Part II of the Combined Plan of Liquidation and Disclosure Statement filed pursuant to Section 1125 of the Bankruptcy Code with respect to the Plan of the Debtor under Chapter 11 of the Bankruptcy Code, including all exhibits, appendices, and schedules thereto, if any, as same may be amended, modified, or supplemented from time to time.

**1.50 “Disputed Claim”** means a Claim or any portion thereof: (a) listed on the Schedules as unliquidated, disputed, or contingent; (b) as to which the Debtor, the Agent, the Lenders, the Plan Administrator, the Class 2 Liquidating Trustee or the Class 3 Liquidating Trustee has filed a timely objection or a request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order; (c) for which the amount or classification of the Claim specified in the relevant proof of claim exceeds the amount or classification of any corresponding Claim listed in the Schedules by the Debtor; (d) for which no corresponding Claim has been listed in the Schedules by the Debtor; (e) on behalf of which Claim the Claim holder has received consideration, in whole or in part, from another source on account of such Claim; (f) that is not an Allowed Claim; or (g) that is otherwise disputed by the Debtor, the Agent, the Lenders, the Plan Administrator, the Class 2 Liquidating Trustee or the Class 3 Liquidating Trustee in accordance with applicable law, and in regards to which such dispute has not been withdrawn or determined by a Final Order. Pursuant and subject to the Plan, the Debtor, the Agent, the Lenders, the Plan Administrator, the Class 2 Liquidating Trustee and/or the Class 3 Liquidating Trustee shall have the authority to object to any Disputed Claim at any time prior to the Claim Objection Deadline. Neither the Lender Claim, the Lender Secured Claim or the Lender Unsecured Claim, nor any portion(s) of the foregoing, shall be a Disputed Claim.

**1.51 “Disputed Reserve”** means the amount of Cash that would have been distributed on the Distribution Date, or in subsequent Distributions, to the holders of Disputed Claims if such Disputed Claims had in fact been Allowed on such date: (a) for liquidated Claims, in the amount asserted in a filed proof of Claim or Administrative Claim; and (b) for unliquidated or contingent Claims, (i) the amount estimated by the Class 3 Liquidating Trustee, subject to approval of the Court after providing notice and an opportunity for a hearing to the relevant holder of such unliquidated or contingent Claims, as the maximum reasonable amount that could ultimately be allowed by the Court, or (ii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Debtor or Class 3 Liquidating Trustee, as the case may be.

**1.52 “Distribution”** means, depending on the Mechanism elected by the Lenders, a distribution of Cash or other property of the Estate made (i) by the Plan Administrator in accordance with the Plan Administrator Agreement, and/or (ii) in accordance with one or more of the Liquidating Trust Agreements to the relevant beneficiaries of the relevant Liquidating Trust.

**1.53 “Distribution Date”** means, depending on the Mechanism elected by the Lenders, a date on which (i) the Plan Administrator makes a Distribution in accordance with the Plan Administrator Agreement and/or (ii) either Liquidating Trustee makes a Distribution, which shall be a date selected by the relevant Liquidating Trustee in accordance with the terms of the relevant Liquidating Trust Agreement.

**1.54 “Effective Date”** means a day, as determined by the Debtor, the Committee and the Lenders, that is the Business Day as soon as reasonably practicable after all conditions to the Effective Date in section 11.1 of the Plan have been satisfied or waived; *provided, however*, the Debtor reserves the right to request that the Bankruptcy Court establish a date certain for the Effective Date in the Confirmation Order, provided that all conditions to the Effective Date in section 11.1 of this Plan have been satisfied or waived.

**1.55 “Election Date”** means that date that is not less than five (5) business days prior to the date of the Confirmation Hearing, and is the date on or prior to which the Lenders must make the election of the Class 2 Liquidating Trust Mechanism, the Liquidating Debtor Mechanism or the Surrender Mechanism, by delivering the Election Notice to the Debtor with a copy to the Committee.

**1.56 “Election Notice”** means a written notice delivered on the Election Date by the Lenders to the Debtor in which the Lenders inform the Debtor of the Lenders’ election of the Class 2 Liquidating Trust Mechanism, the Liquidating Debtor Mechanism or the Surrender Mechanism, and the designation of the Plan Administrator or Class 2 Liquidating Trustee, as applicable.

**1.57 “Entity” or “Entities”** means an entity as defined in Section 101(15) of the Bankruptcy Code.

**1.58 “Equity Interests”** means: (a) any capital stock or other ownership interest in the Debtor; (b) any option, warrant, or right to purchase, sell, or subscribe for an ownership interest in, or other equity security of, the Debtor; (c) any and all redemption, conversion, exchange, voting, participation, or dividend rights or

liquidation preferences relating to any of the foregoing; as they exist prior to the Effective Date.

**1.59 “Equity Claims”** means all Claims arising in connection with an Equity Interest, including, without limitation, Claims arising from the rescission of a purchase or sale of an equity security of the Debtor, for damages arising from the purchase or sale of such security, or for reimbursement or contribution under Section 502 of the Bankruptcy Code on account of such Claim and attorneys’ fees associated therewith.

**1.60 “ERW Lawsuit”** means that certain adversary proceeding commenced by the Debtor on November 14, 2016, by filing a complaint against ERW, LLC and Ann Y. Newman (Adv. Proc. No. 16-05040).

**1.61 “ERW Properties”** means the condominium properties and the chalet property located in Antrim County, Michigan which are the subject of the ERW Lawsuit. The settlement of the ERW Lawsuit resulted in the ERW Properties being transferred to Debtor via quit claim deeds.

**1.62 “ERW Proceeds”** means the net proceeds from the sales of the ERW Properties.

**1.63 “Estate”** means the bankruptcy estate of the Debtor created by Section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

**1.64 “Estate Litigation”** means all proceedings arising from or relating to: (i) all Claims, (ii) objections to Claims, and (iii) Causes of Action.

**1.65 “Excess Shar Proceeds”** means the amount of Shar Proceeds in excess of the Shar Receivable.

**1.66 “Final Order”** means an order or judgment of the Court as to which the time to appeal, petition for certiorari, seek mandamus, or move for reargument, reconsideration, or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument, reconsideration, or rehearing is pending; or, if an appeal, writ of certiorari, or petition for mandamus, reargument, reconsideration, or rehearing has been filed or sought with respect to any order or judgments of the Court, that order or judgment has been affirmed by the highest court to which it was appealed, or certiorari has been denied or mandamus, reargument, reconsideration, or rehearing has been denied or resulted in no modification thereof, and the time to take any further appeal, petition for certiorari, or move for mandamus, reargument, reconsideration, or rehearing shall have expired;

*provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure (or any analogous motion under the Bankruptcy Rules) may be filed with respect to an order or judgment shall not cause such order or judgment not to be a Final Order.*

**1.67 “General Unsecured Claim”** means any Claim that is not a Priority Claim, a Priority Tax Claim, an Administrative Expense Claim, a Secured Claim, a Lender Secured Claim, or an Equity Interest. For the avoidance of doubt, General Unsecured Claims include the Lender Unsecured Claim and rejection damage Claims asserted under the provisions of section 8.2 of the Plan.

**1.68 “Hilco Sale Order”** means the *Order (I) Authorizing the Sale of Certain of the Debtor’s Furniture, Fixtures, and Equipment Free and Clear of All Liens, Claims, Encumbrances, and Interests; (II) Authorizing the Assumption of that Certain Furniture, Fixtures & Equipment Purchase Agreement with Hilco Fixture Finders, LLC; and (III) Granting Related Relief*, entered on October 19, 2016 [Docket No. 138].

**1.69 “Impaired”** shall have the meaning ascribed to it in Section 1124 of the Bankruptcy Code.

**1.70 “Insider Causes of Action”** means all claims and Causes of Action against Debtor’s current and former directors, officers, employees, shareholders, affiliates (including without limitation Shar), and against professionals employed by the Debtor prior to the Petition Date (excluding Professionals employed by the Debtor pursuant to an Order of the Court in this Chapter 11 Case).

**1.71 “Liabilities”** means all liabilities of the Estate, whether or not reflected in the financial records of the Debtor.

**1.72 “Lender Released Parties”** has the meaning ascribed thereto in section 9.2 of the Plan.

**1.73 “Lender Claim”** means the Claim of the Lenders in the amount of \$50,485,957.52, plus unpaid interest, attorneys’ fees, consultant fees, late fees, costs, expenses and other charges of the kind provided for by the Credit Agreement as of the Petition Date pursuant to the terms of the Cash Collateral Order. The Lender Claim was allowed pursuant to the Cash Collateral Order.

**1.74 “Lender Closing Notice”** means a written notice delivered via email by the Plan Administrator, the Class 2 Liquidating Trustee or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders) to the Class 3

Liquidating Trustee stating that the Plan Administrator, the Class 2 Liquidating Trustee or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders) no longer has a need for the Case to remain open and desires that the Case be closed.

**1.75 “Lender Secured Claim”** means the Allowed Class 2 Claim of the Lenders which is equal to: (i) if the Class 2 Liquidating Trust Mechanism is elected by the Lenders, the total Distributions made by the Class 2 Liquidating Trustee (net of the costs associated with liquidation) received by the Lenders; (ii) if the Liquidating Debtor Mechanism is elected by the Lenders, the total net proceeds from the Plan Administrator’s liquidation of the Class 2 Assets (net of the costs associated with liquidation) received by the Lenders; or (iii) if the Surrender Mechanism is elected by the Lenders, the total net proceeds from the Lenders’ liquidation of the Class 2 Assets (net of the costs associated with liquidation) received by the Lenders. The Lender Secured Claim was allowed pursuant to the Cash Collateral Order.

**1.76 “Lender Unsecured Claim”** means the Allowed Class 3 Claim of the Lenders which is the lesser of (i) the Lender Claim minus the Lender Secured Claim minus the Net Billnat Proceeds, the Lenders’ Contribution, the Tax Backstop and the True Up Proceeds), or (ii) \$30,000,000. The Lender Unsecured Claim was allowed pursuant to the Cash Collateral Order.

**1.77 “Lender Unsecured Claim Reserve”** means the amount of cash required such that the amount of the (a) Lender Unsecured Claim Reserve divided by (b) the value of the Class 3 Liquidating Trust Assets (excluding the Lenders’ Contribution, and only taking into account the Class 3 Liquidating Trust Assets remaining after (i) the administration of or setting aside an estimated amount necessary for the administration of the Class 3 Liquidating Trust, and (ii) the payment, in full, of all Allowed Administrative Claims, Allowed Priority Claims, Allowed Priority Tax Claims, and Allowed Substantial Contribution Claims to the extent not paid by the Debtor on or prior to the Effective Date and therefore still payable from the Class 3 Liquidating Trust Assets) shall be equal to (x) \$30,000,000 divided by (y) \$30,000,000 plus the total amount of Allowed General Unsecured Claims (excluding the Lender Unsecured Claim). For the avoidance of doubt, to the extent the Lender Unsecured Claim Reserve would be less than or equal to \$1,000,000.00, the Lender Unsecured Claim Reserve shall be \$0.

**1.78 “Lenders”** means Chase and Comerica.

**1.79 “Lenders’ Contribution”** means \$1,000,000.00 realized from the net proceeds of the sale or sales of Billnat’s assets outside the ordinary course of business.

**1.80 “Lenders’ Conveyed Assets** means any and all assets, claims and property that Lenders, in their sole discretion, elect to convey and/or transfer to the Liquidating Debtor or the Class 2 Liquidating Trust, as the case may be (or, if necessary, to assign to the Liquidating Debtor as agent for the Lenders), including but not limited to the Lenders’ Insider Causes of Action, pursuant to separate written agreement(s) executed by the Agent and/or Lenders.

**1.81 “Lenders’ Insider Causes of Action”** means claims and/or causes of action that the Lenders have against the Debtor’s former and/or current directors, officers, shareholders, affiliates and/or their professionals.

**1.82 “Lien”** has the meaning ascribed to that term in Section 101(37) of the Bankruptcy Code, except that a lien that has been avoided shall not constitute a Lien for the purposes of the Plan.

**1.83 “Liquidating Debtor”** means, in the event that the Lenders elect the Liquidating Debtor Mechanism, the Debtor on and after the Effective Date.

**1.84 “Liquidating Debtor Mechanism”** means a mechanism that may be elected by the Lenders on or before the Election Date and if so elected by the Lenders, all of the Debtor’s rights, title and interests in the Class 2 Assets shall vest in the Liquidating Debtor.

**1.85 “Liquidating Trust Agreements”** means, together, the Class 2 Liquidating Trust Agreement and the Class 3 Liquidating Trust Agreement.

**1.86 “Liquidating Trustees”** means, together, the Class 2 Liquidating Trustee and the Class 3 Liquidating Trustee.

**1.87 “Liquidating Trusts”** means, together, the Class 2 Liquidating Trust and the Class 3 Liquidating Trust.

**1.88 “Loan Documents”** shall have the meaning set forth in the Cash Collateral Order.

**1.89 “Mechanism”** means the Class 2 Liquidating Trust Mechanism, the Liquidating Debtor Mechanism, or the Surrender Mechanism.

**1.90 “Newman Lawsuit”** means that certain adversary proceeding commenced by the Debtor on November 30, 2016, by filing a complaint against Ann Newman Corporation, Ann Y. Newman, William G. Newman, Eugene C. Newman, and Robert S. Newman (Adv. Proc. No. 16-05099).

**1.91 “Net Billnat Proceeds”** means the proceeds that the Lenders receive from the sale or sales of the assets of Billnat, net of all costs associated with such sale(s) and/or liquidation of such assets, surcharges of costs against such assets and amounts the Lenders may be required to pay to creditors of Billnat in settlement with such creditors, *provided that*, such proceeds may be applied by the Lenders first to the postpetition interest accrued on the Lender Claim and postpetition fees of the Lenders’ professionals (such interest and fees being postpetition as to the Debtor but not postpetition as to Billnat and therefore, due and owing from Billnat pursuant to the Credit Agreement).

**1.92 “Novi Sale Order”** means the *Order (A) Authorizing Debtor to Sell Real Property Free and Clear of All Liens, Claims, Encumbrances, and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Granting Related Relief*, entered on October 25, 2016 [Docket No. 151].

**1.93 “Novi Sale Proceeds”** means the proceeds received from the sale of Debtor’s real property located in Novi, Michigan as authorized by the Novi Sale Order.

**1.94 “Objection Completion Notice”** means a written notice delivered via email by the Class 3 Liquidating Trustee to the Plan Administrator, the Class 2 Liquidating Trustee or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders) stating that the Class 3 Liquidating Trustee has completed all objections to Claims and desires that the Case be closed.

**1.95 “Petition Date”** means August 23, 2016, the date on which the Petitioning Creditors filed an involuntary petition for relief under chapter 7 of the Bankruptcy Code.

**1.96 “Petitioning Creditors”** means the Debtor’s creditors that filed the involuntary petition against the Debtor on the Petition Date.

**1.97 “Plan”** means Part I of the Combined Plan of Liquidation and Disclosure Statement filed pursuant to chapter 11 of the Bankruptcy Code as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

**1.98 “Plan Administrator”** means, in the event that the Lenders elect the Liquidating Debtor Mechanism, the person or entity designated by the Lenders charged with administering the Class 2 Assets in accordance with the Plan Administrator Agreement.

**1.99 “Plan Administrator Agreement”** means, in the event that the Lenders elect the Liquidating Debtor Mechanism, the agreement that governs the administration of the Class 2 Assets, which shall be a document in a form acceptable to the Lenders that shall be filed as a Plan Supplement on or before five (5) business days prior to the date of the Confirmation Hearing, and incorporated into the Plan as Appendix C to the Plan.

**1.100 “Plan Administrator Budget”** means a line-item budget that shall be submitted by the Plan Administrator to the Creditor Representative on not less than a monthly basis which details the anticipated weekly expenditures of the Plan Administrator for the month, including but not limited to costs and fees of the Plan Administrator and professionals engaged by the Plan Administrator.

**1.101 “Plan Supplement(s)”** means a document or documents that shall be filed by the Debtor on or before five (5) business days prior to the date of the Confirmation Hearing which shall supplement and be incorporated into the Plan.

**1.102 “Priority Claim”** means any Allowed Claim of a kind specified in Sections 507(a) of the Bankruptcy Code other than Priority Tax Claims.

**1.103 “Priority Tax Claim”** means any Allowed Claim of a kind specified in Section 507(a)(8) of the Bankruptcy Code.

**1.104 “Priority Tax Claim Bar Date”** means February 20, 2017.

**1.105 “Professional”** means any person or Entity employed by the Debtor or the Committee pursuant to a Final Order in accordance with Sections 327, 328, or 1103 of the Bankruptcy Code, and to be compensated for services rendered prior to and after the Effective Date pursuant to Sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

**1.106 “Pro Rata Proportion”** means, with reference to any Distribution on account of any Allowed Claim in any Class, the ratio (expressed as a percentage) that the amount of the Allowed Claim bears to the aggregate amount of all Allowed Claims in that Class.



**1.107 “Record Date”** means the record date for determining the entitlement to receive Distributions under the Plan on account of Allowed Claims, which shall be the Effective Date of the Plan.

**1.108 “Released Parties”** has the meaning ascribed thereto in section 9.3 of the Plan.

**1.109 “Relief Order Date”** means September 20, 2016, the date the Bankruptcy Court entered the Order for Relief upon the Stipulation for Entry of Order for Relief Under a Chapter 11 Proceeding between the Debtor and the Petitioning Creditors.

**1.110 “Sales”** means the sale and transfer of the Debtor’s personal property and the assignment of certain of the Debtor’s executory contracts and unexpired leases pursuant to the Hilco Sale Order and the Antitrust Sale Order.

**1.111 “Sale Orders”** means, collectively, (i) the Hilco Sale Order; (ii) the Novi Sale Order; (iii) the Antitrust Sale Order; and (iv) the Vehicle Sale Order.

**1.112 “Sav-Mor Lawsuit”** means that certain lawsuit commenced by the Debtor in the United States District Court for the Eastern District of Michigan on November 1, 2016, against Sav-Mor Franchising, Inc. (Case No. 16-13880-JEL-MKM).

**1.113 “Schedules”** means the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor in the Chapter 11 Case pursuant to Section 521 of the Bankruptcy Code, and as such schedules and statements have been or may be supplemented or amended from time to time.

**1.114 “Scheduling Order”** means the Court’s Order Establishing Deadlines and Procedures [Docket No. 126] entered on October 14, 2016.

**1.115 “Secured Claim”** means an Allowed Claim that is secured by a Lien (which is valid, perfected, and enforceable under applicable law or by reason of a Final Order) on the property in which the Estate has an interest or that is subject to a setoff under Section 553 of the Bankruptcy Code, to the extent of the value of the Collateral, as determined in accordance with Section 506(a) of the Bankruptcy Code, or to the extent of the amount subject to the setoff.

**1.116 “Settlement Agreement”** means that certain Settlement Term Sheet dated as of July 27, 2017, and entered into by and among the Debtor, the Agent, the

Lenders, and the Committee. A true and correct copy of the Settlement Agreement is attached as Appendix D to the Plan.

**1.117 “Shar”** means Shar I, LLC, a Michigan limited liability company.

**1.118 “Shar Insurance Policies”** means those certain life insurance policies purchased by Shar on the life of Hannah “Ann” Y. Newman with death benefits of \$25,000,000.00.

**1.119 “Shar Receivable”** means the amounts owing to Debtor for all premiums for the Shar Insurance Policies paid, directly or indirectly, through loans to Shar or otherwise by the Debtor including premiums funded pre- and postpetition by the Debtor, the Lenders, the Plan Administrator and/or the Class 2 Liquidating Trustee, plus interest thereon.

**1.120 “Shar Proceeds”** means any amounts collected by the Debtor from Shar or the Shar Insurance Policies.

**1.121 “Statutory Fees”** means all fees payable pursuant to Section 1930 of title 28 of the United States Code.

**1.122 “Substantial Contribution Claim”** means the Claims of the Ad Hoc Committee pursuant to 11 U.S.C. §§ 503(b)(3)(A), 503(b)(3)(D), and 503(b)(4) of the Bankruptcy Code, for its role in making a substantial contribution to the Chapter 11 Case, including in connection with the (i) filing of the involuntary petition against the Debtor, (ii) research and investigation of the Debtor conducted by the Ad Hoc Committee, and (iii) prosecution of various objections by the Ad Hoc Committee prior to the formation of the Committee.

**1.123 “Surrender Mechanism”** means a Mechanism that may be elected by the Lenders on or before the Election Date and if so elected by the Lenders, the Debtor shall transfer all of its rights, title and interests in (all or a portion of) the Class 2 Assets to the Agent for the benefit of the Lenders, or transfer (all or a portion of) the Class 2 Assets to the Agent as secured party in possession, as elected by the Lenders.

**1.124 “Tax Backstop”** means the contribution by Lenders of an amount equal to 40% of any Administrative Claim for taxes due to governmental entities for the year 2016 or Priority Tax Claim for the year 2016 (collectively, a “2016 Tax Claim”), provided that such contribution shall only be on account of the first \$2,500,000.00 of any such 2016 Tax Claim such that the contribution by Lenders shall not exceed \$1,000,000, and provided further that any such contribution by

Lenders shall not be required unless Lenders recover at least \$25,000,000 of cash recoveries received by the Lenders from and after July 27, 2017, net of (i) all costs and expenses incurred by the Lenders, directly or indirectly (whether paid by the Lenders to the Estate as required by the Settlement Agreement, incurred by the Class 2 Liquidating Trustee, or incurred by the Plan Administrator), in connection with the evaluation, liquidation, sale, realization, monetization, pursuit, settlement, release and/or recovery of Lenders' Collateral, Causes of Action, or any other assets (excluding the Unencumbered Proceeds) and sources of recovery, and (ii) payment of the Lenders' Contribution, any True Up Proceeds, or Lenders' Pre-Petition Collateral presently held by the Estate (excluding the Unencumbered Proceeds) used for purposes of the Lenders funding the obligations required to be funded as set forth in the Settlement Agreement, and (iii) in the event that the Shar Receivable has not yet been recovered by the Lenders, the Shar policy premiums paid on and after July 27, 2017, plus interest. Recoveries to the Lenders from the ERW Properties and ERW Proceeds, Commercial Tort Claims, other Cash Collateral (excluding the Unencumbered Proceeds) currently held and segregated by the Debtor, and funds which are presently held by the Lenders unapplied, shall not be included as cash recoveries for purposes of the \$25,000,000 cash recovery calculation. To the extent that the Shar Receivable is recovered by the Lenders on or after July 27, 2017 but prior to the date on which the 2016 Tax Claim is paid, the Shar Receivable recovery shall be included in the \$25,000,000 cash recovery calculation.

**1.125 “True Up Proceeds”** means the proceeds from the payment by the Lenders to the Debtor in an amount equal to 18.9% of the Professional fees and expenses incurred by the Debtor as set forth in the Cash Collateral Order through July 17, 2017, that were previously funded (or funded prior to the Effective Date) from the Novi Sale Proceeds but not otherwise previously reimbursed to the Debtor by the Lenders.

**1.126 “Unclaimed Property”** means any Distributions that are returned to the Class 3 Liquidating Trustee or Class 3 Liquidating Trust as: (i) undeliverable to a Beneficiary, or (ii) unclaimed by a Beneficiary, as further described in section 7.8.1.

**1.127 “Unencumbered Proceeds”** means the Novi Sale Proceeds, the True Up Proceeds, and the Vehicle Proceeds.

**1.128 “United States Trustee”** means the United States Trustee appointed under Section 591 of title 28 of the United States Code to serve in the Eastern District of Michigan, Southern Division.

**1.129 “Vehicle Proceeds”** means the proceeds received from the sale of Debtor’s vehicles as authorized by the Vehicle Sale Order.

**1.130 “Vehicle Sale Order”** means the *Order Approving the Sale of Certain Vehicles to Hilco Fixture Finders, LLC or Its Designee Free and Clear of Liens, Claims, Interests, and Encumbrances Under 11 U.S.C. §§ 105 and 363 and Related Relief*, entered on January 4, 2017 [Docket No. 234].

**1.131 “West Grange Lawsuit”** means that certain lawsuit commenced by the Debtor in the United States District Court for the Eastern District of Michigan on December 9, 2016, against Walnut Associates 1, L.L.C. d.b.a. West Grange Pharmacy (Case No. 16-14307-AC).

## ARTICLE 2

### INTERPRETATION, APPLICATION OF DEFINITIONS, RULES OF CONSTRUCTION, AND COMPUTATION OF TIME

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter. For purposes of the Plan: (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the document shall be substantially in that form or substantially on those terms and conditions; (b) any reference in the Plan to an existing document or exhibit filed or to be filed means the document or exhibit as it may have been or may be amended, modified, or supplemented; and (c) unless otherwise specified, all references in the Plan to Articles, Schedules, and Exhibits are references to articles, schedules, and exhibits of or to the Plan. Unless otherwise specified, the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar meaning refer to the Plan as a whole and not to any particular article, section, subsection, or clause contained in the Plan. A capitalized term used but not defined herein shall have the meaning given to that term in the Bankruptcy Code. The rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

The headings in the Plan are for convenience of reference only and shall not expand, limit, or otherwise affect the provisions of the Plan. Unless otherwise indicated herein, all references to dollars are to United States dollars.

Unless otherwise expressly provided herein, in computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall

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

## **ARTICLE 3**

### **ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS**

#### **3.1 Administrative Expense Claims**

All Allowed Administrative Claims, including all tax claims that accrued post-petition through the Effective Date, shall be paid by the Debtor (on or prior to the Effective Date) or the Class 3 Liquidating Trustee (after the Effective Date), as applicable, in cash, in full, on the later of: (i) the due date or thirty (30) days after entry of a Final Order of the Bankruptcy Court allowing such Administrative Claim, or (ii) if the Administrative Claim is disputed by the Debtor or Class 3 Liquidating Trustee, as applicable, or is subject to disallowance under Section 502(d) of the Bankruptcy Code on account of claims against the holder of such administrative claims pursuant to Sections 542, 543, 550, 553, 522(f), 522(h), 544, 545, 547, 548, and 549 and is or becomes an Allowed Claim, the later of its due date or thirty (30) days after the Effective Date of the Plan.

Notwithstanding the foregoing, all Allowed Administrative Claims accruing on and after July 18, 2017, and relating to the pursuit or liquidation by the Estate of any Class 2 Assets (including but not limited to the costs to (i) investigate, take discovery, and pursue any Causes of Action, or (ii) realize upon Cash Collateral subject to the Lenders' liens) shall be paid (the "Lender Cost Reimbursement") by the Lenders, the Class 2 Liquidating Trust or the Plan Administrator, as applicable, to the Debtor (on or prior to the Effective Date) or the Class 3 Liquidating Trust (after the Effective Date), as applicable, from the proceeds of Class 2 Assets, the Class 2 Assets, or otherwise, subject to a budget approved by the Lenders in advance, as set forth in the Cash Collateral Order. To the extent payable prior to the Effective Date, all Allowed Administrative Claims accruing prior to the Effective Date, including Administrative Claims accruing on or prior to July 17, 2017, and relating to the pursuit or liquidation by the Estate of any Class 2 Assets (including but not limited to the costs to (i) investigate, take discovery, and pursue any Causes of Action, or (ii) realize upon Cash Collateral subject to the Lenders' liens), shall be paid by the Debtor from Unencumbered Proceeds, provided that to the extent any Allowed Administrative Claims accrued on or after July 18, 2017 through the Effective Date relating to the pursuit or liquidation by the Estate of any Class 2 Assets are paid from

Unencumbered Proceeds, such fees and costs (to the extent included in a budget approved by the Lenders) shall be paid as a Lender Cost Reimbursement to the Debtor (on or prior to the Effective Date) or the Class 3 Liquidating Trust (after the Effective Date), as applicable. Any Lender Cost Reimbursement, when paid to the Debtor, Class 3 Liquidating Trustee or Plan Administrator, as applicable, shall be deemed Unencumbered Proceeds.

### **3.2 Statutory Fees**

All fees payable pursuant to Section 1930 of title 28 of the United States Code shall be paid: (i) if due and owing on or prior to the Effective Date, by the Debtor from Unencumbered Proceeds; (ii) if due and owing after the Effective through the earlier of (a) the date on which the Class 3 Liquidation Trustee delivers the Objection Completion Notice via email to the Plan Administrator, Class 2 Liquidating Trustee or the Lenders (depending on the Mechanism elected by the Lenders), and (b) the date on which the Plan Administrator, Class 2 Liquidating Trustee or the Lenders (depending on the Mechanism elected by the Lenders) deliver the Lender Closing Notice via email to the Class 3 Liquidating Trustee, on a *pro rata basis* by the Class 3 Liquidating Trustee from the Class 3 Liquidating Trust Assets, and the Plan Administrator, the Class 2 Liquidating Trustee, or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders), from the Class 2 Assets; (iii) (a) if the Objection Completion Notice is delivered before the Lender Closing Notice is delivered, statutory fees due and owing after the Objection Completion Notice is delivered until the closing of the Case shall be paid by the Plan Administrator, the Class 2 Liquidating Trustee, or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders), from the Class 2 Assets, (b) if the Lender Closing Notice is delivered before the Objection Complete Notice is delivered, statutory fees due and owing after the Lender Closing Notice is delivered until the closing of the Case shall be paid by the Class 3 Liquidating Trustee from the Class 3 Liquidating Trust Assets. In this paragraph, “*pro rata basis*” means the proportional relationship that each of the (x) Distributions by the Class 3 Liquidating Trustee from the Class 3 Liquidating Trust Assets, and (y) Distributions by the Plan Administrator, the Class 2 Liquidating Trustee, or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders), from the Class 2 Assets, have to the total Distributions.

### **3.3 Professional Compensation**

In the case of Administrative Claims of all Professionals, Professionals shall file final fee applications for services provided to or for the benefit of the Estate on or before thirty (30) days after the Effective Date.

Except as provided in section 3.1 of this Plan, Professionals asserting unpaid Administrative Claims based on any services rendered before the Effective Date must file and serve the Debtor and the Committee, through their respective counsel, and such other Entities as are designated by the Bankruptcy Code, the Bankruptcy Rules, the Confirmation Order, or any other order of the Court, an application for final allowance of such Claims no later than thirty (30) days after the Effective Date of the Plan. Subject to the provisions of this section 3.3, once approved by the Court, the Administrative Claims of Professionals shall be paid within ten (10) days of allowance by the Court, by the Debtor (from the Unencumbered Proceeds on or prior to the Effective Date) or the Class 3 Liquidating Trustee (from the Class 3 Liquidating Trust Assets after the Effective Date), as applicable, in accordance with the payment of Allowed Administrative Claims set forth above in section 3.1 of the Plan.

### **3.4 Income Tax Obligations of the Estate**

Income tax obligations owed by the Estate to governmental entities shall be paid as follows: (i) any prepetition Priority Tax Claim and any 2016 Tax Claim, if due and owing prior to the Effective Date, shall be paid by the Debtor (subject to the Tax Backstop contribution by the Lenders) from the Unencumbered Proceeds; (ii) any prepetition Priority Tax Claim and any 2016 Tax Claim, if due and owing after the Effective Date, shall be paid by the Class 3 Liquidating Trustee from the Class 3 Liquidating Trust Assets (subject to the Tax Backstop contribution by the Lenders); and (iii) with regard to any income tax obligations owed by the Estate from January 1, 2017 through the closing of the Case, to the extent no agreement is reached between and among the Debtor, the Lenders and the Committee prior to the Effective Date, then after the Effective Date, the Class 3 Liquidating Trustee and the Plan Administrator (with the consent and approval of the Lenders), Class 2 Liquidating Trustee (with the consent and approval of the Lenders) or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders) will negotiate an agreement for the equitable sharing of the payment of such tax obligations.

### **3.5 Administrative Claims Bar Date**

All requests for the payment or allowance of an Administrative Claim (other than the Administrative Claims of Professionals, which are dealt with in section 3.3 above, shall be discharged and forever barred and shall not be enforceable unless (a) such request for the payment of an Administrative Claim is filed and served upon the Debtor and/or the Class 3 Liquidating Trustee, as applicable, on or before thirty (30) days after the Effective Date of the Plan (the “Administrative Claim Bar Date”), or (b) the Court has previously entered an order in this Chapter 11 Case granting a creditor an Administrative Claim.

### **3.6 Priority Tax Claims**

All requests for the payment or allowance of any Priority Tax Claims shall be discharged and forever barred and shall not be enforceable unless (a) the holder of such Claim filed a proof of Claim on or before the Priority Tax Claim Bar Date, or (b) the Court has previously entered an order in this Chapter 11 Case granting a creditor an Allowed Priority Tax Claim.

Unless the Debtor (in consultation with the Committee) and/or the Class 3 Liquidating Trustee (after the Effective Date) and the holder of an Allowed Priority Tax Claim agree to a different treatment, and subject to the provisions of Article 7 of the Plan, if applicable, each holder of an Allowed Priority Tax Claim shall be paid the Allowed amount of its Priority Tax Claim by the Debtor (from the Unencumbered Proceeds on or prior to the Effective Date) or the Class 3 Liquidating Trustee (from the Class 3 Liquidating Trust Assets after the Effective Date), as applicable, (i) thirty (30) days from the Effective Date, or (ii) if the Priority Tax Claim is a Disputed Claim, thirty (30) days after entry of a Final Order allowing such Priority Tax Claim. The Debtor and the Class 3 Liquidating Trustee, as applicable, reserve the right to dispute any asserted Priority Tax Claim pursuant to Article 7 of the Plan.

### **3.7 Ad Hoc Committee Substantial Contribution Claim**

The Ad Hoc Committee shall have an Allowed Substantial Contribution Claim comprised of the documented unpaid fees and actual, necessary expenses incurred by the Ad Hoc Committee arising out of the services provided by Lowenstein Sandler LLP and Wolfson Bolton PLLC, that were unpaid as of the date the Committee was formed. The Ad Hoc Committee shall receive, on account of and in full satisfaction of the Allowed Substantial Contribution Claim, Cash paid by the Debtor from the Unencumbered Proceeds directly to Lowenstein Sandler LLP and Wolfson Bolton



PLLC on or after to the Effective Date, in an amount equal to the unpaid fees, less a 10% voluntary reduction provided by both Lowenstein Sandler LLP and Wolfson Bolton PLLC, and actual, necessary expenses related to Lowenstein Sandler LLP's and Wolfson Bolton PLLC's services provided to the Ad Hoc Committee.

## ARTICLE 4

### CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including voting, confirmation, and distribution pursuant to the Plan and pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim shall be deemed to be classified in a particular Class only to the extent that such Claim qualifies within the description of that Class, and shall be deemed classified in a different Class to the extent that the remainder of such Claim qualifies within the description of such different Class. A Claim is in a particular Class only to the extent that such Claim is an Allowed Claim.

The classification of Claims and Equity Interests of the Debtor pursuant to the Plan are as follows:

Class	Class Name	Status
Class 1	Allowed Priority Claims	Not Impaired Deemed to accept the Plan and not entitled to vote
Class 2	Allowed Secured Claims	Impaired Entitled to vote
Class 3	Allowed General Unsecured Claims	Impaired Entitled to vote
Class 4	Equity Interests	Impaired Deemed to reject the Plan and not entitled to vote

## ARTICLE 5

### TREATMENT OF ALLOWED CLAIMS AND EQUITY INTERESTS UNDER THE PLAN; ACCEPTANCE OR REJECTION OF THE PLAN

The following treatment set forth in this Article 5 shall be accorded to Allowed Claims against, and Equity Interests in, the Debtor.

#### 5.1 Treatment of Claims

##### 5.1.1 Class 1: Allowed Priority Claims

Class 1 consists of all Allowed Priority Claims. Holders of Class 1 Claims will be paid in full under the Plan and are therefore not Impaired. Unless the Debtor (on or prior to the Effective Date) or the Class 3 Liquidating Trustee (after the Effective Date) and the holder of such Class 1 Claim agree to a different treatment, and subject to the provisions of Article 7 of the Plan, if applicable, each holder of a Class 1 Claim shall be paid the Allowed amount of its Claim by the Debtor (from the Unencumbered Proceeds on or prior to the Effective Date) or the Class 3 Liquidating Trustee (from the Class 3 Liquidating Trust Assets after the Effective Date) in full (i) thirty (30) days from the Effective Date, or (ii) if the Claim is a Disputed Claim, thirty (30) days after entry of a Final Order allowing such Claim. The Debtor (on or prior to the Effective Date) or the Class 3 Liquidating Trustee (after the Effective Date) reserve the right to dispute any asserted Priority Claim pursuant to Article 7 of the Plan.

Class 1 is not Impaired and is deemed to accept the plan and therefore not entitled to vote to accept or reject the Plan. The Debtor does not believe that there are any Priority Claims to be included in Class 1.

##### 5.1.2 Class 2: Allowed Secured Claims

Class 2 consists of all Allowed Secured Claims. The only Allowed Secured Claim is the Lender Secured Claim which was allowed pursuant to the Cash Collateral Order. Distributions made to the Lenders by the Plan Administrator, Distributions made by the Class 2 Liquidating Trustee to the Lenders, or net proceeds received by the Lenders from the Lenders' liquidation of the Class 2 Assets, as the case may be (depending on the Mechanism elected by the Lenders) shall be applied to the Lender Secured Claim.

For purposes of voting on the Plan, only, the Allowed Lender Secured Claim shall have a value of \$20,485,957.52.

Class 2 is Impaired and is entitled to vote to accept or reject the Plan.

### **5.1.3 Class 3: Allowed General Unsecured Claims**

Class 3 consists of all Allowed General Unsecured Claims, including (i) all Allowed Claims arising from rejected executory contracts or unexpired leases, (ii) all Allowed General Unsecured Claims of trade creditors, and (iii) the Lender Unsecured Claim. Unless the Class 3 Liquidating Trustee and the holder of such Claim agree to a different treatment, and subject to the provisions of this Plan, the Settlement Agreement, and the Class 3 Liquidating Trust Agreement, on one or more Distribution Dates, each holder of an Allowed General Unsecured Claim, including the Lender Unsecured Claim, shall receive a Pro Rata Proportion of the Class 3 Liquidating Trust Assets remaining after (i) the administration of or setting aside an estimated amount necessary for the administration of the Class 3 Liquidating Trust, and (ii) the payment, in full, of all Allowed Administrative Claims, Allowed Priority Claims, Allowed Priority Tax Claims, and Allowed Substantial Contribution Claims to the extent not paid by the Debtor on or prior to the Effective Date and therefore still payable from the Class 3 Liquidating Trust Assets; *provided, however*, that (a) the Lenders agree to waive the first \$1,000,000 in Class 3 Liquidating Trust Distributions they would otherwise be entitled to receive from the Unencumbered Proceeds; (b) for purposes of determining the Pro Rata Proportion of the Distribution the Lenders would be entitled to receive on account of the Lender Unsecured Claim, the Lender Unsecured Claim shall be capped at \$30,000,000; (c) the Lenders shall not receive any Distribution from the portion of the Class 3 Liquidating Trust Assets attributable to the Lenders' Contribution; and (d) for purposes of determining the Pro Rata Proportion of the Distribution the holders of Allowed General Unsecured Claims other than the Lender Unsecured Claim would be entitled to receive from the portion of the Class 3 Liquidating Trust Assets attributable to the Lenders' Contribution, the Lender Unsecured Claim shall be deemed to be worth \$0.

For purposes of voting on the Plan, only, the Allowed Lender Unsecured Claim shall have a value of \$30,000,000.

Class 3 is Impaired and is entitled to vote to accept or reject the Plan.

### **5.1.4 Class 4: Equity Interests**

Class 4 consists of all Equity Interests and Equity Claims including warrants to purchase or acquire Equity Interests. The holders of the Equity Interests shall neither receive any distributions nor retain any property under the Plan or the Liquidating

Trust Agreements. As of the Effective Date, all certificates, documents, and other instruments underlying Equity Interests, including warrants, shall be canceled.

Class 4 is Impaired, but because no distributions will be made to the holders of Class 4 Equity Interests, nor will such holders retain any property, such holders are deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

## ARTICLE 6

### **THE CLASS 2 LIQUIDATING TRUST MECHANISM; THE LIQUIDATING DEBTOR MECHANISM; THE SURRENDER MECHANISM; AND THE CLASS 3 LIQUIDATING TRUST**

#### **6.1 The Lenders' Election**

**6.1.1** On or prior to the Election Date, the Lenders must make the election between the Class 2 Liquidating Trust Mechanism, the Liquidating Debtor Mechanism and the Surrender Mechanism, by delivering the Election Notice to the Debtor with a copy to the Committee.

#### **6.1.2 The Class 2 Liquidating Trust Mechanism**

In the event that the Lenders elect the Class 2 Liquidating Trust Mechanism, the following provisions apply.

##### **a. Formation of the Class 2 Liquidating Trust**

On the Effective Date, the Class 2 Liquidating Trust shall be established for the limited purpose of managing and administering the Class 2 Assets and making Distributions to the beneficiaries of the Class 2 Liquidating Trust. Distributions made by the Class 2 Liquidating Trust shall be applied to the Lender Secured Claim. The Class 2 Liquidating Trust is intended to qualify as a liquidating trust pursuant to United States Treasury Regulation section 301.7701-4(d). The Class 2 Liquidating Trust shall be governed under the laws of the State of Michigan.

##### **b. The Class 2 Liquidating Trustee**

The Class 2 Liquidating Trustee shall be designated by the Lenders. The person so designated shall become the Class 2 Liquidating Trustee on the Effective Date. Not more than five (5) calendar days after the Debtor receives the Election Notice from the Lenders, the Debtor shall file a notice with the Court stating that the Lenders have delivered the Election Notice to the Debtor, that the Election

Notice states that the Lenders have elected the Class 2 Liquidating Trust Mechanism, and identifying the person whom the Lenders have designated as the Class 2 Liquidating Trustee. For purposes of this paragraph, no person shall be deemed disqualified from serving as a professional of the Class 2 Liquidating Trustee merely as a consequence of serving as an Officer of Debtor, the CRO or a Professional in the Chapter 11 Case. The Class 2 Liquidating Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Class 2 Liquidating Trust Agreement.

**c. Funding of the Class 2 Liquidating Trust**

On the Effective Date and except as otherwise provided in the Plan, the Debtor shall transfer and convey all right, title, and interest in the Class 2 Assets to the Class 2 Liquidating Trust, which Class 2 Assets shall automatically and irrevocably vest in the Class 2 Liquidating Trust without further action on the part of the Debtor, the Class 2 Liquidating Trustee, or the Court, and with no reversionary interest in the Debtor.

The transfer of the Class 2 Assets to the Class 2 Liquidating Trust shall be made for the benefit and on behalf of the Class 2 Liquidating Trust Beneficiaries. The Debtor and the Class 2 Liquidating Trustee, with the consent and approval of the Lenders, shall reach an agreement as to the value, for tax purposes, of the Class 2 Assets as of the Effective Date. The Class 2 Assets will be treated solely for tax purposes as being transferred by the Debtor to the Class 2 Liquidating Trust Beneficiaries under the Plan in exchange for their Allowed Secured Claims, and then by the Class 2 Liquidating Trust Beneficiaries to the Class 2 Liquidating Trust in exchange for a beneficial interest in the Class 2 Liquidating Trust. For tax purposes, the Class 2 Liquidating Trust Beneficiaries shall be treated as the grantors and owners of the Class 2 Liquidating Trust. Upon the transfer of the Class 2 Assets, the Class 2 Liquidating Trust shall succeed to all of the Debtor's rights, title, and interest in the Class 2 Assets and the Debtor and the Estate will have no other further interest in or with respect to the Class 2 Assets; *provided, however*, that the Debtor will make reasonable efforts to cooperate with the Class 2 Liquidating Trustee in achieving and effectuating the intent and purpose of the Class 2 Liquidating Trust.

**d. Claims Against the Class 2 Liquidating Trust**

All persons having any claim against the Class 2 Liquidating Trustee or the Class 2 Liquidating Trustee's professionals in connection with its performance of the Class 2 Liquidating Trustee's rights, powers, and duties as such shall only look to

the Class 2 Liquidating Trust and the Class 2 Assets for payment or satisfaction thereof.

**e. Exemption From Certain Transfer Taxes**

Pursuant to Section 1146(a) of the Bankruptcy Code, any transfers from the Debtor or the Class 2 Liquidating Trust to any Entity pursuant to the Plan in the United States shall not be taxed under any law imposing a stamp tax or other similar tax. Such exemption specifically applies, without limitation, to all documents necessary to evidence and implement distributions under the Plan.

**f. Privileges**

To the full extent permitted by law, upon the Effective Date, the Debtor shall irrevocably transfer to the Class 2 Liquidating Trust, as its legal successor, all rights of the Debtor and its Estate to exercise or waive any privilege, including the attorney-client privilege, accountant-client privilege, work-product privilege, or other privilege or immunity attaching to any document or communication (whether written or oral) as it relates to any such Class 2 Assets (collectively, the “Privileges”), and the Debtor and the Class 2 Liquidating Trustee are authorized to take all necessary actions to effectuate the transfer of the Privileges. All such Privileges also shall vest in the Class 2 Liquidating Trust and its representatives, to the full extent permitted under law. This transfer is self-executing as of the Effective Date; *provided, however*, that the Class 2 Liquidating Trustee and the Debtor are authorized and directed to take any and all necessary actions to effectuate the transfer of such Privileges. After the Effective Date, the Class 2 Liquidating Trustee shall have the exclusive power and authority to assert or waive the Privileges.

**6.1.3 The Liquidating Debtor Mechanism**

In the event that the Lenders elect the Liquidating Debtor Mechanism, the following provisions apply.

**a. Vesting of the Class 2 Asset in the Liquidating Debtor**

On the Effective Date, all of the Debtor’s rights, title and interests in the Class 2 Assets (for the benefit of the Lenders) and the Billnat Equity Interest shall vest in the Liquidating Debtor.

**b. Duties and Powers of the Plan Administrator**

The Plan Administrator, together with its representatives and professionals, shall administer the Plan with respect to the Liquidating Debtor. In such capacity, the powers of the Plan Administrator shall include any and all powers necessary to implement the Plan with respect to the Liquidating Debtor and to administer and distribute the Class 2 Assets and the Lenders' Conveyed Assets in accordance with Plan Administrator Agreement, all in compliance with the Plan Administrator Budget. The Plan Administrator is not authorized in its capacity as such to engage in any trade or business.

**c. Plan Administrator Designation**

The Plan Administrator shall be designated by the Lenders. The person so designated shall become the Plan Administrator on the Effective Date. Not more than five (5) calendar days after the Debtor receives the Election Notice from the Lenders, the Debtor shall file a notice with the Court stating that the Lenders have delivered the Election Notice to the Debtor, that the Election Notice states that the Lenders have elected the Liquidating Debtor Mechanism, and identifying the person whom the Lenders have designated as the Plan Administrator. For purposes of this paragraph, no person shall be deemed disqualified from serving as a professional of the Plan Administrator merely as a consequence of serving as an Officer of Debtor, the CRO or a Professional in the Chapter 11 Case. The Plan Administrator shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan Administrator Agreement.

**d. Compensation of Plan Administrator**

The salient terms of the Plan Administrator's employment, including the Plan Administrator's duties and compensation, shall be as set forth in the Plan Administrator Agreement and shall be consistent with that of similar functionaries in similar types of beneficiary proceedings.

**e. Successor Plan Administrator**

In the event the Plan Administrator dies, is terminated, or resigns for any reason, a successor shall be designated in accordance with the Plan Administrator Agreement.

**f. Deemed Resignation of Debtor's officers; Plan Administrator Has Powers of Liquidating Debtor; and Plan Administrator is Deemed Equity Holder of Liquidating Debtor**

On the Effective Date, (i) the authority, power and incumbency of the persons then acting as directors and officers of the Debtor shall be deemed to have resigned, (ii) the Plan Administrator shall have the powers of an officer of the Liquidating Debtor, and (iii) the Plan Administrator shall be deemed to hold 100% of the Equity Interests of the Liquidating Debtor until dissolution of the Liquidating Debtor pursuant to the Plan.

**g. Dissolution of the Liquidating Debtor**

After the Plan Administrator has fully administered the Class 2 Assets in accordance with the Plan Administrator Agreement and the Debtor has cancelled the Billnat Equity Interest, the Plan Administrator shall cause to be filed with the State of Michigan such certificates or documents as may be or become necessary to implement the termination of the legal existence of the Liquidating Debtor

**h. Distributions by Plan Administrator**

The Plan Administrator shall cause the Liquidating Debtor to make Distributions to the Lenders in accordance with the Plan Administrator Agreement.

**i. Property Abandoned by the Plan Administrator**

In accordance with the Plan Administrator Agreement (including consent and approvals required by the Plan Administrator Agreement), the Plan Administrator may abandon, or cause the Liquidating Debtor to abandon, or decline to administer a Class 2 Asset if, in Plan Administrator's opinion, the Class 2 Asset is valueless, or is so encumbered or in such a condition that it is of no benefit to the Lenders. Abandonment of a Class 2 Asset by the Plan Administrator shall be deemed to constitute abandonment by the Liquidating Debtor.

**j. Exemption From Certain Transfer Taxes**

Pursuant to Section 1146(a) of the Bankruptcy Code, any transfers from the Debtor, the Liquidating Debtor or the Plan Administrator to any Entity pursuant to the Plan in the United States shall not be taxed under any law imposing a stamp tax or other similar tax. Such exemption specifically applies, without limitation, to all documents necessary to evidence and implement distributions under the Plan.

**k. Privileges**

The Plan Administrator is an officer of the Liquidating Debtor and as such, has all rights of the Debtor and its Estate, as legal successor, to exercise or



waive any privilege of the Debtor, including the attorney-client privilege, accountant-client privilege, work-product privilege, or other privilege or immunity attaching to any document or communication (whether written or oral) as it relates to any such Class 2 Assets (collectively, the “Privileges”). To the extent necessary, to the full extent permitted by law, on the Effective Date, the Debtor shall irrevocably transfer to the Liquidating Debtor and the Plan Administrator, as its legal successors, all rights of the Debtor and its Estate to exercise or waive any Privilege, and the Debtor, the Liquidating Debtor and the Plan Administrator are authorized to take all necessary actions to effectuate the transfer of the Privileges. All such Privileges also shall vest in the Plan Administrator’s representatives, to the full extent permitted under law. This transfer is self-executing as of the Effective Date; *provided, however*, that the Debtor, the Liquidating Debtor and the Plan Administrator are authorized and directed to take any and all necessary actions to effectuate the transfer of such Privileges. After the Effective Date, the Plan Administrator shall have the exclusive power and authority to assert or waive the Privileges.

#### **6.1.4 The Surrender Mechanism**

In the event that the Lenders elect the Surrender Mechanism, on the Effective Date, all of the Debtor shall transfer all of its rights, title and interests in (all or a portion of) the Class 2 Assets to the Agent for the benefit of the Lenders, or transfer (all or a portion of) the Class 2 Assets to the Agent as secured party in possession, as elected by the Lenders. Not more than five (5) calendar days after the Debtor receives the Election Notice from the Lenders, the Debtor shall file a notice with the Court stating that the Lenders have delivered the Election Notice to the Debtor and that the Election Notice states that the Lenders have elected the Surrender Mechanism.

### **6.2 The Class 3 Liquidating Trust**

#### **6.2.1 Formation of the Class 3 Liquidating Trust**

On the Effective Date, the Class 3 Liquidating Trust shall be established for the limited purpose of: (i) administering the Class 3 Liquidating Trust Assets, (ii) resolving all Disputed Claims as of the Effective Date, and (iii) making all Distributions provided for under the Plan in respect of Allowed Class 3 General Unsecured Claims and all other Claims that may become Allowed Class 3 Claims subsequent to the Effective Date. The Class 3 Liquidating Trust is intended to qualify as a liquidating trust pursuant to United States Treasury Regulation section 301.7701-4(d). The Class 3 Liquidating Trust shall be governed under the laws of the State of Michigan.

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### **6.2.2 The Class 3 Liquidating Trustee and Class 3 Liquidating Trust Committee**

The Class 3 Liquidating Trustee shall be designated by the Committee. The person so designated shall become the Class 3 Liquidating Trustee on the Effective Date. The Debtor and the Committee shall file a notice not less than ten (10) days prior to the Confirmation Hearing designating the person who has been selected as the Class 3 Liquidating Trustee. For purposes of this paragraph, no person shall be deemed disqualified from serving as a professional of the Class 3 Liquidating Trustee merely as a consequence of serving as a Professional in the Chapter 11 Case. The Class 3 Liquidating Trustee shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Class 3 Liquidating Trust Agreement.

The Class 3 Liquidating Trust Committee shall be established under the Class 3 Liquidating Trust Agreement and the members of the Class 3 Liquidating Trust Committee shall be designated by the Committee. The Class 3 Liquidating Trust Committee shall provide input to the Class 3 Liquidating Trustee on certain matters, and shall have certain rights and authority as set forth in the Class 3 Liquidating Trust Agreement. Other rights and duties of the Class 3 Liquidating Trustee and the Class 3 Liquidating Trust Beneficiaries shall be as set forth in the Liquidating Trust Agreement.

### **6.2.3 Funding of the Class 3 Liquidating Trust**

On the Effective Date, the Debtor shall transfer and convey all right, title, and interest in the Class 3 Liquidating Trust Assets held by the Debtor as of the Effective Date to the Class 3 Liquidating Trust, which Class 3 Liquidating Trust Assets shall automatically and irrevocably vest in the Class 3 Liquidating Trust without further

action on the part of the Debtor, the Class 3 Liquidating Trustee, or the Court, and with no reversionary interest in the Debtor.

Pursuant to section 1141(b) of the Bankruptcy Code, on the Effective Date, the Class 3 Liquidating Trust Assets shall vest in the Class 3 Liquidating Trust free and clear of all Claims, liens, charges or other encumbrances, including any liens previously held in such Class 3 Liquidating Trust Assets by the Agent and/or the Lenders.

The transfer of the Class 3 Liquidating Trust Assets to the Class 3 Liquidating Trust shall be made for the benefit and on behalf of all Class 3 Liquidating Trust Beneficiaries. The Class 3 Liquidating Trust Assets will be treated for tax purposes as being transferred by the Debtor to all Class 3 Liquidating Trust Beneficiaries in exchange for their Allowed Claims, and then by the all Class 3 Liquidating Trust Beneficiaries to the Class 3 Liquidating Trust in exchange for a beneficial interest in the Class 3 Liquidating Trust. All Class 3 Liquidating Trust Beneficiaries shall be treated as the grantors and owners of the Class 3 Liquidating Trust. Upon the transfer of the Class 3 Liquidating Trust Assets, the Class 3 Liquidating Trust shall succeed to all of the Debtor's rights, title, and interest in the Class 3 Liquidating Trust Assets, and the Debtor will have no further interest in or with respect to the Class 3 Liquidating Trust Assets.

Upon the transfer of the Class 3 Liquidating Trust Assets to the Class 3 Liquidating Trust, the Debtor and its Estate shall have no other or further rights or obligations with respect to the Class 3 Liquidating Trust Assets; *provided, however*, that the Debtor will make reasonable efforts to cooperate with the Class 3 Liquidating Trustee in achieving and effectuating the intent and purpose of the Class 3 Liquidating Trust, including without limitation, the preparation and filing of tax returns for the periods prior to and following the Effective Date.

#### **6.2.4 Responsibilities of the Class 3 Liquidating Trustee**

The Class 3 Liquidating Trustee will be in control of and authorized and empowered to carry out the terms and conditions of this Plan and the Class 3 Liquidating Trust Agreement and will have those responsibilities created by this Plan and the Class 3 Liquidating Trust Agreement upon the terms and conditions summarized therein, and will, for the benefit of the all Class 3 Liquidating Trust Beneficiaries, exercise the rights and powers vested in it by this Plan and the Class 3 Liquidating Trust Agreement in the same manner, and use the same degree of care and skill in their exercise as a prudent person would exercise and use under the circumstances in the conduct of the Class 3 Liquidating Trustee's own affairs, and

further agrees to receive and disburse all of the Class 3 Liquidating Trust Assets in accordance with the terms thereof and this Plan. Subject to the specific terms of the Class 3 Liquidating Trust Agreement, the Class 3 Liquidating Trustee shall have the right, power, authority, standing, and approval, and shall be empowered to, among other things:

- (a) perform all of the obligations and agreements of the Plan and the Class 3 Liquidating Trust Agreement provided for herein;
- (b) keep and maintain in a trust account for the benefit of the Class 3 Liquidating Trust into which proceeds resulting from the initial receipt or from the sale or other disposition of, or from the income resulting from, all or any part of the liquidation of the Class 3 Liquidating Trust Assets;
- (c) keep and maintain trust accounts for the benefit of the Class 3 Liquidating Trust into which accounts the Trustee may place the Disputed Reserves;
- (d) object to any Claims (disputed or otherwise), other than the Lender Secured Claim, at any time prior to the Claim Objection Deadline and to compromise or settle any Claims prior to, during or after objection;
- (e) make distributions in respect of Allowed Class 3 General Unsecured Claims and other Allowed Claims subsequent to the Effective Date in accordance with the Plan and the Class 3 Liquidating Trust Agreement;
- (f) take any actions necessary to the collection, receipt, or disposition of any Class 3 Liquidating Trust Assets;
- (g) execute and deliver all releases, satisfactions, and termination statements as may be required in connection with full payment of any debt obligation relating to any Allowed Class 3 General Unsecured Claims;
- (h) retain and/or terminate professional persons, in the Class 3 Liquidating Trustee's discretion, to assist in the duties and responsibilities ascribed to him or her under this Plan and the Class 3 Liquidating Trust Agreement. The reasonable fees and expenses of all professionals retained by the Class 3 Liquidating Trustee shall be paid from the Class 3 Liquidating Trust Assets;
- (i) satisfy all reporting requirements for the Class 3 Liquidating Trust, and all assets held by or on behalf of the Class 3 Liquidating Trust, to the relevant reporting authority;

- (j) at least annually until the Class 3 Liquidating Trust's termination, submit a report to the Class 3 Liquidating Trust Beneficiaries, or their representatives, regarding the liquidation or other administration of property comprising the Class 3 Liquidating Trust Assets, the distributions made by the Class 3 Liquidating Trust, and other matters required to be included in such report in accordance with the Class 3 Liquidating Trust Agreement; and
- (k) pay any fees and expenses incurred by the Class 3 Liquidating Trust on or after the Effective Date in accordance with the Class 3 Liquidating Trust Agreement.

### **6.2.5 Claims Against the Class 3 Liquidating Trust**

All persons having any claim against the Class 3 Liquidating Trustee or the Class 3 Liquidating Trustee's professionals in connection with its performance of the Class 3 Liquidating Trustee's rights, powers, and duties as such shall only look to the Class 3 Liquidating Trust and the Class 3 Liquidating Trust Assets for payment or satisfaction thereof.

### **6.2.6 Commingling of Assets**

The Class 3 Liquidating Trustee shall not commingle any of the Class 3 Liquidating Trust Assets with its own property or the property of any other person.

### **6.2.7 Reliance on Others**

The Class 3 Liquidating Trustee may rely upon and shall be protected in acting or refraining from acting upon any certificates, opinions, statements, instruments, or reports believed by the Class 3 Liquidating Trustee to be genuine and to have been signed or presented by the proper person or persons; *provided, however*, that the Class 3 Liquidating Trustee shall be under a duty to have examined the same to determine whether or not such writings conform to the requirements of this Plan.

### **6.2.8 Liability for Errors and Omissions**

The Class 3 Liquidating Trust, Class 3 Liquidating Trust Committee, Class 3 Liquidating Trustee, and all professionals, and agents of same, shall not be liable for any error of business judgment or with respect to any action taken or omitted to be taken by it, unless a Final Order is entered determining that they or their agents have been grossly negligent or have acted with willful misconduct in ascertaining the pertinent facts or in performing any of their rights, powers, or duties according to this

Plan and the Class 3 Liquidating Trust Agreement. The Class 3 Liquidating Trustee makes no representations as to: (i) the value or condition of the Assets of the Debtor or any part thereof, (ii) the amount at which Liabilities may be settled, (iii) the amount of any Distributions to be made in accordance with this Plan from the Class 3 Liquidating Trust Assets, and (iv) the security afforded by this Plan, or as to the validity, execution (except its own execution), enforceability, legality, or sufficiency of this Plan, and the Class 3 Liquidating Trustee, the Class 3 Liquidating Trustee's professionals, and the Class 3 Liquidating Trust Committee shall incur no liability or responsibility in respect of such matters. To the extent any claim is asserted and established against the Class 3 Liquidating Trustee, the Class 3 Liquidating Trustee's professionals, or the Class 3 Liquidating Trust Committee in connection with such person's or entities' performance of the rights, powers, and duties under the Liquidating Trust Agreement, such person or entity may only look to the Class 3 Liquidating Trust Assets for payment or satisfaction thereof.

### **6.2.9 Indemnification**

The Class 3 Liquidating Trustee, Class 3 Liquidating Trust Committee, as well as the Class 3 Liquidating Trustee's professionals and agents, shall be indemnified against and from any and all loss, liability, cost, damage, or expense which they may incur or sustain in the exercise and performance of any of their powers and duties pursuant to this Plan and Class 3 Liquidating Trust unless such loss, liability, cost, damage, or expense shall be incurred or sustained as a result of the gross negligence or willful misconduct of the Class 3 Liquidating Trustee or the Class 3 Liquidating Trustee's and agents. All claims of the Class 3 Liquidating Trustee, the Class 3 Liquidating Trustee's professionals, and the Class 3 Liquidating Trustee's agents for indemnification or reimbursement under this Article 6 shall be paid from the Class 3 Liquidating Trust Assets.

### **6.2.10 Tax Treatment of the Class 3 Liquidating Trust**

The Class 3 Liquidating Trustee shall pay any taxes of the Class 3 Liquidating Trust Assets as appropriate. In addition, the Class 3 Liquidating Trust shall require consistent valuation of the property contributed to the Class 3 Liquidating Trust by the Class 3 Liquidating Trustee and the all Class 3 Liquidating Trust Beneficiaries for all federal income tax purposes. The Class 3 Liquidating Trust is intended to be treated for federal income tax purposes as a liquidating trust for the benefit of creditors or claimants within the meaning of Treasury Regulations section 301.7701-4(d) and in accordance with IRS Revenue Procedure 94-45, and, as a grantor trust under Section 677 of the Internal Revenue Code of 1986, as amended. Accordingly, the Class 3 Liquidating Trust Assets in respect of holders of Class 3 Claims shall be

treated for all purposes of the Internal Revenue Code as (i) a transfer of such distribution to the all Class 3 Liquidating Trust Beneficiaries; and (ii) a transfer to the Class 3 Liquidating Trust by the Class 3 Liquidating Trust Beneficiaries, who will be treated as the grantors and deemed owners of the Class 3 Liquidating Trust Assets. The Class 3 Liquidating Trustee shall be responsible for filing all federal, state, and local tax returns for the Class 3 Liquidating Trust as a grantor trust pursuant to applicable Treasury Regulations, including Treasury Regulation Section 1.671-4(a), and any income of the Class 3 Liquidating Trust will be treated as subject to tax on a current basis. Subject to the receipt of any definitive guidance of the IRS or the Bankruptcy Court, any claims reserve is intended to qualify and be treated as a disputed ownership fund pursuant to Proposed Treasury Regulation Section 1.468B-9. As such, any disputed claims reserve shall report and pay any taxes on its income, the Class 3 Liquidating Trustee shall act as the “administrator” of the disputed ownership fund, and the disputed claims reserve shall be subject to the continuing jurisdiction of the Bankruptcy Court. Currently, no money or other property shall be distributed to any Person holding a disputed claim except to the extent that such disputed claim becomes an Allowed Claim pursuant to the Plan.

#### **6.2.11 Reports of the Class 3 Liquidating Trust**

At least annually until the Class 3 Liquidating Trust’s termination, the Class 3 Liquidating Trustee shall prepare and send reports as required in accordance with the Class 3 Liquidating Trust Agreement.

#### **6.2.12 Investment Authority**

The Class 3 Liquidating Trustee may only invest funds held in the Class 3 Liquidating Trust in Permitted Investments (as defined in the Class 3 Liquidating Trust Agreement), in a manner consistent with the requirements of the Bankruptcy Code or any order of the Bankruptcy Court modifying such requirements and, provided that the Class 3 Liquidating Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has invested any of the Class 3 Liquidating Trust Assets or any proceeds, revenue, or income therefrom..

#### **6.2.13 Exemption From Certain Transfer Taxes**

Pursuant to Section 1146(a) of the Bankruptcy Code, any transfers from the Debtor or the Class 3 Liquidating Trust to any Entity pursuant to the Plan in the United States shall not be taxed under any law imposing a stamp tax or other similar

tax. Such exemption specifically applies, without limitation, to all documents necessary to evidence and implement distributions under the Plan.

#### **6.2.14 Termination**

Termination of the Class 3 Liquidating Trust and discharge of the Class 3 Liquidating Trustee and Class 3 Liquidating Trust Committee shall automatically occur at such time as (a) all Disputed Claims have been resolved, (b) all of the Class 3 Liquidating Trust Assets have been liquidated, (c) all duties and obligations of the Class 3 Liquidating Trust hereunder and in the Plan have been fulfilled, (d) all Distributions required to be made by the Class 3 Liquidating Trust under the Plan and the Class 3 Liquidating Trust Agreement have been made, and (e) the Chapter 11 Case of the Debtor has been closed, but in no event shall the Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Trustee within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service, to the extent required under applicable law at that time, that any further extension would not adversely affect the status of the Class 3 Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and/or Distribution of the Class 3 Liquidating Trust Assets to the Class 3 Liquidating Trust Beneficiaries. The Class 3 Liquidating Trustee may seek such an extension with the consent of the Class 3 Liquidating Trust Committee, which consent shall not be unreasonably withheld.

#### **6.2.15 Privileges**

To the full extent permitted by law, upon the transfer of a Class 3 Liquidating Trust Assets to the Class 3 Liquidating Trust, the Debtor shall irrevocably transfer to the Class 3 Liquidating Trust, as its legal successor, all rights of the Debtor and its Estate to exercise or waive any privilege, including the attorney-client privilege, accountant-client privilege, work-product privilege, or other privilege or immunity attaching to any document or communication (whether written or oral) as it relates to any such Class 3 Liquidating Trust Assets and/or the ability of the Class 3 Liquidating Trustee to object to Claims that impact potential recoveries with respect to such Class 3 Liquidating Trust Assets (collectively, the “Privileges”), and the Debtor and the Class 3 Liquidating Trustee are authorized to take all necessary actions to effectuate the transfer of the Privileges. All such Privileges also shall vest in the Class 3 Liquidating Trust and its representatives, to the full extent permitted under law. This transfer is self-executing as of the date a Class 3 Liquidating Trust



Asset is transferred to the Class 3 Liquidating Trust; *provided, however*, that the Class 3 Liquidating Trustee and the Debtor are authorized and directed to take any and all necessary actions to effectuate the transfer of such Privileges. After the date a Class 3 Liquidating Trust Asset is transferred to the Class 3 Liquidating Trust, the Class 3 Liquidating Trustee shall have the exclusive power and authority to assert or waive the Privileges.

## ARTICLE 7

### **(I) FUNDING OF THE TAX BACKSTOP; FUNDING OF THE LENDERS' CONTRIBUTION AND TRUE UP; (II) DISTRIBUTIONS UNDER THE PLAN; AND (III) CLAIM OBJECTION DEADLINE AND CLAIM RESOLUTIONS**

#### **7.1 Tax Backstop Funding**

The Lenders shall fund the Tax Backstop as follows: (i) if the Class 2 Liquidating Trust Mechanism is elected by the Lenders, then the Tax Backstop shall be funded from the proceeds of the Class 2 Liquidating Trust; (ii) if the Liquidating Debtor Mechanism is elected by the Lenders, the Tax Backstop shall be funded from the net proceeds from the Plan Administrator's liquidation of the Class 2 Assets (net of the costs associated with liquidation) received by the Lenders; or (iii) if the Surrender Mechanism is elected by the Lenders, the Tax Backstop shall be funded by the Lenders from the net proceeds received by the Lenders from the liquidation of the Class 2 Assets. The Tax Backstop shall be paid by the Lenders to the Class 3 Liquidating Trust for the benefit of the holders of Allowed General Unsecured Claims. Upon payment of the Tax Backstop, such funds shall be deemed Unencumbered Proceeds.

#### **7.2 Funding of the Lenders' Contribution and True Up**

On or before the later of (i) ten (10) days after the Lenders' receipt of the proceeds the Lenders realize from the sale or sales of the assets of Billnat outside the ordinary course of business, or (ii) ten (10) days after the Effective Date, the Lenders shall pay the Lenders' Contribution to the Class 3 Liquidating Trust for the benefit of the holders of Allowed General Unsecured Claims (other than the Lender Unsecured Claim). The Lenders shall fund the Lenders' Contribution from the proceeds the Lenders receive from the sale or sales of the assets of Billnat outside the ordinary course of business.

No later than twenty (20) days after the Effective Date, the Lenders shall pay the True Up Proceeds to the Class 3 Liquidating Trust for the benefit of the holders of Allowed General Unsecured Claims.

### **7.3 Cancellation of Equity Interests**

As of the Effective Date, all certificates, documents, and other instruments underlying Equity Interests, including warrants, shall be canceled.

In the event that the Lenders elect the Liquidating Debtor Mechanism, as of the Effective Date, the Plan Administrator shall be deemed to hold 100% of the Equity Interests of the Liquidating Debtor until dissolution of the Liquidating Debtor pursuant to the Plan.

No Distributions will be made on account of any Equity Interests.

### **7.4 Distribution Dates**

Subject to the provisions of section 6.1 of the Plan, the Distribution Dates for creditors in Class 2 shall be a date or dates selected by the Class 2 Liquidating Trustee in accordance with the Class 2 Liquidating Trust Agreement or the Plan Administrator in accordance with the Plan Administrator Agreement, as the case may be.

Subject to the provisions of section 6.2 of the Plan, the Distribution Dates for the Class 3 Liquidating Trust shall be a date or dates selected by the Class 3 Liquidating Trustee pursuant to the Class 3 Liquidating Trust Agreement.

### **7.5 Disputed Reserves**

#### **7.5.1 Establishment of Disputed Reserves**

On or prior to the Effective Date (or as soon as reasonably practicable after the Effective Date), and after making all distributions required to be made on the Effective Date under the Plan, the Class 3 Liquidating Trustee, shall be authorized, but not directed, to maintain one or more Disputed Reserves for Disputed Claims in each Class of Claims and Unclassified Claims, which Disputed Reserve(s) shall be administered by the Class 3 Liquidating Trustee on and after the Effective Date. To the extent that the Disputed Reserves are established and maintained for the benefit of any holder of a Disputed Claim, such Disputed Reserves shall include an amount of Cash, equal to the Distributions that would have been made to the holder of such Disputed Claim if it were an Allowed Claim in an amount equal to the lesser of (i)

the amount of the Disputed Claim, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim ultimately may become an Allowed Claim, or (iii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Debtor or Class 3 Liquidating Trustee, as the case may be. In addition, the Debtor or Class 3 Liquidating Trustee, as the case may be, shall establish and maintain a Disputed Reserve in the amount of any Claim, including an Allowed Claim, for which the Debtor or Class 3 Liquidating Trustee, as the case may be, are authorized under the Plan to withhold distributions and are withholding such distributions.

Except as provided in section 7.6 of the Plan, the Class 3 Liquidating Trustee may, but shall not be obligated to, physically segregate and maintain separate accounts or sub-accounts for the Disputed Reserves. Disputed Reserves may be merely bookkeeping entries or accounting methodologies which may be revised from time to time, to enable the Debtor (through the Effective Date) or Liquidation Trustee (after the Effective Date) to determine reserves and amounts to be distributed in accordance with the Plan.

## **7.6 Lender Unsecured Claim Reserve**

To the extent the Lender Unsecured Claim Reserve is greater than \$1,000,000.00, the Class 3 Liquidating Trustee shall establish in a separate account a Lender Unsecured Claim Reserve for the Lender Unsecured Claim which shall be administered by the Class 3 Liquidating Trustee. Upon complete and final determination of the amount of the Lender Unsecured Claim (after final Distribution from the Class 2 Liquidating Trust or the Plan Administrator has been made or the Lenders have liquidated the Class 2 Assets, as the case may be), or estimation (for distribution purposes, only) by agreement of the Class 3 Liquidating Trustee and the Lenders of the amount of the Lender Unsecured Claim, the Class 3 Liquidating Trustee shall make one or more subsequent Distributions from the Lender Unsecured Claim Reserve consistent with the Lender Unsecured Claim and the terms of this Plan and the Class 3 Liquidating Trust.

## **7.7 Record Date for Distributions from the Class 3 Liquidating Trust**

The Class 3 Liquidating Trustee shall have no obligation to recognize any Claim occurring or arising after the Record Date. In making any Distribution with respect to any Claim, the Liquidating Trustees shall be entitled to recognize and deal with, for all purposes hereunder, only the Entity that is listed on the proof of Claim

filed with respect thereto or on the Debtor's Schedules as the holder of the Claim as of the close of business on the Record Date and upon such other evidence or record of transfer or assignment that are known to Liquidating Trustees as of the Record Date.

## **7.8 Delivery of Distributions**

### **7.8.1 General Provisions; Unclaimed Property**

Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to the all Class 3 Liquidating Trust Beneficiaries shall be made by the Class 3 Liquidating Trustee at (i) the address of each Class 3 Liquidating Trust Beneficiary as set forth in the Debtor's Schedules, unless superseded by the address set forth on Proofs of Claim filed by such Class 3 Liquidating Trust Beneficiary or (ii) the last known address of such Class 3 Liquidating Trust Beneficiary if no proof of Claim is filed or if the Class 3 Liquidating Trustee has been notified in writing of a change of address. If any Class 3 Liquidating Trust Beneficiary's Distribution is returned as Unclaimed Property, no further Distributions to such Class 3 Liquidating Trust Beneficiary shall be made unless and until the Class 3 Liquidating Trustee is notified of such Class 3 Liquidating Trust Beneficiary's then current address, at which time all missed Distributions shall be made to such Class 3 Liquidating Trust Beneficiary without interest.

Amounts in respect of Unclaimed Property distributed by the Class 3 Liquidating Trustee shall be returned to the Class 3 Liquidating Trust until such Unclaimed Property is claimed. All claims for Unclaimed Property must be made on or before the later of (i) four (4) months from the date of Distribution, or (ii) one (1) year after the Effective Date, after which date the Unclaimed Property shall be deemed unclaimed property under Section 347(b) of the Bankruptcy Code and shall revert to the Class 3 Liquidating Trust free of any restrictions thereon, and the Claims of any Beneficiary, or successor to such Beneficiary, shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

In the event of a timely claim for Unclaimed Property, the Class 3 Liquidating Trustee shall deliver the Unclaimed Property to the Beneficiary pursuant to the Plan. Nothing contained in the Plan or the Class 3 Liquidating Trust Agreement shall require the Debtor, the Class 3 Liquidating Trust, the Class 3 Liquidating Trustee, or their respective representatives, to attempt to locate any Beneficiary.

## **7.9 No Distributions Pending Allowance**

Notwithstanding any other provision hereof, unless ordered otherwise by a Final Order, if any portion of a Claim is a Disputed Claim, no payment or Distribution provided hereunder shall be made on account of the Allowed portion of the Claim unless and until the Disputed portion of the Claim is Allowed or disallowed by a Final Order.

## **7.10 Distributions to Holders of Disputed Claims**

Holders of Disputed Claims shall receive Distributions within 30 days after such Disputed Claim or the disputed portion thereof becomes an Allowed Claim.

## **7.11 Claim Objection Deadline**

Except as provided herein and in section 3.2 of the Plan, the deadline to file objections to Claims shall be 90 days after the Effective Date or such later date that may be set by the Court upon a motion of the Class 3 Liquidating Trustee (which motion may be approved without a hearing and only upon notice to the parties requesting notice in this Chapter 11 Case) (the “Claim Objection Deadline”), and any Claim that is not the subject of a timely filed objection as of the Claim Objection Deadline shall be deemed an Allowed Claim in the amount set forth on the proof of claim (or application for allowance of claim, in the case of an Administrative Claim) filed by the Holder of such Claim. If a Disputed Claim becomes Allowed, in full or in part, such Claim shall be treated, to the extent Allowed, in accordance with the treatment of its Class.

## **7.12 Objections and Settlements of Claims; Claims Allowance**

Each of the Debtor (in consultation with the Committee) on or prior to the Effective Date and Class 3 Liquidating Trustee after the Effective Date, as applicable, shall have the authority to: (1) file objections to Claims, settle, compromise, withdraw, or litigate to judgment objections to any and all Claims (excluding the Lender Claim, the Lender Secured Claim and the Lender Unsecured Claim), regardless of whether such Claims are in a Class or otherwise; (2) settle, liquidate, allow, or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; (3) administer and adjust the Claims Register and/or direct the Claims Agent to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Court; and (4) deem as Allowed non-contingent, liquidated proofs of claim that are not Allowed as of the Effective Date and as to which the Debtor (in consultation with the Committee) or Class 3 Liquidating Trustee, as applicable, have determined not to file

any objection; *provided, however*, that the Debtor and/or the Class 3 Liquidating Trustee may not settle, liquidate, allow a Claim that is subject to an objection filed by the Agent, the Lenders, the Plan Administrator or the Class 2 Liquidating Trustee without the consent and approval of the party who filed such objection.

### **7.13 Notice**

The Class 3 Liquidating Trustee and the Class 3 Liquidating Trust's counsel shall be provided quarterly email notice regarding any sale, realization, monetization, settlement, release and/or recovery with respect to any Class 2 Assets, including any Causes of Action.

## **ARTICLE 8**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **8.1 Approval of Rejection**

Entry of the Confirmation Order shall constitute the approval, pursuant to Section 365(a) of the Bankruptcy Code, of the rejection of all executory contracts and unexpired leases that have not already been assumed and assigned or rejected by the Debtor, or that are the subject of a pending motion to assume or reject as of the date the Confirmation Order is entered.

#### **8.2 Rejection Claims**

If the rejection of an executory contract or unexpired lease pursuant to the Plan and the Confirmation Order results in damages to the non-Debtor party to such contract or lease, any claim for such damages, if not heretofore evidenced by a timely filed proof of Claim, shall be forever barred and shall not be enforceable against the Debtor, the Estate, the Liquidating Trusts, the Liquidating Trustees, or their properties, successors, and assigns, unless a proof of Claim is filed and served upon the Class 3 Liquidating Trustee and his counsel, on or before thirty (30) days after the Effective Date.

## ARTICLE 9

### RELEASES, INJUNCTION, AND WAIVER OF CLAIMS; DISSOLUTION OF COMMITTEE

#### 9.1 Debtor Releases

On the Effective Date, the Debtor and its Estate shall be conclusively presumed to have released the following parties (but solely to the extent set forth below): the Agent, the Lenders and the Lenders' professionals, all Professionals, the Committee (including the Committee members in their capacities as Committee members only), Conway MacKenzie, the CRO (including Conway MacKenzie personnel supporting the CRO), the Plan Administrator and the Liquidating Trustees, (each of the foregoing, a "Debtor Released Party" and together, the "Debtor Released Parties"), from any claim or cause of action based on, arising from, or in any way connected with, (A) the Chapter 11 Case (including, without limitation, any actions taken and/or not taken with respect to the administration of the Estate or the operation of the business of the Debtor); (B) the Plan, the Liquidating Trusts, or the Distributions received thereunder; (C) the negotiation, formulation, and preparation of the Plan, and (D) any right to seek repayment of any fees paid to a Professional pursuant to an Order of the Court, except to the extent any such claim or cause of action against any Debtor Released Party arises solely as a direct result of that Debtor Released Party's fraud, gross negligence, or willful misconduct.

On the Effective Date, the Debtor and all persons, interested parties and Entities (including, but not limited to, the Liquidating Trustees) shall be conclusively presumed to have released all Causes of Action against the Debtor's non-insiders arising under chapter 5 of the Bankruptcy Code.

Without limiting the terms of the Cash Collateral Order, the Debtor ratifies the waiver and release contained in the Cash Collateral Order, pursuant to which the Debtor fully waived and released any right it may have to challenge the Lender Claim, Lender Secured Claim and the Lender Unsecured Claim, or the validity, perfection, or enforceability of the Lenders' pre-petition liens against the Debtor's Assets.

Notwithstanding anything to the contrary contained in the Plan, none of the releases provided in the Plan shall prejudice or otherwise affect the right of any party in interest to object to (i) any applications for compensation filed by Professionals or the CRO or (ii) any request seeking compensation under Section 503 of the Bankruptcy Code or the rights of parties under the Sale Orders.

For the avoidance of doubt, nothing in this Plan is intended to limit any releases obtained by the CRO or Conway MacKenzie prior to the Petition Date.

## **9.2 Lender Releases**

On the Effective Date, the Lenders shall be conclusively presumed to have released the following parties (but solely to the extent set forth below): all Professionals, the Committee (including the Committee members in their capacities as Committee members only), Conway MacKenzie, and the CRO (including Conway MacKenzie personnel supporting the CRO) (each of the foregoing, a “Lender Released Party” and together, the “Lender Released Parties”), from any claim or cause of action (excluding any claims the Lenders may have against each other) based on, arising from, or in any way connected with, (A) the Chapter 11 Case (including, without limitation, any actions taken and/or not taken with respect to the administration of the Estate or the operation of the business of the Debtor); (B) the Plan; (C) the negotiation, formulation, and preparation of the Plan, and (D) any right to seek repayment of any fees paid to a Professional pursuant to an Order of the Court, except to the extent any such claim or cause of action against any Lender Released Party arises solely as a direct result of that Lender Released Party’s fraud, gross negligence, or willful misconduct. The Lenders shall not be deemed to have released the Plan Administrator or the Class 2 Liquidating Trustee, as the case may be, from its obligations to comply with the Plan Administrator Agreement or the Class 2 Liquidating Trust Agreement, respectively, nor shall the Lenders be deemed to have released their rights to enforce the Plan Administrator Agreement or the Class 2 Liquidating Trust Agreement, as the case may be.

On the Effective Date, the Lenders shall be deemed to have waived and released any security interests that the Lenders have in the Unencumbered Proceeds.

## **9.3 Committee Releases**

On the Effective Date, the Committee (including the Committee members in their capacities as Committee members only) shall be conclusively presumed to have released the following parties (but solely to the extent set forth below): the Agent, the Lenders, the Lenders’ professionals, all Professionals, Conway MacKenzie, the CRO (including Conway MacKenzie personnel supporting the CRO), the Plan Administrator and the Liquidating Trustees, (collectively, the “Committee Released Parties,” and together with the Debtor Released Parties and the Lender Released Parties, the “Released Parties”), from any claim or cause of action based on, arising from, or in any way connected with, (A) the Chapter 11 Case (including, without limitation, any actions taken and/or not taken with respect to the administration of the



Estate or the operation of the business of the Debtor); (B) the Plan, the Liquidating Trusts, or the Distributions received thereunder; (C) the negotiation, formulation, and preparation of the Plan, and (D) any right to seek repayment of any fees paid to a Professional pursuant to an Order of the Court, except to the extent any such claim or cause of action against any Committee Released Party arises solely as a direct result of that Committee Released Party's fraud, gross negligence, or willful misconduct.

On the Effective Date, the Committee shall be deemed to have waived and released any right it may have to challenge the Lender Claim, Lender Secured Claim and the Lender Unsecured Claim, or the validity, perfection, or enforceability of the Lenders' pre-petition liens against the Debtor's Assets.

#### **9.4 Injunction**

Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all entities that have held, currently hold, or may hold a Claim or other debt or Liability against the Debtor or an Equity Interest or other right of an equity security holder shall be deemed permanently enjoined from taking any of the following actions on account of any such Claims, debts, Liabilities, Equity Interests, or rights: (a) commencing or continuing in any manner any action or other proceeding against the Released Parties, the Plan Administrator, the Liquidating Trusts, or the Liquidation Trustees, or their respective property; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Released Parties, the Plan Administrator, the Liquidating Trusts, or the Liquidation Trustees, or their respective property; (c) creating, perfecting, or enforcing any lien or encumbrance against the Released Parties, the Plan Administrator, the Liquidating Trusts, or the Liquidation Trustees, or their respective property; (d) asserting a right of subordination of any kind against any debt, liability, or obligation due to the Released Parties, the Plan Administrator, the Liquidating Trusts, or the Liquidation Trustees, or their respective property; and (e) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

#### **9.5 Exculpation**

Subject to the occurrence of the Effective Date, none of the Released Parties shall have or incur any liability to any Holder of a Claim or Equity Interest or any other party for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case and the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan; provided that the Released Parties shall be entitled to rely

upon the advice of counsel with respect to their duties and responsibilities under the Plan; provided further that nothing in the Plan shall, or shall be deemed to, release the Released Parties, or exculpate the Released Parties with respect to, their respective obligations or covenants, if any, arising pursuant to the Plan and nothing in the Plan shall be deemed to release the Released Parties, or exculpate the Released Parties, with respect to willful misconduct or gross negligence. Nothing herein shall (i) limit any of the releases provided for in the Settlement Agreement or the Cash Collateral Order, or (ii) excuse any Professional from seeking bankruptcy court approval of Professional fees and/or abiding by any bankruptcy court order regarding the payment of Professional fees.

## **9.6 Dissolution of the Committee.**

On the Effective Date, the Committee shall be dissolved automatically and its members, professionals, and agents shall be deemed released of any continuing duties, responsibilities and obligations in connection with the Chapter 11 Case, the Plan and its implementation, except with respect to (i) prosecuting applications for payment of fees and reimbursement of expenses of Professionals, or Committee members, or attending to any other issues related to applications for payment of fees and reimbursement of expenses of Professionals, including in connection with the final fee hearing, or (ii) any appeals of the Confirmation Order and/or motions seeking reconsideration thereof through the date such appeals and/or motions are finally decided, settled, withdrawn or otherwise resolved. On the Effective Date, the retention and employment of the Committee's attorneys, financial advisors, and other agents shall terminate, except with respect to: (i) prosecuting applications for payment of fees and reimbursement of expenses of Professionals, or Committee members, or attending to any other issues related to applications for payment of fees and reimbursement of expenses of Professionals, including in connection with the final fee hearing, or (ii) any appeals of the Confirmation Order and/or motions seeking reconsideration thereof through the date such appeals and/or motions are finally decided, settled, withdrawn or otherwise resolved.

## **ARTICLE 10**

### **RETENTION OF JURISDICTION**

#### **10.1 Retention of Jurisdiction**

Notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Court shall retain, to the maximum extent permitted by law, exclusive jurisdiction of all matters arising in or from or relating to the Chapter 11

Case, the Plan, the Settlement Agreement, the Liquidating Trust Agreements, the Confirmation Order, and the Estate pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code, including and for, among other things, the following purposes:

- (a) To resolve any matters relating to the assumption and assignment or rejection of executory contracts or unexpired leases, and to hear, determine and, if necessary, liquidate any Claims resulting therefrom;
- (b) To decide and resolve any and all motions, adversary proceedings, objections to Claims, including Estate Litigation, applications, contested matters, and any other matters, whether pending as of the Effective Date or brought thereafter in accordance with the terms hereof;
- (c) To consider and rule on the compromise and settlement of any Claim, Disputed Claim, or Estate Litigation on behalf of the Debtor or its Estate, the Liquidating Debtor, the Plan Administrator or the Liquidating Trusts;
- (d) To ensure that Distributions to holders of Allowed Claims are accomplished as provided herein, and resolve any disputes concerning any such Distributions;
- (e) To allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim (including any Administrative Expense Claim), and to resolve any and all objections to the Disputed Claims;
- (f) To hear and determine any and all applications for the allowance of compensation of Professionals for professional services rendered and expenses incurred prior to the Effective Date;
- (g) To enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan, the Plan Administrator Agreement and the Liquidating Trust Agreements, and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Plan Administrator Agreement and the Liquidating Trust Agreements;
- (h) To consider any modifications to the Plan, to cure any defect or omission, or reconcile any inconsistency, in the Plan or in any order of the Court as may be necessary to carry out the purposes and intent of the Plan and to implement and effectuate the Plan;

- (i) To resolve any cases, controversies, suits, or disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Plan Administrator Agreement or the Liquidating Trust Agreements, or any person's or Entity's obligations incurred in connection with the Plan the Plan Administrator Agreement or the Liquidating Trust Agreements;
- (j) To hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;
- (k) To enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, revoked, reversed, or vacated;
- (l) To enforce remedies upon any default under the Plan, the Plan Administrator Agreement or the Liquidating Trust Agreements;
- (m) To enforce, interpret, and determine any disputes arising in connection with any orders, stipulations, judgments, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);
- (n) To resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan, the Settlement Agreement, the Plan Administrator Agreement or the Liquidating Trust Agreements, or any Estate obligations incurred in connection herewith;
- (o) To determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, the Settlement Agreement, the Plan Administrator Agreement, the Plan Administrator, the Liquidating Trusts, Liquidating Trustees, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan, the Settlement Agreement, the Plan Administrator Agreement or the Liquidating Trust Agreements;
- (p) To issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any person or Entity with the consummation of the Plan, the Plan Administrator Agreement or the Liquidating Trust Agreements, or the enforcement of any rights, remedies, or obligations created under the Plan, the Plan Administrator Agreement or the Liquidating Trust Agreements;

- (q) To determine such other matters as may be provided for in the Confirmation Order or other orders of the Court or as may be authorized under the provisions of the Bankruptcy Code or any other applicable law;
- (r) To hear any other matters if the Court's exercise of jurisdiction thereover is not inconsistent with the Bankruptcy Code or Title 28 of the United States Code;
- (s) To hear and determine issues relating to discharge, releases, injunctions, covenants not to sue, and other waivers and protections provided under or relating to the Plan, the Settlement Agreement, the Plan Administrator Agreement or the Liquidating Trust Agreements;
- (t) To recover all Assets of the Debtor's Estate (excepting those Assets transferred pursuant to the Sale Orders) for the benefit of the Liquidating Debtor or Liquidating Trusts, as the case may be, wherever located; and
- (u) To enter a final decree closing the Chapter 11 Case.

## **10.2 Modification of the Plan**

Any modification to the Plan shall be consistent with the terms, conditions, and requirements of Section 1127 of the Bankruptcy Code.

# **ARTICLE 11**

## **MISCELLANEOUS PROVISIONS**

### **11.1 Conditions Precedent to the Effective Date**

The Effective Date will not occur, unless and until each of the following conditions have been satisfied or duly waived: (a) (i) the Bankruptcy Court shall have entered the Confirmation Order, and (ii) the Confirmation Order shall be a Final Order; (b) no stay of the Confirmation Order shall then be in effect; (c) the Class 3 Liquidating Trust Agreement has been executed, the Class 3 Liquidating Trust has been created, and the Class 3 Liquidating Trust Assets have been contributed or transferred by the Debtor to the Class 3 Liquidating Trust; (d) the Plan shall not have been materially amended, altered, or modified from the Plan as confirmed by the Confirmation Order, unless such material amendment, alteration, or modification has been made in accordance with section 10.2 of the Plan; and (e) the Lenders have delivered the Election Notice to the Debtor. The Plan will not be consummated unless and until, depending on the Lenders election of the Class 2 Liquidating Trust

Mechanism, the Liquidating Debtor Mechanism or the Surrender Mechanism, respectively, (i) the Class 2 Liquidating Trust Agreement has been executed, the Class 2 Liquidating Trust has been created, and the Class 2 Assets have been contributed or transferred by the Debtor to the Class 2 Liquidating Trust, (ii) the Plan Administrator Agreement has been executed and the Class 2 Assets have vested in the Liquidating Debtor, or (iii) the Debtor has transferred its rights, title and interests in the Class 2 Assets to the Lenders. The conditions to Confirmation and the conditions to the Effective Date may be waived in whole or in part at any time only by the Debtor with the written consent of the Committee and Lenders without an order of the Bankruptcy Court; *provided however* that the conditions set forth in 11.1(a)(i), (c), and (d) cannot be waived under any circumstances.

### **11.2 Governing Law**

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent a schedule or exhibit hereto or instrument, agreement, or other document executed in connection with the Plan provides otherwise, the rights, duties, and obligations arising under the Plan, and the instruments, agreements, and other documents executed in connection with the Plan, shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Michigan, without giving effect to any choice of law provisions that would require the application of the law of any other jurisdiction.

### **11.3 Notices**

To be effective, all notices, requests, and demands under the Plan must be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

#### **Class 2 Liquidating Trustee**

To be determined

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**and**

**Counsel for the Class 2 Liquidating Trustee**

To be determined

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**Class 3 Liquidating Trustee**

To be determined

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**and**

**Counsel for the Class 3 Liquidating Trustee**

To be determined

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**To the Debtor**

Jeffrey K. Tischler  
Conway MacKenzie Management Services, LLC  
401 S. Old Woodward Avenue, Suite 340  
Birmingham, MI 48009  
T: (248) 433.3100  
Email: [jtischler@conwaymackenzie.com](mailto:jtischler@conwaymackenzie.com)

**and**

**Counsel for the Debtor**

McDonald Hopkins PLC  
Stephen M. Gross, Esq.  
Jayson B. Ruff, Esq.  
Joshua A. Gadharf, Esq.  
39533 Woodward Ave., Suite 318  
Bloomfield Hills, MI 48304  
I. T: (248) 646-5070  
Email: sgross@mcdonaldhopkins.com  
jruff@mcdonaldhopkins.com  
jgadharf@mcdonaldhopkins.com

**Counsel for the Committee**

Lowenstein Sandler LLP  
Jeffrey D. Prol, Esq.  
Philip J. Gross, Esq.  
One Lowenstein Drive  
Roseland, New Jersey, 07068  
T: (973) 597-2500  
Email: jprol@lowenstein.com  
pgross@lowenstein.com

**Counsel for Chase**

Dickinson Wright PLLC  
Steven G. Howell, Esq.  
500 Woodward Avenue, Suite 4000  
Detroit, Michigan 48226  
T: (313) 223-3500  
Email: showell@dickinsonwright.com

**Counsel for Comerica**

Bodman PLC  
Robert J. Diehl, Jr., Esq.  
1901 St. Antoine Street  
6<sup>th</sup> Floor at Ford Field  
Detroit, Michigan 48226  
T: (313) 259-7777  
Email: rdiehl@bodmanlaw.com



#### **11.4 Further Documents and Actions**

The Debtor, the Liquidating Debtor, the Plan Administrator and the Liquidating Trustees, as the case may be, shall execute, and are authorized to file with the Court and deliver, such agreements and other documents or information, and to take or cause to be taken such actions, as may be necessary or appropriate to effect and further evidence the terms and conditions of the Plan, the Plan Administrator Agreement and/or the Liquidating Trust Agreements, as the case may be, and to consummate the transactions and transfers contemplated by the Plan, the Plan Administrator Agreement and the Liquidating Trust Agreements, as the case may be. The Debtor, the Liquidating Debtor, the Plan Administrator and the Liquidating Trustees and all other necessary or appropriate parties shall execute any and all documents and instruments that must be executed under or in connection with the Plan, the Plan Administrator Agreement or the Liquidating Trust Agreements in order to implement the terms of the Plan, to effectuate the transfer of Assets under this Plan, and to effectuate the Distributions under the Plan Administrator Agreement or Liquidating Trust Agreements, provided that such documents and instruments are reasonably acceptable to such party or parties.

#### **11.5 Relationship Between and Among the Plan, Disclosure Statement, Confirmation Order and Liquidating Trust Agreements**

To the extent that the Plan is inconsistent with the Disclosure Statement, the provisions of the Plan shall control. To the extent that the Plan is inconsistent with the Plan Administrator Agreement or Liquidating Trust Agreements, as the case may be, then the Plan Administrator Agreement or Liquidating Trust Agreements, respectively, will control as to matters pertaining to administration of those agreements. If any of the Plan, the Plan Administrator Agreement, Liquidating Trust Agreement, or the Disclosure Statement are inconsistent with the Confirmation Order, then the Confirmation Order shall control.

#### **11.6 Reservation of Rights**

If the Plan is not confirmed by a Final Order, or if the Plan is confirmed and does not become effective, the rights of all parties in interest in the Chapter 11 Case, including the Debtor, are and will be reserved in full. Any concessions or settlements reflected herein (if any), are made for purposes of the Plan only, and if the Plan does not become effective, no party in interest shall be bound or deemed prejudiced by any such concession or settlement.

## 11.7 Post-Confirmation Fees and Expenses

(a) **Debtor's Fees and Expenses.** After the Effective Date, the Debtor shall, in the ordinary course of business and without the necessity for any approval by the Court, pay from the reasonable fees and expenses incurred by the CRO and Debtor's Professionals, in connection with services performed on the administration of the Estate, including without limitation the preparation and filing of tax returns relating to periods prior to and following the Effective Date, implementation and consummation of the Plan, and any other matters as to which the CRO and Debtor's Professionals may be engaged. The fees and expenses of such persons or Entities shall be paid within thirty (30) days after submission of a detailed invoice submitted to the Debtor with a copy to the Class 3 Liquidating Trustee and the Plan Administrator, Class 2 Liquidating Trust or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders). If the Debtor, Class 3 Liquidating Trustee or the Plan Administrator, the Class 2 Liquidating Trustee or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders) disputes the reasonableness of any such invoice and the parties cannot amicably resolve the dispute, Debtor shall timely pay (subject to the limitations described in this section 11.7 of the Plan) the undisputed portion of such invoice, and submit the dispute regarding the balance of such invoice to the Court for a determination of its reasonableness.

The reasonable fees and expenses incurred by the CRO and/or Debtor's Professionals in connection with the preparation and filing of tax returns for the Debtor for the year 2017 prior to or following the Effective Date shall be paid by the Class 3 Liquidating Trust. The Lenders shall pay the reasonable fees and expenses incurred by the CRO and Debtor's Professionals incurred on and after July 18, 2017 until the close of the Case to (i) investigate, take discovery, and pursue any Insider Causes of Action, and/or (ii) realize upon the Class 2 Assets; *provided, however*, that neither the Lenders nor the Class 3 Liquidating Trust shall be required to fund such fees and expenses of the CRO and the Debtor's Professionals unless such fees and expenses are (i) included in a budget submitted in advance to and approved by the Lenders and the Committee (prior to the Effective Date) or Class 3 Liquidating Trustee (on or after the Effective Date), as the case may be, or (ii) otherwise consented to by the Lenders and the Committee (prior to the Effective Date) or Class 3 Liquidating Trustee (on or after the Effective Date), as the case may be.

All other reasonable fees and expenses of the CRO and the Debtor's Professionals (i) incurred after the Effective through the earlier of (a) the date on which the Class 3 Liquidation Trustee delivers the Objection Completion Notice via email to the Plan Administrator, Class 2 Liquidating Trustee or the Lenders

(depending on the Mechanism elected by the Lenders), and (b) the date on which the Plan Administrator, Class 2 Liquidating Trustee or the Lenders (depending on the Mechanism elected by the Lenders) deliver the Lender Closing Notice via email to the Class 3 Liquidating Trustee, equally by the Class 3 Liquidating Trustee from the Class 3 Liquidating Trust Assets, and the Plan Administrator, the Class 2 Liquidating Trustee, or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders), from the Class 2 Assets; (ii) (a) if the Objection Completion Notice is delivered before the Lender Closing Notice is delivered, reasonable fees and expenses of the CRO and the Debtor's Professional incurred after the Objection Completion Notice is delivered until the closing of the Case shall be paid by the Plan Administrator, the Class 2 Liquidating Trustee, or the Lenders, as the case may be (depending on the Mechanism elected by the Lenders), from the Class 2 Assets, (b) if the Lender Closing Notice is delivered before the Objection Complete Notice is delivered, reasonable fees and expenses of the CRO and the Debtor's Professional incurred after the Lender Closing Notice is delivered until the closing of the Case shall be paid by the Class 3 Liquidating Trustee from the Class 3 Liquidating Trust Assets. For the avoidance of doubt, all reasonable fees and expenses of the CRO and the Debtor's Professionals incurred pursuant to this paragraph shall only be payable to the extent included in a budget submitted in advance to and approved by the Lenders and the Committee (prior to the Effective Date) or Class 3 Liquidating Trustee (on or after the Effective Date), as the case may be, or otherwise consented to by the Lenders and the Committee (prior to the Effective Date) or Class 3 Liquidating Trustee (on or after the Effective Date), as the case may be.

**(b) Liquidating Trust Fees and Expenses.** After the Effective Date, and subject to the terms of the Plan Administrator Agreement or Liquidating Trust Agreements, as the case may be, the Plan Administrator or Liquidating Trustees shall, in the ordinary course of business and without the necessity for any approval by the Court, pay from the Class 2 Assets or the Class 3 Liquidating Trust Assets, as applicable, the reasonable fees and expenses incurred by such Plan Administrator or Liquidating Trust and any professionals retained by such Plan Administrator or Liquidating Trustee incurred in connection with services performed on the administration of the Estate, implementation, and consummation of the Plan and relevant Plan Administrator Agreement or Liquidating Trust Agreement, and any other matters as to which the relevant Plan Administrator or Liquidating Trust and any professional retained by such Plan Administrator or Liquidating Trustee may be engaged.

## 11.8 Binding Effect

The rights, benefits, and obligations of any person or Entity named or referred to in the Plan, the Plan Administrator Agreement or the Liquidating Trust Agreements, or whose actions may be required to effectuate the terms of the Plan, the Plan Administrator Agreement or the Liquidating Trusts, shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, assign, officer, agent, employee, representative and attorney, of such person or Entity, including but not limited to, any trustee appointed for the Debtor under chapter 7 or 11 of the Bankruptcy Code. The Confirmation Order shall provide that the terms and provisions of the Plan, the Settlement Agreement, the Plan Administrator Agreement, the Liquidating Trust Agreements, and the Confirmation Order shall survive and remain effective after entry of any order which may be entered converting any of the Chapter 11 Case to cases under chapter 7 of the Bankruptcy Code, and the terms and provisions of the Plan, the Settlement Agreement, the Plan Administrator Agreement and the Liquidating Trust Agreements shall continue to be effective in this or any superseding case under the Bankruptcy Code.

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## **II. DISCLOSURE STATEMENT PLAN OF LIQUIDATION OF FRANK W. KERR COMPANY UNDER CHAPTER 11 OF THE BANKRUPTCY CODE<sup>1</sup>**

### **A. Description of Debtor and Circumstances Resulting in the Filing of the Chapter 11 Case**

1. The Debtor was founded in 1913 and was one of the largest independent pharmaceutical wholesalers in the United States, operating its business from a facility owned by the Debtor in Novi, Michigan. The Debtor's customers through the years included many local and national chains, such as Revco, Cunningham Drugs, Apex, Kmart, Arbor Drugs, Meijer, Inc. and franchisees of Sav-Mor Drugs. The Debtor provided retail customers with brand and generic pharmaceuticals, over-the-counter drugs, private label goods, sundries, and promotional programs.

2. Consolidation in the retail pharmacy industry over the past two decades resulted in the gradual loss by the Debtor of one significant customer after another and, in 2014, the Debtor lost its largest customer, resulting in its annual revenues declining from over \$600 million in 2013, to \$414 million in 2014, and to \$309 million in 2015.

3. In May 2016, the Debtor engaged Conway MacKenzie to assist it with cash flow issues and the Debtor soon thereafter advised the Lenders that the Debtor was in default under the terms of the Credit Agreement.

4. On June 2, 2016, the Debtor appointed Jeffrey K. Tischler of Conway MacKenzie as its Chief Restructuring Officer, and commenced a wind-down of its operations. As of that date, Mr. Tischler took the lead in managing the operations of the Debtor, while reporting directly to Debtor's board of directors. As part of its wind-down, the Debtor sold all of its inventory; collected portions of its accounts receivable; marketed its other assets for sale, including its real property; commenced efforts to realize its notes receivable and other claims; and launched a going concern sale process for its wholly owned retail pharmacy subsidiary, Billnat,<sup>2</sup> which

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

<sup>2</sup> Billnat is a leading independent drug store chain in Southeastern Michigan, with annual revenue of approximately \$105,000,000 that operates twenty stores and one long-term care ("LTC") facility under the names Sav-On Drugs, Sav-On Andrew's Drugs, Sav-On Birmingham Drugs, Sav-On Efros Drugs, Sav-On Family Pharmacy, Sav-On Hunters Pharmacy, Sav-On LTC Pharmacy, Sav-On Novi Drugs, Sav-On

represents the Debtor's most valuable asset, as well as the sale of Debtor's affiliate Novixus, LLC ("Novixus"). Since, the assets of both Billnat and Novixus are collateral of the Lenders' securing the guaranty obligations of each for the amounts owed by the Debtor on account of the Lender Secured Claim, the proceeds from these sales have been (in the case of Novixus) or will be (in the case of Billnat) remitted directly to Lenders for application against the Lender Secured Claim.

5. On the Petition Date, the Petitioning Creditors filed an involuntary petition for relief under chapter 7 of the Bankruptcy Code against the Debtor. As set forth above, as of the Petition Date, the Debtor had already been in the process of winding down and liquidating its assets in an effort to maximize value for all creditors. Therefore, following the filing of the involuntary bankruptcy petition by the Petitioning Creditors, the Debtor entered into meaningful discussions with the Petitioning Creditors and the Lenders that resulted in the parties agreeing to the entry of an Order for Relief and the conversion of the chapter 7 case to the Chapter 11 Case that was entered by the Court on the Relief Order Date.

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Phil's Pharmacy, Sav-On River Oaks, Sav-On Westside Pharmacy and Sav-On Woodhaven Pharmacy. The Billnat stores are affiliated with Sav-Mor Drugs and, in some cases, co-branded as such. Billnat provides customers with quality products and services in a one-stop format at economical prices, including the retail sale of prescription drugs ("Rx"), proprietary drugs and non-prescription ("Non-Rx") medicines. Billnat products include brand and generic pharmaceuticals, over-the-counter ("OTC") drugs, health & beauty care products and general merchandise. Additionally, Billnat offers a variety of private label products under the brand Quality Choice. Billnat's sale process is being managed by SSG Advisors, LLC, which issued a confidential memorandum to interested parties and is in the process of receiving and evaluating offers to purchase Billnat's assets.

## B. Equity Structure

As of the Petition Date, the ownership interests in the Debtor were as follows:

<b>Holder</b>	<b>Voting Equity Interest</b>	<b>Non-Voting Equity Interest</b>
William Newman	49.54%	9.97%
Ann Y. Newman Trust (u/a/d 4/30/1999) Ann Newman Trustee	28.64%	51.09%
Newman Family ESBT (u/a/d 12/31/2002) William Newman Trustee	10.64%	18.98%
Eugene Newman	5.59%	9.97%
Robert Newman	5.59%	9.97%

## C. Pre-Petition Loan Obligations

Prior to the Petition Date, the Debtor, as borrower, and the Lenders, as lenders, entered into the Credit Agreement, pursuant to which the Lenders financed the Debtor's business operations. In connection with the Credit Agreement, the Debtor granted to the Lenders a first priority security interest in substantially all of the Debtor's real and personal property.

As of the Relief Order Date, (i) the Debtor was indebted to the Lenders in the principal amount of \$50,485,957.52, plus accrued but unpaid interest, attorneys' fees, consultant fees, late fees, costs, expenses and other charges of the kind provided for by the Credit Agreement as of such date (collectively the "Pre-Petition Indebtedness"), (ii) the Pre-Petition Indebtedness had been accelerated and was immediately due and payable in full as a result of certain defaults by the Debtor under the terms of the Loan Documents, and (iii) the Pre-Petition Indebtedness constituted a valid and binding obligation of the Debtor to the Lenders without offset, recoupment, counterclaim, deduction, defense, or claim, in law or equity, of any nature or kind.

As of the Relief Order Date, the Debtor's obligations to the Lenders pursuant to the Credit Agreement were guaranteed and cross-collateralized by Billnat and Novixus.

## D. Post-Petition Financing

On October 25, 2016, after a final hearing, and upon the stipulation of the Debtor, the Lenders, the Office of the United States Trustee, and the Committee, the

Court entered the Cash Collateral Order. The Cash Collateral Order authorized the Debtor to use cash to wind down its business pursuant to a budget (the “Budget”) prepared by the Debtor, subject to modifications approved by the Lenders and subject to a ten percent (10%) cumulative variance. As adequate protection for the Debtor’s use of the Lenders’ cash collateral, under the Cash Collateral Order, the Lenders received, among other things, a Lien in all of the Debtor’s post-petition property, subject to statutory fees payable to the United States Trustee under 28 U.S.C. § 1930(a)(6), fees payable to the clerk of the Court, and certain fees of Professionals in accordance with the Budget.

#### **E. Sale of Substantially all of Debtor’s Assets**

Since the outset of this Chapter 11 Case, the Debtor’s primary goal has been to effectuate the sale and liquidation of substantially all of its Assets pursuant to section 363 of the Bankruptcy Code and through collecting various claims of the Debtor’s Estate. As noted above, as part of the Debtor’s wind-down prior to the Petition Date, the Debtor had sold a significant portion of its assets, including all inventory, had collected portions of its accounts receivable, and had marketed certain of its other assets for sale, including real estate, machinery, and equipment. Additionally, the Debtor had commenced efforts to realize its notes receivable and other claims and had launched a going concern sale process of Billnat’s assets. The Debtor anticipates that the sale of Billnat’s assets will be concluded sometime following confirmation of Debtor’s Plan, but prior to the end of 2017. Pursuant to the terms of the Credit Agreement, the Lenders have liens on substantially all of Billnat’s assets to secure the obligations owing by the Debtor to Lenders.

The Debtor continued to wind-down after the Petition Date, as it sought and obtained Court approval to sell substantially all of the Estate’s remaining assets. Specifically, pursuant to the Sale Orders, the Court approved the sale of the Debtor’s Furniture, Fixtures, and Equipment to Hilco Fixture Finders, LLC [Docket No. 138], the Debtor’s Real Property, located in Novi, Michigan, to Novi Nine Mile Associates LLC [Docket No. 151], certain of the Debtor’s antitrust claims to FWK Holdings, L.L.C. [Docket No. 196], and certain of the Debtor’s vehicles to Hilco Fixture Finders, LLC [Docket No. 234].

As of the date of this Disclosure Statement, the Debtor’s Assets consist primarily of its interest in 100% of the equity of Billnat, its claims against insiders and others, the proceeds of any Estate Litigation, and its Cash, including the (i) the remaining Novi Sale Proceeds, (ii) Vehicle Proceeds, and (iii) Antitrust Sale Proceeds.



**F. Anticipated Future of the Company and Source of this Information and Opinion.**

The Plan is a liquidating Plan.

The Plan provides that on the Effective Date, the Class 2 Assets will be transferred by the Debtor for the benefit of the Lenders, through one of the following Mechanisms elected by the Lenders, in their sole discretion: (i) Class 2 Liquidating Trust Mechanism; (ii) Liquidating Debtor Mechanism; or (iii) Surrender Mechanism.

The Plan provides that on the Effective Date, the Class 3 Liquidating Trust Assets will be transferred by the Debtor to the Class 3 Liquidating Trust.

Since the Closing Date, the Debtor terminated all employees, has ceased all ongoing business operations, and has been managed by the CRO. The information contained in this disclosure statement is based primarily upon the information in the Debtor's books and records after a reasonable and comprehensive investigation of the same. While the CRO cannot make a representation as the accuracy of the information contained in the books and records of the Debtor prior to his appointment as the Debtor's CRO in June 2016, the information contained herein is believed to provide a reasonably accurate, fair and comprehensive overview of the Debtor and its Estate in order to allow creditors and other parties in interest to evaluate the proposed terms of this Plan.

**G. Estate Claims; Other Events of Significance**

As part of its post-petition investigations into potential Causes of Action, the Debtor uncovered several potential Causes of Action against certain of the Debtor's insiders and their affiliates. In addition to the claims asserted in the adversary proceedings described below, the Debtor continues to investigate claims for, among other things, breach of fiduciary duty and fraud against the insiders.

On November 1, 2016, the Debtor commenced the Sav-Mor lawsuit wherein the Debtor seeks to collect on a note receivable owing to it by Sav-Mor Franchising, Inc. in the approximate amount of \$265,000 plus interest and costs as provided for in the note that is the subject of the lawsuit. As of the date of the Plan, motions by both parties for summary judgment are pending.

On November 14, 2016, the Debtor commenced the ERW Lawsuit wherein the Debtor seeks a judgment that the defendants have no right, title, or interest whatsoever in two condominium units, a chalet, and vacant property adjoining the chalet located in Antrim County, Michigan. The parties to the ERW Lawsuit were

able to settle the matter following good faith negotiations. The settlement of the ERW Lawsuit was approved by the Court on July 21, 2017. The settlement of the ERW Lawsuit resulted in the ERW Properties being transferred to Debtor via quit claim deeds.

On November 30, 2016, the Debtor commenced the Newman Lawsuit wherein the Debtor alleges that the defendants fraudulently transferred the Debtor's stock for the primary purpose of forcing the Debtor to lose its S Corporation status and shifting the tax liabilities relating to the Debtor's wind down and real estate sale from the Debtor's shareholders to its creditors. On January 26, 2017, the Debtor filed an amended complaint in the Newman Lawsuit, pursuant to which the Debtor seeks the following: (i) a declaration and judgment that the stock transfer is null and void; (ii) shareholder liability to the Debtor for unlawful distribution under Michigan law; (iii) avoidance of the stock transfer as an actual or constructive fraudulent transfer. On May 18, 2017, the Debtor and the defendant's to the Newman Lawsuit stipulated to the dismissal of the Newman Lawsuit without prejudice and without costs. Debtor determined that until any damages incurred by the Debtor as a result of the alleged actions of the Newman Lawsuit defendants could be known more definitively, that it would put off pursuing the claims asserted in the Newman Lawsuit.

On December 9, 2016, the Debtor commenced the West Grange lawsuit seeking to collect \$1,930,943 that Debtor believes Walnut Associates 1, L.L.C. d.b.a. West Grange Pharmacy owes to Debtor on account of goods sold by the Debtor to the defendant. As of the date of the Plan, motions by both parties for summary judgment are pending.

Since the very early stages of this Case, the Debtor, Lenders and Committee have engaged in meaningful and good faith negotiations for the treatment of each parties' rights with respect to certain claims relative to Debtor's Estate. The Lenders assert that they have valid and enforceable security interests in all pre-petition Assets of Debtor and its subsidiaries and affiliates while the Committee disputes this assertion and, under the Cash Collateral Order, the Committee retained the ability to object to or file actions to avoid the Lenders' security interests in Vehicles Proceeds, Novi Sale Proceeds, the Commercial Tort Claims, the ERW Properties, and the Shar Receivable, and to file actions against the Lenders relating to Billnat and Novixus' guarantee of the Debtor's debt pursuant to the Credit Agreement. Further, the Debtor and the Lenders each have claims against the Debtor's directors, officers, shareholders, affiliates and/or their professionals (i.e., the Insider Causes of Action and the Lenders' Insider Causes of Action, respectively) that each believe they are respectively entitled to pursue. The Cash Collateral Order contemplates that the Parties will execute a Contemplated Agreement relating to a course of action for the

Parties' pursuit of the Insider Causes of Action and the Lenders' Insider Causes of Action, and a sharing formula for the proceeds of the Insider Causes of Action.

On July 27, 2017, the Debtor, the Committee and the Lenders executed the Settlement Agreement which constitutes the Contemplated Agreement described in the Cash Collateral Order, and resolves and settles all disputes among the Debtor, the Committee and the Lenders concerning the Lenders' security interests in assets of Debtor and its subsidiaries and affiliates. The Settlement Agreement is specifically subject to confirmation of the Plan which incorporates the terms of the Settlement Agreement. Specifically, the Plan provides that the Lenders shall fund the Lenders' Contribution to increase the pool of assets available to Class 3 creditors (other than the Lender Unsecured Claim, which will not share in recoveries from the Lenders' Contribution), fund the Tax Backstop to help limit the negative impact of any Allowed Tax Priority Claim will have on the distributions to Class 3 creditors, waive and release their liens on the Unencumbered Proceeds so that the Debtor may transfer them unencumbered for the benefit of the Class 3 creditors, waive and release their lien on the Excess Shar Proceeds so that the Class 3 creditors may realize any excess benefit from the monetization of the Shar Policies, waive the first \$1,000,000 of distribution from the Unencumbered Proceeds they would otherwise be entitled to receive on account of the Lender Unsecured Claim, and cap the Lenders Unsecured Claim at \$30,000,000 to limit the Lenders' proportional share of the pool of assets available for distribution to Class 3 creditors. In exchange for the foregoing, the Debtor shall transfer for the benefit of the Lenders (in accordance with the Class 2 Liquidating Trust Mechanism, the Liquidating Debtor Mechanism, or the Surrender Mechanism as elected by the Lenders) the Causes of Action (to the extent not released pursuant to section 9.1 of the Plan), the Commercial Tort Claims, the ERW Properties, Cash Collateral (which is already subject to the Lenders' prepetition security interest) excluding the Class 3 Liquidating Trust Assets, the Shar Receivable (which is already subject to the Lenders' prepetition security interest), and all other Assets of the Debtor (excluding the Unencumbered Proceeds or other Class 3 Liquidating Trust Assets, and the Billnat Equity Interest).

But for entry of the Cash Collateral Order, the sale of substantially all of the Debtor's real and personal property, the investigation of claims against insiders, and the prosecution of certain other claims against insiders, and the negotiation of the terms of the Settlement Agreement with Debtor, Lenders, and the Committee, the Debtor asserts that no other events of significance have occurred since the Petition Date that have had a substantial or material effect on the Debtor's Assets or the administration of this Case.

## **H. Summary of the Debtor's Liabilities to Creditors**

### Administrative Claims

To date, the Debtor has paid all Allowed Administrative Claims as they have come due, but for claims of Professionals. The Debtor estimates that accrued and forecasted fees and expenses owed to Professionals of the Estate on the Effective Date to be approximately \$4,742,000.00 inclusive of \$3,277,000.00 paid to such Professionals pursuant to fee procedures and orders entered in the Chapter 11 Case as of the date of the Plan. Based on preliminary analysis, the Debtor estimates that there may be additional Allowed Administrative Claims owing to taxing authorities. Debtor's analysis is that the taxes for postpetition periods could be as little as \$0.00 or possibly as high as \$900,000.00. These liabilities won't be conclusively known until such time as Debtor's final tax returns can be filed following the Effective Date. The Debtor projects that all Allowed Administrative Expenses Claims will be paid prior to the Effective Date or will be paid from the first proceeds of the Class 3 Liquidating Trust.

### Priority Tax Claims

Based on Proofs of Claim filed as of August 1, 2017, there is one Priority Tax Claims asserting entitlement to priority treatment in the aggregate amount of \$7,295.11. The Debtor reserves the right to object to any and all Priority Tax Claims.

### Priority Claims

Based upon Proofs of Claim filed as of July 5, 2017, there is one Priority Claim asserting entitlement to priority treatment in the aggregate amount of \$5,000.00. The Debtor projects that Allowed Priority Claims will ultimately total approximately \$0. The Debtor reserves the right to object to any and all Priority Claims.

### Secured Claims

The only Secured Claim is the Lender Secured Claim, which, pursuant to the Cash Collateral Order is allowed in an amount equal to: (i) if the Class 2 Liquidating Trust Mechanism is elected by the Lenders, the total Distributions made by the Class 2 Liquidating Trust; (ii) if the Liquidating Debtor Mechanism is elected by the Lenders, the total net proceeds from the Plan Administrator's liquidation of the Class 2 Assets (net of the costs associated with liquidation) received by the Lenders; or (iii) if the Surrender Mechanism is elected by the Lenders, the total net proceeds from the

Lenders liquidation of the Class 2 Asset (net of the costs associated with liquidation) received by the Lenders. Pursuant to the Cash Collateral Order, the Lenders' liens on the Debtor's Assets sold during the Chapter 11 Case attached to the proceeds of the Sales. Pursuant to the Hilco Sale Order and the Antitrust Sale Order, on the Closing Date, the Debtor transferred the proceeds from the Sales to the Lenders in partial satisfaction of the Allowed Lender Secured Claim. The Allowed Lender Secured Claim may be further reduced after application of proceeds from the sales of Novixus and Billnat.

### General Unsecured Claims

As of August 1, 2017, based upon filed Proofs of Claim, the Debtor has total pre-petition unsecured Claims of \$40,193,841.00, exclusive of any claims of insiders or affiliated Entities of the Debtor. The Debtor reserves the right to review, investigate, and dispute any and all General Unsecured Claims except the Lender Unsecured Claim.

#### **I. Liquidation Analysis in Chapter 7**

All of Debtor's Assets, but for the Causes of Action (all of which will be transferred to the Class 2 Liquidating Trust upon the Effective Date), were sold, leaving the Debtor as a shell company with no further Assets except proceeds of the Assets. The proceeds from the Sales were used to partially satisfy the Allowed Lender Secured Claim. The Debtor currently holds the remaining Novi Sale Proceeds, which will be used to pay all Statutory Fees due as of the Effective Date, Allowed Administrative Claims, Allowed Priority Claims, and Allowed Priority Tax Claims. After payment of such fees and Claims, the Debtor will transfer its remaining Assets to the Class 2 Liquidating Trust and Class 3 Liquidating Trust as set forth in the Plan.

Taking into account the foregoing, the only available assets for distribution will be the Class 2 Assets transferred for the benefit of the Lenders in accordance with the Mechanism elected by the Lenders, the Class 3 Liquidating Trust Assets transferred to the Class 3 Liquidating Trust, and the Billnat Equity Interest. Attached as Appendix E is an analysis of Debtor's assets and liabilities and what the expected range of distributions to Allowed Claims would be under the Plan as compared to liquidation in a chapter 7 case.

## **1. Feasibility of the Plan**

The Bankruptcy Code requires that the Bankruptcy Court determine that confirmation of a Plan is not likely to be followed by liquidation or the need for further financial reorganization of the debtor. The Plan already contemplates liquidation so the goals of the Plan are completely feasible and the risk of further financial reorganization is not relevant.

## **2. Acceptance of the Plan**

As a condition to confirmation, the Bankruptcy Code requires that each Class of Impaired Claims vote to accept the Plan, except under certain circumstances. Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two thirds (2/3) in dollar amount and more than one half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the Plan. Thus, for example, Class 3 votes to accept the Plan only if two thirds (2/3) in amount and a majority in number actually voting in such Class cast their Ballots in favor of acceptance. Holders of Claims who fail to vote are not counted as either accepting or rejecting a plan.

## **3. Best Interests Test**

Even if a plan is accepted by the holders of each class of claims and interests, the Bankruptcy Code requires a Bankruptcy Court to determine that the plan is in the best interests of all holders of claims or interests that are impaired by the plan and that have not accepted the plan. The “best interests” test, as set forth in Section 1129(a)(7) of the Bankruptcy Code, requires a Bankruptcy Court to find either that all members of an impaired class of claims or interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

## **4. Application of the Best Interests Test to the Liquidation Analysis**

In this Chapter 11 Case, the Debtor has sold substantially all of its property, with the proceeds from such sales to be distributed pursuant to the Plan. A liquidation under chapter 7 would accomplish the same result but with the additional cost of chapter 7 trustee fees and the cost of administering and proceeding with a chapter 7 case. Therefore, the recovery available in a chapter 7 liquidation to creditors in each Impaired Class in this Chapter 11 Case would be less than the

recovery contemplated by the Plan because of the additional administrative costs associated with a chapter 7 trustee and professionals not familiar with the Debtor's case and the Estate Litigation. Accordingly, the "best interests" test of Section 1129 of the Bankruptcy Code is satisfied because the members of each Impaired Class will receive greater or equal value under the Plan than they would in a chapter 7 liquidation.

Specifically, the Debtor projects that pursuant to the Plan – which incorporates certain recoveries to holders of Allowed Class 3 General Unsecured Claims that are only available under the Plan on account of the Settlement Agreement, if approved – holders of Allowed Class 2 Secured Claims would likely recover in the range of 7.27% to 81.05% and holders of Allowed Class 3 General Unsecured Claims would likely recover in the range of 5.37% to 14.73%. The Debtor projects that in a chapter 7 liquidation scenario which would not incorporate the Settlement Agreement, holders of Allowed Class 2 Secured Claims would likely receive a recovery in the range of 5.18% to 75.05%, and holders of Allowed Class 3 General Unsecured Claims would likely receive a recovery in the range of 0.00% to 6.90%. Creditors are cautioned that the estimates set forth in this paragraph include a number of assumptions with respect to anticipated recoveries and the total Allowed amount of Claims, including Allowed Administrative Claims, Allowed Priority Claims, and Allowed Priority Tax Claims. Accordingly, the actual amount of Assets available for ultimate distribution may vary materially, including downward, from the amounts projected herein, and thus anticipated recoveries could materially vary from the projections set forth herein.

Additionally, the Debtor notes that under the Plan, and specifically in connection with the Settlement Agreement incorporated into the Plan, among other things, the Lenders have agreed to waive any lien on the Unencumbered Proceeds, waive their first \$1 million of recovery on account of the Lender Unsecured Claim, make the \$1 million Lenders' Contribution, and fund the Tax Backstop and True Up Proceeds. None of these assets and/or contributions from the Lenders, which are available under the Plan to the Class 3 Liquidating Trust and holders of Allowed Class 3 General Unsecured Claims, would necessarily be available in a chapter 7 scenario.

Accordingly, the Debtor believes that the "best interests" test of Section 1129 of the Bankruptcy Code is satisfied because the members of each Impaired Class will receive greater or equal value under the Plan than they would in a liquidation. Although the Debtor believes that the Plan meets the "best interests test" of Section 1129(a)(7) of the Bankruptcy Code, there can be no assurance that the Bankruptcy Court will determine that the Plan meets this test.

## **5. Confirmation Without Acceptance of All Impaired Classes: The ‘Cramdown’ Alternative**

In view of the deemed rejection by holders of Class 4 Equity Interests, the Debtor will seek confirmation of the Plan pursuant to the “cramdown” provisions of Section 1129 of the Bankruptcy Code. Specifically, Section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed even if the plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted it. The Bankruptcy Court may confirm the Plan at the request of the Debtor if the Plan “does not discriminate unfairly” and is “fair and equitable” as to each Impaired Class that has not accepted the Plan. A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated equally with respect to other classes of equal rank.

The Debtor believes the Plan does not discriminate unfairly with respect to holders of Class 4 Equity Interests. Holders of Interests in Class 4 are not receiving any distribution under the Plan, and are not entitled to payment under the absolute priority rule until all senior creditors have been paid in full.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides: (i) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (ii) that the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property at all.

The Debtor believes that the Plan will meet the “fair and equitable” requirements of Section 1129(b) of the Bankruptcy Code with respect to holders of Class 4 Equity Interests. No Claim or Interest holder junior to holders of Class 4 Equity Interests is receiving any recovery pursuant to their Claim or Interest, thereby satisfying Section 1129(b) with respect to Class 4.

The Debtor reserves the right to seek confirmation of the Plan through cramdown with respect to any other Class that is determined to be impaired or any creditor that has not accepted or is deemed not to have accepted the Plan pursuant to Section 1126 of the Bankruptcy Code.



## **J. Implementation of Plan**

Because the Debtor has ceased its business operations, no historical financial information is being provided as part of this Disclosure Statement, nor are any financial projections being provided for any period.

It is contemplated that the Class 3 Liquidating Trustee, will retain legal counsel and other professionals to represent, consult, and assist in the administration of the Class 3 Liquidating Trust and the liquidation of the Class 3 Liquidating Trust Assets.

The Debtor will not be continuing in its current business subsequent to the Effective Date, therefore there will be no tax ramifications for the Debtor as a continuing Entity. As a result of implementation of the Plan, certain of the Debtor's outstanding indebtedness will not be paid in full; however, the remaining indebtedness will not be cancelled or discharged. In general, the Internal Revenue Code, with certain exceptions, provides that a taxpayer who realizes a "discharge of indebtedness" must include the amount of discharged indebtedness in gross income to the extent that the indebtedness discharged exceeds any consideration given for such discharge. Because the Plan does not grant the Debtor a discharge pursuant to Section 1141(d)(3) of the Bankruptcy Code, this does not apply to Debtor.

## **K. Dissolution of the Debtor**

### **1. Class 2 Trust Mechanism**

In the event that the Lenders elect the Class 2 Trust Mechanism, the Debtor shall (i) transfer all of its rights, title and interests in the Class 2 Assets to the Class 2 Liquidating Trust, (ii) transfer all of its rights, title and interest in the Class 3 Liquidating Trust Assets to the Class 3 Liquidating Trust, and (iii) retain the Billnat Equity Interests. After (i) the Class 2 Liquidating Trust Agreement is executed and the Class 2 Assets are transferred by the Debtor to the Class 2 Liquidating Trust, (ii) the Class 3 Liquidating Trust Agreement is executed and the Class 3 Liquidating Trust Assets are transferred by the Debtor to the Class 3 Liquidating Trust, and (iii) the Billnat Equity Interest has been cancelled or abandoned by the Debtor, the Debtor will be dissolve in accordance with Michigan law.

The Class 2 Liquidating Trustee will administer and distribute the Class 2 Assets and the Lenders' Conveyed Assets in accordance with the Class 2 Liquidating Trust Agreement.

## **2. Liquidating Debtor Mechanism**

In the event that the Lenders elect the Liquidating Debtor Mechanism: (i) all of the Debtor's rights, title and interests in the Class 2 Assets shall vest in the Liquidating Debtor (for the benefit of the Lenders), (ii) the Debtor shall transfer all of its rights, title and interest in the Class 3 Liquidating Trust Assets to the Class 3 Liquidating Trust, and (iii) the Debtor shall retain the Billnat Equity Interests. After the Class 2 Assets vest in the Liquidating Debtor (for the benefit of the Lenders), and the Class 3 Liquidating Trust Agreement is executed and the Class 3 Liquidating Trust Assets are transferred by the Debtor to the Class 3 Liquidating Trust, (i) the authority, power and incumbency of the persons then acting as directors and officers of the Debtor shall be deemed to have resigned, (ii) the Plan Administrator shall have the powers of an officer of the Liquidating Debtor, (iii) the Plan Administrator shall be deemed to hold 100% of the Equity Interests of the Liquidating Debtor until dissolution of the Liquidating Debtor pursuant to the Plan, (iv) the Plan Administrator shall administer the Plan and shall administer, liquidate and distribute the Class 2 Assets, or the proceeds thereof, for the benefit of the Lenders in accordance with the Plan Administrator Agreement, and (v) after the Plan Administrator has fully administered the Class 2 Assets in accordance with the Plan Administrator Agreement and the Debtor has cancelled the Billnat Equity Interest, the Plan Administrator shall cause to be filed with the State of Michigan such certificates or documents as may be or become necessary to implement the termination of the legal existence of the Liquidating Debtor.

The Plan Administrator, together with its representatives and professionals, shall administer the Plan with respect to the Liquidating Debtor. In such capacity, the powers of the Plan Administrator shall include any and all powers necessary to implement the Plan with respect to the Liquidating Debtor and to administer and distribute the Class 2 Assets and the Lenders' Conveyed Assets in accordance with the Plan Administrator Agreement.

## **3. Surrender Mechanism**

In the event that the Lenders elect the Surrender Mechanism, the Debtor shall (i) transfer all of its rights, title and interests in the Class 2 Assets to the Lenders, (ii) transfer all of its rights, title and interest in the Class 3 Liquidating Trust Assets to the Class 3 Liquidating Trust, and (iii) retain the Billnat Equity Interest. After (i) the Class 2 Assets have been transferred to the Lenders, (ii) the Class 3 Liquidating Trust Agreement is executed and the Class 3 Liquidating Trust Assets are transferred by the Debtor to the Class 3 Liquidating Trust, and (iii) the Debtor has cancelled the Billnat Equity Interest, the Debtor will be dissolve in accordance with Michigan law.

## **III. LEGAL REQUIREMENTS**

## A. Voting Procedures

Under the Bankruptcy Code, the only classes that are entitled to vote to accept or reject a plan are classes of claims or equity interests that are impaired under the plan. Accordingly, classes of claims or interests that are not impaired are not entitled to vote on the Plan.

Creditors that hold Claims in more than one Impaired Class are entitled to vote separately in each Class. Such a creditor will receive a separate ballot for all of its Claims in each Class (in accordance with the records of the Clerk of the Court) and should complete and sign each ballot separately. A creditor who asserts a Claim in more than one Class and who has not been provided with sufficient ballots may photocopy the ballot received and file multiple ballots.

Votes on the Plan will be counted only with respect to claims: (a) that are listed on the Debtor's Schedules other than as disputed, contingent, or unliquidated; (b) for which a proof of Claim was filed on or before the Bar Date set by the Court for the filing of proofs of claim (except for certain claims expressly excluded from the applicable bar date or which are allowed by Court order), or (c) allowed pursuant to the Cash Collateral Order (i.e., the Allowed Lender Secured Claim and the Allowed Lender Unsecured Claim). However, any vote by a holder of a Claim will not be counted if such Claim has been disallowed or is the subject of an unresolved objection, absent an order of the Court allowing such claim for voting purposes pursuant to Section 502 of the Bankruptcy Code and Bankruptcy Rule 3018.

Voting on the Plan by each holder of a claim or interest in an Impaired Class is important. After carefully reviewing the Plan and Disclosure Statement, each holder of such a claim or interest should vote on the enclosed ballot either to accept or reject the Plan, and then return the ballot by mail to the Debtor's counsel by the deadline established by the Court.

Any ballot that does not appropriately indicate acceptance or rejection of the Plan will not be counted.

Claims that have duplicate or amended proofs of Claim filed are only entitled to one vote for such claims and do not receive additional votes on account of any such duplicate and amended proofs of Claim being filed even if the duplicate or amended Claim is not subject to a filed Claim objection.

Claims filed as wholly contingent and/or undetermined or unknown amounts vote \$1.

A ballot that is not received by the deadline will not be counted.

If a ballot is damaged, lost, or missing, a replacement ballot may be obtained by sending a written request to the Debtor's counsel.

## **B. Acceptance**

The Bankruptcy Code defines acceptance of a plan by an impaired class of claims as acceptance by the holders of at least two-thirds in dollar amount, and more than one-half in number, of the claims of that class which actually cast ballots. The Bankruptcy Code defines acceptance of a plan by an impaired class of equity interests as acceptance by holders of at least two-thirds in number of equity interests of that class that actually cast ballots. If no creditor or interest holder in an impaired class votes, then that class has accepted the plan.

## **C. Confirmation**

Section 1129(a) of the Bankruptcy Code establishes conditions for the confirmation of a plan. These conditions are too numerous and detailed to be fully explained here. Parties are encouraged to seek independent legal counsel to answer any questions concerning the chapter 11 process.

Among several conditions for confirmation of a plan under Section 1129(a) of the Bankruptcy Code are these:

1. Each class of impaired creditors and interests must accept the plan, as described in paragraph III.B, above.
2. Either each holder of a claim or interest in a class must accept the plan, or the plan must provide at least as much value as would be received upon liquidation under chapter 7 of the Bankruptcy Code.

## **D. Modification**

The Debtor reserves the right to modify or withdraw the Plan at any time before confirmation.

## **E. Effect of Confirmation**

If the Plan is confirmed by the Court:

1. Its terms are binding on the Debtor, all creditors, shareholders, and other parties in interest, regardless of whether they have accepted the Plan.

2. Except as provided in the Plan, because the Debtor is a corporate Entity that is liquidating and not continuing in its business, Claims will not be discharged.

#### **F. Alternatives to Confirmation and Consummation of the Plan**

The Debtor believes that the Plan affords holders of Claims the potential for the greatest recovery and, therefore, is in the best interests of such holders. If, however, the requisite acceptances are not received, or the Plan is not confirmed and consummated, the theoretical alternatives include: (i) formulation of an alternative plan of liquidation; or (ii) liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

If no plan is confirmed, the Debtor may be forced to liquidate under chapter 7 of the Bankruptcy Code, pursuant to which a chapter 7 trustee would be elected or appointed to liquidate the Debtor's assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective holders of Claims against or Equity Interests in the Debtor. As noted above, however, the Debtor believes that in a liquidation under chapter 7, before creditors receive any distribution, would cause a substantial diminution in the value of the Debtor's Estate, which would result in fewer Assets available for distribution to creditors.

The Debtor could also be liquidated pursuant to the provisions of a different chapter 11 plan of liquidation. However, any distribution to the holders of Claims under a chapter 11 liquidation plan probably would be delayed substantially and there would be no guaranty that the Lenders would agree to the treatment of their Claim as contemplated by the Plan.

Accordingly, the Debtor believes that any alternative liquidation under chapter 7 or 11 is a much less attractive alternative to creditors than the Plan because of the greater return the Debtor believes is provided to creditors under the Plan.

#### **G. Conclusion and Recommendation**

The Debtor believes that confirmation and implementation of the Plan is preferable to any other alternative and recommends that creditors entitled to vote in favor of the Plan.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Debtor respectfully submits this Combined Plan and Disclosure Statement.

Respectfully submitted,

Frank W. Kerr Company

/s/ Jeffrey K. Tischler  
Jeffrey K. Tischler, Chief Restructuring Officer

and

/s/ Stephen M. Gross  
Stephen M. Gross (P35410)  
Jayson B. Ruff (P69893)  
Joshua A. Gadharf (P76860)  
McDONALD HOPKINS LLC  
39533 Woodward Avenue  
Suite 318  
Bloomfield Hills, MI 48304  
Telephone: (248) 646-5070  
Facsimile: (248) 646-5075  
E-mail: sgross@mcdonaldhopkins.com  
jruff@mcdonaldhopkins.com  
jgadharf@mcdonaldhopkins.com

COUNSEL FOR THE DEBTOR  
AND DEBTOR IN POSSESSION

Dated: August 14, 2017

## **Appendix A**

### **Class 2 Liquidating Trust Agreement**

In the event that the Lenders elect the Class 2 Liquidating Trust Mechanism, this agreement that governs the operation and management of the Class 2 Liquidating Trust, shall be filed as a Plan Supplement on or before five (5) business days before the date of the Confirmation Hearing in a form acceptable to the Lenders.

**Appendix B**

**Class 3 Liquidating Trust Agreement**



KERR CREDITORS' LIQUIDATING TRUST AGREEMENT

This Kerr Creditors' Liquidating Trust Agreement (this "Agreement") dated as of September \_\_\_, 2017, by and between Frank W. Kerr Company, (the "Debtor" or "Settlor"), and \_\_\_\_\_, solely in [his/her/its] capacity as the Trustee, for the benefit of the Holders of certain Allowed Claims under the terms of the Debtor's *Chapter 11 Plan of Liquidation* (the "Plan") confirmed by Order of the United States Bankruptcy Court for the Eastern District of Michigan (the "Bankruptcy Court") in Chapter 11 Case No. 16-51724, on September \_\_\_, 2017 (the "Confirmation Order"). Capitalized terms used in this Agreement shall have the meaning ascribed to them herein, or if not defined herein, the Plan or Confirmation Order, as applicable.

**WITNESSETH**

**WHEREAS**, the Trust is created pursuant to, and to effectuate, the Plan;

**WHEREAS**, the Trust is created on behalf of, and for the sole benefit of, the Beneficiaries pursuant to the terms of this Agreement and the Plan;

**WHEREAS**, the Trust is established for the purpose of collecting, administering and distributing the Assets for the benefit of the Beneficiaries in accordance with the terms of this Agreement and the Plan with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust;

**WHEREAS**, pursuant to the Plan, the Settlor, the Trustee, and the Beneficiaries are required to treat, for all federal income tax purposes, the transfer of the Assets to the Trust as a transfer of the Assets by the Settlor to the Beneficiaries in satisfaction of their Allowed Claims, followed by a transfer of the Assets by the Beneficiaries to the Trust in exchange for the beneficial interest herein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation Section 301.7701-4;

**WHEREAS**, the Trust is intended to be treated as a grantor trust for federal income tax purposes;

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Settlor and the Trustee agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATIONS**

1.1 Definitions.

1.1.1 “Assets” shall mean the Class 3 Liquidating Trust Assets as defined in the Plan.

1.1.2 “Available Trust Cash” shall mean the aggregate of the Assets after paying, funding, reserving against, or satisfying: (a) fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) but only as required to be paid by the Trust pursuant to the Plan; (b) operating and administrative expenses of the Trust and Liquidating Trust Committee including, but not limited to, all costs, expenses, and obligations incurred by the Trustee and professionals who may be employed by the Trustee in administering the Trust, the Plan and in carrying out the Trustee’s responsibilities under this Agreement, or in any manner connected, incidental, or related thereto and payment of such expenses; (c) other costs payable by the Trust under the Plan; and (c) the Reserves (as defined below).

1.1.3 “Beneficiaries” shall collectively mean the Holders of Allowed Claims under the Plan to the extent such Holders are entitled to receive distributions from the Assets as provided under the Plan, or any successors to such Holders, whether said Claims are Allowed before or after the Effective Date.

1.1.4 “Liquidating Trust Committee” is the same entity as the Liquidating Trust Committee defined in the Plan.

1.1.5 “Settlor” shall mean the Debtor.

1.1.6 “Trust” shall mean the Liquidating Trust established pursuant to the terms of this Agreement.

1.1.7 “Trustee” shall mean (a) initially, \_\_\_\_\_, solely in [his/her/its] capacity as trustee, and (b) any successors or replacements duly appointed under the terms of this Agreement and the Plan, who is defined in the Plan as the Class 3 Liquidating Trustee.

1.1.8 “Permitted Investments” shall include (a) short-term direct obligations of, or obligations guaranteed by, the United States of America, (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States of America as an agency or instrumentality thereof, (c) such other investments as the Bankruptcy Court may approve from time to time, or (d) demand deposits or certificates of deposit at any bank or trust company that has, at the time of the deposit, a capital stock and surplus aggregating at least \$1,000,000,000, provided, however, that the scope of any Permitted Investments shall be limited to include only those investments that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements, or otherwise.

1.2 Use of Plan Definitions. All capitalized terms that are used in this Agreement but not defined herein shall have the meaning set forth for such terms in the Plan or Confirmation Order as applicable.

1.3 Interpretation. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the provisions of this Agreement. Words denoting the singular number shall include the plural number and vice versa, and words denoting one gender shall include the other gender.

1.4 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that such Section or Article under this Agreement. The words “hereof,” “herein,” “hereinafter,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

## **ARTICLE II**

### **DECLARATION OF TRUST**

2.1 Creation and Name. There is hereby created the Trust, which shall be known as the “Kerr Creditors’ Liquidating Trust,” and is the Trust referred to as the “Liquidating Trust” in the Plan. The Trustee may conduct the affairs of the Trust under the name of the “Kerr Creditors’ Liquidating Trust.”

2.2 Purpose of Trust. The Settlor and the Trustee, pursuant to the Plan and in accordance with the Bankruptcy Code, hereby create the Trust for the purpose of collecting and administering the Assets for the benefit of, and making distributions to, the Beneficiaries in accordance with the terms of this Agreement and the Plan. The activities of the Trust shall be limited to those activities set forth in this Agreement.

2.3 Transfer of Assets.

A. The Settlor hereby grants, releases, assigns, conveys, transfers and delivers, on behalf of the Beneficiaries, all of the Settlor’s right, title and interest in the Assets to the Trustee as of the Effective Date in trust for the benefit of the Beneficiaries, pursuant to

§§ 1123(a)(5)(B) and 1123(b)(3)(B) of the Bankruptcy Code and in accordance with the Plan and Confirmation Order and, as of the Effective Date, free and clear of any and all liens, claims, encumbrances, and interests (legal, beneficial, or otherwise) of all other Persons and Governmental Units to the maximum extent contemplated by and permissible under § 1141(c) of the Bankruptcy Code for the uses and purposes as specified in this Agreement and the Plan. The Assets can be used to, among other things, satisfy the following liabilities: (a) all fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) but only as required to be paid by the Trust pursuant to the Plan; (b) any expenses incurred and unpaid, or to be incurred, by the Settlor (but only as permitted pursuant to the Plan), Liquidating Trust Committee and the Trustee in the performance of their administrative duties and in connection with winding up the Settlor's Estate after the Effective Date; and (c) any other obligations as may be specifically set forth in this Agreement, the Plan or Confirmation Order.

B. The Trustee shall automatically, and without need for further notice or approval of the Bankruptcy Court or the Settlor, be designated as the representative of the Estate pursuant to § 1123 of the Bankruptcy Code to object to any Claims, other than the Lender Secured Claim, including by asserting all legal and equitable rights and defenses, including setoff or recoupment against such Claims, and to compromise or settle any Claims prior to, during or after objection.

2.4 Securities Law. Under § 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Trust to the Beneficiaries under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities and

Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustee shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

2.5 Appointment and Acceptance of Trustee. On the Effective Date of the Plan, the Trustee shall be deemed to be appointed pursuant to § 1123(b)(3)(B) and all other applicable sections of the Bankruptcy Code. The Trustee accepts the Trust created by this Agreement and the grant, assignment, transfer, conveyance, and delivery to the Trustee, on behalf, and for the benefit, of the Beneficiaries, by the Settlor of all of its respective right, title, and interest in the Assets, upon and subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order.

2.6 No Reversion to Settlor. In no event shall any portion of the Assets be distributed to the Settlor after the Effective Date. Rights to any reversionary interests in the Assets shall be controlled by the Plan.

### **ARTICLE III**

#### **ADMINISTRATION OF THE TRUST**

3.1 Liquidating Trust Committee. Pursuant to the Plan, on the Effective Date, the Liquidating Trust Committee shall be established to oversee the implementation of the Plan and this Agreement to the extent provided for in this Agreement. The Liquidating Trust Committee shall have access to the Trustee and the right to consult with and, to the extent provided in the Plan and this Agreement, approve certain actions in connection with the administration and implementation of the Plan and this Agreement on and after the Effective Date as set forth in the Plan and this Agreement. The Liquidating Trust Committee shall initially consist of three

members to be selected by the Committee: \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

Should any member of the Liquidating Trust Committee resign or otherwise be unable or unwilling to continue its service, a replacement member may (but is not required to) be selected by the remaining members of the Liquidating Trust Committee. Except as otherwise expressly provided herein, a majority vote of those members of the Liquidating Trust Committee voting or participating in any decision requiring consultation with or the approval of the Liquidating Trust Committee shall constitute an act or decision of the Liquidating Trust Committee. Approval of the Liquidating Trust Committee may be obtained by the Liquidating Trustee (or counsel to the Liquidating Trustee) via email and by negative notice. All notices, reports or other information to be provided to the Liquidating Trust Committee may be provided by email. Liquidating Trust Committee members shall serve without compensation, but may seek reimbursement from the Trust for out of pocket costs and expenses incurred in connection with service on the Liquidating Trust Committee.

3.2 Rights, Powers, Privileges and Duties. The Trustee shall have only the rights, powers, privileges, and duties expressly provided in this Agreement, the Plan and the Confirmation Order. Subject to the terms of the Plan and this Agreement, including Section 3.11 of this Agreement, and in consultation with or approval of the Liquidating Trust Committee (but only where such consultation or approval is expressly provided this Agreement), the Trustee shall have the power to take the actions granted in this Section 3.2, and any powers reasonably incidental thereto, which the Trustee reasonably determines to be necessary or appropriate to fulfill the purpose of the Trust, including but not limited to:

A. Prosecuting, settling, assigning, or otherwise compromising or abandoning any and all objections to Claims (aside from the Lender Secured Claim), including but not limited to by (i) asserting all legal and equitable rights and defenses to Claims, including setoff or recoupment against such Claims, and (ii) taking any action with respect to appeals, counterclaims, and defenses of or with respect to such objections to Claims, including retaining counsel to pursue objections to Claims;

B. Exercising all powers provided to the Trustee or the Trust hereunder, including, without limitation, the right to allow, object to, reconcile, or settle General Unsecured Claims, Priority Claims (both tax and non-tax), Administrative Claims and Secured Claims and any other Claims asserted against the Estate;

C. Determine and satisfy any liabilities created, incurred or assumed by the Trust;

D. Executing any documents and taking any other actions related to, or in connection with, the liquidation of the Assets and the exercise of the Trustee's powers granted in this Agreement, the Plan, and Confirmation Order;

E. Holding legal title to any and all rights of the Beneficiaries in, to, or arising from the Assets;

G. Establishing one or more Reserves (as set forth below and in the Plan), including the Lender Unsecured Claim Reserve (as defined in the Plan);

H. Protecting and enforcing the rights to the Assets vested in the Trustee by this Agreement by any method reasonably determined to be appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;



I. Making distributions of the Assets to or on behalf of the Beneficiaries in accordance with this Agreement, the Plan, and the Confirmation Order;

J. Filing any and all tax and information returns with respect to the Trust and paying taxes properly payable by the Trust, if any; and filing and issuing any and all necessary information returns, and taking any and all action necessary to obtain payment of any tax refund(s) due to the Settlor, its Estate and/or the Trust;

K. Making all necessary filings in accordance with any applicable law, statute, or regulation;

L. Determining and satisfying from the Assets any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, incurred by or on behalf of the Trust and the Liquidating Trust Committee;

M. Investing the Assets received by the Trust or Trustee or otherwise held by the Trust or Trustee in accordance with Section 3.12 of this Agreement;

N. In the event that the Trustee determines that the Beneficiaries or the Trust may, will or have become subject to different tax consequences than those described in the Plan, taking such actions that will, or are intended to, address such different tax consequences, in consultation with the Liquidating Trust Committee;

O. Creating sub-trusts or title vehicles of which the Trust or the Beneficiaries hold the beneficial or ownership interests, as applicable, in consultation with the Liquidating Trust Committee;

P. Sending annually to each Beneficiary a separate statement stating the Beneficiary's share of income, gain, loss, deduction, or credit and instructing all such Beneficiaries to report such items on their federal tax returns;

Q. Opening and maintaining bank accounts on behalf of or in the name of the Trust;

R. In reliance upon the official claims register maintained in the Settlor's Chapter 11 Case and any applicable court order, maintaining a register on the Trustee's books and records evidencing the beneficial interest in the Trust held by each Beneficiary;

S. Performing such functions and taking such actions as are provided for or permitted in this Agreement;

T. Execute offsets against Claims as provided for in the Plan;

U. Pay all expenses and make all other payments relating to the Trust's Assets;

V. Pay all U.S. Trustee fees until such time as the Bankruptcy Court enters a final decree closing the Debtor's Chapter 11 case; and

W. Prepare and deliver periodic reports on the status of the Trust for the Liquidating Trust Committee.

3.3 Claims Administration. Subject in all respects to the provisions hereof and the Plan, the Trustee, in consultation with the Liquidating Trust Committee, shall have the authority to allow, reconcile, and file objections to Claims or Equity Interests, and to settle, compromise, withdraw, or litigate to judgment objections to any and all Claims or Equity Interests, regardless of whether such Claims or Equity Interests are in a Class or otherwise.

3.4 Subject to the foregoing and the provisions of the Plan, from and after the Effective Date, the Trustee (a) may settle or compromise any Disputed Claim, and (b) shall succeed to the Settlor's right with respect to any objections to Disputed Claims filed by the Settlor that remain pending as of the Effective Date. From and after the Effective Date, the

Trustee shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval of the Bankruptcy Court.

3.5 Cure Costs. Subject to the Plan, on and after the Effective Date, the Trustee may settle any dispute regarding the amount of any cure Claim with respect to rejection damages without any further notice to any party or any action, order, or approval of the Bankruptcy Court.

3.6 Estimation. Subject to the Plan, the Trustee may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including Section 502(c) of the Bankruptcy Code, regardless of whether the Settlor or the Trustee have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to the maximum extent permitted by law as determined by the Bankruptcy Court to estimate any Disputed Claim, contingent Claim, or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection.

3.7 Agents and Professionals. The Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants or other professionals and employees as the Trustee deems appropriate in the reasonable exercise of his or her discretion, and whom the Trustee reasonably determines to have qualifications necessary to assist the Trustee in the proper administration of the Trust. Subject to Section 7.8 of this Agreement, the Trustee may pay the reasonable fees, costs and expenses of such persons (including [himself/herself/it]) out of the Assets in the ordinary course of business. The Trustee may retain professionals who previously were employed by the Committee and/or the Debtor.

3.8 Safekeeping of Assets. All Assets shall, until distributed or paid over as herein provided or in the Plan, be held in trust for the benefit of the Beneficiaries in accordance with this Agreement. The Trustee shall be under no liability for interest or producing income on any moneys received by him or her herein and held for distribution or payment to the Beneficiaries, except as such interest or income shall actually be received by the Trustee.

3.9 Limitations on Trustee. The Trustee shall not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, and no part of the Assets or the proceeds, revenue, or income therefrom shall be used or disposed of by the Trust in furtherance of any trade or business. The Trustee shall also not incur indebtedness or commingle the Trust's Assets with any property owned or held by any other person.

3.10 Investment. The Trustee may only invest funds held in the Trust in Permitted Investments, in a manner consistent with the requirements of the Bankruptcy Code or any order of the Bankruptcy Court modifying such requirements and, provided that the Trustee does so, he or she shall have no liability in the event of insolvency of any institution in which he or she has invested any of the Assets or any proceeds, revenue, or income therefrom.

3.11 Trustee Action. The Trustee shall hold, collect, conserve, protect, and administer the Trust in accordance with the provisions of this Agreement and the Plan, and pay and distribute amounts as set forth therein for the purposes set forth in the Plan and this Agreement. Any good faith determination by the Trustee as to what actions are in the best interests of the Trust shall be determinative, subject to approval by the Liquidating Trust Committee to the extent such approval is required by this Agreement.

3.12 Bankruptcy Court Approval of Trustee Actions. Except as provided in the Plan or as otherwise specified in this Agreement, the Trustee need not obtain an order or approval of the

Bankruptcy Court in the exercise of any power, rights, or discretion conferred hereunder, or account to the Bankruptcy Court. Except as provided in the Plan or otherwise specified in this Agreement, the Trustee shall exercise his or her business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and distributions to the Beneficiaries, giving due regard to the cost, risk, and delay of any course of action. Notwithstanding the foregoing, the Trustee is authorized (but is not required) to seek Bankruptcy Court approval for authority to take a particular action which the Trustee may desire to have explicit approval of the Bankruptcy Court with respect to the Assets, the Trust, and the Settlor, and as provided in the Plan or this Agreement, including the administration and distribution of the Assets. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action.

3.13 Confidentiality. The Trustee shall, during the period that he or she serves as Trustee under this Agreement and for a period of twelve (12) months following the termination of this Agreement or his or her removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Assets, or pending or potential objection to Claim relates, or which he or she has become aware of in his or her capacity as Trustee.

3.14 Privileged Documents. Subject to the Plan, any disclosure or examination of any Privileged documents shall be limited to the Trustee, the Liquidating Trust Committee and the attorneys that the Trustee has retained on behalf of the Trust for the purpose of pursuing objections to Claims, those attorneys' administrative support personnel, and any consulting, non-testifying experts retained by the Trustee on behalf of the Trust for the purpose of assisting the Trust in pursuing such Claim objections. The Trustee may not disclose any of the Privileged

documents (or the contents of the Privileged documents), or otherwise take any actions that may constitute a waiver of the attorney-client privilege, work product privilege, common interest privilege, or any other applicable privileges with respect to the Privileged documents, without giving three (3) Business Days' notice to the applicable affected party and an opportunity to object. Nothing in the Plan or this Agreement shall constitute a waiver of any privilege claims over any of the documents, including the Privileged documents that are produced to or received by the Trust or Trustee. For the avoidance of doubt, the Trust is a successor-in-interest to the Settlor, and thus, the transfer of the Privileged documents as provided herein does not impair or waive any privilege.

#### **ARTICLE IV**

##### **DISTRIBUTIONS FROM THE TRUST**

4.1 Distributions and Reserves. On and after the Effective Date, the Trustee shall make distributions to Beneficiaries as and when required, including no less frequently than once annually, such period to be measured from the Effective Date (each a "Distribution Date"); provided, however, that the Trustee, after consultation with the Liquidating Trust Committee, may (i) defer a Distribution to the next Distribution Date if the Trustee determines, in the reasonable exercise of the Trustee's discretion, that the amount available for Distribution at such time is insufficient to justify the cost of effecting the Distribution or (ii) make more frequent Distributions if the Trustee determines, after consultation with the Liquidating Trust Committee, that such interim distributions are warranted and economical; provided further, however, that the Trustee may, in the reasonable exercise of the Trustee's discretion, cause the Trust to retain an amount of Available Trust Cash reasonably necessary to maintain the value of the Assets or to meet Trust liabilities, including maintenance of the Reserve, and withhold such Cash from

Distributions to Beneficiaries. The Trustee may require any Beneficiary to furnish to the Trustee in writing his/her or its Employer or Taxpayer Identification Number as assigned by the IRS or an executed IRS Form W-9 or similar tax form, such as IRS Form W-8, and the Trustee may condition any distribution upon receipt of such identification number or document.

The Trustee shall not make any distributions of Assets to the Beneficiaries unless the Trustee retains and reserves in one or more reserves (each, a “Reserve”, collectively, the “Reserves”) such amounts as are reasonably necessary to satisfy amounts that would have been distributed in accordance with this Article IV in respect of Disputed Claims if the Disputed Claims were determined to be Allowed Claims immediately prior to such proposed distribution to the Beneficiaries.

To the extent that Reserves are established and maintained for the benefit of any Holder of a Disputed Claim, such Reserves shall include an amount of Cash, equal to the distributions that would have been made to the holder of such Disputed Claim if it were an Allowed Claim in an amount equal to the lesser of (i) the amount of the Disputed Claim, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim ultimately may become an Allowed Claim, or (iii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Trustee.

In addition, the Trustee may establish and maintain one or more Reserves in the amount of any Claim, including an Allowed Claim, for which the Trustee is authorized to withhold distributions and is withholding such distributions.

The Trustee may, but shall not be obligated to, physically segregate and maintain separate accounts or sub-accounts for the Reserves. Reserves may be merely bookkeeping entries or accounting methodologies which may be revised from time to time, to enable the Trustee to determine reserves and amounts to be distributed in accordance with the Plan.

The Trustee shall establish the Lender Unsecured Claim Reserve (as defined in the Plan), but only to the extent the Lender Unsecured Claim Reserve is greater than \$1,000,000.00. If the Lender Unsecured Claim Reserve is greater than \$1,000,000.00 and such Reserve therefore must be established pursuant to the Plan, the details regarding how such Reserve shall be established and maintained shall be governed by the Plan and Confirmation Order.

4.2 Distributions After Allowance or Disallowance of a Disputed Claim. Within thirty (30) days of a Disputed Claim becoming an Allowed Claim, the Trustee shall distribute to the Holder thereof, from the Reserve, such amount of Available Trust Cash as would have been distributed to such Holder if its Claim had been an Allowed Claim on the Effective Date. The Trustee shall no longer reserve for and shall distribute to the Beneficiaries, pursuant to this Agreement, their Pro Rata share of the funds held in the Reserve on account of any Disputed Claim that becomes Disallowed.

4.3 Undeliverable Property. If any distribution of Available Trust Cash to or on behalf of a Beneficiary is returned to the Trustee or his or her agent as undeliverable, no further distribution to such Beneficiary shall be made unless and until the Trustee is notified in writing of such Beneficiary's then-current address by no later than the Unclaimed Distribution Deadline. Any Beneficiary that does not assert a claim for an Unclaimed Distribution of Available Trust Cash within ninety (90) days after the distribution date on which the relevant distribution became deliverable shall no longer have any claim to or interest in the Available Trust Cash represented



by such Unclaimed Distribution, and in such Case, all title to and all beneficial interests in the Assets represented by any such Unclaimed Distributions shall revert to and/or remain in the Trust and shall be distributed in accordance with Article 4 of this Agreement and the Plan. The Trustee has no obligation to search for a Beneficiary's address if a check is undeliverable and the Beneficiary did not provide an updated address.

4.4 Payments Limited to Assets. All payments to be made by the Trustee to or for the benefit of any Beneficiary shall be made only from the Assets.

4.5 United States Trustee Fees. After the Effective Date, the Trustee shall pay from the Assets, as an expense of the Trust, fees incurred under 28 U.S.C. § 1930(a)(6) by reason of the Trust's disbursements but only as required to be paid by the Trust pursuant to the Plan until the Trust is ready to close the Settlor's Chapter 11 Case on account of the Objection Completion (as defined in the Plan).

4.6 Insurance. The Trustee may use Assets in the Trustee's reasonable business judgment, after consultation with the Liquidating Trust Committee, to maintain insurance coverage, if available, for the protection of the Persons or Entities serving as Trustee and/or on the Liquidating Trust Committee on and after the Effective Date.

## **ARTICLE V**

### **BENEFICIARIES**

5.1 Incidents of Ownership. The Beneficiaries shall be the sole beneficiaries of the Trust and the Assets, and the Trustee shall retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in this Agreement, the Plan and the Confirmation Order.

5.2 Interest Beneficial Only. The ownership of a beneficial interest in the Trust shall not entitle any Beneficiary or the Settlor to any title in or to the Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein or in the Plan.

5.3 Evidence of Beneficial Interest. Ownership of a beneficial interest in the Assets shall not be evidenced by any certificate, security, or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee. The Trustee may rely on the claims register maintained by the Claims Agent or its successor.

5.4 Notice of Transfer of Beneficial Interest. Any notice of a change of beneficial interest ownership shall be provided in accordance with Section 13.3 of this Agreement. The notice shall be executed by both the transferee and the transferor and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest to be transferred. The Trustee may rely upon such signatures and acknowledgments as evidence of such transfer without the requirement of any further investigation.

## ARTICLE VI

### THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

6.1 Reliance. Except as otherwise provided in this Agreement, the Plan, or the Confirmation Order, the Trustee may rely upon and shall be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed to be genuine and to have been signed or presented to the Trustee.

6.2 Parties Dealing With the Trustee. In the absence of actual knowledge to the contrary, any person dealing with the Trust or the Trustee shall be entitled to rely on the

authority of the Trustee or any of the Trustee's agents to act in connection with the Assets. There is no obligation on any Person dealing with the Trustee to inquire into the validity, expediency, or propriety of any transaction by the Trustee or any agent of the Trustee.

6.3 Limited Recourse. All Persons (including any professionals retained by the Trustee or the Liquidating Trust Committee in accordance with this Agreement) engaged in transactions with the Trust, the Trustee or the Liquidating Trust Committee and/or having any claims against the Trustee, including any professionals retained by the Trustee, or the Liquidating Trust Committee related to the Plan or this Agreement shall look only to the Assets to satisfy any liability incurred in connection with the carrying out the terms of this Agreement, the Plan, or the Confirmation Order.

6.4 Limitation of Liability. The Trustee and his or her agents, employees, officers, directors, professionals, attorneys, accountants, advisors, and representatives shall not be subject to any personal liability whatsoever, in tort, contract, or otherwise, to any Person in connection with the Assets or the affairs of the Trust, except for their own gross negligence, willful misconduct, or fraud. Other than as set forth in the Plan or Confirmation Order, nothing in this Agreement shall be deemed to release any Beneficiary from any actions or omissions occurring prior to the Effective Date.

6.5 Non-Liability for Acts of Others. Nothing contained in this Agreement, the Plan, or the Confirmation Order shall be deemed to be an assumption by the Trustee of any of the liabilities, obligations, or duties of the Settlor or Beneficiaries and shall not be deemed to be or contain a covenant or agreement by the Trustee to assume or accept any such liability, obligation, or duty. Any successor Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Trustee hereunder, and any statement or representation made by a

predecessor Trustee or his or her agents as to the Assets or as to any other fact bearing upon the prior administration of the Trust, so long as he or she has a good faith basis to do so. A Trustee shall not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. A Trustee or successor Trustee shall not be liable for any act or omission of any predecessor Trustee, nor have a duty to enforce any claims against any predecessor Trustee on account of any such act or omission.

6.6 Indemnification. The Trustee, as well as the Liquidating Trust Committee, and the Trustee's professionals and agents (the "Indemnified Parties"), shall be indemnified by and receive reimbursement from the Assets (whether or not distributed to the Beneficiaries) against and from any and all loss, liability, cost, damage, or expense which they may incur or sustain in the exercise and performance of any of their powers and duties pursuant to the Plan and this Agreement unless such loss, liability, cost, damage, or expense shall be incurred or sustained as a result of the gross negligence or willful misconduct of the Trustee, the Liquidating Trust Committee, or the Trustee's professionals and agents. All claims of the Trustee, the Liquidating Trust Committee, and the Trustee's professionals and agents for indemnification or reimbursement under this paragraph shall only be paid from the Assets remaining in the Trust.

This indemnification shall survive the death, dissolution, resignation, or removal, as may be applicable, of the Indemnified Parties, or the termination of the Trust, and shall inure to the benefit of the indemnified Parties' heirs and assigns.

## ARTICLE VII

### SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE

7.1 Initial Trustee. The initial Trustee shall be \_\_\_\_\_.

7.2 Term of Service. The Trustee shall serve until (a) the completion of all the Trustee's duties, responsibilities and obligations under this Agreement and the Plan; (b) termination of the Trust in accordance with this Agreement; or (c) the Trustee's death or dissolution, incapacitation, resignation, or removal, as set forth below or as provided for in the Plan.

7.3 Removal of a Trustee. The Liquidating Trust Committee may remove and replace the Trustee for cause, including, without limitation, incapacity or failure or refusal to perform his duties hereunder. If removal of the Trustee is sought from the Bankruptcy Court by a motion for cause (or similar motion), then the Trustee is entitled to oppose such motion and to pay his or her reasonable attorneys' fees and expenses in connection with such objection from the Assets of the Trust.

7.4 Resignation of Trustee. The Trustee may resign at any time by giving the Liquidating Trust Committee at least thirty (30) days' written notice of the Trustee's intention to do so. In the event of a resignation, the resigning Trustee shall render to the Liquidating Trust Committee a full and complete accounting of monies and assets received, disbursed, and held during the term of office of that Trustee. The resignation shall be effective on the later of (a) the date specified in the notice; (b) the date that is thirty days (30) after the date the notice is delivered; or (c) the date the accounting described in the preceding sentence is delivered.

7.5 Appointment of Successor Trustee. Upon the resignation, death, incapacity, or removal of a Trustee, the Liquidating Trust Committee shall appoint, by majority vote, a successor Trustee to fill the vacancy so created, or in the absence of majority vote, the Bankruptcy Court shall appoint a successor Trustee. Incapacitation for purposes of this Article VII shall mean that the Trustee is unable to perform the duties required of him/her/it under this

Agreement for a period of thirty (30) consecutive calendar days. If the Trustee becomes incapacitated, the Liquidating Trust Committee shall promptly appoint a successor Trustee. Any successor Trustee so appointed shall consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement shall be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors or assigns. Notwithstanding anything in this Agreement, in the event that a successor Trustee is not appointed within sixty (60) days of the occurrence or effectiveness, as applicable, of the prior Trustee's resignation, death, incapacity, or removal, the Liquidating Trust Committee shall be authorized to request the Bankruptcy Court appoint a successor Trustee.

7.6 Powers and Duties of Successor Trustee. A successor Trustee shall have all the rights, privileges, powers, and duties of the predecessor Trustee under this Agreement and the Plan.

7.7 Trust Continuance. The death, incapacity, resignation or removal of the Trustee shall not terminate the Trust or revoke any existing agency created pursuant to this Agreement or invalidate any action theretofore taken by the Trustee.

7.8 Compensation and Costs of Administration. The Trustee may retain and compensate professionals (including [himself/herself/itself]) as provided for in Section 3.9 of this Agreement. The reasonable fees and actual and necessary expenses of such professionals and the Trustee shall be paid by the Trustee upon the monthly submission of a fee statement to the Trustee and/or the Liquidating Trust Committee, as applicable, in accordance with the following procedures. The Trustee shall deliver his or her invoices or fee statements to the Liquidating Trust Committee before payment from the Assets shall be allowed. Any professionals retained

by the Trustee pursuant to this Agreement shall deliver their invoices or fee statements to the Trustee and the Liquidating Trust Committee before payment from the Assets shall be allowed. The Trustee and Liquidating Trust Committee, as applicable, shall have fifteen (15) calendar days from the delivery of any invoice or fee statement to give notice of an objection to the fee statement to the professional seeking compensation or reimbursement (including the Trustee himself). For an objection to be valid, it shall be in writing and set forth in detail the specific fees objected to and the basis for the objection. The uncontested portion of each invoice shall be paid within twenty-five (25) calendar days after its original delivery to the Trustee or Liquidating Trust Committee, as applicable. Any objection that remains unresolved fifteen (15) calendar days after it is made shall be submitted to the Bankruptcy Court for resolution.

7.9 Reporting and Filing Requirements.

A. Within thirty (30) days after December 31 of each calendar year in which the Trust shall remain in existence, the Trustee shall prepare a report of all Assets held and received by the Trust, all Available Trust Cash disbursed to Beneficiaries, and all fees, income, and expenses related to the Trust during the preceding calendar year. The Trustee's report shall be provided to the Liquidating Trust Committee, and shall be made available to any Beneficiary upon written request.

B. The Trustee shall also timely prepare, file and distribute such additional statements, reports and submissions as may be necessary to cause the Trust and the Trustee to be in compliance with applicable law, such as the filing of tax or informational returns.

C. The Trustee shall provide such additional statements, reports, submissions and information to the Liquidating Trust Committee as may reasonably be

requested, including without limitation, periodic updates on the status of the Trust, its Assets (including tax refunds), and the projected timing of future distributions (to the extent known by the Trustee).

## **ARTICLE VIII**

### **TRUST RIGHTS AND OBLIGATIONS**

8.1 The Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations.

8.2 To the extent reasonably practicable unless otherwise ordered by the Bankruptcy Court, the Trustee shall, within 110 days after the end of each calendar year, send to each Beneficiary a statement setting forth the Beneficiary's share or items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns. Such a statement shall also be sent to each Beneficiary within 110 days of the dissolution of the Trust. The Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan and Confirmation Order relating to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust, as determined pursuant to this Agreement.

8.3 In addition to the Trustee's rights and duties with respect to the Trust, and subject to the Plan, on and after the Effective Date, the Trustee is authorized to implement the Plan and any applicable orders of the Bankruptcy Court.

## **ARTICLE IX**

### **MAINTENANCE OF BOOKS AND RECORDS**

9.1 Subject to the Plan, on the Effective Date, the Trust shall: (a) to the extent provided for in the Plan and as necessary for handling Claim objections, take possession of the



necessary books, records, and files of the Settlor and its Estate, in all forms including electronic and hard copy; and (b) provide for the retention and storage of such books, records, and files until such time as the Trustee determines, in accordance with this Agreement and in consultation with the Liquidating Trust Committee, that retention of same is no longer necessary or required.

9.2 The Trustee shall maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements. The Trustee shall furnish to any Beneficiary upon written request an annual statement of receipts and disbursements, including a summary of all income and expenses of the Trust.

## **ARTICLE X**

### **DURATION OF TRUST**

10.1 Duration. The Trust shall become effective upon the Effective Date of the Plan, and the Trust and its provisions herein shall remain and continue in full force and effect until the Trust is terminated.

10.2 Termination. Subject to the Plan, the Trustee and members of the Liquidating Trust Committee shall be discharged and the Trust and Liquidating Trust Committee shall be terminated, at such time as (a) all Disputed Claims have been resolved, (b) all of the Assets have been liquidated, (c) all duties and obligations of the Trustee hereunder and in the Plan have been fulfilled, (d) all distributions required to be made by the Trust under the Plan and the Agreement have been made, and (e) the Chapter 11 Case of the Debtor has been closed, but in no event shall the Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Trustee within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed

period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service, to the extent required under applicable law at that time, that any further extension would not adversely affect the status of the Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and distribution of the Assets to the Beneficiaries. The Trustee may seek such an extension with the consent of the Liquidating Trust Committee, which consent shall not be unreasonably withheld.

10.3 Continuance of Trust for Winding Up. After the termination of the Trust and for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until the Trustee's duties have been fully performed, including, without limitation, such post-distribution tasks as necessary to windup the affairs of the Trust. The Trustee and Trust shall dispose of the books, records, Beneficiary lists, and certificates and other documents and files which shall have been delivered to or created by the Trustee as set forth in the Plan. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and after final distributions of the Trust are made, the Trustee shall have no further duties or obligations hereunder. For the avoidance of doubt, the limitations on liability and indemnification rights contained in Article VI hereof shall apply to any actions taken by the Trustee and his professionals during the course of winding up the affairs of the Trust.

## **ARTICLE XI**

### **TAX TREATMENT OF THE TRUST**

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

purposes, the Beneficiaries of the Trust will be treated as grantors and owners thereof and it is intended that the Trust be classified as a liquidating Trust under 26 C.F.R. § 301.7701-4 and that the Trust is owned by the Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Beneficiaries be treated as if they had received a distribution of an undivided interest in the Assets and then contributed such interests to the Trust. Accordingly, the Trust shall, in an expeditious but orderly manner, and pursuant to the terms of this Agreement, the Plan and the Confirmation Order, liquidate and convert to Cash the Assets, make timely distributions to the Beneficiaries pursuant to the Plan, and not unduly prolong the Trust's duration. The Trust shall not be deemed a successor in interest of the Settlor for any purpose other than as specifically set forth herein, the Plan and Confirmation Order.

11.2 Tax Returns. In accordance with the Plan, the Trustee shall cause the filing of file returns for the Trust, except with respect to any Reserve, as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Trust's taxable income, gain, loss, deduction or credit will be allocated to each one of the Beneficiaries in accordance with their relative beneficial interests in the Trust.

11.3 Valuation of Assets. As soon as practicable after the Effective Date, the Trustee (to the extent that he or she deems it necessary or appropriate in the reasonable exercise of his or her discretion) shall, in good faith, value the Assets, and shall apprise the Beneficiaries of such valuation (but the Trust is not required to engage an expert to make such a valuation) for tax purposes. The valuation shall be used consistently by all parties (including the Settlor, the Trustee, and the Beneficiaries) for all federal income tax purposes. The Bankruptcy Court shall resolve any dispute regarding the valuation of the Assets.

11.4 Disputed Claims Reserve. The Trustee shall file any required income tax returns with respect to any income attributable to the Reserves and shall pay any federal, state and local income taxes attributable to the Reserves, based on the items of income, deduction, credit or loss allocable thereto.

11.5 Determination of Taxes. The Trustee or Settlor (as the case may be) may request an expedited determination of any local, state and/or federal taxes of the Settlor or of the Trust, including the Reserves, under Bankruptcy Code Section 505(b) for all returns filed for, or on behalf of, the Settlor and the Trust for all taxable periods through the dissolution of the Trust, and to take any and all action necessary to obtain payment of any tax refund(s) due to the Settlor, its Estate and/or the Trust.

11.6 Filing, Reporting, Withholding. [TO BE DISCUSSED] The Trustee shall be responsible for filing all federal, state, local and foreign tax returns for the Trust. The Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Trust shall be subject to any such withholding and reporting requirements

## **ARTICLE XII**

### **WIND-DOWN**

12.1 Wind-Down of Settlor. In addition to the Trustee's rights and duties with respect to the Trust as set forth herein, on and after the Effective Date, the Trustee shall also have the power and authority to take any action necessary to assist the Debtor (to the extent in existence after the Effective Date) wind down the Estate.

## ARTICLE XIII

### MISCELLANEOUS

13.1 Jurisdiction. The Bankruptcy Court shall have exclusive jurisdiction over (a) the Trust, the Trustee and the Liquidating Trust Committee with respect to the administration of and activities relating to the Trust, as well as (b) any issues or disputes arising out of this Agreement; provided, however, that notwithstanding the foregoing, the Trustee shall have the power and authority to bring any action in any court of competent jurisdiction to prosecute any objections to Claims, subject to the oversight and consent requirements set forth in this Agreement, the Plan and the Confirmation Order.

13.2 Limitation on Transferability. A beneficial interest in the Trust shall be non-assignable and non-transferable except upon death of the interest holder or by operation of law. An assignment or transfer shall not be effective until appropriate notification and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of proper notification and proof of assignment or transfer. The Trustee may rely upon such proof without the requirement of any further investigation.

13.3 Notices. All notices to be given to Beneficiaries may be given by ordinary mail, or may be delivered personally, to the holders at the addresses appearing on the books kept by Trustee. Any notice or other communication which may be or is required to be given, served, or sent to the Trustee shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

If to the Trust/Trustee:

\_\_\_\_\_  
With a copy to:

[Trustee's Counsel]

If to the Liquidating Trust Committee:

\_\_\_\_\_  
- and -  
\_\_\_\_\_

If to the Settlor:

\_\_\_\_\_  
With a copy to:  
\_\_\_\_\_

or to such other address as may from time to time be provided in written notice by the Trustee or the Liquidating Trust Committee.

13.4 No Bond. Notwithstanding any state law to the contrary, the Trustee (including any successor) shall be exempt from giving any bond or other security in any jurisdiction.

13.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without giving effect to conflicts of law principles.

13.6 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

13.7 Headings. The various headings of this Agreement are inserted for convenience only and shall not affect the meaning or understanding of this Agreement or any provision hereof.

13.8 No Execution. All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can bind, pledge, encumber, execute upon, garnish, or attach the Assets or the Trustee in any manner or compel payment from the Trust except by final order of the Bankruptcy Court.

13.9 Conflict. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of this Agreement shall govern and control. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Confirmation Order, then the terms of the Confirmation Order shall govern and control.

13.10 Amendment. This Agreement may only be amended with the consent of the Trustee and the Liquidating Trust Committee (which consent shall not be unreasonably withheld) or, in the absence of such agreement, by order of the Bankruptcy Court (or other court of competent jurisdiction), and any such amendment must be consistent with the terms of the Plan.

13.11 Severability. If any term, provision, covenant, or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against its regulatory policy, the remainder of the terms, provisions, covenants, and restrictions contained in this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

**IN WITNESS WHEREOF**, the parties have executed this Agreement (or are deemed to have so executed this Agreement) as of the day and year written above.

Trustee

Frank W. Kerr Company

By: \_\_\_\_\_  
Name: [\_\_\_\_\_]

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

Title: Liquidating Trustee of the  
Kerr Creditors' Liquidating  
Trust

Name:  
Title:



## Appendix C

### **Plan Administrator Agreement**

In the event that the Lenders elect the Liquidating Debtor Mechanism, this agreement that governs the administration of the Class 2 Assets, shall be filed as a Plan Supplement on or before five (5) business days before the date of the Confirmation Hearing in a form acceptable to the Lenders.

**Appendix D**

**Settlement Agreement**

SETTLEMENT TERM SHEET (“Settlement”)

*In re Frank W. Kerr Company* (the “Debtor”), Chapter 11 Case No. 16-51724 (the “Bankruptcy Case”), United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”)

This Settlement is made this 27th day of July, 2017 (the “Execution Date”), by and among the Debtor, JPMorgan Chase Bank, N.A., as Administrative Agent for itself (“Agent”, and in its capacity as a Lender, “Chase”) and Comerica Bank (“Comerica”, and together with Chase, the “Lenders”), and the Official Committee of Unsecured Creditors appointed in the Bankruptcy Case (“Committee”, and together with Debtor, Agent, and Lenders (the “Parties”)).

On October 21, 2016, after the final hearing, the Parties and the United States Trustee entered into a Stipulation consenting to entry of an Order Authorizing Use of Cash Collateral and Granting Adequate Protection (Docket #147), as subsequently amended on December 6, 2016 (Docket #189), January 4, 2017 (Docket #232), January 23, 2017 (Docket #252), March 1, 2017 (Docket #283), March 20, 2017 (Docket #291), April 12, 2017 (Docket #311), May 8, 2017 (Docket #357), May 15, 2017 (Docket #367), June 8, 2017 (Docket #401), June 19, 2017 (Docket #413) and July 18, 2017 (Docket #451) (the “Cash Collateral Order”).

Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Cash Collateral Order.

The Lenders assert that they have valid and enforceable security interests in all pre-petition assets of Debtor and its subsidiaries and affiliates while the Committee disputes this assertion and, under the Cash Collateral Order, the Committee retained the ability to object to or file actions to avoid the Lenders’ security interests in Vehicles (and proceeds thereof), Novi Proceeds (as defined below), proceeds of the Commercial Tort Claims (or transfers of such proceeds), ERW Interests (and proceeds thereof), and the Shar Receivable, and to file actions against the Lenders relating to the Guarantor Transactions.

The Debtor and the Lenders each have claims against the Debtor’s directors, officers, shareholders, affiliates and/or their professionals (the “Insider Causes of Action”) that each believe they are respectively entitled to pursue. The Cash Collateral Order contemplates that the Parties will execute a Contemplated Agreement relating to a course of action for the Parties’ pursuit of the Insider Causes of Action, and a sharing formula for the proceeds of the Insider Causes of Action. The Parties desire for this Settlement to constitute the Contemplated Agreement described in the Cash Collateral Order, and resolve and settle all disputes among the Parties concerning the Lenders’ security interests in assets of Debtor and its subsidiaries and affiliates.

1. **Effectiveness.** This Settlement shall be effective and enforceable by and against the Parties on such date as both of the following events have occurred (the “Effective Date”): (i)

the execution of this Settlement by all of the Parties, and (ii) entry by the Bankruptcy Court or other court of competent jurisdiction of a final, non-appealable order confirming a chapter 11 plan of liquidation (the “Plan”) containing the terms of this Settlement (the “Final Approval”).

2. **Lenders’ Contribution.** No later than the later of (i) ten (10) days after the Lenders’ receipt of the proceeds the Lenders realize from the sale of the assets of Billnat, or (ii) ten (10) days after the Effective Date, the Lenders shall pay to the Debtor’s chapter 11 bankruptcy estate (the “Estate”) or the GUC Liquidation Trust (as defined below), as applicable, the amount of One Million Dollars (\$1,000,000.00) from such proceeds (the “Lenders’ Contribution”).

3. **True Up.** No later than twenty (20) days after the Effective Date, the Lenders shall pay to the Estate their allocated share pursuant to the Allocated Share Arrangement of Section 1.5 of the Cash Collateral Order of all cash utilized by Debtor as authorized by the Cash Collateral Order through July 17, 2017 (the “True Up Proceeds”), to the extent that such True Up Proceeds have not been previously reimbursed to the Estate through proceeds of the Lenders’ Collateral or otherwise previously paid to the Estate by the Lenders.

4. **Agent and Lenders’ Release of Liens.** Upon the Effective Date, the Agent, on behalf of itself and the Lenders, waives and releases any security interests that the Agent or Lenders have in (i) the remaining net proceeds that are being held by the Debtor in a segregated account from the Debtor’s sale of real property located at 43155 Nine Mile Road, Novi, Michigan (the “Novi Proceeds”), (ii) the True Up Proceeds, and (iii) the Vehicles and any proceeds thereof (the “Vehicle Proceeds”, together with the Novi Proceeds and the True Up Proceeds, the “Unencumbered Proceeds”).

5. **Unencumbered Proceeds.** The Unencumbered Proceeds shall be used to fund accrued and unpaid administrative expenses, including approved fees of the Estate’s professionals (including Committee professional fees that were not included in the Budgets that were incorporated into the Cash Collateral Order), future chapter 11 administrative fees and costs (including fees and costs of drafting and confirming the Plan) and allowed priority claims. After all allowed administrative expenses and allowed priority claims are paid (or funds sufficient to pay such administrative expenses and priority claims are retained in reserve by the Estate or GUC Liquidation Trust, as applicable), the remainder of the Unencumbered Proceeds shall be used to fund (through the Plan) distributions to general unsecured creditors (including costs of distributions) and claim objections (to the extent not brought prior to the Plan effective date or pending as of the Plan effective date) to be handled by a “GUC Liquidation Trust” to be established under the Plan.<sup>1</sup> The GUC Liquidation Trust shall be funded by the Debtor on the Plan effective date with the Unencumbered Proceeds remaining as of the Plan effective date.

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<sup>1</sup> The trustee for the GUC Liquidation Trust and oversight committee of the GUC Liquidation Trust shall be selected by Committee.

The GUC Liquidation Trust shall also be funded (whether on or after the Plan effective date, as applicable) with the following assets: (i) the Lenders' Contribution; (ii) the Excess Shar Proceeds, if any; and (iii) the Backstop Amount (as defined in paragraph 7 below), if any.

6. **Lenders' Deficiency Claim.** The Lenders shall not receive a distribution from the Lenders' Contribution on account of any unsecured deficiency claim held by the Lenders. Both general unsecured creditors with allowed claims and the Lenders' unsecured deficiency claim shall share in distributions from the remainder of Unencumbered Proceeds (after payment of all allowed administrative/priority claims) on a *pro rata* basis, provided the Lenders waive the first \$1 million of distribution they would receive from the Unencumbered Proceeds based on their *pro rata* share of allowed general unsecured claims, and that this first \$1 million being waived by the Lenders shall be distributed *pro rata* to holders (other than the Lenders) of allowed general unsecured claims. For purposes of determining the Lenders' *pro rata* share of the GUC claim pool/distributions from Unencumbered Proceeds only, the Lenders' deficiency claim shall be capped at \$30 million.

7. **Backstop Amount.** From the proceeds of their collateral or recoveries obtained from settlement(s) and/or litigated judgment(s) against any parties or sources, including but not limited to, the Insider Causes of Action (including but not limited to Shar), the Lenders shall fund an additional cash contribution to the Estate or the GUC Liquidation Trust, as applicable, of 40% of any allowed priority tax claim that may be due and owing by the Debtor for tax year 2016 up to a maximum allowed priority tax claim of \$2.5 million (the "Backstop Amount" (the Backstop Amount shall not exceed \$1 million)), provided that any such contribution from the Lenders is contingent on the Lenders recovering at least \$25 million in cash recoveries on and after the Execution Date (but subject in all respects to Final Approval of this Settlement), net of (i) all costs and expenses incurred by the Lenders, directly or indirectly (whether paid by Lenders to the Estate as required by this paragraph or by a trustee of a liquidating trust (or other mechanism or structure acceptable to the Lenders) created for Lenders' benefit under the Plan), in connection with the evaluation, liquidation, sale, realization, monetization, pursuit, settlement, release and/or recovery of Lenders' collateral, Insider Causes of Action, other causes of action or any other assets (excluding the Unencumbered Proceeds) and sources of recovery (the exercise of such rights to evaluate, liquidate, sell, realize, monetize, pursue, settle, release and/or recover any assets of the Debtor, including Insider Causes of Action, is in the sole discretion of the Lenders and not subject to notice to, or consent or approval of any party or person, including but not limited to, the Debtor, the Committee or the GUC Liquidation Trust), (ii) payment of the Lenders' Contribution, any True Up Proceeds, or Lenders' Pre-Petition Collateral presently held by the Debtor's estate (excluding the Unencumbered Proceeds) used for purposes of the Lenders funding the obligations required to be funded as set forth in paragraphs 2, 3 and 9 herein, and (iii) in the event that the Shar Receivable has not yet been recovered by the Lenders, the Shar policy premiums paid on and after the Execution Date, plus interest. Recoveries to the Lenders from the ERW, Commercial Tort Claims, other Cash Collateral (excluding the Unencumbered

Proceeds) currently held and segregated by the Debtor, and funds which are presently held by the Lenders unapplied, shall not be included as cash recoveries for purposes of the \$25 million cash recovery calculation. To the extent that the Shar Receivable is recovered by the Lenders on or after the Execution Date but prior to the date on which the Estate or the GUC Liquidation Trust pays the priority tax claim, the Shar Receivable recovery shall be included in the \$25 million cash recovery calculation.

8. **Transfer/Assignment to Lenders.** The Estate shall transfer (or pledge or assign, to the extent pledge or assignment is necessary) to Lenders (i) the Commercial Tort Claims (and any proceeds thereof), (ii) the ERW Interests (and any proceeds thereof), (iii) all other Cash Collateral (other than the Unencumbered Proceeds) currently held by the Debtor, (iv) all rights, title and interests in any assets of the Debtor (excluding the Unencumbered Proceeds) including Insider Causes of Action (including but not limited to the Excess Shar Proceeds) (utilizing a mechanism and structure acceptable to the Lenders created for Lenders' benefit under the Plan), including all rights to evaluate, liquidate, sell, realize, monetize, pursue, settle, release and/or recover any such assets (the exercise of such rights to evaluate, liquidate, sell, realize, monetize, pursue, settle, release and/or recover any assets of the Debtor, including Insider Causes of Action, is in the sole discretion of the Lenders and not subject to consent or approval of any party or person, including but not limited to, the Debtor, the Committee or the GUC Liquidation Trust; provided that email notice shall be given to the GUC Liquidation Trust of any sale, realization, monetization, settlement, release and/or recovery with respect to any assets or Insider Causes of Action), and (v) the Shar Receivable, provided that to the extent Excess Shar Proceeds are recovered from Shar (*i.e.*, proceeds above the amount needed to pay all funded Shar policy premiums plus interest), such Excess Shar Proceeds shall be paid to the GUC Liquidation Trust on the Plan effective date (or, to the extent recovered after the Plan effective date, as soon as reasonably practicable thereafter) for distribution on a *pro rata* basis to both general unsecured creditors with allowed claims and the Lenders' unsecured deficiency claim.

9. **Costs Funded by Lenders.** Lenders shall fund a budget, approved by Lenders, to pay the costs on and after July 18, 2017 to (a) investigate, take discovery, and pursue any Insider Causes of Action, and/or (b) realize upon Lenders' collateral (*e.g.*, accounts receivable, Shar, etc.) (*i.e.*, Insider Causes of Action and realization of Lenders' collateral shall be funded from Lenders' collateral (excluding the Unencumbered Proceeds) or future consent (this Settlement does not constitute such consent) but in no respect shall such funding come from Unencumbered Proceeds). For the avoidance of doubt, the Lenders shall not be required to fund the payment of fees and costs of the Debtor's professionals unless such fees and costs are included in the budget approved by the Lenders or the Lenders otherwise consent. All other Estate administrative costs and expenses on and after July 18, 2017, including claim objections, plan confirmation, GUC Liquidation Trust expenses and allowed priority claims, shall be funded 100% from Unencumbered Proceeds. Prior to Final Approval, use of Unencumbered Proceeds shall continue to be subject to the Budget to be approved by Lenders and Committee, and

Unencumbered Proceeds may continue to be used to fund Debtor and Committee professionals pursuant to the Budget, provided that to the extent Unencumbered Proceeds are used to fund the costs on and after July 18, 2017 (i) to investigate, take discovery, and pursue any Insider Causes of Action; or (ii) realize upon Lenders' collateral (e.g., accounts receivable, Shar Receivable), the Lenders agree that upon Final Approval, to the extent that such fees and costs are included in a budget approved by the Lenders or Lenders otherwise consent, such funds shall be repaid by the Lenders by the Lenders' Contribution Date to the Debtor's Estate or the GUC Liquidating Trust.

10. **Extension of Deadlines.** All deadlines under the Cash Collateral Order for the Committee to object to or file actions to avoid the Lenders' security interests in the Vehicles (and proceeds thereof), Novi Proceeds, proceeds of the Commercial Tort Claims (or transfers of such proceeds), ERW Interests (and proceeds thereof), and Shar Receivable, and to file actions against the Lenders relating to the Guarantor Transactions shall be extended without date until this Settlement is approved through the Final Approval, except that, in the event that the Final Approval does not occur, such deadlines are as set forth in Section 4.10(C) of the Cash Collateral Order.

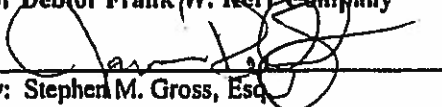
11. **Releases and Exculpation.** Typical and customary releases and exculpation, (relating only to postpetition actions and events) to be granted through the chapter 11 plan by and between the Committee (and its members (in their capacities as Committee members, only) and professionals), Lenders (and their professionals) (excluding claims Agent and Lenders may have against each other), and the Debtor's professionals (but not the Debtor). The Parties acknowledge that under the Cash Collateral Order, the Debtor released the Agent and the Lenders of prepetition claims that the Estate may have had against the Agent and the Lenders (without prejudice to the rights of parties in interest including the Committee as provided in Section 4.10 of the Cash Collateral Order), and that the Plan will contain provision(s) to ratify such releases.

12. All chapter 5 causes of action against non-insiders to be released by Debtor.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, THE UNDERSIGNED PARTIES HAVE CAUSED THIS STIPULATION TO BE EXECUTED AS OF THE DATES SET FORTH BELOW.


For Debtor Frank W. Kerr Company

/s/   
By: Stephen M. Gross, Esq.  
Jayson B. Ruff, Esq.  
McDonald Hopkins PLC  
39533 Woodward Ave.,  
Ste. 318  
Bloomfield Hills, MI 48304  
Phone: (248) 220-1344  
sgross@mcdonaldhopkins.com  
jruff@mcdonaldhopkins.com

DATED: July 27, 2017

*Counsel to the Debtor*

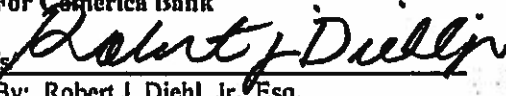
For JPMorgan Chase Bank, N.A.

/s/   
By: Steven G. Howell, Esq.  
Dawn R. Copley, Esq.  
Dickinson Wright PLLC  
500 Woodward Ave Ste 4000  
Detroit, MI 48226-5403  
Phone: (313) 223-3108  
Email:  
showell@dickinson-wright.com  
dcopley@dickinson-wright.com

DATED: July 21, 2017

*Counsel to the JP Morgan Chase, N.A.*


For Comerica Bank

/s/   
By: Robert J. Diehl, Jr., Esq.  
Bodman PLC  
1901 St. Antoine Street  
6th Floor at Ford Field  
Detroit, MI 48226  
Phone: (313) 393-7597  
rdiehl@bodmanlaw.com

*Counsel to Comerica Bank*

DATED: July \_\_, 2017

For the Official Committee of Unsecured Creditors

/s/   
By: Jeffrey D. Prol, Esq.  
Kenneth A. Rosen, Esq.  
Philip J. Gross, Esq.  
LOWENSTEIN SANDLER LLP  
One Lowenstein Drive  
Roseland, New Jersey 07068  
Phone: (973) 597-2500  
jprol@lowenstein.com  
pgross@lowenstein.com

*Counsel to the Official Committee of Unsecured Creditors*

DATED: July 27, 2017



**Appendix E**

**Liquidation Analysis**

**Frank W. Kerr Company**  
**Chapter 7 Liquidation Analysis**  
Thousands of U.S. Dollars

	Low		High		Estimated Recovery				Note				
					Secured Creditors		Unsecured Creditors						
					Low	High	Low	High					
<b>Assets</b>													
<u>Cash and Related</u>													
Cash on Hand	\$	503	\$	503	\$	503	\$	503	\$	-	\$	-	1.
Real Estate Proceeds		4,389		4,389		-		4,389		-		4,389	
Titled Vehicle Proceeds		25		25		-		25		-		25	
Funds held for Professionals		432		432		-		-		432		432	
Deposits and Prepayments		584		584		230		230		354		354	
Total Cash and Related		5,932		5,932		733		5,146		786		5,199	
<u>Accounts Receivable</u>													
Accounts Receivable - Third Party Customers		-		171		-		171		-		-	
Accounts Receivable - Related Parties		1,000		9,765		1,000		9,765		-		-	
Total Accounts Receivable		1,000		9,937		1,000		9,937		-		-	
<u>Other Assets</u>													
Notes Receivable		750		1,700		750		1,700		-		-	
Business Interests		-		20		-		20		-		-	
Insurance Policies		750		1,123		750		1,123		-		-	
Interests in Property		200		500		200		500		-		-	
Claims Against Insiders		1,500		15,000		1,500		15,000		-		TBD	
Chapter 5 Claims, Non-Insider		-		-		-		-		-		-	
Total Other Assets		3,200		18,343		3,200		18,343		-		-	
<u>Contingent Contributions</u>													
True-Up Proceeds		-		-		(492)		(492)		492		492	2.
Collections Not Remitted		-		-		422		422		(422)		(422)	
Total Contingent Contributions		-		-		(70)		(70)		70		70	
<b>Total Assets</b>	<b>\$</b>	<b>10,132</b>	<b>\$</b>	<b>34,212</b>	<b>\$</b>	<b>4,863</b>	<b>\$</b>	<b>33,355</b>	<b>\$</b>	<b>857</b>	<b>\$</b>	<b>5,270</b>	
<u>Chapter 7 Administration Fees</u>													
Trustee Fees	\$	304	\$	1,026	\$	146	\$	1,001	\$	26	\$	158	
Estimated Expenses		3,250		1,500		2,500		1,000		750		500	
Total Chapter 7 Administrative Claims	\$	3,554	\$	2,526	\$	2,646	\$	2,001	\$	776	\$	658	
<b>Excess / (Shortfall) after Chapter 7 Administrative Claims</b>	<b>\$</b>	<b>6,578</b>	<b>\$</b>	<b>31,685</b>	<b>\$</b>	<b>2,217</b>	<b>\$</b>	<b>31,354</b>	<b>\$</b>	<b>81</b>	<b>\$</b>	<b>4,612</b>	
<u>Secured Claims</u>													
Outstanding Principle Balance					\$	42,833	\$	42,833					3.
Accrued Interest - Estimated						-		-					4.
Accrued Fees - Estimated						-		-					
Total Secured Claims					\$	42,833	\$	42,833					
<b>Excess / (Shortfall) after Secured Claims</b>	<b>\$</b>	<b>(40,616)</b>	<b>\$</b>	<b>(11,478)</b>									
<u>Chapter 11 Administrative / Priority Claims</u>													
Post-Petition Accounts Receivable									\$	25	\$	-	
Costs Incurred through Conversion										442		392	5.
Administrative Claims										1,791		1,791	6.
Priority Claims										10		4	
Priority Tax Claim [Contingent]										893		-	
503(b)(9) Claims										-		-	
Total Chapter 11 Administrative Claims									\$	3,162	\$	2,188	
<b>Excess / (Shortfall) after Chapter 11 Administrative Claims</b>	<b>\$</b>	<b>(3,081)</b>	<b>\$</b>	<b>2,424</b>									
<u>Unsecured Claims</u>													
General Unsecured Claims									\$	40,193	\$	23,632	
Secured Claim Deficiency										40,616		11,478	
Total Unsecured Claims									\$	80,809	\$	35,111	
<u>Unsecured Claim Recovery</u>													
General Unsecured Claim Recovery									\$	-	\$	1,632	
Secured Claim Deficiency Recovery										-		792	
Total Unsecured Claim Recovery									\$	-	\$	2,424	
<b>Excess / (Shortfall) after General Unsecured Claims</b>	<b>\$</b>	<b>(83,890)</b>	<b>\$</b>	<b>(32,687)</b>									
<b>Secured Claim Recovery %</b>										<b>5.18%</b>		<b>75.05%</b>	7.
<b>General Unsecured Claim Recovery %</b>										<b>0.00%</b>		<b>6.90%</b>	

**Notes:**

- Cash on hand includes funds related to income tax refund, settlement of anti-trust claims, and Progressive.
- True-Up Proceeds from Secured Lenders for reimbursement of 18.9% of pre July 17, 2017 expenses.
- Accrued interest is assumed to be \$0 as Secured Claims are under-secured.
- Accrued expenses are assumed to be \$0 as Secured Claims are under-secured.
- Estimated costs, exclusive of professional fees.
- Administrative claims represent estimated incurred, accrued, and unpaid professional fees through October 20, 2017.
- Secured Claim Recovery % is inclusive of estimated recoveries related to the Secured Claim Deficiency.

**Frank W. Kerr Company**  
**Waterfall Analysis - Chapter 11 Liquidating Plan**  
Thousands of U.S. Dollars

	Estimated Recovery						Note		
	Low		High		Secured Creditors			Unsecured Creditors	
					Low	High		Low	High
<b>Assets</b>									
Cash and Related									
Cash on Hand	\$ 503	\$ 503	\$ 503	\$ 503	\$ -	\$ -		1.	
Real Estate Proceeds	4,389	4,389	-	-	4,389	4,389			
Titled Vehicle Proceeds	25	25	-	-	25	25			
Funds held for Professionals	432	432	-	-	432	432			
Deposits and Prepayments	584	584	230	230	354	354			
Total Cash and Related	5,932	5,932	733	733	5,199	5,199			
<b>Accounts Receivable</b>									
Accounts Receivable - Third Party Customers	-	171	-	171	-	-			
Accounts Receivable - Related Parties	1,000	11,983	1,000	11,983	-	-			
Total Accounts Receivable	1,000	12,154	1,000	12,154	-	-			
<b>Other Assets</b>									
Notes Receivable	750	2,007	750	2,007	-	-			
Business Interests	-	20	-	20	-	-			
Insurance Policies	750	1,123	750	1,123	-	-			
Interests in Property	200	500	200	500	-	-			
Claims Against Insiders	2,500	20,000	2,500	20,000	-	-			
Chapter 5 Claims, Non-insider	-	-	-	-	-	-			
Total Other Assets	4,200	23,650	4,200	23,650	-	-			
<b>Contingent Contributions</b>									
True-Up Proceeds	-	-	(492)	(492)	492	492		2.	
Collections Not Remitted	-	-	422	422	(422)	(422)			
BillNat Contribution	1,000	1,000	-	-	1,000	1,000		3.	
SHAR I Proceeds	-	-	-	TBD	-	TBD		4.	
Tax Backstop	-	-	-	-	-	-		5.	
Total Contingent Contributions	1,000	1,000	(70)	(70)	1,070	1,070			
<b>Total Assets</b>	<b>\$ 12,132</b>	<b>\$ 42,736</b>	<b>\$ 5,863</b>	<b>\$ 36,466</b>	<b>\$ 6,270</b>	<b>\$ 6,270</b>			
<b>Liquidating Trustee Expenses</b>									
Trustee Fees	\$ 950	\$ 350	\$ 750	\$ 250	\$ 200	\$ 100			
Estimated Expenses	2,750	2,000	2,000	1,500	750	500			
Total Liquidating Trustee Expenses	\$ 3,700	\$ 2,350	\$ 2,750	\$ 1,750	\$ 950	\$ 600			
<b>Excess / (Shortfall) after Liquidating Trustee Expenses</b>	<b>\$ 8,432</b>	<b>\$ 40,386</b>	<b>\$ 3,113</b>	<b>\$ 34,716</b>	<b>\$ 5,320</b>	<b>\$ 5,670</b>			
<b>Secured Claims</b>									
Outstanding Principle Balance			\$ 42,833	\$ 42,833					
Accrued Interest - Estimated			-	-				6.	
Accrued Fees - Estimated			-	-				7.	
Total Secured Claims			\$ 42,833	\$ 42,833					
<b>Excess / (Shortfall) after Secured Claims</b>			<b>\$ (39,720)</b>	<b>\$ (8,116)</b>					
<b>Chapter 11 Administrative / Priority Claims</b>									
Post-Petition Accounts Payable					\$ 25	\$ -			
Costs Incurred through Effective Date					442	392		8.	
Administrative Claims					1,791	1,791		9.	
Priority Claims					10	4			
Priority Tax Claim [Contingent]					893	-			
503(b)(9) Claims					-	-			
Total Chapter 11 Administrative Claims					\$ 3,162	\$ 2,188			
<b>Excess / (Shortfall) after Chapter 11 Administrative Claims and Liquidating Trustee Expenses</b>					<b>\$ 2,158</b>	<b>\$ 3,482</b>			
<b>Unsecured Claims</b>									
General Unsecured Claims					\$ 40,193	\$ 23,632			
Secured Claim Deficiency					30,000	8,116		10.	
Total Unsecured Claims					\$ 70,193	\$ 31,748			
<b>General Unsecured Claim Recovery</b>									
BillNat Contribution					\$ 1,000	\$ 1,000		11.	
Pro-Rata Distribution of Remaining Excess after Chapter 11 Administrative Claims					663	1,848			
Recoveries Waived by Secured Lenders					495	635		12.	
Total General Unsecured Claim Recovery					\$ 2,158	\$ 3,482			
<b>Secured Claim Deficiency Recovery</b>									
Pro-Rata Distribution of Remaining Excess after Chapter 11 Administrative Claims					\$ 495	\$ 635			
Less: Recoveries Waived by Secured Lenders					(495)	(635)		12.	
Net Secured Claim Deficiency Recovery					\$ -	\$ -			
<b>Excess / (Shortfall) after General Unsecured Claims</b>					<b>\$ (68,035)</b>	<b>\$ (28,266)</b>			
<b>Secured Claim Recovery %</b>					<b>7.27%</b>	<b>81.05%</b>		13.	
<b>General Unsecured Claim Recovery %</b>					<b>5.37%</b>	<b>14.73%</b>			

**Notes:**

- Cash on hand includes funds related to income tax refund, settlement of anti-trust claims, and Progressive.
- True-Up Proceeds from Secured Lenders for reimbursement of 18.9% of pre July 17, 2017 expenses.
- Secured Lender contribution of the first \$1,000 of proceeds from the sale of BillNat assets.
- SHAR I proceeds in excess of the SHAR receivable, if any, will be available for Unsecured Creditors
- If Secured Lenders recover at least \$25.0 million, including proceeds from the sale of BillNat assets, from July 27, 2017 forward, they will contribute 40% of any allowed 2016 tax priority claim, up to \$1.0 million.
- Accrued interest is assumed to be \$0 as Secured Claims are under-secured.
- Accrued expenses is assumed to be \$0 as Secured Claims are under-secured.
- Estimated costs, exclusive of professional fees.
- Administrative claims represent estimated incurred, accrued, and unpaid professional fees through September 30, 2017.
- Secured Claim Deficiency is capped at \$30 million.
- Secured Lender contribution of the first \$1,000 of proceeds from the sale of BillNat assets.
- Secured Claim waiver of first \$1.0 million in a distribution with Unsecured Creditors for amounts attributable to their deficiency claim.
- Secured Claim Recovery % is inclusive of estimated recoveries related to the Secured Claim Deficiency.