

In re:)
) Chapter 11
DATA COOLING TECHNOLOGIES LLC,)
<i>et al.</i> , ¹) Case Nos. 17-52170 and 17-52177
) (Jointly Administered)
Debtors.)
) Judge Koschik
)

January 17, 2018

¹ The Debtors and the last four digits of each of the Debtors' tax identification numbers following in parentheses are: Data Cooling Technologies LLC (3425); and Data Cooling Technologies Canada LLC (3172).

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I. INTRODUCTION AND NARRATIVE DESCRIPTION OF THE PLAN

This disclosure statement, as amended (the “Disclosure Statement”) is being submitted pursuant to section 1125 of the Bankruptcy Code, for use in the solicitation of votes on the Debtors’ Plan of Liquidation, dated January 5, 2018 (the “Plan”). The Plan is being proposed by Data Cooling Technologies, LLC and Data Cooling Technologies Canada, LLC (collectively, the “Debtors” and each a “Debtor”), and was filed with the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division (the “Bankruptcy Court”). A copy of the Plan is attached as Appendix A to this Disclosure Statement.

This Disclosure Statement sets forth certain information regarding the Debtors’ prepetition operating and financial history, the need to seek chapter 11 protection, significant events that have occurred during the Chapter 11 Cases, and the anticipated process for liquidation of the Debtors’ remaining assets and distribution of the Debtors’ assets to the Debtors’ creditors using a liquidating trust. This Disclosure Statement also describes terms and provisions of the Plan, including certain alternatives to the Plan, certain effects of confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that Holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

Under the Plan, certain Cash generated during the Chapter 11 Cases and the liquidation of any remaining assets will be distributed to creditors in accordance with the priority scheme of the Bankruptcy Code by a liquidating trustee. **THE DEBTORS SUPPORT THE PLAN, RECOMMEND ACCEPTANCE OF THE PLAN, AND URGE CREDITORS ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT IT.**

Except as otherwise provided herein, capitalized terms used but not otherwise defined in this Disclosure Statement have the meanings ascribed to them in the Plan. Unless otherwise noted herein, all dollar amounts provided in this Disclosure Statement and in the Plan are given in United States dollars.

A. General Structure of the Plan

The following overview is a general summary only, which is qualified in its entirety by, and should be read in conjunction with, the Plan itself and the more detailed discussions and information appearing elsewhere in this Disclosure Statement.

The Plan provides for the Debtors’ Assets, consisting of the Debtors’ Cash, Causes of Action, and miscellaneous other Assets to be distributed to the Liquidating Trust and managed by the Liquidating Trustee. The Liquidating Trustee will take actions to liquidate and administer the remaining non-Cash Assets, including, among other things, investigating and pursuing Causes of Action (except for any Insider Causes of Action, which shall be investigated and/or pursued by the Investigation Trustee). The Liquidating Trustee will make distributions to creditors pursuant to the terms of the Plan and prior orders of the Bankruptcy Court. Allowed Administrative Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims will be paid in full. Holders of Terminated Employee Claims will receive, in full satisfaction of such Terminated Employee Claim, and subject to any required or appropriate applicable tax

withholding, Cash equal to the equivalent of thirty (30) days gross wages for such Terminated Employee. Holders of Allowed General Unsecured Claims will receive a Pro Rata portion of remaining Cash. Holders of Interests and Intercompany Claims will not receive any distributions under the Plan.

B. Summary of Treatment of Claims and Interests under the Plan

1. Overview of Treatment

As contemplated by the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified under the Plan. Administrative Claims and Priority Tax Claims will be paid in full on the later of (i) within sixty (60) days after the Effective Date of the Plan; (ii) the date on which such Administrative Claim becomes an Allowed Administrative Claim or Allowed Priority Tax Claim; or (iii) the date funds from the liquidation of Liquidating Trust Assets are available to pay Allowed Administrative Claims or Allowed Priority Tax Claims. The range of estimated Allowed Administrative Claims is \$_____, to \$_____ and the range of estimated Priority Tax Claims is \$_____ to \$_____.²

Based on current levels of Cash and the Debtors' financial projections, the Debtors anticipate having approximately \$____ of Cash as of the Effective Date. The Debtors believe that this Cash, plus the net proceeds of Causes of Action, will be sufficient to pay in full Allowed Administrative Claims, Allowed Secured Claims, Allowed Other Priority Claims, Allowed Terminated Employee Claims, and Allowed Priority Tax Claims.

The table below summarizes the classification and treatment of the prepetition Claims and Interests under the Plan. For certain classes of Claims and Interests, estimated percentage recoveries are also set forth below. Estimated percentage recoveries have been calculated based upon a number of assumptions, including the amount of Claims in a particular Class.

2. Classification and Treatment of Claims Against and Interests in the Debtors

Description and Amount of Claims or Interests	Summary of Treatment
Class 1 Secured Claims Class 1 consists of all Claims, other than Administrative Claims or Priority Tax Claims, that are secured by a lien on property in which any of the Debtors' Estates has an interest, to the extent of the	Class 1 is Unimpaired by the Plan. Each Holder of an Allowed Class 1 Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

² The Debtors are in the process of reviewing Claims filed in the Debtors' chapter 11 cases, and such Claims will continue to be filed in the Chapter 11 Cases until the bar date of February 16, 2018. In addition, the Debtors are finalizing their cash projections as of the Effective Date. The Debtors will supplement these numbers in the Disclosure Statement prior to the solicitation of votes on the Plan.

<p>value of the Claim Holder's interest in the applicable Estate's interest in such property, as determined pursuant to section 506(a) of the Bankruptcy Code.</p> <p>Estimated Claims Pool: \$0.00</p> <p>Expected Recovery: 100%</p>	<p>Each Holder of an Allowed Secured Claim will receive (a) the net proceeds of the sale of property securing such Secured Claim, up to the amount of the Allowed Secured Claim of such Holder and after payment to any valid senior lienholders; (b) the return of property securing such claim; (c) payment in accordance with the provisions of any agreement relating to the secured property, on the same terms as such agreement; or (d) Cash equal to the value of the property securing such Secured Claim, up to the amount of the Allowed Secured Claim of such Holder.</p>
<p>Class 2 Other Priority Claims</p> <p>Class 2 consists of all Claims, other than Administrative Claims or Priority Tax Claims, which are entitled to priority in payment pursuant to sections 507(a) and 507(b) of the Bankruptcy Code.</p> <p>Estimated Claims Pool: \$_____</p> <p>Expected Recovery: _____</p>	<p>Class 2 is Unimpaired by the Plan.</p> <p>Each Holder of an Allowed Class 2 Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.</p> <p>Each Holder of an Allowed Other Priority Claim shall receive, in full satisfaction of its Other Priority Claim, Cash equal to the amount of such Allowed Other Priority Claim on the later of: (a) sixty (60) days after the Effective Date; (b) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim; or (c) the date funds from the liquidation of the Liquidating Trust Assets are available to pay Allowed Other Priority Claims.</p>
<p>Class 3 Terminated Employee Claims</p> <p>Class 3 consists of the Claims of any Person who was employed by the Debtors but was laid off or terminated by the Debtors on or after August 23, 2017, and before the Petition Date.</p> <p>Estimated Claims Pool: \$_____</p>	<p>Class 3 is Impaired by the Plan</p> <p>Each Holder of an Allowed Class 3 Claim is entitled to vote to accept or reject the Plan.</p> <p>Each Holder of an Allowed Terminated Employee Claim shall receive, in full satisfaction of such Terminated Employee Claim, and subject to any required or appropriate applicable tax withholding, Cash equal to the equivalent of thirty (30) days'</p>

<p>Expected Recovery: _____</p>	<p>gross wages for such Terminated Employee (calculated at the last applicable pay rate of such Terminated Employee prior to his or her termination) on the later of (a) sixty (60) days after the Effective Date; (b) the date on which such Terminated Employee Claim becomes an Allowed Terminated Employee Claim; or (c) the date funds from the liquidation of the Liquidating Trust Assets are available to pay Allowed Terminated Employee Claims.</p>
<p>Class 4 General Unsecured Claims</p> <p>Class 4 consists of any Claim that is not an Administrative Claim, Fee Claim, Priority Tax Claim, Secured Claim, Other Priority Claim, Terminated Employee Claim, Intercompany Claim, or Interest.</p> <p>Estimated Claims Pool: \$_____³</p> <p>Expected Recovery: _____</p>	<p>Class 4 is Impaired by the Plan.</p> <p>Each Holder of an Allowed Class 4 Claim is entitled to vote to accept or reject the Plan.</p> <p>On one or more Distribution Dates, each Holder of an Allowed General Unsecured Claim shall receive a Pro Rata share of the net proceeds of the Liquidating Trust Assets after the payment of all Allowed Fee Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, Allowed Other Priority Claims, Allowed Terminated Employee Claims, and the payment (or reserve for) of all costs and expenses of the Liquidating Trust.</p>

³ This amount reflects the Debtors' best estimate of the total amount of General Unsecured Claims remaining after the claims objection process to eliminate duplicate Claims, late-filed Claims, superseded Claims, and other Claims estimated not to be valid in whole or in part.

<p>Class 5 Intercompany Claims</p> <p>Class 5 consists of all Intercompany Claims, which means any Claim held by one Debtor against another Debtor.</p> <p>Expected Recovery: 0%</p>	<p>Class 5 is Impaired by the Plan.</p> <p>Each Holder of a Class 5 Intercompany Claim is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.</p> <p>Intercompany Claims will be cancelled on the Effective Date and no distributions shall be made on account of such Intercompany Claims.</p>
<p>Class 6 Interests</p> <p>Class 6 consists of all Interests in the Debtors.</p> <p>Expected Recovery: 0%</p>	<p>Class 6 is Impaired by the Plan.</p> <p>Each Holder of a Class 6 Interest is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.</p> <p>On the Effective Date, all Interests will be deemed cancelled, null, and void.</p>

II. DISCLAIMER

On February __, 2018, after notice and a hearing, the Bankruptcy Court entered an order approving this Disclosure Statement (the “Disclosure Statement Order”) as containing adequate information of a kind and in sufficient detail to enable a hypothetical, reasonable investor typical of the Debtors’ creditors and Interest Holders to make an informed judgment whether to accept or reject the Plan. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN. THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE, RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND RULE 3018-2 OF THE LOCAL RULES FOR THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF OHIO.

The Disclosure Statement Order sets forth deadlines for voting to accept or reject the Plan and procedures to be followed to object to confirmation of the Plan. A Ballot for the acceptance or rejection of the Plan is enclosed with each Disclosure Statement submitted to a Holder of a Claim that is entitled to vote to accept or reject the Plan. The Ballot includes certain instructions for voting and the record date for voting purposes. **THE BANKRUPTCY COURT HAS SCHEDULED A HEARING ON MARCH __, 2018, AT __:00 __.M. (PREVAILING EASTERN TIME) TO CONSIDER WHETHER TO CONFIRM THE PLAN.**

This Disclosure Statement describes certain aspects of the Plan, the Debtors’ operations, pending litigation, the proposed formation of a liquidating trust and other related matters. FOR

A COMPLETE UNDERSTANDING OF THE PLAN, YOU SHOULD READ THIS DISCLOSURE STATEMENT, THE PLAN, THE LIQUIDATING TRUST AGREEMENT, AND THE EXHIBITS, APPENDICES, AND SCHEDULES THERETO IN THEIR ENTIRETY. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN, THE LIQUIDATING TRUST AGREEMENT AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL, WITH THE TERMS OF THE LIQUIDATING TRUST AGREEMENT CONTROLLING DISPUTES, IF ANY, BETWEEN THE LIQUIDATING TRUST AND THIS DISCLOSURE STATEMENT.

This Disclosure Statement does not constitute an offer to exchange or sell, or the solicitation of an offer to exchange or buy, any securities that may be deemed to be offered hereby with respect to any creditor that is not an “accredited investor” as defined in Regulation D under the Securities Act. In any state or other jurisdiction (domestic or foreign) in which any securities that may be deemed to be offered hereby are required to be qualified for offering in such jurisdiction, no offer is hereby being made to, and the receipt of Ballots will not be accepted from, residents of such jurisdiction unless and until such requirements, in the sole and final determination of the Debtors, have been fully satisfied. Until such time, any Ballot submitted with respect to any such creditor will be deemed null and void and will not constitute a rejection or acceptance for purposes of determining whether requisite votes for acceptance of the Plan have been received.

NO PERSON IS AUTHORIZED BY THE DEBTORS, IN CONNECTION WITH THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN, TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION REGARDING THIS DISCLOSURE STATEMENT OR THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS, APPENDICES, AND/OR SCHEDULES ATTACHED HERETO OR INCORPORATED BY REFERENCE OR REFERRED TO HEREIN, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE DEBTORS.

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. ANY CREDITOR DESIRING ANY SUCH ADVICE OR ANY OTHER ADVICE SHOULD CONSULT WITH ITS OWN ADVISORS.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT CREATE AN IMPLICATION THAT THERE HAS NOT BEEN ANY CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE INFORMATION REGARDING THE HISTORY, BUSINESS, AND OPERATIONS OF THE DEBTORS IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN BUT, AS TO CONTESTED MATTERS AND ADVERSARY PROCEEDINGS, IS NOT TO BE CONSTRUED AS AN ADMISSION OR A STIPULATION BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR TO REJECT THE PLAN, AND NOTHING STATED HEREIN WILL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS, THE LIQUIDATING TRUSTEE OR ANY OTHER PARTY, OR BE DEEMED A REPRESENTATION OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY NATURE, ARE FORWARD LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. ALL HOLDERS OF CLAIMS SHOULD CAREFULLY READ AND CONSIDER THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY, INCLUDING ARTICLE VIII, “RISK FACTORS TO BE CONSIDERED,” OF THIS DISCLOSURE STATEMENT, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

This Disclosure Statement contains forward looking statements. You should understand that the factors described below, in addition to those discussed elsewhere in this Disclosure Statement, could materially affect the amount of assets available for distributions to creditors. Results could differ materially from those expressed in such forward looking statements.

III. HISTORY AND STRUCTURE OF THE DEBTORS AND OVERVIEW OF THE DEBTORS AND THE PLAN

A. Historical Overview and Existing Organizational Structure

Data Cooling Technologies LLC (“DCT”) was the exclusive North American provider of the KyotoCooling™ system, which the Debtors used to provide water-free, environmentally friendly cooling for data centers. DCT acquired the exclusive North American rights to produce and sell the KyotoCooling™ system from KyotoCooling North America LLC (“KCNA”) under a license agreement executed in 2013. Through the use of the KyotoCooling™ system, DCT was able to provide the best possible power usage effectiveness for data cooling systems on the market. Until the second quarter of 2017, DCT was part of a larger corporate enterprise with three separate divisions that included (i) Air Enterprises Custom Air Handling, which provided all-aluminum air handling solutions worldwide; (ii) Thermotech, which supplied energy recovery wheels, heatwheels and related systems; and (iii) KyotoCooling™, which provided cooling systems to data centers within North America. The Debtors divested the Air Enterprises Custom Air Handling legacy business in May 2017, leaving the remaining businesses consolidated.

As of the Petition Date, DCT operated its KyotoCooling™ division in Streetsboro, Ohio, and its Thermotech division in Tampa, Florida. Data Cooling Technologies Canada LLC (“DCT Canada”) is the wholly-owned subsidiary of DCT that was a party to a few contracts, but DCT Canada has no operations and essentially no assets.

B. Events Leading to Chapter 11

The Debtors faced a number of significant challenges over the course of 2017, ultimately leading to the filing of the Debtors' chapter 11 cases in September 2017. The Debtors grew very quickly under former management, which led to top line revenue, but also led, in some cases, to installations that were delayed or did not go smoothly. While 2016 sales and early 2017 revenue were strong, the Debtors struggled since March 2017 to generate new orders, leading to a shrinking backlog and ultimately to liquidity concerns. The Debtors' dearth of new orders was likely caused by a number of factors, including but not limited to: a) an industry-wide slowdown in the first half of 2017; b) issues with certain installations; and c) the Debtors' volatile relationship with their licensor, KCNA. In the spring and summer of 2017, the Debtors became aware that KCNA was apparently attempting to re-acquire the North American rights to the KyotoCooling™ system by taking various steps that Debtors viewed as illegitimate. The Debtors believed that KCNA was making inappropriate contact with the Debtors' suppliers, customers and potential customers, leading to difficulties in the Debtors' businesses.

Prior to the Petition Date, the Debtors engaged in extensive discussions and negotiations with their secured lender in an attempt to restructure their existing capital structure. Ultimately, these negotiations were not successful. Simultaneously, the Debtors attempted to find a replacement lender to provide the Debtors with sufficient liquidity. These efforts also did not bear fruit. Finally, the Debtors engaged in extensive discussions and negotiations with numerous parties who expressed interest in buying a portion or substantially all of the Debtors' business before the Petition Date. Ultimately, these prepetition negotiations were not successful, and the Debtors filed the chapter 11 cases to preserve their assets as the Debtors' disputes with KCNA grew more acrimonious.

IV. VOTING INSTRUCTIONS AND PROCEDURES AND CONFIRMATION HEARING

A. Notice to Holders of Claims

This Disclosure Statement will be transmitted to Holders of Claims and Interests entitled to vote on the Plan. Pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims in Class 1 and Class 2, who are unimpaired under the Plan, are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan. Pursuant to section 1126(g) of the Bankruptcy Code, Holders of Intercompany Claims in Class 5 and Holders of Interests in Class 6, who will receive no distribution on account of their Intercompany Claims or Interests under the Plan, are conclusively deemed to have rejected the Plan and are not entitled to vote on the Plan. Holders of Claims in Class 3 and Class 4 will be the only Holders of Claims or Interests that will vote on the Plan. The purpose of this Disclosure Statement is to provide adequate information to enable such Claim Holders to make a reasonably informed decision with respect to the Plan prior to exercising their right to vote to accept or reject the Plan.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS APPENDICES CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR TO REJECT THE

PLAN. This Disclosure Statement contains important information about the Plan and considerations pertinent to acceptance or rejection of the Plan.

THIS DISCLOSURE STATEMENT (INCLUDING ATTACHMENTS AND EXHIBITS) IS THE ONLY DOCUMENT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. No solicitation of votes may be made except after distribution of this Disclosure Statement, and no person has been authorized to distribute any information concerning the Debtors other than the information contained herein.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS ESTIMATES AND ASSUMPTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. This Disclosure Statement does not reflect any events that may occur subsequent to the date hereof and that may have a material impact on the information contained in this Disclosure Statement. Accordingly, the delivery of this Disclosure Statement will not under any circumstance imply that the information herein is correct or complete as of any time subsequent to the date hereof.

THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERY POSSIBLE FOR HOLDERS OF CLAIMS AGAINST THE DEBTORS AND THUS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

B. Solicitation Package

In soliciting votes for the Plan pursuant to this Disclosure Statement from the Holders of Claims entitled to vote, the Debtors will send a copy of this Disclosure Statement, a Plan, and a Ballot to be used by such Holders in voting to accept or to reject the Plan.

C. Voting Procedures and Ballots and Voting Deadline

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot. Please complete and sign your original Ballot and return it in the envelope provided to **MCDONALD HOPKINS LLC, Attn: Maria Carr, 600 Superior Avenue, Suite 2100, Cleveland, OH 44114. THE VOTING DEADLINE IS MARCH __, 2018, AT 5:00 P.M. (PREVAILING EASTERN TIME).**

IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN THE VOTING DEADLINE AT THE ADDRESS ABOVE.

If you (i) have any questions about the procedure for voting your Claim or with respect to the packet of materials that you have received or (ii) wish to obtain an additional copy of the Plan, this Disclosure Statement or any appendices or exhibits to such documents, please contact:

McDonald Hopkins LLC
600 Superior Avenue, East
Suite 2100
Cleveland, Ohio 44114
Attn.: Maria Carr
Telephone: 216-348-5400
Facsimile: 216-348-5474
Email: mcarr@mcdonaldhopkins.com

D. Confirmation Hearing and Deadline for Objections to Confirmation

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

The Court has scheduled a Confirmation Hearing for March __, 2018 at __ .m. (prevailing Eastern Time). Notice of the Confirmation Hearing will be provided to Holders of Claims and Interests or their representatives (the “Confirmation Notice”) as set forth in the Disclosure Statement Order. Objections to Confirmation must be filed with the Bankruptcy Court by the date designated in the Confirmation Notice and are governed by Bankruptcy Rules 3020(b) and 9014 and local rules of the Bankruptcy Court. UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

V. THE DEBTORS’ CURRENT OPERATIONS AND MANAGEMENT

A. Overview of Current Business Operations and Corporate Structure

The Plan contemplates the liquidation of the Debtors. All of the Debtors’ operations and substantially all of the Debtors’ tangible Assets have already been liquidated and converted to Cash. Upon Confirmation of the Plan and transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtors’ only remaining Assets will be Cash, Causes of Action (including Avoidance Actions and Insider Causes of Action), proceeds from the sales of miscellaneous assets, and any rights to refunds or other contingent assets.

B. Capital Structure of the Debtors

The prepetition capital structure of the Debtors was simple. On the Petition Date, DCT had a line of credit facility and term loan agreement with KeyBank, N.A. (“KeyBank”). As of the Petition Date, DCT did not carry a balance of the line of credit, but the balance on the term loan was approximately \$1.933 million. The Debtors sought and obtained approval to use the cash collateral of KeyBank throughout the Debtors’ chapter 11 cases, and KeyBank was paid off in full shortly after the closing of the sales to KCNA & J&J (as defined below). The Debtors do not have any remaining secured debt obligations as of the date of the filing of the Plan.

C. Board of Directors and Executive Officers of the Debtors

The following is a list of the current directors and executive officers of DCT. DCT is the sole member of DCT Canada.

Data Cooling Technologies LLC

Name	Title
Harry Shimp	Chairperson of the Board of Directors of Data Cooling Technologies LLC
A. Malachi Mixon	Member of the Board of Directors of Data Cooling Technologies LLC
Mark Mansour	Member of the Board of Directors of Data Cooling Technologies LLC
William M. Weber	Member of the Board of Directors of Data Cooling Technologies LLC
John Lane	Chief Restructuring Officer of Data Cooling Technologies LLC ⁴

VI. THE ACTIVITIES IN THE CHAPTER 11 CASES

A. The Chapter 11 Cases

On September 8, 2017, each of the Debtors filed a voluntary petition for relief under the Bankruptcy Code in the Bankruptcy Court. At that time, all actions and proceedings against the Debtors and all acts to obtain property from the Debtors were stayed pursuant to section 362 of the Bankruptcy Code. The Debtors continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

As part of the Chapter 11 Cases, the Debtors sought and received various forms of relief from the Bankruptcy Court. A summary of such relief sought and granted in the Chapter 11 Cases, along with other material activities in the Chapter 11 Cases, is set forth below.

⁴ Richard Szekelyi of Phoenix Management Services, LLC currently serves as Chief Restructuring Officer of DCT. As of the date of the filing of this Disclosure Statement, to satisfy independence rules of the United States Trustee, the Debtors have filed a motion (the “Inglewood Motion”) to appoint John Lane of Inglewood Advisors LLC as Chief Restructuring Officer of DCT and retain Inglewood to provide Chief Restructuring Officer services to DCT. The Inglewood Motion is currently pending before the Court, and John Lane will take Mr. Szekelyi’s place as Chief Restructuring Officer of DCT after Bankruptcy Court approval of the Inglewood Motion.

B. Postpetition Operations

Data Cooling Technologies LLC continued to operate its Streetsboro facility only in an administrative capacity after the Petition Date, but continued to operate its facility located in Tampa, Florida in the ordinary course of business after the Petition Date. These operations continued until the closing of the sales of substantially all of the Thermotech Assets to J&J Mission Critical LLC and the sale of substantially all of the DCT Assets to KyotoCooling North America LLC on November 30, 2017 (each as defined below).

C. Chapter 11 Relief

1. First Day and Similar Relief

On the Petition Date, the Debtors filed “first day” motions with the Bankruptcy Court seeking certain relief to continue uninterrupted operations. The requested relief included authority to use the cash collateral of KeyBank, authority to continue payment of wages and ordinary course employee benefits (including prepetition amounts), authority to continue to use the Debtors’ bank accounts and centralized cash management system, authority to provide adequate assurance of performance to utilities, and authority to continue payment of taxes in in the ordinary course of business (including prepetition amounts). All of the requested relief was granted, although approval of the use of cash collateral on a final basis was deferred to a later hearing, as is typical in chapter 11 cases. Shortly after the filing of the Chapter 11 Cases, the Debtors also requested authority to pay interim compensation to professionals, and this relief was also granted shortly after the Petition Date.

2. The Debtors’ Professional Advisors

The Debtors have been advised by the following professional advisors: McDonald Hopkins LLC, as the Debtors’ chapter 11 counsel; Phoenix Management Services, LLC, as the Debtors’ financial advisor; Mansour Gavin LPA, as the Debtors’ special counsel for certain limited matters; and Western Reserve Partners, a Division of Citizens Capital Markets, as the Debtors’ investment banker.⁵

3. Appointment of the Committee

The Office of the United States Trustee appointed a five-member Committee on September 20, 2017 (Docket No. 54), appointing Starr Manufacturing, Inc., HDT Expeditionary Systems, Inc., The Sheet Metal Products, Co, Inc., Ziehl-Abegg, Inc., and Complete Access Co. as members of the Committee. On November 3, 2017, the Bankruptcy Court entered an order approving the retention of Dahl Law LLC as counsel to the Committee. HDT Expeditionary Systems, Inc. later resigned from the Committee.

⁵ As discussed above, the Debtors have also filed the Inglewood Motion to retain Inglewood Advisors LLC and appoint John Lane as Chief Restructuring Officer of DCT.

4. Use of Cash Collateral

DCT obtained interim approval to use the cash collateral of KeyBank shortly after the Petition Date (Docket No. 31). DCT obtained final approval for the use of cash collateral on October 4, 2017 (Docket No. 84).

5. Litigation with KCNA

The Debtors' above-referenced disputes with KCNA regarding the KyotoCooling™ system and related license agreement resulted in KCNA filing a declaratory judgment action against DCT on October 12, 2017 (Adv. Proceeding No. 17-05072) (the "Declaratory Judgment Action"). DCT also requested an examination of a John Drossos, the Chief Executive Officer of KCNA, and certain document production pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (Docket No. 107) in the Debtors' main bankruptcy cases. Before DCT's answer in the Declaratory Judgment Action was due or the Debtors' request for the Rule 2004 examination was heard by the Court, however, the Debtors and KCNA negotiated a resolution of their disputes. KCNA agreed to buy substantially all of the DCT Assets (as defined below), and the parties agreed to settle all pending claims between them, including the Declaratory Judgment Action, in conjunction with the proposed sale. After the proposed sale of the DCT Assets and settlement was approved by the Court, the Declaratory Judgment Action was voluntarily dismissed, with prejudice, on December 19, 2017 (Adv. Proc. Docket No. 20).

6. Bar Dates

The Bankruptcy Court established certain bar dates for filing proofs of Claim. General proofs of Claim and section 503(b)(9) proofs of Claim are required to be filed no later than February 16, 2018, except that proofs of Claim for any governmental units are required to be filed no later than March 9, 2018 (Docket No. 175).

7. Sale of Substantially All of Data Cooling Technologies' Assets

The Debtors entered the Chapter 11 Cases with the goal of preserving their assets, potentially through selling substantially all of DCT's Assets or achieving confirmation of a sponsored plan of liquidation. After engaging in an extensive marketing process to find a plan sponsor or for the sale of substantially all of DCT's Assets located in both Streetsboro, Ohio (the "DCT Assets") and Tampa, Florida (the "Thermotech Assets"), DCT chose to pursue two separate sales for the DCT Assets and the Thermotech Assets. In November 2017, DCT sought Bankruptcy Court approval of a proposed sale of the Thermotech Assets to Thermotech Enterprises, LLC, as well as a proposed sale the DCT Assets to KCNA. The proposed sale of the DCT Assets to KCNA also involved a comprehensive settlement of all claims between DCT and KCNA. Both proposed sales involved an opportunity for other parties to provide overbids, and DCT received a competing offer for the Thermotech Assets from J&J Mission Critical, LLC ("J&J"). No other bids were received for the DCT Assets. After an in-court auction process, DCT sought court approval of the sale of the Thermotech Assets to J&J, who provided the highest and best offer for the Thermotech Assets during the auction.

On November 30, 2017, the Court entered that certain Order (A) Authorizing the Sale of the Data Cooling Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Expense Reimbursement; (D) Approving Settlement and Release of Claims With KyotoCooling North America LLC; and (E) Granting Related Relief (Docket No. 211), approving the sale of substantially all of the DCT Assets to KCNA, and approving the settlement of all claims between KCNA and DCT (the “KCNA Sale Order”). On December 1, 2017, the Court entered that certain Order (A) Authorizing the Sale of the Thermotech Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Expense Reimbursement; and (D) Granting Related Relief (Docket No. 212), approving the sale of substantially all of the Thermotech Assets to J&J, as detailed in the J&J APA (the “J&J Sale Order”)

Effective November 30, 2017, DCT closed both of the sales to KCNA and J&J in accordance with the KCNA Sale Order and the J&J Sale Order. The Debtors are in the process of winding down their affairs and administering their remaining assets.

8. Committee’s Violation of the Debtors’ Exclusive Right to File a Plan

On January 8, 2018, the Committee improperly filed a plan outlining the Committee’s own, unauthorized proposed plan of liquidation, a corresponding disclosure statement and motion to approve the disclosure statement. These filing were in contravention of the Debtors’ statutory right to file and solicit their own plan under section 1121 of the Bankruptcy Code. The Debtors moved to strike the Committee’s plan documents and sought sanctions against the Committee. At a hearing on January 16, 2018, the Court found that the Committee violated section 1121 of the Bankruptcy Code and ordered that all of the plan documents filed by the Committee be stricken from the Court’s docket and disregarded by creditors. **[TBD - description of the outcome of the sanctions hearing on February 6, 2018.]**

9. Litigation Matters

a. WARN Class Action

On September 12, 2017, Angel Albright (the “Plaintiff”) filed a class action proceeding complaint (the “Complaint”) against DCT, alleging that DCT violated the Worker Adjustment and Retraining Act, 29 U.S.C. § 2101, *et seq.*, on behalf of herself and all others similarly situated (Adv. Proceeding No. 17-05065, the “WARN Action”). DCT filed an answer to the Complaint on October 31, 2017 (Docket No. 21), asserting various affirmative defenses and exceptions to the WARN Action. On December 20, 2017, the Plaintiff filed a motion to certify the class in the WARN Action (the “Class Certification Motion,” Docket No. 28), and DCT filed an objection to the Class Certification Motion on January 3, 2018 (Docket No. 29), noting the proposed favorable resolution for the Terminated Employees that the Debtors have proposed in the Plan. The Class Certification Motion is currently pending before the Court. The outcome of the WARN Action is uncertain at this time, but if the Class Certification Motion is denied and the proposed Plan is confirmed by the Court, the Debtors believe that the relief the Plaintiff requests in the WARN Action will be moot.

b. Avoidance Actions

On the Effective Date, except as otherwise provided in the Plan, the Debtors shall transfer to the Liquidating Trust the Causes of Action. The Liquidating Trustee shall have exclusive standing to pursue and compromise all Causes of Action (other than Insider Causes of Action), as the representative of the Estates under section 1123(b) of the Bankruptcy Code, and the Liquidating Trustee may enforce any such Causes of Action that the Debtors or the Estates may hold against any entity to the extent not expressly released under the Plan or by any Final Order of the Bankruptcy Court. Such Causes of Action shall include all Avoidance Actions (other than Avoidance Actions that are Insider Causes of Action) and all litigation that may presently be pending in other forums for later adjudication, as applicable, by the Debtors or the Liquidating Trustee. The Investigation Trustee shall have exclusive standing to pursue and compromise the Insider Causes of Action, as the representative of the Estates under section 1123(b) of the Bankruptcy Code, and the Investigation Trustee may enforce any such Insider Causes of Action that the Debtors or the Estate may hold against any Insider to the extent not expressly released under the Plan or by any Final Order of the Bankruptcy Court.

VII. SUMMARY OF THE PLAN OF LIQUIDATION

The primary objective of the Plan is to maximize recovery to creditors by liquidating the Debtors' remaining assets in the most efficient way and distributing the proceeds of that liquidation to creditors.

This Disclosure Statement includes summaries of the material provisions contained in the Plan and in documents referred to therein. The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statements of such terms and provisions.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtors under the Plan and will, upon the Effective Date, be binding upon all Holders of Claims against and Interests in the Debtors and their Estates and other parties in interest. In the event of any conflict between this Disclosure Statement, on the one hand, and the Plan or any other operative document, on the other hand, the terms of the Plan or such other operative document are controlling.

A. Overview of Chapter 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its business for the benefit of itself, its creditors and interest holders. Controlled and structured liquidations are also possible under chapter 11. A primary goal of chapter 11, whether in reorganization or liquidation, is to promote equality of treatment for similarly situated creditors and similarly situated interest holders with respect to the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides

that the debtor may continue to operate its business and remain in possession of its property as a “debtor in possession.”

The consummation of a plan is the principal objective of a chapter 11 case. A plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan by a bankruptcy court makes the plan binding upon the debtor, any issuer of securities under the plan, any person or entity acquiring property under the plan, and any creditor of or equity security holder in the debtor, whether or not such creditor or equity security holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan.

B. Overview of the Plan

The Debtors believe that the Plan provides the best and most prompt possible recovery to Holders of Claims against the Debtors. The Plan is divided into ten (10) Articles. It is important that Holders of Claims review the Plan in its entirety.

1. Defined Terms and Rules of Interpretation

Article I and Exhibit A of the Plan define various terms used in the Plan, and Article I also provides rules for interpretation of the Plan and computation of time, and makes clear that the exhibits to the Plan and any schedules to the Plan are incorporated into and a part of the Plan.

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

Article II of the Plan classifies Claims against and Interests in the Debtors. Administrative Claims and Priority Tax Claims are unclassified. There are two unimpaired Classes of Claims that are deemed to have accepted the Plan: Class 1, Secured Claims and Class 2, Other Priority Claims. There are two Impaired Classes of Claims, and the Holders of Claims in those Classes are entitled to vote on the Plan. Those Classes are Class 3 (Terminated Employee Claims) and Class 4 (General Unsecured Claims). Finally, there are two Classes of Claims that are deemed to have rejected the Plan: Class 5 (Intercompany Claims) and Class 6 (Interests).

Article II of the Plan also describes the treatment of Claims and Interests under the Plan. In general, however, Holders of Allowed Administrative Claims, Priority Tax Claims, Secured Claims, and Other Priority Claims will be paid in full on the later of: (i) within sixty (60) days of the Effective Date; (ii) the date on which such Claim becomes an Allowed Claim; or (iii) the date funds from the liquidation of Liquidating Trust Assets are available to pay such Claims. Holders of Class 3 Terminated Employee Claims will receive, in full satisfaction of such Terminated Employee Claim, and subject to any required or appropriate applicable tax withholding, Cash equal to the equivalent of thirty (30) days' gross wages for such Terminated Employee on the later of (a) sixty (60) days after the Effective Date; (b) the date on which such Terminated Employee Claim becomes an Allowed Terminated Employee Claim; or (c) the date funds from the liquidation of the Liquidating Trust Assets are available to pay Allowed Terminated Employee Claims. Holders of Class 4 General Unsecured Claims will receive a Pro Rata share of remaining Liquidating Trust Assets after payment of Liquidating Trust Expenses and the Claims

described above. Holders of Class 5 Intercompany Claims will have their Intercompany Claims cancelled. In addition, Holders of Class 6 Interests will have their equity interests cancelled.

The Debtors anticipate the Liquidating Trust having sufficient funds to pay all Priority Tax Claims, Other Priority Claims, and Terminated Employee Claims in full. If for any reason the Liquidating Trust does not have sufficient funds to pay all such Claims in full, then, after the payment of all Administrative Claims and Fee Claims and the payment of (or reserve for) all costs and expenses of the Liquidating Trust, such priority Claims will be paid in the order of priority set forth in section 507 of the Bankruptcy Code. In such a situation, Terminated Employee Claims will be treated with the same priority level as Claims under section 507(a)(4) of the Bankruptcy Code.

3. Acceptance or Rejection of the Plan

Article III of the Plan describes the voting requirements for acceptance of the Plan and states that only Holders of Allowed Class 3 Claims and Class 4 Claims are entitled to vote on the Plan.

4. Means for Implementation of the Plan

Article IV of the Plan describes the means for implementation of the Plan. That Article includes discussion of: (a) the wind down of the Debtors; (b) the establishment and key terms of the Liquidating Trust, including the preservation of the Causes of Action and Insider Causes of Action and their transfer to the Liquidating Trust; and (c) restructuring transactions.

a. Wind Down of the Debtors

On the Effective Date, the Liquidating Trust Assets will be delivered to and vest in the Liquidating Trust and will be managed by the Liquidating Trustee, subject to certain specific rights of the Investigation Trustee.

b. The Liquidating Trust

On or prior to the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of liquidating the Estates and distributing the proceeds thereof to creditors. The Liquidating Trust (and the Liquidating Trustee) shall be empowered to: (a) effect all actions and execute all agreements, instruments and other documents necessary to implement the Liquidating Trust provisions of the Plan; (b) accept, preserve, receive, collect, manage, invest, supervise, prosecute, settle, and protect the Liquidating Trust Assets (directly or through its professionals, in accordance with the Plan); (c) sell, liquidate, transfer, distribute, abandon, or otherwise dispose of the Liquidating Trust Assets (directly or through its professionals) or any part thereof or any interest in the Plan upon such terms as the Liquidating Trustee determines to be necessary, appropriate, or desirable; (d) calculate and make distributions to Holders of Allowed Claims; (e) comply with the Plan and exercise the Liquidating Trustee's rights and fulfill his or her obligations thereunder; (f) review, reconcile, or

object to Claims and resolve such objections as set forth in the Plan⁶; (g) i investigate and pursue Causes of Action transferred to the Liquidating Trust (except for any Insider Causes of Action, which shall be investigated and/or pursued by the Investigation Trustee); (h) retain and compensate professionals to represent the Liquidating Trustee without further authority from the Bankruptcy Court; (i) establish and maintain a Disputed Claims Reserve; (j) file appropriate Tax returns and other reports on behalf of the Liquidating Trust and pay Taxes or other obligations owed by the Liquidating Trust; (k) exercise such other powers as may be vested in the Liquidating Trustee under the Liquidating Trust Agreement or the Plan, or as deemed by the Liquidating Trustee to be necessary and proper to implement the provisions of the Plan and the Liquidating Trust Agreement; (l) object to the amount of any Claim on the Schedules if the Liquidating Trustee determines in good faith that the Claim is invalid, overstated, or has previously been paid or satisfied; (m) file any required reports and pay any and all residual statutory fees of the Debtors as provided in the Plan; and (n) dissolve the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement and Plan. The Liquidating Trust's primary purpose is liquidating the Liquidating Trust Assets transferred to it by the Debtors and making distributions from the Liquidating Trust to Holders of Allowed Claims. If the Liquidating Trustee determines to pursue Avoidance Actions, the Liquidating Trustee shall hire counsel on a contingency fee basis, it being the intent of the Plan that only colorable claims be pursued.

c. The Investigation Trustee and Liquidating Trustee

On the Effective Date, in accordance with the Liquidating Trust Agreement, the Investigation Trustee shall be appointed for the sole purpose of investigating and/or pursuing Insider Causes of Action. The Investigation Trustee's fees and expenses in conducting his or her duties shall be funded exclusively from the Investigation Expenses (up to \$25,000). To the extent that the Investigation Trustee determines that he or she has a colorable claim against any Person arising out of the investigation, the Investigation Trustee shall have the sole authority to assert and pursue such Insider Causes of Action. If the Investigation Trustee determines to pursue Insider Causes of Action, the Investigation Trustee shall hire counsel on a contingency fee basis, it being the intent of the Plan that only colorable claims be pursued. The Investigation Trustee shall have no rights, powers, or authority other than what is expressly reserved for the Investigation Trustee in the Liquidating Trust Agreement. The initial Investigation Trustee shall be a Person selected by the Committee at least 10 days prior to the Confirmation Hearing. The proceeds of any Insider Causes of Action, if any, shall be property of the Liquidating Trust and delivered to the Liquidating Trustee.

The initial Liquidating Trustee shall be Richard Szekelyi not individually, but solely as Liquidating Trustee of the Liquidating Trust Assets. Mr. Szekelyi's shall charge an initial hourly rate of \$_____ per hour. The powers, rights, and responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and shall include the authority and responsibility to fulfill the rights and obligations identified in the Plan. For the avoidance of

⁶ To the extent that the Bankruptcy Court sustains any objection filed by the Debtors or the Liquidating Trustee to any filed Claim, the amount of such Allowed Claim, if any, may be less than the amount listed on the proof of claim form filed by the alleged Claim holder.

doubt: (i) the Liquidating Trustee shall have exclusive standing to pursue and compromise (without further Order of the Bankruptcy Court) all Causes of Action, excluding any Insider Causes of Action, which are reserved for the Investigation Trustee; and (ii) all responsibilities and rights of a trustee of the Liquidating Trust shall be those of the Liquidating Trustee, except to the extent specifically granted to the Investigation Trustee.

d. Restructuring Transactions

The Liquidating Trustee will be authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan.

5. Treatment of Executory Contracts and Unexpired Leases

Article V of the Plan describes the treatment of Executory Contracts and Unexpired Leases. Except as otherwise set forth in the Plan, all Executory Contracts and Unexpired Leases which have not been previously been rejected, or assumed and assigned, will be deemed automatically rejected under the Plan as of the Effective Date.

6. Provisions Governing Distributions

Article VI of the Plan discusses provisions governing distributions under the Plan. The Liquidating Trustee will make distributions to Holders of Allowed Administrative Claims, Priority Tax Claims, Secured Claims, Other Priority Claims, and Fee Claims on the later of (a) sixty (60) days after the Effective Date; (b) the date on which such Claim becomes an Allowed Claim; or (c) the date funds from the liquidation of Liquidating Trust Assets are available to pay such Allowed Claims. Each Holder of an Allowed Terminated Employee Claim shall receive, in full satisfaction of such Terminated Employee Claim, and subject to any required or appropriate applicable tax withholding, Cash equal to the equivalent of thirty (30) days' gross wages for such Terminated Employee (calculated at the last applicable pay rate of such Terminated Employee prior to his or her termination) on the later of (a) sixty (60) days after the Effective Date; (b) the date on which such Terminated Employee Claim becomes an Allowed Terminated Employee Claim; or (c) the date funds from the liquidation of the Liquidating Trust Assets are available to pay Allowed Terminated Employee Claims. Finally, the Liquidating Trustee will make one or more distributions to Holders of Allowed General Unsecured Claims on a Pro Rata basis on one or more Distribution Dates after payment of the other Classes of Claims described above.

Article VI of the Plan also describes, among other things: (a) methods of delivery of distributions; (b) the treatment of undeliverable distributions; (c) the selection of distribution dates; (d) the estimation of Claims; (e) the treatment of *de minimis* distributions; (f) provisions governing Disputed Claims Reserves; and (g) provisions regarding setoffs. Holders of Claims should review Article VI in its entirety.

7. Procedures for Resolving Disputed Claims

Article VII of the Plan discusses procedures for resolving Disputed Claims. The Plan provides that objections to Claims must be made by the Claims Objection Bar Date. After the Effective Date, the Liquidating Trustee will have the sole authority to File, settle, compromise, withdraw, or litigate to judgment objections to Claims. The Liquidating Trustee will have the authority to amend the Schedules with respect to any Claim, and to make distributions based on such amended Schedules without necessarily seeking approval of the Bankruptcy Court, *provided, however*, that the Liquidating Trustee will seek prior approval from the Bankruptcy Court prior to increasing by more than \$50,000 the proposed Allowed amount of any Claim on the Schedules. In addition, if any such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of a Claim, the Liquidating Trustee will provide the Holder of such Claim with notice of such amendment and such Holder will have thirty (30) days to file an objection to such amendment with the Bankruptcy Court. The notice will contain the same specificity to affected creditors that would be required if the Schedules amendment was a Claim objection. If no such objection is filed, the Liquidating Trustee may proceed with distributions based on such amended Schedules without approval of the Bankruptcy Court. Notwithstanding anything contained in Plan to the contrary, the Liquidating Trustee shall have the authority to object to the amount of any Claim indicated on the Schedules if the Liquidating Trustee determines in good faith that the Claim is fully or partially invalid, overstated, or has previously been paid or satisfied.

8. Confirmation and Consummation of the Plan and Effect of Plan Confirmation

Article VIII describes the conditions to Confirmation of the Plan, the conditions to the Effective Date of the Plan, and provisions for waivers thereof. Holders of Claims should review Article VIII of the Plan in its entirety.

Article VIII also details the effect of Plan Confirmation. Specifically, it provides for the following:

- Limitation of Rights of Holders of Claims. Pursuant to section 1141(d)(3) of the Bankruptcy Code, Confirmation shall not discharge Claims against the Debtors; *provided, however*, that no Holder of a Claim against the Debtors may, on account of such Claim, seek or receive any payment or other distribution from, or seek recourse against, the Debtors, the Liquidating Trustee, or property of the Estates or the Liquidating Trust, except as expressly provided in the Plan.
- Injunction. Except as provided in the Plan or the Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim or other debt or liability against the Debtors or an Interest or other right of an equity security holder are permanently enjoined from taking any of the following actions on account of any such Claims, debts, Liabilities, Interests, or rights: (a) commencing or continuing in any manner any action or other proceeding against the Liquidating Trust, the Liquidating Trustee, or their respective property; (b) enforcing, attaching, collecting, or recovering in any manner any

judgment, award, decree, or order against the Liquidating Trust, the Liquidating Trustee, or their respective property; (c) creating, perfecting, or enforcing any lien or encumbrance against the Liquidating Trust, the Liquidating Trustee, or their respective property; (d) asserting a right of subordination of any kind against any debt, liability, or obligation due to the Liquidating Trust, or the Liquidating Trustee, or their respective property; or (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 (including the pursuit of any claims exculpated pursuant to Section 8.6.3 of the Plan).

- Exculpation. Subject to the occurrence of the Effective Date, none of the Exculpated Parties shall have or incur any liability to any Holder of a Claim or Interest or any other party for any act or omission in connection with, related to, or arising out of, the Chapter 11 Cases or 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 Exculpated 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 Exculpated Parties, or exculpate the Exculpated Parties with respect to, acts or omissions occurring prior to the Petition Date (including Avoidance Actions with respect thereto) other than the decision to file the Chapter 11 Cases.

9. Retention of Jurisdiction

Article IX calls for the retention of jurisdiction by the Bankruptcy Court, to the fullest extent permitted by law, to enforce the terms of the Plan and take other actions related to the Chapter 11 Cases.

10. Miscellaneous Provisions

Article X of the Plan contains various other provisions, including among other things amendment or modifications of the Plan, events of default and governing law.

11. Substantive Consolidation

The Debtors are requesting that the Bankruptcy Court approve the Debtors' election to substantively consolidate the Estates. Accordingly, for purposes of implementing the Plan, pursuant to such order: (a) all assets and liabilities of all the Debtors shall be pooled; and (b) with respect to any guarantees by one Debtor of the obligations of any Debtor, and with respect to any joint or several liability of any Debtor, the Holder of any Claims for such obligations will receive a single recovery on account of any such joint obligations of the Debtors, in each case except to the extent otherwise provided in the Plan.

Such election to treat the Estates as consolidated shall not constitute a waiver of the mutuality requirement for setoff under section 553 of the Bankruptcy Code, except to the extent otherwise expressly waived by the Debtors or the Liquidating Trustee. The Plan serves as a

motion seeking entry of an order consolidating the Debtors, as described in Section 4.7 of the Plan. Upon a proper evidentiary showing at the Confirmation Hearing by the Debtors, the consolidation order (which may be the Confirmation Order) will be entered by the Bankruptcy Court.

The Debtors submit that substantive consolidation of the Estates is appropriate under applicable law given the facts and circumstances of the Chapter 11 Cases. The Debtors are so interrelated that substantive consolidation is the best and most efficient way to make distributions under the Plan. Creditors will not be harmed by substantive consolidating and could actually be prejudiced by the Estates not substantively consolidating.

VIII. RISK FACTORS TO BE CONSIDERED

Holders of Claims against the Debtors should read and consider carefully the information set forth below, as well as the other information set forth in this Disclosure Statement prior to voting to accept or reject the Plan. This information, however, should not be regarded as the only risks involved in connection with the Plan and/or its implementation.

A. Failure to Satisfy Vote Requirement

If the Plan does not receive the requisite votes in accordance with the requirements of the Bankruptcy Code, the Debtors may be forced to pursue other alternatives in the Chapter 11 Cases that are not as attractive to creditor recoveries as the treatment under the Plan. This risk factor is particularly significant in these cases, because the Committee inappropriately filed a competing plan during the Debtors' exclusivity period. The Bankruptcy Court struck the Committee's plan, but the filing of that plan and related documents may have irreparably harmed the Debtors' Estates and confused creditors, which could have an effect on voting. For example, the Committee plan pandered to alleged WARN creditors (and their purported class action counsel) by conceding critical legal issues without any investigation whatsoever. Accordingly, WARN creditors may be confused and believe the Committee plan is an option for them (which it is not), and that could affect their votes on the Debtors' Plan.

B. Non-Confirmation or Delay of Confirmation of the Plan

The Bankruptcy Court, which sits as a court of equity, may exercise substantial discretion. Section 1129 of the Bankruptcy Code sets forth the requirements for Confirmation and requires, among other things, that the value of distributions to dissenting creditors and shareholders not be less than the value of distributions such creditors and shareholders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtors believe that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

C. Non-Consensual Confirmation

In the event any impaired Class of Claims does not accept a plan, a bankruptcy court may nevertheless confirm such plan at the proponent's request if at least one impaired class of claims has accepted the plan (with such acceptances being determined without including the vote of any "insider" in such class), and, as to each impaired class that has not accepted the plan, the

bankruptcy court determines that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to the dissenting impaired classes. The Debtors believe that the Plan satisfies these requirements, but there can be no assurance that the Bankruptcy Court will reach the same conclusion.

D. Risk of Non-Occurrence of the Effective Date

Although the Debtors believe that the Effective Date will occur reasonably soon after the Confirmation Date, there can be no assurance as to such timing or as to whether it will occur.

E. Classification and Treatment of Claims and Equity Interests

Section 1122 of the Bankruptcy Code requires that the Plan classify Claims against, and Interests in, the Debtors. The Bankruptcy Code also provides that the Plan may place a Claim or Interest in a particular Class only if such Claim or Interest is substantially similar to the other Claims or Interests of such Class. The Debtors believe that all Claims and Interests have been appropriately classified in the Plan, but there can be no assurance that the Bankruptcy Court will reach the same conclusion.

F. Claim Objections and Reconciliations

The potential recovery to Class 4 depends on, among other things, the outcome of the Claims reconciliation and objection process, conducted pre-confirmation by the Debtors and post confirmation by the Liquidating Trustee. Therefore, the distribution to Holders of Class 4 General Unsecured Claims may increase or decrease depending on the resolution of outstanding Claims. There is a risk that a creditor’s claim, as filed, could be valid and enforceable when the Plan is confirmed, but could be objected to later even though such creditor voted in favor of the Plan.

G. Recoveries from Causes of Actions

Causes of Action, including all Avoidance Actions, will be transferred to the Liquidating Trust as of the Effective Date of the Plan. The Liquidating Trustee will conduct a thorough investigation of the Causes of Action (other than Insider Causes of Action). If the Liquidating Trustee determines to pursue any Causes of Action or Avoidance Actions (other than Insider Causes of Action), the Liquidating Trustee shall hire counsel on a contingency fee basis to pursue any colorable claims. The Liquidating Trustee will conduct a thorough investigation of the Insider Causes of Action. If the Liquidating Trustee determines to pursue Insider Causes of Action, the Liquidating Trustee shall hire counsel on a contingency fee basis to pursue any colorable claims. The Debtors believe that the proceeds of Causes of Action, along with the Cash to be transferred to the Liquidating Trust, will be sufficient to: (i) pay in full all Administrative Claims, Secured Claims, Other Priority Claims, Terminated Employee Claims, and Priority Tax Claims; and (ii) provide a recovery on a Pro Rata Basis to holders of Allowed General Unsecured Claims. Litigation is always speculative, however, and there can be no guaranty of the recovery on Causes of Action.

H. Other Unliquidated Assets

Depending on the timing of the Effective Date, it is possible that the Liquidating Trust will receive other unliquidated Assets, such as proceeds from the sale or liquidation of miscellaneous assets. These assets include rights under the KCNA APA related to patent infringement against Nortek that is being pursued by KCNA on behalf of both KCNA and DCT. While a potential beneficiary of such litigation, DCT does not have input into the prosecution or settlement of the litigation. It is impossible at this time to determine the value of these unliquidated Assets, which will affect the ultimate recovery to Holders of General Unsecured Claims.

I. Litigation

As described above, the DCT is engaged in the pending WARN Action. After the Effective Date, the Liquidating Trustee will take over that litigation on behalf of DCT. It is possible that confirmation of the Plan will moot the relief requested in the WARN Action. However, litigation is inherently unpredictable, and it is impossible at this time to determine the outcome of the WARN Action.

IX. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

Substantial uncertainty exists with respect to many of the tax issues discussed below. Therefore, each Holder of a Claim is urged to consult its own tax advisor regarding the federal, state, and other tax consequences of the Plan. No rulings have been requested from the Internal Revenue Service (the “IRS”) with respect to any tax aspects of the Plan.

A summary description of certain United States federal income tax consequences of the Plan is provided below. The description of tax consequences below is for informational purposes only and, due to lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various U.S. federal income tax consequences of the Plan as discussed herein. Only the potential material U.S. federal income tax consequences of the Plan to the Debtors, the Liquidating Trust, and to hypothetical Holders of Claims in Class 3 and Class 4 are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan, and no tax opinion is being given in this Disclosure Statement. No rulings or determinations of the IRS or any other tax authorities have been obtained or sought with respect to any tax consequences of the Plan, and the discussion below is not binding upon the IRS or such other authorities. No representations are being made regarding the particular tax consequences of the confirmation and consummation of the Plan to the Debtors, to the Liquidating Trust, or to any Holder of Claims. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein.

The discussion of the U.S. federal income tax consequences below is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), Treasury Regulations promulgated and proposed thereunder, judicial decisions, and administrative rulings and pronouncements of the IRS, and other applicable authorities, all as in effect on the date hereof. Legislative, judicial or administrative changes or interpretations enacted or promulgated in the

future could alter or modify the analyses and conclusions set forth below. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences to the Holders of Claims. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences discussed below.

THIS DISCUSSION DOES NOT ADDRESS FOREIGN, STATE, OR LOCAL TAX CONSEQUENCES OF THE PLAN, NOR DOES IT PURPORT TO ADDRESS THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO SPECIAL CLASSES OF TAXPAYERS (SUCH AS FOREIGN ENTITIES, NONRESIDENT ALIEN INDIVIDUALS, PASS-THROUGH ENTITIES SUCH AS PARTNERSHIPS AND HOLDERS THROUGH SUCH PASS-THROUGH ENTITIES, S CORPORATIONS, MUTUAL FUNDS, INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, SMALL BUSINESS INVESTMENT COMPANIES, REGULATED INVESTMENT COMPANIES, CERTAIN SECURITIES TRADERS, BROKER-DEALERS AND TAX-EXEMPT ORGANIZATIONS). FURTHERMORE, ESTATE AND GIFT TAX ISSUES ARE NOT ADDRESSED HEREIN AND TAX CONSEQUENCES RELATING TO THE ALTERNATIVE MINIMUM TAX ARE GENERALLY NOT DISCUSSED HEREIN.

NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE PLAN TO ANY SPECIFIC HOLDER OF CLAIMS. EACH HOLDER OF CLAIMS IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.

A. U.S. Federal Income Tax Consequences to the Debtors

Under the Tax Code, a taxpayer generally recognizes gross income to the extent that indebtedness of the taxpayer is cancelled for less than the amount owed by the taxpayer, subject to certain judicial or statutory exceptions. The most significant of these exceptions with respect to the Debtors is that taxpayers who are operating under the jurisdiction of a federal bankruptcy court are not required to recognize such income. In that case, however, the taxpayer must reduce its tax attributes, such as its net operating losses, general business credits, capital loss carryforwards, and tax basis in assets, by the amount of the cancellation of indebtedness income avoided.

B. U.S. Federal Income Tax Consequences of the Liquidating Trust

1. Tax Characterization of the Liquidating Trust

The Liquidating Trust created pursuant to the Plan (except for any Disputed Claims Reserve treated as either a discrete trust taxed pursuant to Section 641 of the Tax Code or as a disputed ownership fund described in Treasury Regulation Section 1.468B-9) is intended to qualify as a “liquidating trust” for U.S. federal income tax purposes with respect to the holders of Claims pursuant to sections 671 through 678 of the Tax Code. However, establishing a trust as a liquidating trust does not ensure that it will be treated as a grantor trust for U.S. federal income

tax purposes. Pursuant to the Plan and consistent with Revenue Procedure 94-45, all parties (including, without limitation, the Debtors, the Liquidating Trustee, and holders of the beneficial interests in the Liquidating Trust) will be required to treat, for U.S. federal income tax purposes, the Liquidating Trust as grantor trust of which the holders of the beneficial interests in the liquidating trust are the owners and grantors. The discussion that follows assumes that the Liquidating Trust will be so respected for U.S. federal income tax purposes. However, no assurance can be given that the IRS would not take a position that is contrary. To the extent that the IRS were to challenge successfully the Liquidating Trust's classification, the U.S. federal income tax consequences to the Liquidating Trust, the Debtors and the holders of the beneficial interests in the Liquidating Trust could differ from those contained in this discussion. **The holders of the beneficial interests in the Liquidating Trust should consult with their own tax advisors regarding the tax treatment of the Liquidating Trust for U.S. federal income tax purposes.**

2. Establishment of the Liquidating Trust

The transfer of the Liquidating Trust Assets to the Liquidating Trust, as of the Effective Date of the Plan, shall be treated for U.S. federal income tax purposes as a deemed transfer of those assets to the holders of the Claims in exchange for their Claims, immediately followed by a deemed contribution of those assets to the Liquidating Trust by such Holders in exchange for a beneficial interest in the Liquidating Trust, all as of the Effective Date of the Plan. As a result of this deemed exchange of the Claims for the consideration under the Plan and the deemed contribution of the consideration to the Liquidating Trust, the holders of the Class 3 Terminated Employee Claims and the Class 4 General Unsecured Claims will receive a beneficial interest in the Liquidating Trust and will be the beneficiaries of the Liquidating Trust. **The beneficiaries of the Liquidating Trust should consult with their own tax advisors regarding the U.S. federal income tax consequences to them resulting from the establishment of the Liquidating Trust.**

3. Taxation of the Liquidating Trust

The beneficiaries of the Liquidating Trust will be treated as grantors and deemed to owners of the Liquidating Trust and each beneficiary will be required to report on its U.S. federal income tax return its allocable share of any income, loss, deduction, or credit recognized or incurred by the Liquidating Trust including, but not limited to, any interest or dividend income earned with respect to the assets of the Liquidating Trust. Each beneficiary's obligation to report its share of any such income is not dependent on the Liquidating Trust distributing any cash or other proceeds. Accordingly, a beneficiary may incur a tax liability as a result of owning a beneficial interest in the Liquidating Trust regardless of whether the Liquidating Trust makes a current distribution. **The beneficiaries of the Liquidating Trust should consult with their own tax advisors for information that may be relevant to their particular circumstances regarding the U.S. federal income tax consequences to them resulting from the Liquidating Trust.**

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Liquidating Trustee (a) may elect to treat any Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9, and (b) to the

extent permitted by applicable law, will report consistently for state and local income tax purposes. Accordingly, if a “disputed ownership fund” election is made, any amounts allocable to, or retained on account in a Disputed Claims Reserve will be subject to tax annually on a separate entity basis on any net income earned with respect to the Liquidating Trust Assets in such Disputed Claims Reserve, and all distributions from such reserve (which distributions will be net of the expenses relating to the retention of such assets) will be treated as received by holders in respect of their Claims as if distributed by the Debtors. All parties (including, without limitation, the Debtors, the Liquidating Trustee and the beneficiaries of the Liquidating Trust) will be required to report for tax purposes consistently with the foregoing.

4. Tax Reporting

As soon as reasonably practicable after the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make a good faith valuation of the Liquidating Trust Assets. All parties to the Liquidating Trust (including, without limitation, the Debtors and beneficiaries of the Liquidating Trust) must consistently use such valuations for all U.S. federal income tax purposes. The Liquidating Trust will file an annual information tax return with the IRS which will include information concerning the allocation of income, gain, loss, deductions and credits to the beneficiaries of the Liquidating Trust. Each beneficiary of the Liquidating Trust will receive a copy of such return and will be required to report on its own U.S. federal income tax return its allocable share of such items.

C. U.S. Federal Income Tax Consequences to the Holders of Class 3 Terminated Employee Claims and Class 4 General Unsecured Claims

Pursuant to the Plan, each holder of an Allowed Terminated Employee Claim or a General Unsecured Claim will receive in satisfaction of its Claim either (a) subject to any required or appropriate applicable tax withholding, Cash equal to the equivalent of thirty (30) days gross wages for such Terminated Employee; or (b) a Pro Rata beneficial interest in the Liquidating Trust, respectively, after payment of certain other Claims and Liquidating Trust Expenses.

The Holders of Terminated Employee Claims and General Unsecured Claims should be treated as exchanging such Terminated Employee Claims or General Unsecured Claims for cash in a fully taxable exchange. Such a Holder should recognize gain or loss equal to the difference between (a) the Holder’s share of the Liquidating Trust Assets, and (b) the Holder’s tax basis in the surrendered Terminated Employee Claim or General Unsecured Claim. To the extent that the Holder held its General Unsecured Claim as a capital asset, such gain or loss should generally be capital in nature and should be long-term capital gain or loss if the debts constituting the surrendered General Unsecured Claim were held for more than one year unless the Holder has previously claimed a bad debt or worthless securities deduction, or the Holder had accrued market discount with respect to the General Unsecured Claim. To the extent that a portion of the Liquidating Trust Assets received in exchange for the Allowed Terminated Employee Claims or General Unsecured Claims is allocable to accrued but untaxed interest, the Holder may recognize ordinary income.

In the case of a Holder of a deferred compensation or other wage claim, the receipt of Liquidating Trust Assets in satisfaction of such claim will be includable by the Holder as compensation income (taxed at ordinary income rates) to the extent not previously included, and, if the Holder was an employee of the Debtors for federal tax purposes, may be subject to applicable withholding.

HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS CONCERNING THE RECOGNITION OF GAIN OR LOSS, FOR FEDERAL INCOME TAX PURPOSES, ON THE SATISFACTION OF THEIR TERMINATED EMPLOYEE CLAIMS OR GENERAL UNSECURED CLAIMS.

D. Information Reporting and Backup Withholding

Certain payments, including payments in respect of accrued interest or market discount, are generally subject to information reporting by the payor to the IRS. Moreover, such reportable payments are subject to backup withholding under certain circumstances. Under the Tax Code's backup withholding rules, a U.S. Holder may be subject to backup withholding at the applicable rate with respect to certain distributions or payments pursuant to the Plan, unless the Holder: (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (ii) provides a correct U.S. taxpayer identification number and certifies under penalty of perjury that the holder is a U.S. person, the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of a failure to report all dividend and interest income.

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a Holder's U.S. federal income tax liability, and a Holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing an appropriate claim for refund with the IRS.

E. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE, LOCAL, AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN, INCLUDING WITH RESPECT TO TAX REPORTING AND RECORD KEEPING REQUIREMENTS.

X. FEASIBILITY AND ACCEPTANCE OF THE PLAN, BEST INTERESTS TEST, AND CRAMDOWN

A. 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 Debtors. The Plan already contemplates liquidation, so the goals of the Plan are completely feasible and the risk of further financial reorganization is not relevant.

B. 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.

C. 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 Debtors were liquidated under chapter 7 of the Bankruptcy Code.

D. Application of the Best Interests of Creditors Test

In this case, the Debtors have sold substantially all of their assets, with the remaining assets to be liquidated and 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. Additionally, the Debtors believe that the Estates have a better chance to collect certain post-Petition Date receivables due to the structured process under the Plan as opposed to the “fire sale” nature of a chapter 7 case. The recovery available in a chapter 7 liquidation to creditors in each Impaired Class in these Chapter 11 Cases would be substantially less, because of the additional administrative costs associated with a chapter 7 trustee and professionals not familiar with the Debtors’ cases and the complicated litigation involved, including the WARN Action. The Debtors also believe that the proposed payment to the Terminated Employees pursuant to the Plan is a materially better and more efficient resolution of any claims of the Terminated Employees through the WARN Action or otherwise. 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.

Accordingly, the Debtors believe 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 Debtors believe 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.

E. Confirmation Without Acceptance of All Impaired Classes: The ‘Cramdown’ Alternative

In view of the deemed rejection by Holders of Class 5 Intercompany Claims and Class 6 Interests, the Debtors 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. A bankruptcy court may confirm a plan at the request of a plan proponent 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 Debtors believe the Plan does not discriminate unfairly with respect to Holders of Class 5 Intercompany Claims and Class 6 Interests. Holders of Intercompany Claims in Class 5 and Holders of Interests in Class 6 are not receiving any distribution under the Plan.

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 Debtors believe that the Plan will meet the “fair and equitable” requirements of section 1129(b) of the Bankruptcy Code with respect to Holders of Class 6 Interests. No Claim or Interest Holder junior to Holders of Class 6 Interests is receiving any recovery pursuant to their Claim or Interest, thereby satisfying section 1129(b) with respect to Class 6.

The Plan reserves the right of the Debtors 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, including, to the extent necessary, Disputed Claims not entitled to vote under the Plan.

XI. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Debtors believe 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 Debtors under chapter 7 of the Bankruptcy Code.

If no plan is confirmed, the Debtors may be forced to liquidate under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate the Debtors' 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 Interests in the Debtors. As noted above, however, the Debtors believe that in a liquidation under chapter 7, before creditors receive any distribution, additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants and other professionals to assist such trustees would cause a substantial diminution in the value of the Debtors' Estates. The assets available for distribution to creditors would be reduced by such additional expenses.

The Debtors 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.

Accordingly, the Debtors believe 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 Debtors believe is provided to creditors under the Plan.

XII. CONCLUSION AND RECOMMENDATION

The Debtors believe 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.

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Respectfully submitted,

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