

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	Case No. 16-32814-11
	§	
FRYMIRE SERVICES, INC.,	§	Chapter 11
	§	
Debtor.	§	

DISCLOSURE STATEMENT UNDER 11 U.S.C. § 1125 IN SUPPORT OF
DEBTOR'S CHAPTER 11 PLAN OF LIQUIDATION

Dated: January 6, 2017

THIS DISCLOSURE STATEMENT HAS NOT YET BEEN
APPROVED BY THE COURT FOR VOTING

THE DISCLOSURE STATEMENT HAS BEEN PREPARED BY THE DEBTOR AND DESCRIBES THE TERMS AND PROVISIONS OF, AND SETS FORTH CERTAIN MATERIAL CONSIDERATIONS IN CONNECTION WITH, THE DEBTOR'S PLAN OF LIQUIDATION (THE "PLAN"). ANY CAPITALIZED TERM USED IN THIS DISCLOSURE STATEMENT THAT IS NOT DEFINED HEREIN HAS THE MEANING ASCRIBED TO THAT TERM IN THE PLAN. THE DEBTOR URGES YOU TO ACCEPT THE PLAN BY SIGNING AND RETURNING THE BALLOTS MAILED TO YOU ALONG WITH THIS DISCLOSURE STATEMENT. IN THE EVENT THAT THE PLAN IS NOT CONFIRMED, THE DEBTOR LIKELY WILL BE FORCED TO LIQUIDATE ITS ASSETS UNDER CHAPTER 7 OF THE BANKRUPTCY CODE. IN A CHAPTER 7 LIQUIDATION, THE DEBTOR BELIEVES THAT CREDITORS WOULD RECEIVE SUBSTANTIALLY LESS THAN IS CONTEMPLATED BY THE PLAN.

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TABLE OF CONTENTS

PLAN SUMMARY.....1

I. INTRODUCTION1

 A. *Filing of the Debtor’s Bankruptcy Case*.....1

 B. *Purpose of the Disclosure Statement*.....2

 C. *Sources of Information*.....2

II. OVERVIEW OF CHAPTER 113

 A. *Overview of Chapter 11*3

 B. *Plan of Liquidation*.....3

III. VOTING PROCEDURES AND REQUIREMENTS FOR CONFIRMATION.....4

 A. *Persons Entitled to Vote*4

 B. *Voting Instructions*5

 1. *Deadline for Submission of Ballots*.....5

 2. *Incomplete or Irregular Ballots*5

 3. *Ballot Retention*5

 C. *Confirmation of Plan*.....5

 1. *Solicitation of Acceptances*5

 2. *Requirements for Confirmation of the Plan*6

 3. *Acceptances Necessary to Confirm the Plan*.....7

 4. *Cramdown*.....7

 5. *Absolute Priority Rule*.....7

IV. BACKGROUND OF DEBTOR AND EVENTS LEADING TO BANKRUPTCY8

 A. *History of The Debtor and Background of the Debtor’s Management*8

 B. *Management’s Discussion of the Events Leading to Bankruptcy*.....8

 1. *Revenue*8

 2. *Expenses*.....8

 C. *Goal of the Debtor’s Bankruptcy Case*8

 1. *Plan to Sell:*.....9

V. POST-PETITION OPERATIONS AND SIGNIFICANT ORDERS AND EVENTS9

 A. *Post-Petition Operations*.....9

 B. *Significant Orders and Events During the Debtor’s Bankruptcy Case*9

 1. *General Case Background*.....9

 2. *Meeting of Creditors and Claims Bar Dates*.....9

 3. *Cash Collateral*.....9

 4. *Commercial Contract Rejection*10

VI. ASSETS AND LIABILITIES OF THE DEBTOR.....10

 A. *Overview of the Debtor’s Assets*10

 B. *Overview of the Debtor’s Liabilities*10

 C. *Classification of Claims, Estimated Allowed Claims, and Estimated Recoveries*10

 D. *Estimated Professional Fees and Liquidation Costs*.....11

 E. *Estate Actions*.....11

VII. OVERVIEW OF THE PLAN.....12

VIII. MEANS FOR EXECUTION OF THE PLAN.....12

 A. *Powers and Duties of the Plan Trustee with Respect to Consummation of the Plan*13

 B. *Vesting of Assets*.....13

 C. *Corporate Purpose of the Plan Trust*.....13

 D. *Assumption of Liabilities*.....13

 E. *Contested Claims*.....13

F.	<i>Estimated Claims</i>	13
G.	<i>Deficiency Claims</i>	13
H.	<i>Provisions Governing Distributions</i>	14
1.	<i>Order of Distribution of Cash</i>	14
2.	<i>Timing of Distributions</i>	14
3.	<i>Distributions After Allowance</i>	14
4.	<i>Distributions After Disallowance</i>	15
5.	<i>Exculpation and Immunity Regarding Distributions</i>	15
I.	<i>Conditions Precedent to Effective Date</i>	15
J.	<i>Waiver of Conditions</i>	15
K.	<i>Retention of Bankruptcy Court Jurisdiction</i>	15
L.	<i>Miscellaneous Provisions of the Plan</i>	16
1.	<i>Setoff and Other Rights</i>	16
2.	<i>Discharge</i>	16
3.	Injunctions	16
5.	Channeling Injunction	17
6.	<i>Lawsuits</i>	17
8.	<i>Modification or Revocation of Plan</i>	17
9.	<i>Breach of Plan by Creditor</i>	18
10.	<i>Retention of Causes of Action</i>	18
IX. FEASIBILITY AND RISKS		18
A.	<i>Management’s Discussion of Financial Projections</i>	19
B.	<i>Risks</i> 19	
1.	<i>Certain Risks of Non-Confirmation</i>	19
2.	<i>Potential Effects of a Prolonged Chapter 11 Proceeding</i>	19
3.	<i>Risks Relating to the Projections and Liquidation Analysis</i>	19
4.	<i>Cash and Sale Proceeds</i>	19
5.	<i>Forward-Looking Information May Prove Inaccurate</i>	20
X. ALTERNATIVES TO PLAN		20
A.	<i>Liquidation Analysis</i>	20
B.	<i>Other Alternative Plans</i>	20
XI. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN		21
A.	<i>Federal Income Tax Consequences to the Debtor</i>	21
1.	<i>In General</i>	21
2.	<i>Treatment of Debt Discharge Income Under the Plan</i>	21
B.	<i>Federal Income Tax Consequences to Creditors</i>	22
1.	<i>In General</i>	22
2.	<i>Payments Attributable to Interest</i>	22
3.	<i>Backup Withholding and Information Reporting</i>	22
C.	<i>Federal Income Tax Consequences to Equity Interest Holders</i>	23
XII. CONCLUSION		23

PLAN SUMMARY

On July 15, 2016 (the "Petition Date"), Frymire Services, Inc. (the "Debtor") commenced the Bankruptcy Case by filing a voluntary petition for Relief (the "Voluntary Petition") under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). The Debtor filed in the District in which the Debtor operates its business and maintains its assets at 2818 Satsuma Dr., Dallas TX 75229.

The Debtor has proposed a Plan of Liquidation, dated January 6, 2017, as may be amended, (the "Plan") for the benefit of the creditors of the Debtor. The Plan represents the culmination of significant efforts by the Debtor to put forth a confirmable exit strategy to allow the Debtor to satisfy its debts and its creditors.

All holders of Claims or Interests are encouraged to read and carefully consider this entire Disclosure Statement, including the Plan, which is attached hereto as "Exhibit A". The Plan contains definitions that may not be defined directly herein, but are essential to the interpretation of the Disclosure Statement and Plan. Voting instructions regarding the Plan are provided (i) in this Disclosure Statement, (ii) in the Order approving the Disclosure Statement, and (iii) in the Ballots enclosed herewith. The Plan can only be confirmed if at least one voting Class of Claims votes in favor of the Plan.

Generally, the Plan is a Chapter 11 plan that works in conjunction with a motion to sell substantially all assets of the Debtor and vests the sale proceeds and remaining assets of the Debtor's estate in the Plan Trust to be administered by the Plan Trustee. The Plan Trustee will make distributions and payments required by the Plan, object to Claims against the Debtor's estate, and prosecute claims and Estate Actions against third parties as appropriate to obtain assets for purposes of the Plan distributions to creditors.

On the Effective Date, all property of the Debtor, including but not limited to all Estate Actions, shall vest in the Plan Trust, and it is contemplated that no further Liquidation or Reorganization need or shall occur. From and after the Effective Date, the Plan Trustee shall be authorized to make the distributions required under, and implement the provisions of, the Plan.

The Debtor believes that the Plan is in the best interests of all holders of Claims and that unsecured creditors will receive little or no distributions if the Plan is not approved.

If the Plan is confirmed, the holders of Allowed Claims against the Debtor will be entitled to distributions and treatment as set forth in the Plan. Due to the total amount of Secured Claims against the Debtor, **there likely will be little or no funds remaining for distribution to holders of Allowed Claims if the Plan is not confirmed and the Debtor is forced to liquidate in Chapter 7, delay the distributions process, and add an additional layer of administrative claims of Chapter 7 professionals.**

I. INTRODUCTION

A. Filing of the Debtor's Bankruptcy Case

The Debtor's case (the "Bankruptcy Case") is pending in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, before the Honorable Stacey G.C. Jernigan, United States Bankruptcy Judge. Since the Petition Date, the Debtor has been a Debtor-in-Possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. Purpose of the Disclosure Statement

This Disclosure Statement is submitted by the Debtor pursuant to section 1125 of the Bankruptcy Code in connection with the Debtor's Plan. A copy of the Plan is attached to this Disclosure Statement as "Exhibit A." For purposes hereof, any term used in this Disclosure Statement (regardless of capitalization) and not otherwise separately defined herein shall have the defined meaning ascribed to it in the Plan or, if not defined in the Plan, then in section 101 of the Bankruptcy Code. As used herein, "Liquidated Debtor" means the Debtor, as Liquidated on and after the Effective Date .

IT IS OF UTMOST IMPORTANCE THAT YOU READ THIS DISCLOSURE STATEMENT IN FULL AND IN CONJUNCTION WITH THE PLAN ATTACHED HERETO.

OTHER THAN THIS DISCLOSURE STATEMENT, NO STATEMENT OR INFORMATION GIVEN FOR THE PURPOSE OF SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN HAS BEEN APPROVED BY THE BANKRUPTCY COURT CONCERNING (1) THE DEBTOR AND DEBTOR'S BUSINESS, ASSETS OR PROPERTY; (2) THE LIQUIDATED DEBTOR AND THE PROJECTED RESULTS OF DEBTOR'S FUTURE BUSINESS OPERATIONS AND FINANCIAL CONDITION; OR (3) DISTRIBUTIONS TO BE MADE UNDER THE PLAN. YOU SHOULD USE CAUTION IN CONSIDERING ANY STATEMENT OR INFORMATION IN MAKING YOUR VOTING DECISION BASED UPON INFORMATION NOT CONTAINED HEREIN.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THIS DISCLOSURE STATEMENT CONTAINS PROJECTED FINANCIAL INFORMATION REGARDING THE DEBTOR AND THE LIQUIDATED DEBTOR AND CERTAIN OTHER FORWARD-LOOKING STATEMENTS, ALL OF WHICH ARE BASED ON VARIOUS ASSUMPTIONS AND ESTIMATES AND MAY NOT BE UPDATED TO REFLECT EVENTS OCCURRING AFTER THE DATE HEREOF. SUCH INFORMATION AND STATEMENTS ARE SUBJECT TO INHERENT UNCERTAINTIES AND TO A WIDE VARIETY OF SIGNIFICANT BUSINESS, ECONOMIC, AND COMPETITIVE RISKS INCLUDING, AMONG OTHERS, THOSE DESCRIBED HEREIN. SEE "ARTICLE IX – FEASIBILITY AND RISKS." CONSEQUENTLY, ACTUAL EVENTS, CIRCUMSTANCES, EFFECTS, AND RESULTS MAY VARY SIGNIFICANTLY FROM THOSE INCLUDED IN OR CONTEMPLATED BY SUCH PROJECTED FINANCIAL INFORMATION AND SUCH OTHER FORWARD-LOOKING STATEMENTS.

C. Sources of Information

THE STATEMENTS AND THE FINANCIAL INFORMATION ABOUT THE DEBTOR AND/OR THE LIQUIDATED DEBTOR INCLUDING ALL FINANCIAL PROJECTIONS AND INFORMATION REGARDING CLAIMS AND INTERESTS CONTAINED HEREIN, HAVE BEEN PREPARED FROM THE DEBTOR'S BOOKS AND RECORDS. WHILE THE DEBTOR BELIEVES THE INFORMATION TO BE ACCURATE AND COMPLETE, THE DEBTOR AND DEBTOR'S PROFESSIONALS HAVE NOT TAKEN EXHAUSTIVE INDEPENDENT ACTION TO VERIFY THE ACCURACY OR COMPLETENESS OF SUCH STATEMENTS AND INFORMATION AND EXPRESSLY DISCLAIM ANY REPRESENTATION CONCERNING THE ACCURACY OR COMPLETENESS THEREOF.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED, AND DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE THE DATE OF THE DISCLOSURE STATEMENT OR SINCE THE MATERIALS RELIED UPON IN THE PREPARATION OF THE DISCLOSURE STATEMENT WERE COMPILED.

Certain of the materials contained in this Disclosure Statement are taken directly from other readily accessible documents or are summaries of other documents. While the Debtor has made every effort to retain the meaning of such other documents or portions that have been summarized, the Debtor urges that any reliance on the contents of such other documents should depend on a thorough review of the documents themselves. In the event of a discrepancy between this Disclosure Statement and the actual terms of a document, the actual terms of such document shall apply and govern.

No statements concerning the Debtor, the value of Debtor's property, or the value of any benefit offered to the holder of a Claim or Interest in connection with the Plan should be relied upon other than as set forth in this Disclosure Statement. In arriving at your decision, you should not rely on any representation or inducement made to secure your acceptance or rejection that is contrary to information contained in this Disclosure Statement, and any such additional representations or inducements should be reported to counsel for the Debtor:

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II. OVERVIEW OF CHAPTER 11

A. Overview of Chapter 11

Chapter 11 is the principal reorganization Chapter of the Bankruptcy Code, and it can also be utilized for orderly liquidations. Upon the commencement of a Chapter 11 case, section 362 of the Bankruptcy Code provides for an automatic stay of all attempts to collect upon claims against a debtor that arose prior to the bankruptcy filing. Generally speaking, the automatic stay prohibits interference with a debtor's property or business.

Under Chapter 11, a debtor attempts to reorganize or liquidate its business and/or debts for the benefit of the debtor and its creditors. Confirmation of a plan of reorganization or liquidation is a primary purpose of a case under Chapter 11 of the Bankruptcy Code.

B. Plan of Liquidation

A plan of Liquidation sets forth the means for satisfying all claims against, and interests in, a debtor. Generally, a claim against a debtor arises from a normal debtor/creditor transaction such as a promissory note or a trade-credit relationship, but may also arise from other contractual arrangements or from alleged torts. An interest in the debtor is held by a party that owns all or part of the debtor, such as a shareholder or partner.

After a plan of Liquidation has been filed with a bankruptcy court, it must be voted on by holders of impaired claims against, or interests in, the debtor. Section 1125 of the Bankruptcy Code requires that a plan proponent fully disclose sufficient information about the debtor, its assets, and the plan of Liquidation to claim holders and interest holders before acceptances of that plan may be solicited. This Disclosure Statement is being provided to the holders of Claims against, or Interests in, the Debtor to satisfy such requirements of section 1125 of the Bankruptcy Code.

The Bankruptcy Code provides that claim holders and interest holders are to be grouped into "classes" under a plan and that they are to vote to accept or reject a plan by class. While case law has varied on the proper method to

be used in classifying claim holders and interest holders, the Bankruptcy Code requires that holders of claims with dissimilar legal rights shall not be placed together in the same class. Generally, each secured creditor will be placed in a class by itself because each such creditor usually has a Lien on distinct property and therefore has distinct legal rights.

To confirm the Plan the Court must determine that the requirements of section 1129(a) of the Bankruptcy Code have been satisfied. See below, "Voting Procedures and Requirements for Confirmation," Article III, for a discussion of the section 1129(a) requirements for confirmation of a plan of Liquidation.

THE DEBTOR BELIEVES THAT THE PLAN SATISFIES EACH OF THE CONFIRMATION REQUIREMENTS OF SECTION 1129(a) AND, IF NECESSARY, SECTION 1129(b) OF THE BANKRUPTCY CODE.

Confirmation of the Plan makes the Plan binding upon the Debtor, the Liquidated Debtor, Claim holders, Equity Interest holders, and other parties in interest irrespective of whether they have filed proofs of Claim or voted to accept the Plan.

III. VOTING PROCEDURES AND REQUIREMENTS FOR CONFIRMATION

If you are the holder of a Claim or Equity Interest in one of the Classes whose rights are affected by the Plan, it is important that you vote. If you fail to vote, your rights may be jeopardized.

A. Persons Entitled to Vote

Pursuant to the provisions of section 1126 of the Bankruptcy Code, only holders of Claims or Equity Interests that are (i) Allowed, (ii) impaired, and (iii) receiving or retaining property on account of such Claims pursuant to the Plan, are entitled to vote either for or against the Plan ("Voting Claims"). Accordingly, in the Bankruptcy Case, all Classes of Claims that are impaired under the Plan should have received a Ballot for voting (with return envelope) along with this Disclosure Statement, Plan, and other materials because these are the only Classes consisting of impaired Claims that are receiving property. Under the Bankruptcy Code, Classes that are unimpaired are presumed to vote to accept the Plan and, therefore, votes from such Classes are not solicited. Classes that do not receive or retain any property under the Plan as payment of the Interests within such Class are presumed to vote to reject the Plan and, therefore, votes from such Classes are not solicited.

As referenced in the preceding paragraph, a Claim must be Allowed to be a Voting Claim. The Debtor filed the Schedules in its Bankruptcy Case listing Claims against the Debtor. To the extent a creditor's Claim was listed in the Debtor's Schedules, and was not listed as disputed, contingent, or unliquidated, such Claim is deemed "Allowed." Any creditor whose Claim was not scheduled, or was listed as disputed, contingent, or unliquidated, must timely file a proof of Claim in the Bankruptcy Case in order to have an Allowed Claim against the Debtor.

The last day for holders of Claims to file their Claims for amounts owed or Interests held prepetition against the Debtor was set for November 22, 2016, the "Claims Bar Date." Claims not filed by the Claims Bar Date will be forever barred and discharged.

Absent an objection to a timely filed proof of Claim by the Objection Deadline, such Claim is deemed Allowed. In the event that any proof of Claim is a Contested Claim during the Plan voting period, then, by definition, it is not Allowed for purposes of section 1126 of the Bankruptcy Code, and is not to be considered a Voting Claim entitled to cast a Ballot. Nevertheless, pursuant to Bankruptcy Rule 3018(a), the holder of a Contested Claim may petition the Bankruptcy Court, after notice and hearing, to allow the Claim temporarily for voting purposes in an amount that the Bankruptcy Court deems proper. Allowance of a Claim for voting purposes, and disallowance for voting purposes, does not necessarily mean that all or a portion of the Claim will be Allowed or Disallowed for distribution purposes.

BY ENCLOSING A BALLOT, THE DEBTOR IS NOT REPRESENTING THAT YOU ARE ENTITLED TO VOTE ON THE PLAN. BY INCLUDING A CLAIM AMOUNT ON THE BALLOT (IF APPLICABLE), THE DEBTOR IS NEITHER ACKNOWLEDGING THAT YOU HAVE AN ALLOWED CLAIM IN THAT AMOUNT NOR WAIVING ANY RIGHTS THE DEBTOR MAY HAVE TO OBJECT TO YOUR VOTE OR CLAIM.

If you believe you are a holder of a Claim in an impaired Class under the Plan and entitled to vote to accept or reject the Plan, but did not receive a Ballot with these materials, please contact Bryan C. Assink, Curtis | Castillo PC, Bank of America Plaza, 901 Main Street, Suite 6515, Dallas, Texas 75202, Telephone: 214.752.2222, E-mail: bassink@curtislaw.net.

B. Voting Instructions

If you are a holder of a Voting Claim, your vote on the Plan is important. Please read the voting instructions carefully and return your Ballots as specified below and on the Voting Instructions contained in and attached to your Ballots.

1. Deadline for Submission of Ballots

BALLOTS MUST BE ACTUALLY RECEIVED BY THE DEBTOR'S COUNSEL, WHETHER BY MAIL, COURIER, OR FACSIMILE, ON OR BEFORE _____, **2017 AT 5:00 P.M. CENTRAL TIME**. ANY BALLOTS RECEIVED AFTER THAT TIME WILL NOT BE COUNTED. ANY BALLOT THAT IS NOT EXECUTED BY A PERSON AUTHORIZED TO SIGN SUCH BALLOT WILL NOT BE COUNTED.

IF YOU HAVE ANY QUESTIONS REGARDING THE PROCEDURES FOR VOTING ON THE PLAN OR YOU DID NOT RECEIVE OR NEED A REPLACEMENT BALLOT, CONTACT BRYAN C. ASSINK, CURTIS | CASTILLO PC, 901 MAIN STREET, SUITE 6515, DALLAS, TEXAS 75202, (TELEPHONE: 214.752.2222, E-MAIL: BASSINK@CURTISLAW.NET). **THE DEBTOR URGES ALL HOLDERS OF VOTING CLAIMS TO VOTE IN FAVOR OF THE PLAN.**

2. Incomplete or Irregular Ballots

Ballots that fail to designate the Class to which they apply will be counted, subject only to contrary determinations by the Court, in the Class determined by the Debtor. Subject to the Court's ultimate approval, the Debtor's counsel will use its best judgment in the determination of votes; however, Ballots that do not reflect acceptance or rejection, or reflect both acceptance and rejection of the Plan for a single Claim will not be counted. All votes shall be subject to final determination of the Bankruptcy Court.

3. Ballot Retention

Original ballots will be retained by the Debtor's counsel for six (6) months following the Confirmation Date, after which they may be destroyed at the discretion of the Debtor's counsel.

C. Confirmation of Plan

1. Solicitation of Acceptances

The Debtor is soliciting your vote. The cost of any solicitation by the Debtor will be borne by the Debtor. No other additional compensation shall be received by any party for any solicitation other than as disclosed to the Bankruptcy Court.

NO REPRESENTATIONS OR ASSURANCES, IF ANY, CONCERNING THE DEBTOR OR THE PLAN
DEBTOR'S DISCLOSURE STATEMENT

ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE BY ANY PERSON TO SECURE YOUR VOTE THAT ARE OTHER THAN HEREIN CONTAINED SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE DEBTOR FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE.

THIS IS A SOLICITATION SOLELY BY THE DEBTOR AND IS NOT A SOLICITATION BY ANY EQUITY INTEREST HOLDER, ATTORNEY, FINANCIAL ADVISOR, OR ACCOUNTANT FOR THE DEBTOR. THE REPRESENTATIONS, IF ANY, MADE HEREIN ARE THOSE OF THE DEBTOR AND NOT OF SUCH EQUITY INTEREST HOLDERS, ATTORNEYS, FINANCIAL ADVISORS, OR ACCOUNTANTS, EXCEPT AS MAY BE OTHERWISE SPECIFICALLY AND EXPRESSLY INDICATED.

Under the Bankruptcy Code, a vote for acceptance or rejection of the Plan may not be solicited unless the Claim holder has received a copy of a disclosure statement approved by the Bankruptcy Court prior to, or concurrently with, such solicitation. This solicitation of votes on the Plan is governed by section 1125(b) of the Bankruptcy Code. Violation of section 1125(b) of the Bankruptcy Code may result in sanctions by the Bankruptcy Court, including disallowances of any improperly solicited vote.

2. Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Court will determine whether the requirements of section 1129(a) of the Bankruptcy Code have been satisfied. If those requirements have been satisfied, the Court will enter the Confirmation Order. The requirements for confirmation under the Bankruptcy Code, to the extent they may be applicable to this Debtor, are as follows:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The proponent of the Plan has complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised by the proponent of the Plan or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the case, or in connection with the Plan and incident to the Bankruptcy Case, was disclosed to the Court, and any such payment made before confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Court as reasonable.
- The proponent of the Plan has disclosed the identity and affiliation of any individual proposed to serve, after confirmation of the Plan, as director, officer or voting trustee of the Debtor, any affiliate of the Debtor participating in a plan with the Debtor, or a successor to the Debtor under the Plan, and the appointment to, or the continuance in, such office of such individual, is consistent with the interests of holders of Claims and with public policy.
- The proponent of the Plan has disclosed the identity of any Insider that will be employed or retained by the Liquidated Debtor and the nature of the compensation for such Insider.
- Any governmental regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Debtor have approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval.
- With respect to each Class of impaired Claims, either each holder of a Claim in such Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date of the Plan, that is not less than the amount such Claim holder would receive or retain if the Debtor were Liquidated on such date under Chapter 7 of the Bankruptcy Code.
- Subject to the Plan proponent's "cramdown" right described in Article III.C.4., which follows, each Class of Claims has either accepted the Plan or is not impaired under the Plan.
- Except to the extent that the holder of a particular Claim has agreed to a different treatment of such

Claim, the Plan provides that Administrative Claims will be paid in Cash in full on the Effective Date and that any tax Claim entitled to priority under section 507(a)(8), the holder of such Claim will receive on account of such Claim regular installment payments, (i) of a total value, as of the Effective Date of the Plan, equal to the Allowed amount of such Claim; (ii) over a period ending not later than 5 years after the date of the order for relief; and (iii) in a manner not less favorable than the most favored nonpriority unsecured Claim provided for by the Plan.

- At least one impaired Class of Claims has accepted the Plan, determined without including any acceptance of the Plan by any Insider holding a Claim in such Class.
- Confirmation of the Plan is not likely to be followed by the liquidation of the Debtor or the need for further financial reorganization of the Debtor or any successors to the Debtor under the Plan, unless such reorganization or liquidation is proposed in the Plan.
- All fees payable under 28 U.S.C. § 1930 have been paid (or the Plan has provided for payment of such fees) on the Effective Date of the Plan.
- The Plan provides for continuation after its Effective Date of retiree benefits, if any, for the duration of the period the Debtor has obligated himself to provide such benefits.
- All transfers of property under the Plan are in accordance with any applicable provisions of nonbankruptcy law that govern transfer of property by a non-commercial corporation or trust.

The Debtor believes that the confirmation requirements applicable to the Bankruptcy Case are met under the Plan. The Debtor will present evidence in support of each applicable requirement at the Confirmation Hearing.

3. Acceptances Necessary to Confirm the Plan

The Bankruptcy Code does not require that each holder of a Claim or Interest vote in favor of the Plan for the Court to confirm the Plan. Rather, the Plan must be accepted by each *Class* of holders of Claims or Equity Interests (subject to an exception discussed below and in Article III.C.4.). Under the Bankruptcy Code, a Class of holders of Claims or Equity Interests has accepted the Plan if, of the Claims in the Class that actually voted on the Plan, such Claims constituting at least two-thirds in dollar amount and more than one-half in number of voted Allowed Claims vote to accept the Plan, excluding the votes of Insiders. For example, if a hypothetical class has ten claims that are voted and the total dollar amount of those ten claims is \$1,000,000, then for such class to have accepted the plan, six or more of those claims must be voted to accept the plan (a simple majority), and the claims voted to accept the plan must total at least \$666,667 (a two-thirds majority).

4. Cramdown

If any impaired Class of Claims does not vote to accept the Plan, the Court may nevertheless confirm the Plan pursuant to the “cramdown” provisions of section 1129(b) of the Bankruptcy Code. If the Court determines that the Plan “does not discriminate unfairly” and is “fair and equitable” to each Class of dissenting holders of Claims or Equity Interests, the Court may confirm the Plan through “cramdown.” The Plan will not discriminate unfairly if no Class receives more than it is legally entitled to receive.

With respect to each dissenting Class of unsecured Claims, “fair and equitable” means either: (i) the members of each dissenting impaired Class of unsecured Claims receive property of a value, as of the Effective Date of the Plan, equal to the amount of their Allowed Claim; or (ii) the holders of Claims and Equity Interests that are junior to each dissenting impaired Class of unsecured Claims will not receive any property under the Plan. The Plan would not be fair and equitable to a Class of holders of Equity Interests if any junior Class of holders of Claims is paid more than in full.

5. Absolute Priority Rule

The absolute priority rule set forth in section 1129(b)(2)(B) of the Bankruptcy Code requires that confirmation obtained by “cramdown” meet an “either/or” test. Either (i) the members of each dissenting impaired

Class of unsecured Claims must be paid in full, or (ii) the holders of Claims and Interests that are junior to each dissenting impaired Class of Claims must not receive any property under the plan of Liquidation on account of “such junior interest.” The absolute priority rule applies only in a case where a Class of Claims or Equity Interests is impaired and does not accept the Plan. Thus, the absolute priority rule does not apply to all Classes of Claims and Equity Interests but only to the dissenting Class and Classes junior to the dissenting Class.

A more comprehensive discussion of the application of the absolute priority rule and the new value exception contains complexities and subtleties, the explanation of which is beyond the scope of this Disclosure Statement. To the extent a Claim holder or Equity Interest holder desires further explanation regarding such rule or its exception, they are advised to seek advice of counsel.

IV. BACKGROUND OF DEBTOR AND EVENTS LEADING TO BANKRUPTCY

A. History of The Debtor and Background of the Debtor’s Management

Frymire Services, Inc. is a sixty-year old, family-owned corporation duly organized within the State of Texas on April 2, 1956. The Debtor’s stock is owned by family members George R. Frymire (approx. 84%) and Thomas R. Frymire (approx. 16%).

The Debtor operated a services company specializing in HVAC heating/cooling and plumbing. Prior to the Petition Date, the Debtor serviced both residential and commercial customers, but has since determined that it must liquidate its business and to preserve the value of its remaining assets for its creditors and customers.

B. Management’s Discussion of the Events Leading to Bankruptcy

A substantial factor in the Debtor’s need for Liquidation stems from years of heavy losses tied to the Debtor’s now-terminated commercial business. Once the Debtor discovered there was no viable means to maintain the commercial side of its operations, the Debtor began to close those divisions and focused on increasing its residential operations. By cutting both commercial losses and overall expenses, and investing time and advertising on the profitable residential side, the Debtor was able to mitigate its losses but it was not enough to avoid the need for a Chapter 11 Liquidation.

1. Revenue

Historically, the Debtor maintained annual gross revenues on the order of approximately \$12 million. The Debtor’s monthly operating reports (“MORs”) reflect more recent revenues and expenses.

2. Expenses

In the last few years, the Debtor’s expenses have exceeded its gross revenues, and Debtor has recently experienced substantial increases to certain expenses like health insurance.

C. Goal of the Debtor’s Bankruptcy Case

The Debtor’s Bankruptcy Case is intended to provide a short breathing spell for the Debtor and to provide a forum for the orderly and efficient liquidation of the Debtor and the satisfaction of the Debtor’s outstanding obligations. The proposed Plan is the Debtor’s best prospect for a prompt, objective, and streamlined approach to repaying its creditors. The alternative to Debtor’s plan of Liquidation would be a Chapter 7 Liquidation where Debtor’s secured lender would receive substantially less and Debtor’s hundreds of unsecured creditors could expect to receive nothing on their substantial debts. The Debtor’s proposed Reorganization plan, on the other hand, gives creditors an opportunity for a meaningful payout over time.

1. Plan to Sell:

The Plan contemplates a motion to sell substantially all of the Debtor's assets and the creation of a Trust shall be created for the purpose of liquidating the Trust Assets for the benefit of the Creditors and satisfying Claims consistent with the Plan. The Plan Trust Agreement is attached to the Plan as "**Exhibit 1.**"

V. POST-PETITION OPERATIONS AND SIGNIFICANT ORDERS AND EVENTS

A. Post-Petition Operations

The Debtor has filed its schedules of assets and liabilities and statements of financial affairs with the Court (collectively, including all amendments and supplements thereto, the "Schedules"). The Schedules contain a detailed description of the Debtor's assets, liabilities, and other information related to its business activities. Copies of the Debtor's Schedules and other filings may be obtained online from the Court's website at: <https://ecf.txnb.uscourts.gov/>. For information or to subscribe to PACER (the online court-document-viewing system), you may visit the PACER Service Center website at <http://pacer.psc.uscourts.gov> or call (800) 676-6856. Due to the payment of certain creditors, certain court-approved agreements, and the discovery and/or investigation of other assets and liabilities, the Debtor's Schedules may be amended from time to time to reflect such information; however, any failure to amend shall not result in a claimant's Claim receiving a distribution for amounts already satisfied, released, or assigned.

Also, in conformance with the Guidelines of the Office of the United States Trustee for the Northern District of Texas, the Debtor has filed and will continue to file the required MORs and pay the quarterly United States Trustee fees. The monthly operating reports will be prepared by the Debtor's in-house professionals and detail the Debtor's post-petition operating activities, income, and disbursements. Copies of the Debtor's monthly operating reports also may be obtained online from the Court's website at: <https://ecf.txnb.uscourts.gov>. The Debtor's Monthly Operating Reports reflect the Debtor's increasing profitability due, in part, to (a) stabilizing post-bankruptcy operations, (b) eliminating the Debtor's commercial-side losses, and (c) revitalizing the Debtor's branding and refocusing on its residential products and services.

B. Significant Orders and Events During the Debtor's Bankruptcy Case

1. General Case Background

The Debtor's voluntary Chapter 11 case was filed on July 15, 2016. Thereafter, the Debtor acted as Chapter 11 Debtor-in-Possession. The Debtor filed a motion to retain Mark A. Castillo, Joshua L. Shepherd, and Bryan C. Assink of Curtis | Castillo, PC ("Application") as counsel for the Debtor, which Application was approved by the Court.

2. Meeting of Creditors and Claims Bar Dates

The United States Trustee's meeting of creditors under section 341(a) of the Bankruptcy Code was held on August 24, 2016. The Claims Bar Date for filing Claims against and Equity Interest in the Debtor was set for November 22, 2016. The Debtor is analyzing Claims as they are filed and may file objections to one or more of such Claims and Equity Interests. After confirmation, the Reorganized Debtor may file objections to Claims and Equity Interests. Claims and Equity Interests not filed by the Claims Bar Date are forever barred and discharged.

3. Cash Collateral

In order to maintain operations after the Petition Date, the Debtor sought and obtained the Court's approval to continue to use cash collateral, based largely upon an agreement by the Debtor and its cash-collateral lender, Capital

One. After entry of interim orders on the use of cash collateral, the Court ultimately entered its final order on this matter, effective August 31, 2016.

4. Commercial Contract Rejection

A large component of the Debtor's Liquidation effort included closure of its commercial offerings so as to mitigate the Debtor's operational losses. To effectuate this transition, the Debtor filed motions for rejection of several commercial contracts, which the Court approved in August and September. Additional contracts will be rejected to the extent not necessary to the Debtor's ultimate acquirer.

VI. ASSETS AND LIABILITIES OF THE DEBTOR

A. Overview of the Debtor's Assets

The Debtor's assets consist largely of accounts receivable, inventory, intellectual property, trade names, good will, and ongoing service contracts. The Debtor's affiliate, Royal Indian, LP, owns the real estate and improvements from which the Debtor operates, and this real estate and improvements are being sold in conjunction with the Debtor's assets to satisfy cross-collateralized debt of the Debtor's principal lender. Earthwise Cares, Inc. ("Earthwise") has submitted a letter of intent (the "LOI") to purchase the Debtor's non-cash and cause-of-action assets, as well as the real estate owned by Royal Indian, LP. This LOI is the basis for the Debtor's 363 Sale Motion, with Earthwise as the stock horse bidder. "Exhibit C" attached hereto provides a summary of the Debtor's current estimates on its various assets, both from an ongoing concern value (per Debtor's Chapter 11 Liquidation Plan) and from a Chapter 7 liquidation value (if Debtor's Plan is not approved).

B. Overview of the Debtor's Liabilities

Based upon the Debtor's schedules of liabilities, creditors' proofs of claim, and continued analysis by the Debtor, the Debtor believes the aggregate amount of its liabilities will be approximately four million dollars (\$4,000,000). "Exhibit C" attached hereto also provides a summary of the Debtor's current estimates on its various liabilities. The Court's register for Claims filed against the Debtor is available on the Court's website at: <https://ecf.txnb.uscourts.gov>. The Court's Claim register may contain some Claims that have been paid, resolved in lower amounts, are duplicative, or are disputed by the Debtor.

C. Classification of Claims, Estimated Allowed Claims, and Estimated Recoveries

Section 1122 of the Bankruptcy Code mandates that a claim or interest must be in its own class unless it is substantially similar to the claims or interests of another class. Debtor has, therefore, designated classes 1 through 4 in order to comply with Section 1122. Class 1 is designated separately as it consists of different Secured Claims arising from the Debtor's varying secured obligations. Class 2 is designated separately due to its priority over other unsecured claims as that priority is established by the Bankruptcy Code. Class 3 is designated separately due to its composition of General Unsecured Claims. Finally, the equity Interests that comprise Class 4 are legally different than the Claims comprising each of the other Classes.

The Debtor reserves all rights to object to any and all Claims, Liens, and Interests filed or asserted against the Debtor or Debtor's property or property interests notwithstanding any discussion or treatment herein or in the Plan. The Debtor estimates that the aggregate Allowed Claims against the Debtor's estate will be as follows:

Class of Claims	Classification of Claims	Est. No. of Claims	Est. Remaining Allowed Amt. of Claims ¹	Est. Recovery of Classes ²
N/A	Administrative Claims (other than ordinary course) ³	10	\$114,500	
N/A	Priority Tax Claims	1	\$37,000	
Class 1.1	Secured Tax Claim of Dallas County	1	\$0	N/A
Class 1.2	Secured Non-Tax Claim of Ascentium Capital, LLC	1	\$3,500	
Class 1.3	Secured Non-Tax Claim of Capital One per Line of Credit	1	\$700,000	
Class 1.4	Secured Non-Tax Claim of Capital One per Term Loan	1	\$536,000	
Class 1.5	Secured Non-Tax Claim of Ferguson Enterprises, Inc.	1	\$0	N/A
Class 1.6	Secured Non-Tax Claim of Standard Supply and Distributing Company	1	\$3,300	
Class 1.7	Secured Non-Tax Claims of Stock Lenders	4	\$232,000	0%
Class 2	Priority Non-Tax Unsecured Claims (employee wages) ⁴	79	\$0	100%
Class 3	General Unsecured Claims	200	\$2,000,000	
Class 4	Equity Interests	2	\$0	0%
--	Totals			

D. Estimated Professional Fees and Liquidation Costs

The Debtor estimates that aggregate requested post-petition professional fees and other Liquidation costs asserted in the Bankruptcy Case, excluding ordinary course professionals and/or liabilities, will be approximately as set forth below on the Effective Date, assuming an Effective Date in June 2017. The estimated requested Administrative Expenses will be as follows:

Administrative Claims (all subject to Court approval) (incl. amts. previously billed)	Est. Allowed Amts.:	Est. Amts. Due:
28 USC § 1930, UST Quarterly Fees	N/A	\$9,500
11 USC § 503(b)(2), Curtis Castillo PC, Debtor's Bankruptcy Counsel	\$200,000	\$55,000
11 USC § 503(b)(2), Texas Consillium, Debtor's Financial Assistants	\$15,000	\$0
11 USC § 503(b), Accounts Payable	N/A	\$50,000
Totals:	\$215,000	\$114,500

E. Estate Actions

Pursuant to the Bankruptcy Code, a debtor may recover certain preferential transfers of property, including Cash, made while insolvent during the ninety (90) days immediately prior to the filing of its bankruptcy petition with respect to pre-existing debts, to the extent the transferee received more than it would have in respect of the pre-existing debt had the debtor been Liquidated under Chapter 7 of the Bankruptcy Code. In the case of Insiders, the Bankruptcy Code provides for a one-year preference period. There are certain defenses to such recoveries. Transfers made in the ordinary course of the debtor's and the transferee's businesses, according to ordinary business terms, are not

¹ The estimated aggregate Allowed Amount includes some amounts that may have been previously paid, but does not reflect interest that will be paid on secured claims.

² Assuming holders of Claims do not agree to receive alternative treatment.

³ A portion of the administrative-priority claims have been previously paid.

⁴ Class 2's Allowed Amount has been paid in full per Court orders entered at Docs. 30 and 77.

recoverable. Furthermore, if the transferee extended credit subsequent to the transfer (and prior to the commencement of the Bankruptcy Case), such extension may constitute a defense, to the extent of any new value, against any otherwise recoverable transfer of property. If a transfer is recovered by a debtor, the transferee has a general unsecured claim against the debtor to the extent of the recovery. The Debtor reserves all rights to pursue, at its sole discretion, any Estate Actions not limited to, but including, any preference to the full extent allowed under the Bankruptcy Code and applicable state laws. The Debtor also may pursue other actions including but not limited to actions under Chapter 5 of the Bankruptcy Code. After confirmation of the Plan, the Liquidated Debtor shall be vested to bring such causes of action for the benefit of creditors of the estate, and the bringing of any such action shall be at the sole discretion of the Liquidated Debtor.

Also, under the Bankruptcy Code and various state laws, a debtor may recover certain transfers of property, including the grant of a security interest in property or the undertaking of an obligation, made while insolvent or which rendered it insolvent if, and to the extent, the debtor received less than fair value for such property. The Debtor and its legal and financial professionals reviewed any significant transfers made by the Debtor within the years preceding the Petition Date for potential avoidance and recovery as fraudulent transfers under section 544, 548, and/or 550 of the Bankruptcy Code. The Debtor reserves all rights to pursue, in Debtor's sole discretion, any fraud or fraudulent transfer to the full extent allowed under the Bankruptcy Code and applicable state laws. After confirmation of the Plan, the Reorganized Debtor shall be vested to bring such causes of action for the benefit of creditors of the estate.

The Debtor believes it has viable claims for avoidance and recovery of preferential payments made to Debtor's credit card providers, including American Express and Capital One, which Debtor intends to pursue post-confirmation. The Debtor also is investigating and pursuing claims with its insurers for potential coverage related to the prepetition misfeasance and/or malfeasance of the Debtor's prior CPA and the prepetition and postpetition theft of inventory by Debtor's prior inventory manager and others. These insurance claims like all of the forgoing claims referenced in this section are not being released at confirmation, but, rather, are being preserved for prosecution, collection, and distribution by the Plan Trust.

VII. OVERVIEW OF THE PLAN

THE PLAN ANNEXED HERETO AS "**EXHIBIT A**" IS AN INTEGRAL PART OF THIS DISCLOSURE STATEMENT. THE OVERVIEW OF THE PLAN SET FORTH HEREIN IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN. IN THE EVENT OF AN INCONSISTENCY BETWEEN THE PROVISIONS OF THE PLAN AND THE OVERVIEW CONTAINED HEREIN, THE TERMS OF THE PLAN SHALL GOVERN.

In this case, the Plan is a Chapter 11 plan that vests the assets of the Debtor's estate in the Plan Trust, to be administered by the Plan Trustee. The Plan Trustee will efficiently and promptly liquidate remaining estate assets, make distributions and payments required by the Plan, object to Claims against the Debtors' estates, and prosecute claims and Estate Actions against third parties as appropriate.

On the Effective Date, all remaining property of the Debtor's estate, including but not limited to all Estate Actions, shall vest in the Plan Trust. From and after the Effective Date, the Plan Trustee may liquidate causes of action and other assets as reasonable and/or necessary, and shall be authorized to make the distributions required under, and implement the provisions of, the Plan.

The classes of Claims against and the Equity Interests in the Debtor shall be treated as set forth in Article IV of the Plan attached hereto. **Payment details are set forth within the Plan attached hereto as "Exhibit A" and should be read closely.**

VIII. MEANS FOR EXECUTION OF THE PLAN

A. Powers and Duties of the Plan Trustee with Respect to Consummation of the Plan

Under the Plan, the Plan Trustee is empowered to: (a) take all steps and execute all instruments and documents necessary to effectuate the Plan; (b) make distributions and payments contemplated by the Plan; (c) comply with the Plan and the obligations thereunder; (d) employ, retain, or replace Professional Persons to represent it with respect to its responsibilities; (e) object to Claims; (f) prosecute the Estate Actions; and (g) exercise such other powers as may be vested in the Plan Trustee pursuant to order of the Court or pursuant to the Plan or as the Plan Trustee deems to be necessary and proper to carry out the provisions of the Plan. The Plan Trustee shall have the duties of carrying out the provisions of the Plan, which shall include taking or not taking any action that the Plan Trustee deems to be in furtherance of the Plan.

B. Vesting of Assets

On the Effective Date, all real and personal property of the estate of the Debtor, including but not limited to all Estate Actions, shall vest in the Plan Trust. Except as expressly provided in the Plan, all assets of the Debtor shall vest free and clear of all Claims, Interests, and Liens or successor liability claims in the Plan Trust, which shall be owned and controlled as set out in the Plan.

C. Corporate Purpose of the Plan Trust

From and after the Effective Date, the Plan Trust shall be duty bound to promptly and efficiently administer estate assets and shall be authorized to operate in the ordinary course of business and shall be authorized to make the distributions required under, and implement the provisions of, the Plan.

D. Assumption of Liabilities

The liability for and obligations under the Plan shall be assumed by and become obligations of the Plan Trust.

E. Contested Claims

On and after the Effective Date, the filing, litigation, settlement, or withdrawal of any and all objections to Claims or Estate Actions may be made by the Plan Trustee as soon as practicable.

F. Estimated Claims

Except as otherwise provided herein, the Court may estimate for purposes of allowance pursuant to section 502(c) of the Bankruptcy Code, (i) any Contested Claim or unliquidated Claim, or (ii) any portion or part of a Claim that is, itself, unliquidated. Any Estimation Order, to the extent it becomes a Final Order, shall determine the amount of the Allowed Claim so estimated.

G. Deficiency Claims

Except as otherwise provided in the Plan or in any other Final Order of the Court, in the event of Debtor's return of collateral, the holder of Secured Non-Tax Claims, shall have thirty (30) days from the date that (a) the Debtor returns to such holder the Collateral securing such holder's claim, or (b) the date of entry of a Final Order of the Court lifting the automatic stay and authorizing Debtor to return to such holder the Collateral securing such holder's claim, to file a proof of claim for any resulting unsecured deficiency claim, including all fees and costs associated with Liquidation of the Collateral under applicable law, against the estate resulting from the Liquidation of the Collateral. A deficiency proof of claim filed as described herein shall receive the treatment provided for General Unsecured Claims as described in Article IV of the Plan.

H. *Provisions Governing Distributions*

1. *Order of Distribution of Cash.*

The Plan Trustee shall distribute or reserve available Cash of the estate in the following order of priority:

- (a) Any Cash or other property that is subject to the valid Lien and Allowed Claim of a Class 1 Secured Creditor shall be distributed to the holders of the Allowed Class 1 Secured Claims pursuant to Article IV of the Plan;
- (b) To pay Allowed Administrative Expense Claims pursuant to Article V of the Plan ;
- (c) To pay the post-confirmation expenses of the Liquidated Debtor and Plan Trust, including a reserve of such Cash to pay future expenses of the Plan Trust as the Plan Trustee deems advisable ;
- (d) To pay Allowed Priority Unsecured Claims of Class 2 pursuant to the Plan, in the order of priority prescribed by the Bankruptcy Code section 507(a) as applicable to such Allowed Claims ;
- (e) To pay Allowed General Unsecured Claims of Class 3, pursuant to the Plan ;
- (f) In the event funds become available after payments to each of the foregoing creditors, the Plan Trustee shall distribute any residual funds to the Class 4 Interest holders of the Debtor as their interests appeared as of the Effective Date, in the order of the rights of such equity Interest holders.

2. *Timing of Distributions*

After the Effective Date has occurred and has been noticed and the Plan Trustee has assumed his, her, or its duties under the Plan Trust Agreement, the Plan Trustee shall make distributions of Trust Assets as follows:

- (a) Holders of Allowed Secured Claims and/or Allowed Administrative Expense Claims shall be paid on the Effective Date to the extent a particular payment is required by the Plan to be made on the Effective Date;
- (b) Holders of Allowed Secured Claims shall be paid within thirty (30) days after the Plan Trust has obtained funds for distribution to Allowed Class 1 Secured Claims;
- (c) Otherwise, distributions to Creditors shall be made by the Plan Trustee each time the Plan Trustee, in his sole discretion, has accumulated sufficient funds to merit a distribution, considering the number of Creditors and dollar amount of their Allowed Claims, or when the Plan Trustee has determined that no additional funds are likely to be collected. The Plan Trustee shall have sole discretion to determine the amount and timing of such distributions.

3. *Distributions After Allowance*

Payments and distributions to each holder of a Contested Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the class of Claims to which the respective holder belongs. With respect to any Claim that is a Contested Claim on the Effective Date, as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Contested Claim becomes a Final Order, the Plan Trustee shall distribute to the holder of such Claim from the Contested Claims Escrow any distribution that would have been distributed to such holder if the Claim had been an Allowed Claim on the Effective Date. The holder of a Contested Claim shall be entitled to interest on the Withheld Distribution Amount at the rate earned on the Contested Claims Escrow from the date such holder of a Contested Claim would have received as a distribution had the Claim been an Allowed Claim as of the Effective Date.

4. *Distributions After Disallowance*

Any Withheld Distribution Amount in the Contested Claims Escrow after an objection to a Contested Claim has been resolved by Final Order of the Bankruptcy Court shall be distributed in accordance with the provisions of the Plan. The Plan Trustee may and shall rely on an order of the Bankruptcy Court fixing the amount of a Claim or disallowing a Claim. The Plan Trustee shall make no further reserve on account of a Contested Claim that has been disallowed or reduced by the Bankruptcy Court, unless the affected Creditor obtains a stay pending appeal that requires that the Plan Trust maintain a reserve on account of such Claim. In no event shall the reversal or modification on appeal or reconsideration of a Bankruptcy Court order disallowing a Claim affect the validity or require the disgorgement of any distributions previously made pursuant to the Plan if such Creditor did not obtain a stay pending reconsideration or appeal that required a further or continuous reserve.

5. *Exculpation and Immunity Regarding Distributions*

The Debtor and Plan Trust, and their Representatives, from and after the Effective Date, are hereby exculpated by all Persons, holders of Claims and Interests, entities and parties-in-interest receiving distributions under the Plan from any and all claims, causes of action, and other assertions of liability arising out of the Debtor's or Plan Trust's and their Representatives' discharge of their powers and duties conferred upon them by the Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan or applicable law, provided such act was an act or a failure to act in accordance with the terms of the Plan or Plan Documents. No current holder of a Claim or an Interest, and no representative thereof, shall have or pursue any claim or cause of action (a) against the Debtor or Plan Trust and their Representatives for making payments or taking any action in accordance with the Plan or for implementing the provisions of the Plan or (b) against any holder of a Claim for receiving or retaining payments or other distributions as provided for in the Plan.

I. *Conditions Precedent to Effective Date*

The occurrence of the Effective Date of the Plan is subject to the occurrence of the following conditions precedent:

- (a) The Trust Agreement has been executed and delivered; and
- (b) The Confirmation Order shall have become a Final Order.

J. *Waiver of Conditions*

The conditions to the Effective Date may be waived, in whole or in part, by the Debtor, at any time, with notice to all parties on the Master Service List and an order of the Bankruptcy Court. The failure to satisfy or waive any condition may be asserted by the Debtor regardless of the circumstances giving rise to the failure. The failure of the Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

K. *Retention of Bankruptcy Court Jurisdiction*

The Bankruptcy Court shall retain jurisdiction as set forth in the Plan.

L. *Miscellaneous Provisions of the Plan*

1. **Setoff and Other Rights.**

In the event that the Debtor has a claim of any nature whatsoever against the holder of a Claim, the Debtor, the Liquidated Debtor, or the Plan Trustee may, but are not required to, setoff against the Claim (and any payments or other distributions to be made in respect to such Claim hereunder), subject to the provisions of section 553 of the Bankruptcy Code. Neither the failure to setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor, the Liquidated Debtor, or the Plan Trustee of any claim the Debtor has against the holder of a Claim.

2. **Discharge.**

Except as otherwise expressly provided in the Plan, the rights and treatment afforded in the Plan shall discharge all existing security interests, liens, debts and Claims of any kind, nature, or description whatsoever against the Debtor or any of its assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code; upon the Effective Date, all existing Claims against the Debtor shall be, and shall be deemed to be, discharged, and all holders of Claims shall be precluded from asserting against the Debtor, or any of its assets or properties, any other or further Claim based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder filed a proof of Claim. Confirmation of the Plan and the obligations imposed on the Debtor and/or the Liquidated Debtor herein shall be in complete satisfaction, discharge and release of all Claims of any nature whatsoever against the Debtor and/or the Liquidated Debtor or any of its assets or properties; and, upon the Effective Date, the Debtor shall be deemed discharged, and released from any and all Claims, including but not limited to demands and liabilities that arose before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code that arose before the Effective Date, whether or not (a) a proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (b) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, or (c) the holder of a Claim based upon such debt has accepted the Plan. Except as provided herein, the Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtor. As provided in section 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtor at any time obtained, to the extent it relates to a Claim discharged and operates as an injunction against the prosecution of any action against the Debtor, or its property, to the extent it relates to a Claim discharged. The discharge granted herein shall not discharge the Reorganized Debtor from the obligations in the Plan.

3. **Injunctions**

The Confirmation Order shall contain such temporary and permanent injunctions as may be necessary and appropriate to enable the Debtor, solely through the Trust, to implement and perform under the Plan. Without limiting the generality of the foregoing, such injunctions shall include an absolute prohibition from collecting Claims in any manner other than as provided for in the Plan.

4. **Injunction Regarding Claims Against the Debtor**

From and after the Confirmation Date, all persons or entities that hold, have held, or may hold Claims against or Interests in the Debtor are permanently restrained and enjoined from, directly or indirectly:

(a) *Commencing or continuing in any manner any action or other proceeding of any kind against the Debtor, the Liquidated Debtor or the Assets of the Debtor to collect or recover any property on account of any such Claim or Interest;*

(b) *Enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order to collect or recover any property on account of any such Claim or Interest against the Debtor, the Liquidated Debtor, or Assets of the Debtor;*

(c) *Creating, perfecting, or enforcing any Lien or encumbrance of any kind against the Debtor, the Liquidated Debtor, or the Assets of the Debtor ;*

(d) *Asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due the Debtor, the Liquidated Debtor, or the Assets of the Debtor, except as otherwise allowed by the Bankruptcy Court or Bankruptcy Code;*

(e) *Commencing or continuing any action against the Debtor, the Liquidated Debtor, or the Assets of the Debtor in any manner or forum in respect of such Claim or Interest that does not conform to or comply with or that is inconsistent with the Plan; and*

(f) *Taking any action to interfere with the implementation or consummation of the Plan .*

Notwithstanding the foregoing, however, nothing herein shall prohibit any holder of a Claim or Interest from prosecuting a proof of Claim or Interest in the Bankruptcy Case or from enforcing such holder's rights under the Plan.

5. Channeling Injunction

The Bankruptcy Court shall retain exclusive jurisdiction over any case, suit, or proceeding brought on for any claim or cause of action related to the Bankruptcy Case that exists as of the Effective Date against Debtor, Liquidated Debtor, or any Representative for conduct pertaining to Debtor during the Bankruptcy Case and that any entity wishing to bring such case, suit, or proceeding shall do so in the Bankruptcy Court. Additionally, nothing herein shall limit or affect the protections provided Debtor and Liquidated Debtor by sections 524 and 1141 of the Bankruptcy Code.

6. Lawsuits

Upon entry of the Confirmation Order, all lawsuits, litigation, administrative, police, or regulatory actions, or other proceedings, judicial or administrative, in connection with the assertion of a Claim or Lien against the Debtor or the Representatives or property of the Debtor's estate, shall be subject to the discharge and any other injunctions set forth in the Bankruptcy Code or the Court's Confirmation Order. Such discharge injunctions shall be with prejudice to the assertion of such Claim or Lien in any manner other than as prescribed by the Plan. All parties to any such action shall be enjoined by the Bankruptcy Court in the Confirmation Order from taking any action in violation of the Bankruptcy Code or the Confirmation Order. All lawsuits, litigation, administrative, police, or regulatory actions, or any other proceedings, judicial or administrative, in connection with the assertion of any Claims by the Debtor shall become property for the Plan Trustee to prosecute, settle, or dismiss as the Plan Trustee sees fit.

7. Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtor, the holders of Claims, the holders of Interests, the Liquidated Debtor, and the Plan Trustee, and all of their respective successors and assigns; provided, however, that if the Plan is not confirmed, the Plan shall be deemed null and void and nothing contained herein shall be deemed (a) to constitute a waiver or release of any Claims by the Debtor or any other Person, (b) to prejudice in any manner the rights of the Debtor or any other Person or (c) to constitute any admission by the Debtor or any other Person.

8. Modification or Revocation of Plan

Modifications of the Plan may be proposed in writing by the Debtor at any time before the Confirmation Date, provided that (a) the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code and (b) the Debtor shall have complied with section 1125 of the Bankruptcy Code. The Plan may be modified

at any time after the Confirmation Date and before substantial consummation by the Debtor, provided that (a) the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, (b) the Bankruptcy Court, after notice and a hearing, confirms the Plan as modified, under section 1129 of the Bankruptcy Code and (c) the circumstances warrant such modifications. A holder of a Claim or equity Interest that has accepted or rejected the Plan shall be deemed to have accepted or rejected, as the case may be, such Plan as modified, unless, within the time fixed by the Bankruptcy Court, such holder changes its previous acceptance or rejection.

The Debtor reserves the right to revoke and/or withdraw the Plan prior to entry of the Confirmation Order. If the Debtor revokes and/or withdraws the Plan, or if confirmation of the Plan does not occur, then the Plan shall be deemed null and void and nothing contained herein shall be deemed (a) to constitute a waiver or release of any Claims by the Debtor or any other Person, (b) to prejudice in any manner the rights of the Debtor or any other Person, or (c) to constitute an admission by the Debtor or any other Person.

9. Breach of Plan by Creditor

Upon the occurrence of any act or omission by the holder of a Claim or Interest in contravention of a provision within this Plan, the Debtor or Plan Trustee may seek to hold the defaulting party in contempt of the Confirmation Order. If such holder of a Claim or Interest is found to be in contempt under the Plan, such party may be required to pay the reasonable attorneys' fees and costs of the Debtor or Plan Trustee in pursuing such matter. Furthermore, upon the finding of such a contempt by the holder of a Claim or Interest, the Bankruptcy Court may (a) designate a party to appear, sign and/or accept the documents required under the Plan on behalf of such party, in accordance with Rule 70 of the Federal Rules of Civil Procedure, or (b) issue and enter such other order as may be equitable which does not materially alter the terms of the Plan as confirmed.

10. Retention of Causes of Action

The Plan Trustee shall retain the exclusive right to prosecute, settle, or compromise any Estate Action vested in such Trust under the Plan and the Plan Trustee shall be the representative of the Trust for such purposes. To the extent any Estate Action is not transferable by the Debtor to the Trust under applicable law, the Debtor shall retain such Estate Action and the Plan Trustee shall be entitled to prosecute such Estate Action for the benefit of the Trust and shall deliver the proceeds of such Estate Actions to the Trust upon receipt. The Trust shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Debtor's estate.

IX. FEASIBILITY AND RISKS

Section 1129(a)(11) of the Bankruptcy Code requires a finding that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial liquidation, of the Debtor or any successor in interest, unless liquidation is expressly contemplated by the Plan. The Debtor's Plan underlies the projections set forth herein.

THE PROJECTED FINANCIAL INFORMATION AND OTHER FORWARD-LOOKING STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE BASED ON VARIOUS ASSUMPTIONS AND ESTIMATES AND WILL NOT BE UPDATED TO REFLECT EVENTS OCCURRING AFTER THE DATE HEREOF. SUCH INFORMATION AND STATEMENTS ARE SUBJECT TO INHERENT UNCERTAINTIES AND TO A WIDE VARIETY OF SIGNIFICANT BUSINESS, ECONOMIC AND COMPETITIVE RISKS, INCLUDING, AMONG OTHERS, THOSE RISKS DESCRIBED HEREIN. CONSEQUENTLY, ACTUAL EVENTS, CIRCUMSTANCES, EFFECTS AND RESULTS MAY VARY SIGNIFICANTLY FROM THOSE INCLUDED IN OR CONTEMPLATED BY SUCH PROJECTED FINANCIAL INFORMATION AND SUCH OTHER FORWARD-LOOKING STATEMENTS.

A. *Management's Discussion of Financial Projections*

The Debtor believes that, based upon the value of its assets and liabilities, the Plan is feasible and the Plan Trust will be able to make the distributions contemplated by the Plan and will be financially secure and not need to seek further liquidation after confirmation. The Debtor's ownership and management are ready, willing, and able to perform those tasks described in the Disclosure Statement to ensure the Plan's success.

B. *Risks*

The Plan is subject to a number of material risks, including those enumerated below. Prior to deciding how to vote on the Plan, each holder of an impaired Claim and holder of an Interest should carefully consider all of the information contained in this Disclosure Statement, especially the factors mentioned in the following paragraphs.

1. *Certain Risks of Non-Confirmation*

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Court will confirm the Plan. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Court that the confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial liquidation and that the value of the distributions to non-accepting holders of Claims and Interests will not be less than the value of the distributions that such holders would receive if the Debtor was Liquidated under Chapter 7 of the Bankruptcy Code. Although the Debtor believes that these requirements will be satisfied, there can be no assurance that the Court will concur. The confirmation and consummation of the Plan also are subject to those certain conditions described in this Disclosure Statement.

If the Plan were not to be confirmed and consummated, the Debtor would have to liquidate Debtor's assets under Chapter 7, in which case it is likely the holders of Claims and Equity Interests would receive substantially less than they would have received pursuant to the Plan. *See* Article X of this Disclosure Statement.

2. *Potential Effects of a Prolonged Chapter 11 Proceeding*

Prolonged Chapter 11 proceedings could have adverse effects on the Debtor, including the accrual of carrying costs on assets, and the continuing accrual of Administrative Expenses relating to the continuation of bankruptcy proceedings.

3. *Risks Relating to the Projections and Liquidation Analysis*

The management of the Debtor has prepared the projected financial information in connection with the development of the Plan to present the projected effects of the Plan and the transactions contemplated hereby. The projections assume that the Plan and the transactions contemplated hereby will be implemented in accordance with its terms and are based upon numerous other assumptions and estimates. The assumptions and estimates underlying the projections are inherently uncertain and are subject to significant business, economic, legal, and competitive risks and uncertainties that could cause actual results to differ materially from those projected. Accordingly, the projections are not necessarily indicative of the future financial condition or results of liquidation of the Plan Trust, which may vary significantly from those set forth in the projections.

4. *Cash and Sale Proceeds*

The Debtor believes that the Cash generated from liquidation during the Bankruptcy Case and Plan process will be adequate to support payment on the Liquidated Debtor's Administrative Expense Claims and Priority Tax Claims; however, there can be no assurance that one or more unexpected necessary expenditures will not impact the Plan Trust materially and adversely, and no assurance can be given that a sale will be consummated timely and on

reasonable terms. To mitigate against such losses, the Debtor and the Reorganized Debtor shall continue to maintain and carry, appropriate insurance, cash accounts at FDIC insured depository institutions, and procedures to protect the estate's assets.

5. Forward-Looking Information May Prove Inaccurate

This Disclosure Statement contains various forward-looking statements and information that are based on management's beliefs as well as assumptions made by and information currently available to management. When used in this document, the words "believe," "expect," "anticipate," and similar expressions are intended to identify forward-looking statements. Such statements are subject to certain risks, uncertainties, and assumptions including those identified above. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those anticipated, estimated, or projected.

X. ALTERNATIVES TO PLAN

A. Liquidation Analysis

Section 1129 of the Bankruptcy Code provides that the Court may confirm a plan only if certain requirements are met. One of these requirements is that each non-accepting holder of an Allowed Claim or Interest must receive or retain under the Plan, on account of such Claim or Interest, property as of the Effective Date of the Plan at least equal to the value such holder would receive if the Debtor was Reorganized under Chapter 7 of the Bankruptcy Code on the Effective Date.

The table attached to the Disclosure Statement as "**Exhibit C**" shows the estimated recoveries of claims against the Debtor upon Liquidation under Chapter 7 of the Bankruptcy Code if the Plan is not approved.

For purposes of the following discussion, it is assumed that a Chapter 7 trustee would seek to maximize the value of the estate by attempting to sell the assets of the Debtor or pursue any claims against third parties. However, the Debtor believes that the circumstances surrounding a liquidation under Chapter 7 would inevitably lead to conditions that would substantially detract from the total value returned to the estate. Further, there is no assurance that a Chapter 7 trustee will promptly sell the assets or appropriately pursue the estate's claims, particularly as several Chapter 7 panel trustees move less swiftly than others and there is no guarantee as to which trustee is selected in a converted case. The following are some, but not all, of the deleterious consequences that the Debtor believes would result from Chapter 7 liquidation:

- Substantial additional Chapter 7 administrative costs relating to Chapter 7 attorneys' fees, Chapter 7 financial-consultant fees, Chapter 7 trustee statutory payments, and other associated expenses would necessarily be incurred.
- A Chapter 7 trustee and new professionals likely will be unfamiliar with the Debtor's business and assets at the time of his/her appointment and are not likely to be in a position to fully pursue the Debtor's asset equity during the Liquidation period as effectively as current management and professionals.
- The Chapter 7 Trustee's process of winding-down the Debtor's affairs, objections to Claims, and making dividends could take longer than contemplated under the Plan, particularly as there are numerous Chapter 7 cases that have been pending for several years without any distribution to Creditors despite assets in the estates' coffers at the onset.

B. Other Alternative Plans

The Debtor believes that to maximize the value of the Debtor's assets, and commensurately maximize the return to creditors, the current Plan option is the most desirable and beneficial plan to pursue. Notwithstanding the foregoing, the Debtor will consider all viable options.

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

The following discussion summarizes certain material federal income tax consequences of the implementation of the Plan to the Debtor, and to holders of Claims and Interests. This discussion is based on the Internal Revenue Code of 1986, as amended, Treasury Regulations thereunder, judicial decisions, and published rulings and pronouncements of the IRS in effect on the date of this Disclosure Statement. Changes in these rules, or new interpretations of these rules, may have retroactive effect and could significantly affect the federal income tax consequences described below.

The material U.S. federal income tax consequences of the Plan and the creation of the Plan Trust is complex and subject to uncertainties. Except as may be provided herein, the Debtor has not requested a ruling from the IRS or an opinion with respect to any of the tax aspects of the Plan. There can be no assurance that the IRS will agree with this discussion of material federal income tax consequences. In addition, this summary does not address state, local, or foreign tax consequences of the Plan, and it does not purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as foreign taxpayers, broker-dealers, banks, insurance companies, financial institutions, small business investment corporations, regulated investment companies, tax-exempt organizations, or investors in pass-through entities).

THE FOLLOWING SUMMARY OF CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED ON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A PARTICULAR CREDITOR. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS IN DETERMINING THE U.S. FEDERAL, STATE, LOCAL, AND OTHER TAX CONSEQUENCES TO THEM IN CONNECTION WITH THE PLAN.

A. Federal Income Tax Consequences to the Debtor

1. In General

Pursuant to the Plan, a portion of the outstanding indebtedness of the Debtor is being satisfied at a discount. The debt forgiveness income resulting from the satisfaction of Claims at a discount should not constitute taxable income, although it will reduce tax attributes, such as net operating loss (“NOL”) carryovers. The utilization of any NOL’s remaining after application of the attribute reduction rules may be subject to limitations imposed by section 382 of the Tax Code.

2. Treatment of Debt Discharge Income Under the Plan

Pursuant to the Plan, the aggregate outstanding indebtedness of the Debtor will be reduced. In general, section 61(a)(12) of the Tax Code provides that a taxpayer who realizes discharge of indebtedness income must include such income (“Debt Discharge Income”) in taxable gross income. As a result of the Plan, the Debtor will realize a Debt Discharge if the fair market value of the property transferred by the Debtor to its Creditors for the benefit of its Creditors is less than the amount of Claims that such Creditors have against the Debtor. The Tax Code further provides in section 108(a)(1), however, that if a taxpayer is in a Title 11 case and the discharge of indebtedness is pursuant to a plan approved by a bankruptcy court, such Debt Discharge Income is not required to be included in gross income. However, section 108(b) of the Tax Code further provides that amounts so excluded from gross income will reduce certain tax attributes of the taxpayer, including NOL carryovers and the adjusted tax bases of assets.

Debt Discharge Income will arise with respect to those Claim holders whose Claims are discharged by a payment of Cash or distributions of property, with a value less than the face amount of the Allowed Claims. The Debt Discharge Income would equal the excess of the debt canceled over the Cash and fair market value of property received in exchange therefore. Regardless of the amount of Debt Discharge Income, there will be no taxable income

recognized by the Debtor.

B. *Federal Income Tax Consequences to Creditors*

1. In General

The tax consequences of the implementation of the Plan to a Claim holder will depend in part on (i) whether the Claim holder's Claim constitutes a security for federal income tax purposes, (ii) whether the Claim holder reports income on the accrual basis, (iii) whether the Claim holder receives consideration in more than one tax year of the Claim holder, (iv) whether the Claim holder is a resident of the United States, and (v) whether all the consideration received by the Claim holder is deemed to be received by that Claim holder as part of an integrated transaction.

A Claim holder will recognize gain or loss on the exchange of his or her existing Claim (other than a Claim for accrued interest) for any consideration. The amount of such gain or loss will equal the difference between (i) the "amount realized" in respect of such Claim and (ii) the adjusted tax basis of the Claim holder in such Claim. Pursuant to section 1001 of the Tax Code, the "amount realized" will be equal to the sum of the Cash plus the fair market value of any other property received in such exchange.

A Claim holder who receives Cash in full satisfaction of his or her Claim will be required to recognize gain or loss on the exchange. The Claim holder will recognize gain or loss equal to the difference between the "amount realized" in respect of such Claim and the adjusted tax basis of the Claim holder in the Claim, and the tax treatment of the exchange will parallel the tax treatment set forth above.

In the case of a Claim holder whose existing Claim does not constitute a capital asset, the gain or loss realized on the exchange will give rise to ordinary income or loss. In the case of a Claim holder whose existing Claim constitutes a capital asset in his hands, the gain or loss required to be recognized will generally be classified as a capital gain or loss, except to the extent of interest. Any capital gain or loss recognized by a Claim holder will be long-term capital gain or loss with respect to those Claims for which the holding period of the Claim holder is more than twelve (12) months, and short-term capital gain or loss with respect to such Claims for which the holding period of the Claim holder is twelve (12) months or less.

2. Payments Attributable to Interest

Consideration attributable to accrued but unpaid interest will be treated as ordinary income, regardless of whether the Claim holder's existing Claims are capital assets in his hands and the exchange is pursuant to a tax Liquidation. A Claim holder who, under his or her accounting method, was not previously required to include in income accrued but unpaid interest attributable to his existing Claims, and who exchanges his interest Claim for Cash, other property or stock, or a combination thereof, pursuant to the Plan will be treated as receiving ordinary interest income to the extent of any consideration so received allocable to such interest, regardless of whether that Claim holder realizes an overall gain or loss as a result of the exchange of his existing Claims. A Claim holder who previously was required to include in his or her taxable income any accrued but unpaid interest on a Claim may be entitled to recognize a deductible loss, to the extent the amount of interest actually received by the Claim holder is less than the amount of interest taken into income by the Claim holder.

3. Backup Withholding and Information Reporting

Under the Tax Code, interest, dividends and other "reportable payments" may, under certain circumstances, be subject to "backup withholding." Withholding generally applies if the holder: (i) fails to furnish his social security number or other taxpayer identification number ("TIN"), (ii) furnishes an incorrect TIN, (iii) fails to report interest or dividends, or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is his correct number and that he is not subject to backup withholding.

C. Federal Income Tax Consequences to Equity Interest Holders

Pursuant to the Plan, all interests in the Debtor are retained subject to the conditions of the Plan; however, no cash is to be distributed to equity interest holders from the Plan.

ADDITIONAL TAX-RELATED INFORMATION IS PROVIDED IN THE PLAN. BECAUSE THE FINAL OUTCOME DEPENDS SO MUCH ON EACH INDIVIDUAL CLAIM HOLDER’S AND EQUITY INTEREST HOLDER’S SITUATION, IT IS IMPERATIVE THAT EACH CLAIM AND EQUITY INTEREST HOLDER SEEK INDIVIDUAL TAX COUNSEL FOR ADVICE ON HIS OR HER PARTICULAR SITUATION. NOTHING IN THIS DISCLOSURE STATEMENT OR THE PLAN DOCUMENTS IS INTENDED TO PROVIDE ANY TAX ADVICE TO ANY CLAIM OR INTEREST HOLDER.

XII. CONCLUSION

This Disclosure Statement has attempted to provide information regarding the Debtor’s estate and the potential benefits that might accrue to holders of Claims against and Equity Interests in the Debtor under the Plan as proposed. The Plan is the result of extensive efforts by the Debtor and Debtor’s advisors to provide the Debtor’s creditors with a meaningful dividend. The Debtor believes that the Plan is feasible and will provide each holder of a Claim against the Debtor with an opportunity to receive greater benefits than those that would be received by any other alternative available to the Debtor. Therefore, the Debtor urges you to vote in favor of the Plan.

Through confirmation of the Plan, the Debtor believes that the Reorganized Debtor can resolve all Claims that have been, or could be, asserted against the estate in a timely and cost-effective manner. The Debtor believes that the Plan provides a mechanism to resolve and provide just compensation to all Claim holders. The Debtor believes that the Plan is fair to all parties-in-interest and should be approved by all persons entitled to vote.

Whether or not you expect to attend the Confirmation Hearing, you must sign, date, and mail, hand deliver, or fax your Ballot as soon as possible for the purpose of having your vote count at such hearing. All votes must be received by the Debtor’s counsel, as indicated on the Ballot. Any Ballot that is unsigned, illegible, or that fails to properly designate an acceptance or rejection of the Plan with an appropriate Claim amount may not be counted as a vote in favor of the Plan.

DATED: January 6, 2017

Frymire Services, Inc.

**By: [pending Court approval]
Read Frymire, President**

EXHIBITS TO DISCLOSURE STATEMENT

- EXHIBIT “A” Plan of Reorganization
- EXHIBIT “1” Plan Trust Agreement
- EXHIBIT “B” Monthly Operating Report(s)
- EXHIBIT “C” Ch. 11 Versus Ch. 7 Liquidation Analysis

EXHIBIT “A”

DEBTOR’S PLAN OF LIQUIDATION UNDER CHAPTER 11

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COUNSEL FOR DEBTOR
AND DEBTOR-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE: §
§
FRYMIRE SERVICES, INC., § **Case No. 16-32814-11**
§ **Chapter 11**
DEBTOR. §

DEBTOR'S PLAN OF LIQUIDATION UNDER CHAPTER 11

Dated: January 6, 2017
Dallas, Texas

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DEBTOR'S PLAN OF LIQUIDATION

Frymire Services, Inc. (the "Debtor") proposes the following Plan of Liquidation for the Debtor under Chapter 11 of the Bankruptcy Code.

ARTICLE I

DEFINITIONS AND CONSTRUCTION OF TERMS

1.1 Definitions.

The capitalized terms used herein shall have the respective meanings set forth below:

"363 Sale Motion" shall mean the Debtor's motion to sell substantially all of its assets filed on or around January 6, 2017.

"Administrative Expense" shall mean any cost or expense of administration of the Bankruptcy Case incurred on or before the Effective Date entitled to priority under section 507(a)(1) and allowed under section 503(b) of the Bankruptcy Code, including Fee Claims and all other claims for compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under the Bankruptcy Code, and all fees and charges assessed against the Debtor's estate under chapter 123 of Title 28 of the United States Code.

"Allowance Date" means the date on which a Claim becomes an Allowed Claim.

"Allowed" when used with respect to any Claim, except for a Claim that is an Administrative Expense, shall mean (1) such Claim to the extent it is not a Contested Claim; (2) such Claim to the extent it may be set forth pursuant to any stipulation or agreement that has been approved by Final Order; or (3) a Contested Claim, proof of which was timely filed with the Bankruptcy Court and (a) as to which no objection was filed by the Objection Deadline, unless such Claim is to be determined in a forum other than the Bankruptcy Court, in which case such Claim shall not become Allowed until determined by Final Order of such other forum and Allowed by Final Order of the Bankruptcy Court, or (b) as to which an objection was filed by the Objection Deadline, to the extent Allowed by Final Order.

"Assets" means, with respect to the Debtor, all of the right, title, and interest in and to property of whatsoever type or nature owned by the Debtor as of the Petition Date, together with property subsequently acquired by the Debtor (including any recoveries arising from any restitution order), and including, but not limited to, the Estate Actions, and all other property defined in section 541 of the Bankruptcy Code, any proceeds derived therefrom, the available insurance or insurance policies, or any right, claim or cause of action of the estate including without limitation any asset wherever located or pursued.

"Ballot" shall mean the ballot to be used by holders of claims to cast their votes to accept or reject the Plan.

"Balloting Agent" shall mean the Person designated by the Debtor to receive Ballots as reflected on the face of the Ballot.

"Bankruptcy Case" shall mean the cases commenced under, or converted to, chapter 11 of the Bankruptcy Code by the Debtor under the Case No. 16-32814-11.

"Bankruptcy Code" shall mean the Bankruptcy Reform Act of 1978, as amended, and codified at title 11 of the United States Code.

"Bankruptcy Court" or "Court" shall mean the Bankruptcy Court unit of the United States District Court for the Northern District of Texas, Dallas Division, or such other court having jurisdiction over the Bankruptcy Case.

"Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure, as prescribed by the United States Supreme Court pursuant to section 2075 of title 28 of the United States Code.

"Bar Date" shall mean the final date for filing of proofs of Claims or Interests in the Debtor's Bankruptcy Case set by the Bankruptcy Court as November 11, 2016 or such other date as may apply to a particular Claim or Interest pursuant to a duly entered order of the Bankruptcy Court.

"Beneficiaries" shall refer to those certain holders of unpaid Allowed Administrative Expense and Allowed Claims and Interests in Classes 1 – 4 under the Plan for whom the Frymire Liquidation Trust is created.

"Business Day" shall mean any day that is not a Saturday, Sunday, or one of the legal holidays listed in Bankruptcy Rule 9006(a).

"Capital One" shall mean Capital One, NA.

"Cash" shall mean legal tender of the United States of America or Cash equivalents.

"Claim" shall have the meaning as set out in section 101 of the Bankruptcy Code.

"Collateral" shall mean any property of the Debtor subject to a valid and enforceable Lien to secure the payment of a Claim.

"Confirmation Date" shall mean the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order.

"Confirmation Hearing" shall mean the hearing held by the Bankruptcy Court pursuant to Bankruptcy Code section 1128, scheduled for _____ __, 2017 at _____ __.m. Central Prevailing Time, and as it may be continued from time to time, on confirmation of the Plan. Unless expressly stated otherwise in the Plan, all references to the Confirmation Hearing or the date of the Confirmation Hearing shall mean the date the Confirmation Hearing commences.

"Confirmation Order" shall mean the order of the Bankruptcy Court confirming this Plan.

"Contested" when used with respect to a Claim, shall mean a Claim against the Debtor (1) that is listed in the Debtor's Schedules as disputed, contingent, or unliquidated, regardless of whether a proof of claim has been filed or not; (2) that is listed in the Debtor's Schedules as undisputed, liquidated, and not contingent and as to which a proof of claim has been filed with the Bankruptcy Court, to the extent the proof of Claim exceeds the scheduled amount; (3) that is not listed in the Debtor's Schedules, but as to which a Proof of Claim has been filed with the Bankruptcy Court; or (4) as to which an objection has been filed. Notwithstanding the foregoing, after the Objection Deadline, only (a) Claims to which an Objection has been filed, including but not limited to Claims listed on the Debtor's Schedules, and (b) Claims that were not timely filed shall be deemed Contested Claims with respect to Claims for which a proof of Claim has been filed.

"Contested Claims Escrow" shall mean an escrow account created by the Plan Trustee as described in section 11.9 of the Plan.

"Contracts" shall mean all "leases" and "executory contracts" as such terms are used within section 365 of the Bankruptcy Code to which the Debtor was a party as of the Petition Date.

"Creditors" shall mean the holders of Allowed Administrative Expenses and/or Allowed Claims.

"Debtor" shall mean Frymire Services, Inc.

"Deficiency Amount" shall mean, with respect to a Secured Claim, the amount by which the Allowed Claim exceeds the sum of (1) any set-off rights of the holder of such Claim against a Debtor under sections 506 and 553 of the Bankruptcy Code, and (2) the net proceeds realized from the disposition of the Collateral securing such Claim, or, if such Collateral is not liquidated to Cash, the value of the interest of the holder of the Claim in the

Debtor's interest in the Collateral securing such Claim, as determined by the Bankruptcy Court under section 506 of the Bankruptcy Code.

"Disallowed" when used with respect to a Claim, shall mean a Claim that has been disallowed by Final Order.

"Disclosure Statement" shall mean the Debtor's Disclosure Statement under 11 U.S.C. § 1125 in support of the Debtor's Plan of Liquidation, dated January 6, 2017, either in its present form or as it may be hereafter be altered, amended, or modified from time to time.

"Disclosure Statement Order" shall mean the order of the Bankruptcy Court approving the Disclosure Statement and solicitation procedures, and setting the hearing on confirmation of the Plan.

"Effective Date" shall mean a Business Day selected by the Debtor after both (i) the Confirmation Order has become a Final Order and is not stayed, and (ii) all conditions to the effectiveness of the Plan have been satisfied or waived as provided in Article XIV of the Plan. Unless the Court orders otherwise upon cause shown, in no event shall the Effective Date be later than thirty (30) days after the Confirmation Order has become a Final Order.

"Estate Actions" shall mean any and all claims, causes of action and enforceable rights of the Debtor against third parties, or assertable by the Debtor on behalf of its creditors or the estate, whether brought in the Bankruptcy Court or any other forum for recovery or avoidance, that has not been settled or resolved as of the Effective Date, with respect to:

- (a) Obligations, transfers of property or interests in property, offsets, debt forgiveness, Cash, and other types or kinds of property or interests in property or the value thereof, recoverable or avoidable pursuant to Chapter 5 or other sections of the Bankruptcy Code or any applicable law;
- (b) Damages, general or statutory or exemplary (or all) or other relief, including but not limited to actions relating to or based upon—
 - (i) indebtedness owing to Debtor, (ii) fraud, negligence, gross negligence, willful injury or misconduct, acts or malice, or any other tort actions, including but not limited to defamation, malicious prosecution, or tortious interference with contract, (iii) breaches of contract, (iv) violations of federal or state securities laws, (v) violations of applicable corporate laws, (vi) breaches of fiduciary or agency duties, (vii) causes of action based on disregard of the corporate form or piercing the corporate veil or other liability theories, (viii) any theory of recovery against a lending institution for any action causing harm to the Debtor, (ix) equitable or legal subordination, or (x) any other action listed in Bankruptcy Rule 7001;
- (c) Damages or other relief based upon any other claim of Debtor to the extent not specifically compromised or released pursuant to this Plan or an agreement referred to, or incorporated into, this Plan;
- (d) Insurance claims; and
- (e) Any and all litigation and causes of action listed or referenced in the Schedules, the Disclosure Statement, the Plan, or any schedules or attachments thereto.

"Estimation Order" shall mean any order of the Bankruptcy Court estimating a Claim pursuant to Bankruptcy Rule 3018 or pursuant to section 502(c) of the Bankruptcy Code.

"Fee Application" shall mean an application of a Professional Person under section 330, 331, or 503 of the Bankruptcy Code for allowance of compensation and reimbursement of expenses in the Bankruptcy Case.

"Fee Claim" shall mean a Claim against the Debtor under section 330, 331, or 503 of the Bankruptcy Code for allowance of compensation and reimbursement of expenses in the Chapter 11 case.

"Final Decree" means the final decree entered by the Bankruptcy Court on or after the Effective Date and pursuant to Bankruptcy Rule 3022.

"Final Cash Collateral Order" shall mean the Final Order entered by the Court on September 1, 2016 in the Bankruptcy Case at Docket No. 95, which Final Order authorized and approved the Debtor's postpetition use of cash collateral and provision of adequate protection to its prepetition lender, Capital One, N.A.

"Final Order" shall mean (1) an order as to which the time to appeal, petition for certiorari or move for reargument, rehearing, reconsideration, new trial, or to alter or amend findings or judgment has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument, rehearing, reconsideration, new trial, or to alter or amend findings or judgment shall then be pending or (2) in the event that an appeal, writ of certiorari, reargument, rehearing, reconsideration, new trial, or motion to alter or amend findings or judgment thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied or from which reargument, rehearing, reconsideration, new trial, or motion to alter or amend findings or judgment was sought, and the time to take any further appeal, petition for certiorari or move for reargument, rehearing, reconsideration, new trial, or to alter or amend findings or judgment shall have expired, provided, however that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure may be filed with respect to such order.

"General Unsecured Claim" shall mean any Claim against the Debtor that is not a Priority Unsecured Claim, a Secured Claim, an Administrative Expense, a Penalty Claim, a Disallowed Claim, or a Subordinated Claim.

"Insider" shall have the meaning set forth in section 101(31) of the Bankruptcy Code.

"Interest" shall mean any "equity security" as defined in section 101(16) of the Bankruptcy Code.

"Lien" shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

"Liquidated Debtor" shall mean the Debtor, as Liquidated on and after the Effective Date.

"Master Service List" shall mean the service list filed, as updated, periodically with the Court, as amended through the Confirmation Date.

"Objection Deadline" shall mean the date by which objections to Claims shall be filed with the Bankruptcy Court and served upon the respective holders of each of the Claims as provided in Article XII of the Plan.

"Ordinary Course Professional" shall mean any Professional Person employed by the Debtor pursuant to the Order Granting Debtor's Application for Approval to Retain and Employ Professional Utilized in the Ordinary Course of Business entered on September 1, 2016 at Docket No. 97 authorizing retention without the necessity of filing any fee applications with the Bankruptcy Court.

"Penalty Claim" shall mean Claims for penalties or punitive damages, including Claims denominated as "interest" or "liquidated damages" that the Bankruptcy Court determines to be punitive in nature.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, joint ventures, trusts, land trusts, business trusts, unincorporated organizations, or other organizations, irrespective of whether they are legal entities, governments and agencies and political subdivisions thereof or other entities.

"Petition Date" shall mean July 15, 2016 for Debtor Frymire Services, Inc., constituting the entry of orders for relief under Chapter 11 of the Bankruptcy Code.

"Plan" shall mean this Plan of Liquidation either in its present form or as it may hereafter be altered, amended or modified from time to time.

"Plan Documents" shall mean the Disclosure Statement and other documents that aid in effectuating the Plan as specifically identified as such herein or as attached as exhibits hereto, which will be substantially in the respective forms filed by the Debtor with the Bankruptcy Court prior to the conclusion of the Confirmation Hearing.

"Plan Participants" shall mean the Debtor, the Liquidated Debtor, the Plan Trustee, and members thereof, and directors, managers, officers, employees and advising professionals of all the preceding, all as of and after the Confirmation Date.

"Plan Trust" or "Trust" shall mean the Frymire Liquidating Trust created pursuant to Article VI of the Plan for the purposes, among other things, of prosecuting or otherwise liquidating Assets, resolving certain Claims and causes of action of the Debtor, and making distributions to holders of Allowed Claims in accordance with the Plan.

"Plan Trust Agreement" shall mean the contract governing the creation, implementation, and termination of the Plan Trust as well as the employment of the Plan Trustee, as attached to the Plan as Exhibit 1.

"Plan Trustee" or "Trustee" shall mean that Person approved by the Bankruptcy Court to serve as trustee of the Trust.

"Priority Tax Claim" shall mean a Claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

"Priority Unsecured Claim" shall mean any Claim (other than an Administrative Expense) to the extent entitled to priority in payment under section 507(a) of the Bankruptcy Code, not including priority tax Claims.

"Professional Person" shall mean any person retained or to be compensated pursuant to section 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code.

"Pro Rata Share" shall mean the proportion that the amount of an Allowed Claim in a particular class of Claims bears to the aggregate amount of all Claims in such class of Claims, including Contested Claims, but not including Disallowed Claims.

"Representatives" shall mean any principal, agent, responsible party, officer, director, shareholder, financial advisor, attorney, accountant, or other professional persons of the Debtor, including but not limited to Mark A. Castillo, Joshua L. Shepherd, Bryan C. Assink, and Curtis | Castillo PC, and any of his, its, or their employees, attorneys, accountants, professionals, assistants, or contractors.

"Schedules" shall mean the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor as required by section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules and statements have been or may be supplemented or amended.

"Secured Claim" shall mean a prepetition Claim against the Debtor secured by a Lien on property of the Debtor, which Lien is valid, perfected, and enforceable under applicable law, is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law, and is duly established in the Bankruptcy Case, but only to the extent of the value of the Collateral that secures payment of such Claim.

"Subordinated Claim" shall mean any Claim against the Debtor (1) subordinated by contract or by order of the Bankruptcy Court to the right of payment of General Unsecured Claims (2) that would be paid pursuant to Bankruptcy Code section 726(a)(2)(c), (a)(3), (a)(4) or (a)(5), if these Bankruptcy Case were cases under chapter 7 of the Bankruptcy Code.

"Trust Assets" shall mean all Assets of the Debtor that, as of the Effective Date of the Plan, have not been sold, assigned, transferred, or otherwise conveyed to any purchasers pursuant to a Final Order of the Bankruptcy Court, which Assets shall immediately and automatically vest in the Plan Trust.

"Voting Claim" shall mean a Claim of a holder that is (i) Allowed, (ii) impaired, and (iii) receiving or retaining property on account of such Claim pursuant to the Plan.

“Voting Deadline” shall mean _____, 2017 at _____m. Central Prevailing Time, the date and time set by the Bankruptcy Court by which Ballots for accepting or rejecting the Plan must be received by the Debtor’s counsel.

“Withheld Distribution Amount” shall have the meaning as set forth in section 11.9 of the Plan.

1.2 Interpretation.

For purposes of the Plan, (i) any reference in the Plan to an existing document or exhibit filed or to be filed means that document or exhibit as it may have been or may be amended, modified, or supplemented; (ii) unless otherwise specified, all references in the Plan to articles and exhibits are references to articles or exhibits in the Plan; (iii) captions and headings contained in the Plan are inserted for convenience and reference only, and are not intended to be part of or to affect the interpretation of the Plan; (iv) wherever appropriate from the context, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and neuter gender; and (v) the rules of construction outlined in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply to the Plan.

1.3 Application of Definitions and Rules of Construction Contained in the Bankruptcy Code.

Words and terms defined in section 101 of the Bankruptcy Code shall have the same meaning when used in the Plan, unless a different definition is given in the Plan. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

1.4 Other Terms.

The words “herein,” “hereof,” “hereto,” “hereunder,” and others of similar import refer to the Plan as a whole and not to any particular section, subsection, or clause contained in the Plan.

1.5 Integration Clause.

This Plan is a complete, whole, and integrated statement of the binding agreement between the Debtor, its creditors, its Interest holders, and other parties-in-interest upon the matters herein. Parole evidence shall not be admissible in an action regarding this Plan or any of its provisions.

1.6 Plan Documents.

The Plan Documents are incorporated into and are part of the Plan as if set forth in full herein.

ARTICLE II

CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

2.1 Claims and Interests Classified.

For purposes of organization, voting, and all confirmation matters, all Claims (except Administrative Expenses and Priority Tax Claims) and all Interest shall be classified as set forth in Article IV of the Plan. This Plan shall provide distributions only to Allowed Claims; nothing within this Plan shall provide for the Allowance of any Claim.

2.2 Administrative Expense and Priority Tax Claims.

As provided in section 1123(a)(1) of the Bankruptcy Code, Administrative Expenses and Priority Tax Claims against the Debtor shall not be classified for purposes of voting or receiving distributions under the Plan.

Rather, all such Claims shall be treated separately as unclassified Claims on the terms set forth in Article IV of the Plan.

2.3 Claims and Interest.

The Plan classifies the Claims against and Interests in the Debtor as follows:

- Class 1.1: Secured Tax Claim of Dallas County
- Class 1.2: Secured Non-Tax Claim of Ascentium Capital, LLC
- Class 1.3: Secured Non-Tax Claim of Capital One per Line of Credit
- Class 1.4: Secured Non-Tax Claim of Capital One per Term Loan
- Class 1.5: Secured Non-Tax Claim of Ferguson Enterprises, Inc.
- Class 1.6: Secured Non-Tax Claim of Standard Supply and Distributing Company
- Class 1.7: Secured Non-Tax Claims of Stock Lenders
- Class 2: Priority Non-Tax Unsecured Claims
- Class 3: General Unsecured Claims
- Class 4: Equity Interests

2.4 Claims May Be in More Than One Class.

An Allowed Claim is part of a particular Class only to the extent that the Allowed Claim qualifies within the definition of that Class and such Claim shall be part of a different Class to the extent that the remainder of the Claim qualifies within the description of a different Class.

ARTICLE III

IDENTIFICATION OF IMPAIRED CLASSES; ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES OF CLAIMS OR EQUITY INTERESTS

3.1 Impaired Classes of Claims and Interests.

All Classes of Claims and Interests are impaired under the Plan.

3.2 Impairment Controversies.

If a controversy arises as to whether any Claim or equity Interest or any class of Claims or class of Interests is impaired under the Plan, the Bankruptcy Court shall rule at the appropriate time on any such dispute.

3.3 Classes Entitled to Vote.

All Classes of Claims and Equity Interests are impaired under the Plan and are entitled to vote to accept or reject the Plan.

3.4 Class Acceptance Requirement.

The Bankruptcy Code does not require that each holder of a Claim or Interest vote in favor of the Plan for the Court to confirm the Plan. Rather, the Plan must be accepted by each *Class* of holders of Claims or Interests (subject to an exception discussed below in section 3.5 of the Plan). Under the Bankruptcy Code, a Class of holders of Claims or Interests has accepted the Plan if, of the Claims in the Class that actually are voted on the Plan, such Claims constituting at least two-thirds in dollar amount and more than one-half in number of Allowed Claims vote to accept the Plan, excluding the votes of Insiders. For example, if a hypothetical class has ten claims that are voted and the total dollar amount of those ten claims is \$1,000,000, then for such class to have accepted the Plan, six or more of those claims must be voted to accept the Plan (a simple majority), and the claims voted to accept the Plan must total at least \$666,667 (a two-thirds majority).

3.5 Cramdown.

If any impaired Class of Claims does not vote to accept the Plan, the Court may nevertheless confirm the Plan pursuant to the “cramdown” provisions of section 1129(b) of the Bankruptcy Code. If the Court determines that the Plan “does not discriminate unfairly” and is “fair and equitable” to each Class of dissenting holders of Claims or Interests, the Court may confirm the Plan through “cramdown.” The Plan will not discriminate unfairly if no Class receives more than it is legally entitled to receive.

With respect to each dissenting Class of unsecured Claims, “fair and equitable” means either: (i) the members of each dissenting impaired Class of unsecured Claims receive property of a value, as of the Effective Date of the Plan, equal to the amount of their Allowed Claim; or (ii) the holders of Claims and Interests that are junior to each dissenting impaired Class of unsecured Claims will not receive any property under the Plan. The Plan is not fair and equitable to a Class of holders of Interests if any Class of holders of Claims is paid more than in full.

3.6 Absolute Priority Rule.

Simply characterized, the absolute priority rule set forth in section 1129(b)(2)(B) of the Bankruptcy Code requires that confirmation obtained by “cramdown” meet an “either/or” test. Either (i) the members of each dissenting impaired Class of unsecured Claims must be paid in full, or (ii) the holders of Claims and Interests that are junior to each dissenting impaired Class of claims must not receive any property under the plan of Liquidation on account of “such junior interest.” The absolute priority rule applies only in cases where a Class of Claims or equity Interests is impaired and does not accept the Plan. Thus, the absolute priority rule does not apply to all Classes of Claims and equity Interests but only to the dissenting Class and Classes junior to the dissenting Class.

The absolute priority rule may apply in the Bankruptcy Case because all Classes are impaired and entitled to vote. A more comprehensive discussion of the application of the absolute priority rule and the new value exception contains complexities and subtleties, the explanation of which is beyond the scope of this Disclosure Statement. To the extent a Claim holder or Interest holder desires further explanation regarding such rule or its exception, they are advised to seek advice of counsel.

3.7 One Vote per Holder.

If a holder of a Claim holds more than one Claim in any one Class, all Claims of such holder in such Class shall be aggregated and deemed to be one Claim for purposes of determining the number and amount of Claims in such Class voting on this Plan.

ARTICLE IV

PROVISIONS FOR TREATMENT OF CLAIMS AND EQUITY INTERESTS UNDER THE PLAN

The classes of Claims against and the Interests in the Debtor shall be treated under the Plan as set forth below:

4.1 Class 1 – Secured Claims.

Each holder of an Allowed Secured Claim will be treated in a separate class and shall, at the sole option of the Plan Trustee, receive as soon as practicable after the Effective Date (or, if later, the Allowance Date) on account of its Allowed Secured Claim: (a) payment of the proceeds of the sale of the Collateral securing such Allowed Secured Claim; or (b) such holder's Collateral. To the extent any disputes concerning the validity or priority of Liens against the Collateral securing or purporting to secure any Secured Claim in this Class have not been resolved before the Confirmation Hearing, such disputes shall be resolved by the Bankruptcy Court upon notice and hearing.

4.2 Class 2 – Priority Non-Tax Unsecured Claims.

Each holder of an Allowed Priority Unsecured Claim shall receive as soon as practicable after the Effective Date (or, if later, the Allowance Date) on account of its Allowed Priority Unsecured Claim a single Cash payment from the Trust equal to the Allowed amount of such claim.

4.3 Class 3 – General Unsecured Claims.

Allowed Claims in Class 3 shall be treated as follows in full satisfaction of any and all Claims as hereinafter provided. After payment of Allowed Secured Claims, Allowed Administrative Expense Claims, and Allowed Priority Unsecured Claims, each holder of an Allowed General Unsecured Claim will receive its Pro Rata Share of Trust Assets, not to exceed the amount of their Allowed General Unsecured Claim. The Plan Trustee shall be empowered, in his or her sole discretion but subject to the Court's continuing jurisdiction, to make multiple distributions to creditors holding Allowed General Unsecured Claims in accordance with the terms of the Plan. No Class subordinate to or junior to Class 3 will receive a distribution unless and until Allowed Class 3 Claims are paid in full, without postpetition interest.

4.4 Class 4 – Equity Interests.

All existing Interests shall be canceled on the Effective Date. Notwithstanding such cancellation, each holder of an Allowed Class 4 Interest shall receive its Pro Rata Share of Trust Assets as provided in section 11.1 of the Plan. Holders of Interests shall not receive any distributions under the Plan on account of such Interests unless and until Class 3 has been paid in full, without postpetition interest.

4.5 Satisfaction of Claims.

The treatment of and consideration to be received by holders of Allowed Claims or Allowed Interests pursuant to Article IV and Article V of the Plan shall be in full satisfaction and settlement of such holder's respective Claims against or Interests in the Debtor and the Estate, except as otherwise provided in this Plan or the Confirmation Order. Only holders of Allowed Claims and Interests will receive a distribution under the Plan.

ARTICLE V

PROVISIONS FOR TREATMENT OF UNCLASSIFIED CLAIMS UNDER THE PLAN

5.1 Treatment of Administrative Expenses.

All Administrative Expenses against the Debtor shall be treated as follows:

(a) **Time for Filing Administrative Expenses.**

The holder of an Administrative Expense, other than (1) a Fee Claim or (2) a Claim for ad valorem property taxes, must file with the Bankruptcy Court and serve on the Debtor and its counsel notice of such Administrative Expense within thirty (30) days of the occurrence of the Effective Date of the Plan. Such notice must include at a minimum: (1) the name of the holder of the Claim; (2) the amount of the Administrative Expense; and (3) the basis of the Administrative Expense. Failure to file and serve this notice timely and properly shall result in the Administrative Expense being forever barred and discharged.

(b) Time for Filing Fee Claims.

Each Professional Person or other Person that holds or asserts an Administrative Expense that is a Fee Claim incurred before the Effective Date shall be required to file a Fee Application with the Bankruptcy Court, and serve on all parties required to receive notice, no later than sixty (60) days of the Effective Date. To the extent necessary, entry of the Confirmation Order shall amend and supersede any previously entered orders of the Bankruptcy Court regarding procedures for the payment of Fee Claims.

(c) Allowance of Administrative Expenses.

An Administrative Expense with respect to which notice has been properly filed pursuant to section 5.1(a) of the Plan shall become an Allowed Administrative Expense to the extent Allowed by Final Order. An Administrative Expense that is a Fee Claim, and with respect to which a Fee Application has been properly filed pursuant to section 5.1(b) of the Plan, shall become an Allowed Administrative Expense to the extent allowed by a Final Order.

5.2 Payment of Allowed Administrative Expenses.

Each holder of an Allowed Administrative Expense against the Debtor shall receive a single Cash payment from the Debtor and/or Plan Trustee in the amount of the unpaid portion of such Allowed Administrative Expense either (a) upon the later of the Effective Date or the Allowance Date, or (b) upon such terms as may be agreed to in writing by such holder.

5.3 Treatment of Priority Tax Claims.

Each holder of an Allowed Priority Tax Claim shall receive in full satisfaction of such holder's Allowed Priority Tax Claim Cash from the Trust in the full amount of such Allowed Priority Tax Claim according to section 11.2 of the Plan.

ARTICLE VI

CREATION OF TRUST

6.1 Creation of the Trust.

On the Effective Date, the Trust shall be created for the purpose of liquidating the Trust Assets for the benefit of the Creditors and satisfying Claims consistent with the Plan. The Plan Trust Agreement is attached hereto as **Exhibit "1"** and is incorporated herein by reference. The Trust shall be entitled and authorized to engage in the conduct of the trade or business of the Debtor solely to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust. Subject to the Bankruptcy Court's approval, the Plan Trustee shall be named in the Confirmation Order and shall be disclosed prior to the Confirmation Hearing. The Plan Trustee shall receive any and all assets coming into or becoming a part of the Trust and disburse the proceeds from revenues realized from the operation, lease, assignment, sale or other similar transaction involving the property constituting the Trust consistent with the terms of this Plan. The Trust Agreement described in Article X hereof shall serve as the trust instrument and no other trust instrument shall be prepared or entered into. The Beneficiaries of the Trust will be treated as the grantors and deemed owners of the Trust. The Plan Trustee will be entitled to file federal income tax returns for the Trust as a grantor trust pursuant to section 1.671-4(a) of the Federal Income Tax Regulations, unless the Plan Trustee determines that filing such federal income tax return violates applicable law, regulation, statute, or Revenue ruling.

6.2 Funding of the Trust.

To fund the Trust, by operation of the Confirmation Order, the Plan Trustee shall be in possession of and have title to all Trust Assets as of the Effective Date, including any unsold equipment, cash, bank deposits, certificates of deposit, inventory, furniture, fixtures, equipment, real property, rights, contracts, claims and causes of

action, garnishments, and all documents evidencing and relating to the ownership of estate property. The conveyances of all Trust Assets shall be accomplished pursuant to the Plan and the Confirmation Order and shall be effective upon the Effective Date, without the need of further documentation or instruments of conveyance, other than the Plan and the Confirmation Order. Upon the Effective Date, the Trust shall also be deemed to have taken (a) an assignment of all Estate Actions, and (b) an assignment, bill of sale, deed and/or release covering all remaining Trust Assets. The Plan Trustee may present such orders as may be necessary to require third parties to accept and acknowledge such conveyance to the Trust. Such orders may be presented without further notice other than as has been given in this Plan. The Beneficiaries of the Trust shall be holders of Allowed Claims and Interests in accordance with this Plan.

6.3 Name of Trust.

The Trust shall be known as the "Frymire Liquidating Trust." The Trust may do business under any name the Plan Trustee deems advisable and is appropriate.

ARTICLE VII

MEANS FOR IMPLEMENTATION OF THE PLAN

7.1 Transfer and Vesting of Assets.

On the Effective Date, the Debtor will be deemed to have transferred pursuant to 11 U.S.C. § 363(f) all of the Debtor's right, title and interest in and to all Trust Assets to the Trust, free and clear of all Claims, Liens, charges, other encumbrances, and interests.

The Confirmation Order shall authorize and order the Debtor to (i) make all transfers required by this Section, and (ii) execute and deliver the Trust Agreement to the Plan Trustee immediately following the entry of the Confirmation Order. The conveyances of all property of the Debtor's estate shall be accomplished pursuant to the Plan and the Confirmation Order and shall be effective upon the Effective Date without the need of further documentation or instruments of conveyance, other than the Plan and the Confirmation Order. Upon the Effective Date, the Debtor, solely through the Plan Trustee, shall also be deemed to have taken (a) an assignment of all Estate Actions and (b) an assignment, bill of sale, deed and/or release covering all remaining Trust Assets free and clear of all Claims, Liens, charges, and other encumbrances, with such Claims, Liens, charges, and other encumbrances attaching to the proceeds of the liquidation of the Trust Assets. The Debtor, solely through the Plan Trustee, may present such orders as may be necessary to require third parties to accept and acknowledge such conveyance. Such orders may be presented without further notice other than as has been given in this Plan.

The Plan Trustee shall retain the exclusive right to prosecute, settle, or compromise any Estate Action vested in such Trust under the Plan and the Plan Trustee shall be the representative of the Trust for such purposes. To the extent any Estate Action is not transferable by the Debtor to the Trust under applicable law, the Debtor shall retain such Estate Action and the Plan Trustee shall be entitled to prosecute such Estate Action for the benefit of the Trust and shall deliver the proceeds of such Estate Actions to the Trust upon receipt. The Trust shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Debtor's estate.

7.2 Corporate Authority.

All actions and transactions contemplated under the Plan and the Disclosure Statement shall be authorized upon confirmation of the Plan without the need of further management resolutions, approval, notice, or meetings, other than the notice provided by serving this Plan on all known creditors of the Debtor, all equity Interest holders as of the Voting Record Date, and all current directors, officers, or management of the Debtor.

The Confirmation Order shall include provisions authorizing and directing the President and Secretary and other authorized representative(s) of the Debtor to execute such documents as are necessary to effectuate the Plan, which documents shall be binding on the Debtor, the Debtor's creditors, and all of the Debtor's equity Interest holders.

From and after the Effective Date, the Trust shall exist and manage the Trust Assets. The Debtor shall continue to exist to the extent necessary to consummate the Plan. However, upon the Effective Date, all current officers and directors shall be deemed to have resigned, and the Plan Trustee (or the Trustee's designee, which shall not be an Affiliate of, nor affiliated with, the Debtor prior to the Effective Date) shall become the Chief Executive Officer and sole director of the Debtor. All Professional Persons employed by the Debtor, and not previously discharged, shall be discharged upon the Effective Date except to the extent necessary to file and prosecute their final fee applications.

Subject to the provisions of this Plan, the Plan Trustee is vested with authority to take any action on behalf of the Debtor that would otherwise require the approval of the membership, managers, or officers of the Debtor. The Liquidated Debtor's management and employees as of the Confirmation Date may be employed by the Plan Trust at the same or similar rates and terms as existed during the pendency of the Bankruptcy Case. From and after the Effective Date, the existing managers and officers of the Debtor shall have no further duties or responsibilities with respect to the Debtor or the Liquidated Debtor, except to the extent employed by the Trust after the Effective Date.

7.3 Plan is a Motion to Sell.

This Plan is hereby offered and shall be considered a motion pursuant to sections 363(b) and 363(f) of the Bankruptcy Code to sell any and all of the remaining Trust Assets of the Debtor as of the Effective Date to the Trust free and clear of all Liens, Claims, and encumbrances, with such Liens, Claims, or encumbrances attaching to the proceeds of the Trust's liquidation of such property to the same extent, validity, and priority as such Liens existed prior to confirmation. Any objections to such motion must be made as an objection to confirmation of the Plan and shall be set for hearing at the time of confirmation. The order or orders may designate all Liens, Claims, and encumbrances that appear of record and/or from which the property is being transferred free and clear. The Plan shall be conclusively deemed to be adequate notice that such Lien, claim or encumbrances is being extinguished, and no notice, other than by this provision of the Plan, shall be given prior to the presentation of such order. Any party having a Lien, Claim, or encumbrances against property shall be conclusively deemed to have consented to the transfer of such property to the Trust free and clear of such Lien, Claim, or encumbrance by failing to object to confirmation of this Plan.

7.4 Plan Trustee to Liquidate All Assets and Distribute Proceeds.

The Plan Trustee shall sell, transfer, assign, convey, lease, use, or otherwise liquidate all property of the Trust, and use the proceeds thereof to pay (a) the Trust's administrative costs and expenses and (b) Allowed Administrative Expenses and Allowed Claims in Classes 1 - 4 as designated within the Plan, unless the Plan Trustee deems any asset to be of inconsequential value or burdensome to the Trust. Further, the Plan Trustee may abandon any other asset upon approval by Capital One. The proceeds of such liquidation shall be distributed as provided in the Plan. Further, the proceeds of such liquidation shall, to the extent possible, be distributed in the same taxable year in which received or obtained by the Trust; provided, however, that the Trust may retain an amount of such funds as may be reasonably necessary to maintain the value of the Trust Assets or to meet claims and contingent liabilities (including disputed claims) and U.S. Trustee fees. The Plan Trustee's efforts to liquidate the Trust Assets shall be continual so that it may make timely distribution and will not unduly prolong the duration of the Trust.

7.5 Control of Books and Records.

On and after the Effective Date, the Plan Trustee shall have complete and exclusive access to, and control of, all books and records of the Debtor. Upon written request, the Debtor, any management personnel, brokers, appraisers, and other professionals shall immediately surrender all such books and records to the Plan Trustee on the Effective Date.

ARTICLE VIII

[INTENTIONALLY OMMITED]

ARTICLE IX

DUTIES OF THE PLAN TRUSTEE

During the term of the Plan, the Plan Trustee, shall:

- (a) Keep or cause to be kept books containing a description of all property from time to time constituting the estate and an accounting of all receipts and disbursements of Trust property or the proceeds thereof.
- (b) Prepare and file quarterly reports in reasonable detail showing all assets received, expended, disbursed, and otherwise administered by the Plan Trustee, and all other assets remaining to be administered.
- (c) Maintain insurance for full value with extended coverage at all times with respect to all insurable personal property of the Debtor, now existing or hereafter acquired, against risks of fire, theft, and other risks as Capital One may deem appropriate or as the Court has directed.
- (d) Permit access by the Debtor, Capital One, or any Person designated by the Court to all records maintained by the Plan Trustee during business hours.
- (e) Provide the holders of interests in the Plan Trust with valuations of the property transferred to the Plan Trust. Such valuations will be used for all federal income tax purposes.

ARTICLE X

TRUST PROVISIONS

10.1 Plan Trustee's Powers.

The Plan Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Plan Trust, except that the Plan Trustee may deal with the Trust Assets for its own account as permitted by the Plan and Plan Trust Agreement.

The Plan Trustee shall serve without bond. Subject to the terms of the Plan, the Plan Trustee shall have full power and authority, without further notice or Bankruptcy Court approval, to:

- (a) Perfect and secure its rights, title, and interest to any property comprising the estate;
- (b) Sell or convert all assets of the estate to Cash and distribute the net proceeds pursuant to the Plan;
- (c) Settle or dismiss litigation claims that the Plan Trustee determines in its sole discretion should be settled;
- (d) To contract and sell the Trust estate or any part or parts thereof for such purchase price and for cash on such terms as the Plan Trustee shall deem appropriate;
- (e) Pay and discharge costs, expenses, or obligations deemed necessary to preserve the estate or any part thereof or to preserve the Trust;
- (f) Improve or repair the Trust's properties or any parts thereof as may be necessary to effectuate the orderly liquidation thereof;

- (g) Purchase insurance sufficient to protect fully the Trust 's properties or any part or parts thereof and to protect such properties from liability;
- (h) Maintain bank accounts in which Cash of the Trust is deposited;
- (i) Draw checks and make disbursements;
- (j) Employ such attorneys, accountants, appraisers, and any other professionals as are necessary in the administration of the Liquidated Debtor and the Trust or for prosecution of litigation claims belonging to the Debtor, and to compensate the same from the Trust estate;
- (k) Employ auctioneers, brokers, and sales representatives;
- (l) Take any action necessary to protect the Trust estate or to increase the value of the Trust's assets;
- (m) Enter into contracts and execute negotiable and non-negotiable obligations;
- (n) Sue and be sued;
- (o) Appoint, remove, and act through agents, managers, and employees, and confer upon them such power and authority as may be necessary or advisable;
- (p) Review and determine the allowance of Claims or Interests and file objections to any Claim or Interest that the Plan Trustee disputes;
- (q) Seek the valuation of assets by the Bankruptcy Court;
- (r) Borrow money pursuant to the terms of the Plan and the Trust;
- (s) Withhold and pay employment and income taxes, or other taxes as is appropriate;
- (t) Prosecute to final judgment all litigation of the Trust Claims and Estate Actions. The Plan Trustee may also bring or defend those appeals of litigation claims if the Plan Trustee determines that doing so is in the best interest of the Trust; and
- (u) Take such other actions, as may be necessary or helpful to consummate the Plan.

10.2 Management of Estate.

The Plan Trustee shall have such other or additional powers as may be vested in or assumed by the Plan Trustee pursuant to the Plan or Bankruptcy Court order or as may be necessary and proper to carry out the provisions of the Plan and the liquidating purposes of the Trust. The Plan Trustee shall exercise such powers in accordance with the provisions of the Plan. The Plan Trustee shall not be required to obtain the approval of the Capital One for day-to-day activities of the Trust, including resolution of issues under \$5,000.00.

The Plan Trustee shall invest all funds received into the Trust in the same manner as chapter 7 trustees are required to invest funds pursuant to the guidelines of the United States Trustee's Office, provided that the Plan Trustee shall invest funds held in only demand and time deposits, such as short-term certificates of deposit, in banks or savings institutions, or other temporary, liquid, and low-risk investments, such as Treasury bills.

10.3 Duration of the Plan Trust.

The Trust shall become effective upon the Effective Date. Thereupon, these Trust provisions and the Trust shall remain and continue in full force and effect until the Trust's estate has been wholly converted to cash or abandoned, all costs, expenses, and obligations incurred in administering this Trust have been fully paid, and all

remaining income, proceeds, and avails of the Trust's estate have been distributed in payment of Allowed Claims pursuant to the provisions of the Plan. The Trust shall in no event remain in existence for longer than one (1) year; provided, however, that upon approval of the Bankruptcy Court and upon a finding that an extension of such one-year term, or any prior extension thereof, is necessary to the liquidating purpose of the Trust, the term of the Trust may be extended for a finite term of no more than six (6) months based on the particular facts and circumstances, and each extension must be approved by the Bankruptcy Court within thirty (30) days of the beginning of the extended term. Upon the occurrence of the termination of the Trust, the Plan Trustee shall file with the Bankruptcy Court a report, seeking an order discharging the Plan Trustee and providing such injunctive relief required with respect to Claims that are discharged, and provide notice thereof to all Creditors whose Claims were not paid in full pursuant to the Plan.

10.4 Designating and Replacing the Plan Trustee.

The Plan Trustee will be identified in the Confirmation Order. In the event of the death or resignation of the Plan Trustee, a successor Plan Trustee shall be appointed by Capital One. Capital One may petition the Bankruptcy Court to dismiss the Plan Trustee for cause as outlined in section 324 of the Bankruptcy Code at any time and may thereafter name a successor Plan Trustee. The Plan Trustee may resign at any time by giving written notice of his intention to do so addressed to Capital One and Capital One counsel, and such resignation shall be effective upon the date and time provided in an instrument in writing, signed and acknowledged by the Capital One and delivered to the resigning Plan Trustee, which instrument shall also name the successor Plan Trustee.

A successor Plan Trustee shall be vested with all the rights, privileges, powers and duties of his predecessor.

10.5 Plan Trustee Compensation.

The Trustee will be compensated for services provided at a rate of no more than \$250.00 per hour. The Trustee will serve from and after the Effective Date until his successor is duly elected or appointed.

Professionals retained by the Plan Trust shall be entitled to reasonable compensation for services rendered and reimbursement of expenses incurred. The payment of the fees and expenses of Trust-retained professionals shall be made subject to the interim compensation procedures established under the Court's order at Docket 94.

10.6 Tax Treatment of the Trust.

It is intended that the Trust will be treated as a liquidating trust described in Treasury Regulations Section 301.7701-4 and as a grantor trust subject to the provisions of Subchapter J, Subpart E of the Code that is owned by its beneficiaries as grantors. Accordingly, for federal income tax purposes, the transfer and assignment of the Debtor's assets, subject to the assumption of liabilities, shall be treated as a deemed transfer and assignment of such assets to the holders of Allowed Claims in classes 1-4 followed by a deemed transfer and assignment by such holders to the Trust. As a result, the holders of Allowed Claims in classes 1-4, as Beneficiaries of the Trust, will be treated as the grantors and deemed owners of the Trust. The Plan Trustee shall provide the holders of Allowed Claims in classes 1-4 with consistent valuations of the assets transferred to the Trust, and such valuations shall be used by the Trust and the holders of Allowed Claims in classes 1-4 for all federal income tax purposes. All items of income, deduction, credit, or loss of the Trust shall be allocated for federal, state, and local income tax purposes among the holders of Claims in classes 1-4; provided, however, that to the extent that any item of income cannot be allocated in the taxable year in which it arises, the Trust shall pay the federal, state, and local taxes attributable to such income net of related deductions, and the amount of such taxes shall be treated as having been received by, and paid on behalf of, the holders of Allowed Claims in classes receiving the distributions attributable to such allocations when such distributions are ultimately made. The Trustee shall operate and maintain the Trusts in compliance with the guidelines for liquidating trusts as set forth in Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Section 1.671-4(a) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service. The Trustee shall treat all trust income as subject to tax on a current basis. All Trust beneficiaries shall each report their share of the net income of the Trust and pay any tax owing thereon on a current basis.

10.7 Trust Documentation.

The Plan Trust Agreement implementing the terms and conditions of the Trust described in this Plan is attached hereto as Exhibit "1" and incorporated herein by reference.

ARTICLE XI

PROVISIONS GOVERNING DISTRIBUTIONS

11.1 Order of Distribution of Trust Cash.

The Plan Trustee shall distribute or reserve available Cash of the estate in the following order of priority:

- (a) Any Cash or other property that is subject to the valid Lien and Allowed Claim of a Class 1 Secured Creditor shall be distributed to the holders of the Allowed Class 1 Secured Claims pursuant to Article IV of the Plan;
- (b) To pay Allowed Administrative Expense Claims pursuant to Article V of the Plan;
- (c) To pay the post-confirmation expenses of the Liquidated Debtor and Plan Trust, including a reserve of such Cash to pay future expenses of the Plan Trust as the Plan Trustee deems advisable;
- (d) To pay Allowed Priority Unsecured Claims of Class 2 pursuant to the Plan, in the order of priority prescribed by the Bankruptcy Code section 507(a) as applicable to such Allowed Claims;
- (e) To pay Allowed General Unsecured Claims of Class 3, pursuant to the Plan;
- (f) In the event funds become available after payments to each of the foregoing creditors, the Plan Trustee shall distribute any residual funds to the Class 4 Interest holders of the Debtor as their interests appeared as of the Effective Date, in the order of the rights of such equity Interest holders.

The Creditors entitled to distribution under this section shall be deemed the sole Beneficiaries of the Plan Trust until they are paid in full or the Estate assets have been exhausted.

11.2 Timing of Distributions.

After the Effective Date has occurred and has been noticed and the Plan Trustee has assumed his, her, or its duties under the Plan Trust Agreement, the Plan Trustee shall make distributions of Trust Assets as follows:

- (a) Holders of Allowed Secured Claims and/or Allowed Administrative Expense Claims shall be paid on the Effective Date to the extent a particular payment is required by the Plan to be made on the Effective Date;
- (b) Holders of Allowed Secured Claims shall be paid within thirty (30) days after the Plan Trust has obtained funds for distribution to Allowed Class 1 Secured Claims;
- (c) Otherwise, distributions to Creditors shall be made by the Plan Trustee each time the Plan Trustee, in his sole discretion, has accumulated sufficient funds to merit a distribution, considering the number of Creditors and dollar amount of their Allowed Claims, or when the Plan Trustee has determined that no additional funds are likely to be collected. The Plan Trustee shall have sole discretion to determine the amount and timing of such distributions.

11.3 Distributions to be Pro Rata Within Class.

All distributions constituting partial payment to a Class of Allowed Claims shall be made on a Pro Rata basis to the holders of Allowed Claims in such Class.

11.4 Federal Tax Identification Number.

The Plan Trustee may suspend distribution to any Creditor that has not provided the Plan Trustee with its Federal Tax Identification number or social security number, as the case may be.

11.5 Means of Cash Payment.

Cash payments made pursuant to the Plan shall be in U.S. funds, by check drawn on a domestic bank, or, at the Plan Trustee's option, by wire transfer from a domestic bank, except that payments made to foreign creditors holding Allowed Claims may be paid in such funds and by such means as are customary or as may be necessary in a particular foreign jurisdiction.

11.6 Delivery of Distributions.

Distributions to holders of Allowed Claims shall be made at the address of each such holder as set forth on the proof of Claim filed by such holders (or at the last known addresses of such a holder if no proof of Claim or proof of equity Interest is filed or if the Plan Trustee has been notified in writing of a change of address), except as provided below. If any holder's distribution is returned as undeliverable, no further distributions to such holder shall be made unless and until the Plan Trustee is notified in writing of such holder's then current address, at which time all missed distributions shall be made to such holder without interest. Amounts in respect of undeliverable distributions shall be returned to the Plan Trustee until such distributions are claimed. All claims for undeliverable distributions shall be made on or before the first anniversary date of such distribution. After such date, all unclaimed property shall revert to the Trust, and the claim of any holder with respect to such property shall be discharged and forever barred.

11.7 Time Bar to Cash Payments.

Checks issued by the Plan Trustee in respect of Allowed Claims shall be null and void if not negotiated within six (6) months after the date of issuance thereof. Requests for reissuance of any such voided check shall be made in writing directly to the Plan Trustee by the holder of the Allowed Claim with respect to which such check originally was issued. Any such request for reissuance shall be made on or before the later of (a) the first anniversary of the distribution or (b) ninety (90) days after such check became null and void. After such date, all claims in respect to voided checks shall be discharged and forever barred.

11.8 No Distributions Pending Allowance.

Notwithstanding any other provision of the Plan, no payment or distribution shall be made with respect to any Claim to the extent it is a Contested Claim unless and until such Contested Claim becomes an Allowed Claim.

11.9 Withholding of Distribution on Account of Contested Claims.

Except as limited by section 11.10, the Plan Trustee shall withhold from any distribution an amount sufficient to be distributed on account of the full amount of Contested Claims (the "Withheld Distribution Amount"). The Withheld Distribution Amount shall be placed in the Contested Claims Escrow held by the Plan Trustee. To the extent requested by the Plan Trustee or the holder of the Contested Claim, the Bankruptcy Court may estimate (upon proper notice and an opportunity for hearing to the holder of the Contested Claim) the amount to be placed in escrow on account of any Contested Claim, which amount need not be the full amount of the asserted Claim.

11.10 Distributions After Allowance.

Payments and distributions to each holder of a Contested Claim, to the extent that such Claim ultimately becomes an Allowed Claim, shall be made in accordance with the provisions of the Plan governing the class of Claims to which the respective holder belongs. With respect to any Claim that is a Contested Claim on the Effective

Date, as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Contested Claim becomes a Final Order, the Plan Trustee shall distribute to the holder of such Claim from the Contested Claims Escrow any distribution that would have been distributed to such holder if the Claim had been an Allowed Claim on the Effective Date. The holder of a Contested Claim shall be entitled to interest on the Withheld Distribution Amount at the rate earned on the Contested Claims Escrow from the date such holder of a Contested Claim would have received as a distribution had the Claim been an Allowed Claim as of the Effective Date.

11.11 Distributions After Disallowance.

Any Withheld Distribution Amount in the Contested Claims Escrow after an objection to a Contested Claim has been resolved by Final Order of the Bankruptcy Court shall be distributed in accordance with the provisions of the Plan. The Plan Trustee may and shall rely on an order of the Bankruptcy Court fixing the amount of a Claim or disallowing a Claim. The Plan Trustee shall make no further reserve on account of a Contested Claim that has been disallowed or reduced by the Bankruptcy Court, unless the affected Creditor obtains a stay pending appeal that requires that the Plan Trustee maintain a reserve on account of such Claim. In no event shall the reversal or modification on appeal or reconsideration of a Bankruptcy Court order disallowing a Claim affect the validity or require the disgorgement of any distributions previously made pursuant to the Plan if such Creditor did not obtain a stay pending reconsideration or appeal that required a further or continuous reserve.

11.12 Exculpation and Immunity Regarding Distributions.

The Liquidated Debtor, Plan Trustee, and their representatives, from and after the Effective Date, are hereby exculpated by all Persons, holders of Claims and Interests, entities and parties-in-interest receiving distributions under the Plan from any and all claims, causes of action, and other assertions of liability arising out of the Liquidated Debtor's, Plan Trustee's, and their representatives' discharge of their powers and duties conferred upon them by the Plan or any order of the Bankruptcy Court entered pursuant to or in furtherance of the Plan or applicable law, provided such act was a failure to act in accordance with the terms of the Plan or Plan Documents. No current holder of a Claim or an Interest, and no representative thereof, shall have or pursue any claim or cause of action (a) against the Liquidated Debtor, Plan Trustee, and their representatives for making payments or taking any action in accordance with the Plan or for implementing the provisions of the Plan or (b) against any holder of a Claim for receiving or retaining payments or other distributions as provided for in the Plan.

ARTICLE XII

PROCEDURES FOR RESOLVING AND TREATING CONTESTED AND DISPUTED CLAIMS UNDER THE PLAN

12.1 Objection Deadline.

As soon as practicable, but in no event later than three (3) months after the Effective Date, unless extended by order of the Bankruptcy Court, objections to Claims shall be filed with the Bankruptcy Court and served upon each holder of each Claim to which an objection is filed. Notwithstanding the foregoing sentence, as to any Claim or Interest (or amended Claim or Interest) which is filed after the Effective Date, an objection may be filed on or before three (3) months after the date on which such Claim or Interest (or amended Claim or Interest) is filed.

12.2 Prosecution of Objections.

On and after the Effective Date, except as the Bankruptcy Court may otherwise order, the filing, litigation, settlement, or withdrawal of all objections to Contested Claims may be made by the Liquidated Debtor or the Plan Trustee. Any party-in-interest may seek authority from the Court to file a claim objection(s) upon (i) making written demand on the Liquidated Debtor and the Plan Trustee; (ii) failure to bring such claim objection(s) by the Liquidated Debtor or the Plan Trustee within thirty (30) days of receipt of the written demand; and (iii) upon order of this Court after a hearing and at least twenty (20) days' notice to the Liquidated Debtor, the Plan Trustee, and Master Service List.

ARTICLE XIII

**PROVISIONS REGARDING EXECUTORY CONTRACTS
AND UNEXPIRED LEASES UNDER THE PLAN**

13.1 Rejection.

The Plan constitutes a motion by the Debtor to reject, as of the Effective Date, all executory contracts and unexpired leases of the Debtor that (a) were not assumed prior, (b) are not subject to assumption under the 363 Sale Motion, or (c) were not the subject of any other motion to assume pending on the Confirmation Date.

13.2 Bar to Rejection Claims.

If the rejection of an executory contract or unexpired lease results in a claim for damages by the other party or parties thereto, a Claim for such damages, if not heretofore evidenced by a filed proof of Claim, shall be forever barred and shall not be enforceable against the Debtor, the Liquidated Debtor, or the Trust, or their properties or their agents, successors or assigns, unless a proof of Claim is filed with the Bankruptcy Court and served upon counsel for the Debtor on or before thirty (30) days after the Effective Date.

ARTICLE XIV

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

14.1 Conditions Precedent to the Effective Date.

The occurrence of the Effective Date of the Plan is subject to the occurrence of the following conditions precedent:

- (a) The Trust Agreement has been executed and delivered; and
- (b) The Confirmation Order shall have become a Final Order.

14.2 Waiver of Conditions.

The conditions to the Effective Date may be waived, in whole or in part, by the Debtor, at any time, with notice to all parties on the Master Service List and an order of the Bankruptcy Court. The failure to satisfy or waive any condition may be asserted by the Debtor regardless of the circumstances giving rise to the failure. The failure of the Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

ARTICLE XV

RETENTION OF JURISDICTION

15.1 Scope of Jurisdiction.

Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, pursuant to sections 1334 and 157 of title 28 of the United States Code, the Bankruptcy Court shall retain and have jurisdiction over all matters arising in, arising under, or related to the Bankruptcy Case and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (a) To hear and determine pending motions for the assumption or rejection of Contracts, and the allowance of Claims resulting therefrom.
- (b) To hear and determine any and all adversary proceedings, applications, and contested matters, including any remands of appeals;

- herein;
- (c) To ensure that distributions to holders of Allowed Claims are accomplished as provided herein;
 - (d) To hear and determine any timely objections to or applications concerning Claims or the allowance, classification, priority, estimation, or payment of any Claim or equity Interest;
 - (e) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;
 - (f) To enter and implement such orders as may be necessary or appropriate to execute, interpret, implement, consummate, or enforce the Plan and the transactions contemplated thereunder, the Confirmation Order, any transactions or payments contemplated hereby, or any agreement, instrument, or other document governing or relating to any of the foregoing;
 - (g) To consider any modification of the Plan pursuant to section 1127 of the Bankruptcy Code, and to cure any defect or omission or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
 - (h) To hear and determine all applications for the allowance of Administrative Expenses, including all Fee Applications and Fee Claims and any objections thereto;
 - (i) To hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation, or enforcement of the Plan;
 - (j) To enter and implement orders to take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation or implementation of the Plan, including, without limitation, to issue, administer, and enforce injunctions provided for in the Plan and the Confirmation Order;
 - (k) To recover all assets of the Debtor and property of the estate, wherever located;
 - (l) To hear and determine matters concerning state, local, and federal income taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
 - (m) To hear and determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code that may arise in connection with or related to the Plan;
 - (n) To hear and determine all actions commenced or prosecuted by the Liquidated Debtor or the Plan Trustee pursuant to sections 505, 510, 542-45, 547-50, and 553 of the Bankruptcy Code, collection matters related thereto, and settlements thereof;
 - (o) To hear and determine any disputes concerning Contested Claims;
 - (p) To hear and determine any disputes concerning the validity or priority of Liens against the Collateral securing or purporting to secure any Secured Claim; and
 - (q) To enter a Final Decree closing the Bankruptcy Case.

15.2 Failure of the Bankruptcy Court to Exercise Jurisdiction.

If the Bankruptcy Court abstains from exercising jurisdiction, declines to exercise jurisdiction, or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Bankruptcy Case, including matters set forth in section 15.1 of the Plan, this Article XV shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

ARTICLE XVI

MISCELLANEOUS PROVISIONS

16.1 Setoff and Other Rights.

In the event that the Debtor has a claim of any nature whatsoever against the holder of a Claim, the Debtor, the Liquidated Debtor, or the Plan Trustee may, but are not required to, setoff against the Claim (and any payments or other distributions to be made in respect to such Claim hereunder), subject to the provisions of section 553 of the Bankruptcy Code. Neither the failure to setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor, the Liquidated Debtor, or the Plan Trustee of any claim the Debtor has against the holder of a Claim.

16.2 Discharge.

Except as otherwise expressly provided in the Plan, the rights and treatment afforded in the Plan shall discharge all existing security interests, liens, debts and Claims of any kind, nature, or description whatsoever against the Debtor or any of its assets or properties to the fullest extent permitted by section 1141 of the Bankruptcy Code; upon the Effective Date, all existing Claims against the Debtor shall be, and shall be deemed to be, discharged, and all holders of Claims shall be precluded from asserting against the Debtor, or any of its assets or properties, any other or further Claim based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not such holder filed a proof of Claim. Confirmation of the Plan and the obligations imposed on the Debtor and/or the Liquidated Debtor herein shall be in complete satisfaction, discharge and release of all Claims of any nature whatsoever against the Debtor and/or the Liquidated Debtor or any of its assets or properties; and, upon the Effective Date, the Debtor shall be deemed discharged, and released from any and all Claims, including but not limited to demands and liabilities that arose before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code that arose before the Effective Date, whether or not (a) a proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code, (b) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, or (c) the holder of a Claim based upon such debt has accepted the Plan. Except as provided herein, the Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtor. As provided in section 524 of the Bankruptcy Code, such discharge shall void any judgment against the Debtor at any time obtained, to the extent it relates to a Claim discharged and operates as an injunction against the prosecution of any action against the Debtor, or its property, to the extent it relates to a Claim discharged. The discharge granted herein shall not discharge the Reorganized Debtor from the obligations in the Plan.

16.3 Injunctions.

The Confirmation Order shall contain such temporary and permanent injunctions as may be necessary and appropriate to enable the Debtor, solely through the Trust, to implement and perform under the Plan. Without limiting the generality of the foregoing, such injunctions shall include an absolute prohibition from collecting Claims in any manner other than as provided for in the Plan.

16.4 Injunction Regarding Claims Against the Debtor.

From and after the Confirmation Date, all persons or entities that hold, have held, or may hold Claims against or Interests in the Debtor are permanently restrained and enjoined from, directly or indirectly:

(a) Commencing or continuing in any manner any action or other proceeding of any kind against the Debtor, the Liquidated Debtor or the Assets of the Debtor to collect or recover any property on account of any such Claim or Interest;

(b) Enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order to collect or recover any property on account of any such Claim or Interest against the Debtor, the Liquidated Debtor, or Assets of the Debtor;

(c) *Creating, perfecting, or enforcing any Lien or encumbrance of any kind against the Debtor, the Liquidated Debtor, or the Assets of the Debtor;*

(d) *Asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due the Debtor, the Liquidated Debtor, or the Assets of the Debtor, except as otherwise allowed by the Bankruptcy Court or Bankruptcy Code;*

(e) *Commencing or continuing any action against the Debtor, the Liquidated Debtor, or the Assets of the Debtor in any manner or forum in respect of such Claim or Interest that does not conform to or comply with or that is inconsistent with the Plan; and*

(f) *Taking any action to interfere with the implementation or consummation of the Plan.*

Notwithstanding the foregoing, however, nothing herein shall prohibit any holder of a Claim or Interest from prosecuting a proof of Claim or Interest in the Bankruptcy Case or from enforcing such holder's rights under the Plan.

16.5 Channeling Injunction.

The Bankruptcy Court shall retain exclusive jurisdiction over any case, suit, or proceeding brought on for any claim or cause of action related to the Bankruptcy Case that exists as of the Effective Date against Debtor, Liquidated Debtor, or any Representative for conduct pertaining to Debtor during the Bankruptcy Case and that any entity wishing to bring such case, suit, or proceeding shall do so in the Bankruptcy Court. Additionally, nothing herein shall limit or affect the protections provided Debtor and Liquidated Debtor by sections 524 and 1141 of the Bankruptcy Code.

16.6 Term of Injunction or Stay.

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

16.7 Lawsuits.

Upon entry of the Confirmation Order, all lawsuits, litigation, administrative, police, or regulatory actions, or other proceedings, judicial or administrative, in connection with the assertion of a Claim or Lien against the Debtor or the Representatives or property of the Debtor's estate, shall be subject to the discharge and any other injunctions set forth in the Bankruptcy Code or the Court's Confirmation Order. Such discharge injunctions shall be with prejudice to the assertion of such Claim or Lien in any manner other than as prescribed by the Plan. All parties to any such action shall be enjoined by the Bankruptcy Court in the Confirmation Order from taking any action in violation of the Bankruptcy Code or the Confirmation Order. All lawsuits, litigation, administrative, police, or regulatory actions, or any other proceedings, judicial or administrative, in connection with the assertion of any Claims by the Debtor shall become property for the Plan Trustee to prosecute, settle, or dismiss as the Plan Trustee sees fit.

16.8 Insurance.

Confirmation and consummation of the Plan shall have no effect on insurance policies of the Debtor in which the Debtor is or was the insured party. The Trust shall become the insured party under any such policies without the need of further documentation other than the Plan and entry of the Confirmation Order. *Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering, or delaying coverage on any basis regarding or related to the Debtor's bankruptcy, the Plan, or any provision within the Plan.*

16.9 De Minimis Distributions.

No distribution of less than \$20.00 shall be required to be made to any holder of an Allowed Claim. Such undistributed amount may be retained by the Trust. Such undistributed amount may be retained by the Debtor and distributed in accordance with the Plan.

16.10 Payment of Statutory Fees.

All fees payable pursuant to section 1930 of title 28 of the United States Code shall be paid through the entry of a final decree in the Bankruptcy Case, and the Plan Trustee shall maintain funds sufficient to pay such fees.

16.11 Bankruptcy Restrictions.

From and after the Effective Date, the Trust shall no longer be subject to the restrictions and controls provided by the Bankruptcy Code or Rules (e.g., section 363, 364, Rule 9019, etc.), the Bankruptcy Court, or the United States Trustee's guidelines. The Plan Trustee may, on behalf of the Trust, compromise claims and controversies post-Effective Date without the need of notice or Bankruptcy Court approval for settlements involving payments of \$5,000.00 or less, provided Capital One has approved any such settlement. The Trust may operate the Debtor's business in such manner as is consistent with companies not in bankruptcy without the need of seeking Bankruptcy Court approval with regard to any aspect of the Trust's business. No monthly operating reports will be filed after the Effective Date; however, the Plan Trustee shall provide, until the entry of a final decree, quarterly operating reports or such other financial reports as the U.S. Trustee may reasonably request.

16.12 Binding Effect.

The Plan shall be binding upon and inure to the benefit of the Debtor, the holders of Claims, the holders of Interests, the Liquidated Debtor, and the Plan Trustee, and all of their respective successors and assigns; provided, however, that if the Plan is not confirmed, the Plan shall be deemed null and void and nothing contained herein shall be deemed (a) to constitute a waiver or release of any Claims by the Debtor or any other Person, (b) to prejudice in any manner the rights of the Debtor or any other Person or (c) to constitute any admission by the Debtor or any other Person.

16.13 Governing Law.

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or the law of the jurisdiction of organization of any entity, the laws of the State of Texas shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan or the Bankruptcy Case, including the documents executed pursuant to the Plan.

16.14 Modification of Plan.

Modifications of the Plan may be proposed in writing by the Debtor at any time before the Confirmation Date, provided that (a) the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code and (b) the Debtor shall have complied with section 1125 of the Bankruptcy Code. The Plan may be modified at any time after the Confirmation Date and before substantial consummation by the Debtor, provided that (a) the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, (b) the Bankruptcy Court, after notice and a hearing, confirms the Plan as modified, under section 1129 of the Bankruptcy Code and (c) the circumstances warrant such modifications. A holder of a Claim or equity Interest that has accepted or rejected the Plan shall be deemed to have accepted or rejected, as the case may be, such Plan as modified, unless, within the time fixed by the Bankruptcy Court, such holder changes its previous acceptance or rejection.

16.15 Revocation or Withdrawal of this Plan.

(a) The Debtor reserves the right to revoke or withdraw this Plan at any time prior to the Confirmation Date.

(b) If the Debtor revokes or withdraws the Plan, the Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against

the Debtor or any other Person or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

16.16 Severability.

Should the Bankruptcy Court determine that any provision of the Plan is unenforceable either on its face or as applied to any Claim or Interest or transaction, the Debtor may modify the Plan in accordance with section 16.12 of the Plan so that such provision shall not be applicable to the holder of any Claim or equity Interest. Such a determination of unenforceability shall not (a) limit or affect the enforceability and operative effect of any other provision of the Plan or (b) require the resolicitation of any acceptance or rejection of the Plan.

16.17 Closing the Case.

The Bankruptcy Case shall be closed as soon as practicable after the Effective Date upon the Plan being substantially consummated and upon motion by the Plan Trustee, a final decree shall be entered containing such provisions as may be equitable. The Bankruptcy Court may close the case, but shall retain jurisdiction thereafter to hear and decide all matters specified in section 15.1 of the Plan.

16.18 Breach of Plan by Creditor.

Upon the occurrence of any act or omission by the holder of a Claim or Interest in contravention of a provision within this Plan, the Debtor or Plan Trustee may seek to hold the defaulting party in contempt of the Confirmation Order. If such holder of a Claim or Interest is found to be in contempt under the Plan, such party may be required to pay the reasonable attorneys' fees and costs of the Debtor or Plan Trustee in pursuing such matter. Furthermore, upon the finding of such a contempt by the holder of a Claim or Interest, the Bankruptcy Court may (a) designate a party to appear, sign and/or accept the documents required under the Plan on behalf of such party, in accordance with Rule 70 of the Federal Rules of Civil Procedure, or (b) issue and enter such other order as may be equitable which does not materially alter the terms of the Plan as confirmed.

16.19 Asserting Breach of Plan by Debtor/Trustee.

In the event that the holder of an Allowed Claim or Interest asserts that a default under the Plan has occurred, such person must provide the Debtor and Plan Trustee, and their counsel, with written notice of such default and a reasonable opportunity to cure. If the default asserted in the notice remains uncured on the thirtieth (30th) day from the date on which such notice is received, the holder may pursue any rights or remedies it may have under applicable non-bankruptcy law, whether state, federal, or otherwise, including in the Bankruptcy Court. Provided, however, nothing contained herein precludes such holder from seeking equitable relief in the form of an injunction if circumstances warrant.

DATED: January 6, 2017
Dallas, Texas

Frymire Services, Inc.

By: *[pending Court approval]*
Read Frymire

Its: President

PLAN EXHIBIT 1

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COUNSEL FOR DEBTOR
AND DEBTOR-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE: §
§
FRYMIRE SERVICES, INC., § **Case No. 16-32814-11**
§
DEBTOR. § **Chapter 11**

PLAN TRUST AGREEMENT

The parties to this Plan Trust Agreement (the “Trust Agreement”) are the holders of claims and interests (the “Claimants”) under the terms of the Plan of Liquidation Under Chapter 11 of the Bankruptcy Code and Disclosure Statement (the “Plan”) confirmed by the United States Bankruptcy Court for the Northern District of Texas, Dallas Division in Case Number 16-32814-11, styled *In re Frymire Services, Inc.* (the “Debtor”) and the Plan Trustee for the Trust as defined in the Plan.

The purpose of the Trust is to administer the assets to be contributed to the Trust pursuant to the Plan. The Trustee shall operate and oversee the operations of the assets and provide an orderly conversion of the real and personal property of the estate to cash to maximize value for the Claimants. Operation and oversight shall include, but is not limited to, payment of expenses, preparation of tax returns, payment of taxes, sale of property, collection of payments and rents, prosecution and defense of all pending litigation that has been transferred to the Trust, and prosecution of claims retained in the Plan and transferred to this Trust. The Trustee shall distribute proceeds to the Claimants in accordance with the terms of the Plan and the Trust Agreement.

WITNESSETH

WHEREAS, pursuant to the terms of the Plan, the Debtor will, among other things, take all necessary action to transfer all of the Trust Property, as defined below, to the Trust; and

PLAN EXHIBIT 1

WHEREAS, in order to fulfill the requirements of the Plan, the assets of the Trust are to be administered by the Trustee pursuant to the Plan as herein provided; and

WHEREAS, the Claimants in all classes of Claims and Interests under the Plan are deemed to have ratified and accepted the terms of this Agreement as though they were actual signatory parties hereto; and

WHEREAS, the Trustee has consented to act as trustee hereunder upon the terms and conditions hereinafter set forth and shall evidence such consent by executing a copy of this agreement promptly on the Effective Date.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and undertakings herein contained, to be kept and performed by the several parties hereto, and to further the provisions of the Plan, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I

DEFINITIONS

1.1 “Administrative Expense” shall mean any cost or expense of administration of the Bankruptcy Case incurred on or before the Effective Date entitled to priority under section 507(a)(1) and allowed under section 503(b) of the Bankruptcy Code, including Fee Claims and all other claims for compensation or reimbursement of expenses to the extent allowed by the Bankruptcy Court under the Bankruptcy Code, and all fees and charges assessed against the Debtor’s estate under chapter 123 of Title 28 of the United States Code.

1.2 “Agreement” or “Trust Agreement” or “Plan Trust Agreement” shall mean this Trust Agreement.

1.3 “Allowance Date” means the date on which a Claim becomes an Allowed Claim.

1.4 “Allowed” when used with respect to any Claim, except for a Claim that is an Administrative Expense, shall mean (1) such Claim to the extent it is not a Contested Claim; (2) such Claim to the extent it may be set forth pursuant to any stipulation or agreement that has been approved by Final Order; or (3) a Contested Claim, proof of which was timely filed with the Bankruptcy Court and (a) as to which no objection was filed by the Objection Deadline, unless such Claim is to be determined in a forum other than the Bankruptcy Court, in which case such Claim shall not become Allowed until determined by Final Order of such other forum and Allowed by Final Order of the Bankruptcy Court, or (b) as to which an objection was filed by the Objection Deadline, to the extent Allowed by Final Order.

1.5 “Assets” means, with respect to the Debtor, all of the right, title, and interest in and to property of whatsoever type or nature owned by the Debtor as of the Petition Date, together with property subsequently acquired by the Debtor (including any recoveries arising from any restitution order), and including, but not limited to, the Estate Actions, and all other property defined in section 541 of the Bankruptcy Code, any proceeds derived therefrom, the available insurance or insurance policies, or any right, claim or cause of action of the estate including without limitation any asset wherever located or pursued.

PLAN EXHIBIT 1

1.6 “Bankruptcy Case” shall mean the cases commenced under, or converted to, chapter 11 of the Bankruptcy Code by the Debtor under the Case No. 16-32814-11.

1.7 “Bankruptcy Code” shall mean the Bankruptcy Reform Act of 1978, as amended, and codified at title 11 of the United States Code.

1.8 “Bankruptcy Court” or “Court” shall mean the Bankruptcy Court unit of the United States District Court for the Northern District of Texas, Dallas Division, or such other court having jurisdiction over the Bankruptcy Case.

1.9 “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure, as prescribed by the United States Supreme Court pursuant to section 2075 of title 28 of the United States Code.

1.10 “Beneficiaries” shall mean those certain holders of unpaid Allowed Administrative Expense and Allowed Claims and Interests in Classes 1 - 4 under the Plan for whom the Trust is created.

1.11 “Business Day” shall mean any day that is not a Saturday, Sunday, or one of the legal holidays listed in Bankruptcy Rule 9006(a).

1.12 “Capital One” shall mean Capital One, NA.

1.13 “Cash” shall mean legal tender of the United States of America or Cash equivalents.

1.14 “Claim” shall have the meaning as set out in section 101 of the Bankruptcy Code.

1.15 “Collateral” shall mean any property of the Debtor subject to a valid and enforceable Lien to secure the payment of a Claim.

1.16 “Confirmation Hearing” shall mean the hearing held by the Bankruptcy Court pursuant to Bankruptcy Code section 1128, scheduled for _____, 2017 at _____ .m. Central Prevailing Time, and as it may be continued from time to time, on confirmation of the Plan. Unless expressly stated otherwise in the Plan, all references to the Confirmation Hearing or the date of the Confirmation Hearing shall mean the date the Confirmation Hearing commences.

1.17 “Confirmation Order” shall mean the order of the Bankruptcy Court confirming this Plan.

1.18 “Contested” when used with respect to a Claim, shall mean a Claim against the Debtor (1) that is listed in the Debtor’s Schedules as disputed, contingent, or unliquidated, regardless of whether a proof of claim has been filed or not; (2) that is listed in the Debtor’s Schedules as undisputed, liquidated, and not contingent and as to which a proof of claim has been filed with the Bankruptcy Court, to the extent the proof of Claim exceeds the scheduled amount; (3) that is not listed in the Debtor’s Schedules, but as to which a Proof of Claim has been filed with the Bankruptcy Court; or (4) as to which an objection has been filed.

PLAN EXHIBIT 1

Notwithstanding the foregoing, after the Objection Deadline, only (a) Claims to which an Objection has been filed, including but not limited to Claims listed on the Debtor's Schedules, and (b) Claims that were not timely filed shall be deemed Contested Claims with respect to Claims for which a proof of Claim has been filed.

1.19 "Contested Claims Escrow" shall mean an escrow account created by the Plan Trustee as described in section 11.9 of the Plan.

1.20 "Debtor" shall mean Frymire Services, Inc.

1.21 "Disallowed" when used with respect to a Claim, shall mean a Claim that has been disallowed by Final Order.

1.22 "Disclosure Statement" shall mean the Debtor's Disclosure Statement under 11 U.S.C. § 1125 in support of the Debtor's Plan of Liquidation, dated January 6, 2017, either in its present form or as it may be hereafter be altered, amended, or modified from time to time.

1.23 "Effective Date" shall mean a Business Day selected by the Debtor after both (i) the Confirmation Order has become a Final Order and is not stayed, and (ii) all conditions to the effectiveness of the Plan have been satisfied or waived as provided in Article XIV of the Plan. Unless the Court orders otherwise upon cause shown, in no event shall the Effective Date be later than thirty (30) days after the Confirmation Order has become a Final Order.

1.24 "Estate Actions" shall mean any and all claims, causes of action and enforceable rights of the Debtor against third parties, or assertable by the Debtor on behalf of its creditors or the estate, whether brought in the Bankruptcy Court or any other forum for recovery or avoidance, that has not been settled or resolved as of the Effective Date, with respect to:

(a) Obligations, transfers of property or interests in property, offsets, debt forgiveness, Cash, and other types or kinds of property or interests in property or the value thereof, recoverable or avoidable pursuant to Chapter 5 or other sections of the Bankruptcy Code or any applicable law;

(b) Damages, general or statutory or exemplary (or all) or other relief, including but not limited to actions relating to or based upon—

(i) indebtedness owing to Debtor, (ii) fraud, negligence, gross negligence, willful injury or misconduct, acts or malice, or any other tort actions, including but not limited to defamation, malicious prosecution, or tortious interference with contract, (iii) breaches of contract, (iv) violations of federal or state securities laws, (v) violations of applicable corporate laws, (vi) breaches of fiduciary or agency duties, (vii) causes of action based on disregard of the corporate form or piercing the corporate veil or other liability theories, (viii) any theory of recovery against a lending institution for any action causing harm to the Debtor, (ix) equitable or legal subordination, or (x) any other action listed in Bankruptcy Rule 7001;

PLAN EXHIBIT 1

(c) Damages or other relief based upon any other claim of Debtor to the extent not specifically compromised or released pursuant to this Plan or an agreement referred to, or incorporated into, this Plan;

(d) Insurance claims; and

(e) Any and all litigation and causes of action listed or referenced in the Schedules, the Disclosure Statement, the Plan, or any schedules or attachments thereto.

1.25 “Fee Claim” shall mean a Claim against the Debtor under section 330, 331, or 503 of the Bankruptcy Code for allowance of compensation and reimbursement of expenses in the Chapter 11 case.

1.26 “Final Order” shall mean (1) an order as to which the time to appeal, petition for certiorari or move for reargument, rehearing, reconsideration, new trial, or to alter or amend findings or judgment has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument, rehearing, reconsideration, new trial, or to alter or amend findings or judgment shall then be pending or (2) in the event that an appeal, writ of certiorari, reargument, rehearing, reconsideration, new trial, or motion to alter or amend findings or judgment thereof has been sought, such order shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied or from which reargument, rehearing, reconsideration, new trial, or motion to alter or amend findings or judgment was sought, and the time to take any further appeal, petition for certiorari or move for reargument, rehearing, reconsideration, new trial, or to alter or amend findings or judgment shall have expired, provided, however that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure may be filed with respect to such order.

1.27 “General Unsecured Claim” shall mean any Claim against the Debtor that is not a Priority Unsecured Claim, a Secured Claim, an Administrative Expense, a Penalty Claim, a Disallowed Claim, or a Subordinated Claim.

1.28 “Interest” shall mean any “equity security” as defined in section 101(16) of the Bankruptcy Code.

1.29 “Lien” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

1.30 “Liquidated Debtor” shall mean the Debtor, as Liquidated on and after the Effective Date.

1.31 “Objection Deadline” shall mean the date by which objections to Claims shall be filed with the Bankruptcy Court and served upon the respective holders of each of the Claims as provided in Article XII of the Plan.

PLAN EXHIBIT 1

1.32 “Penalty Claim” shall mean Claims for penalties or punitive damages, including Claims denominated as "interest" or "liquidated damages" that the Bankruptcy Court determines to be punitive in nature.

1.33 “Petition Date” shall mean July 15, 2016 for Debtor Frymire Services, Inc., constituting the entry of orders for relief under Chapter 11 of the Bankruptcy Code.

1.34 “Plan” shall mean the Plan of Liquidation Under Chapter 11 of the Bankruptcy Code confirmed by the United States Bankruptcy Court for the Northern District of Texas, Dallas division, in case number 16-32814-11, styled *In re Frymire Services, Inc.*, in its present form or as it may hereafter be altered, amended or modified from time to time, which is incorporated by reference herein. All terms that are used herein and that are defined in the Plan shall have the same meaning herein as in the Plan. In the case of any inconsistency between the terms of this Agreement and the terms of the Plan, the terms of the Plan shall govern and control.

1.35 “Plan Documents” shall mean the Plan, Disclosure Statement and other documents that aid in effectuating the Plan as specifically identified as such herein or as attached as exhibits hereto, which will be substantially in the respective forms filed by the Debtor with the Bankruptcy Court prior to the conclusion of the Confirmation Hearing.

1.36 “Priority Unsecured Claim” shall mean any Claim (other than an Administrative Expense) to the extent entitled to priority in payment under section 507(a) of the Bankruptcy Code, not including priority tax Claims.

1.37 “Professional Person” shall mean any person retained or to be compensated pursuant to section 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code.

1.38 “Representatives” shall mean any principal, agent, responsible party, officer, director, shareholder, financial advisor, attorney, accountant, or other professional persons of the Debtor, including but not limited to Mark A. Castillo, Joshua L. Shepherd, Bryan C. Assink, and Curtis | Castillo PC, and any of his, its, or their employees, attorneys, accountants, professionals, assistants, or contractors.

1.39 “Schedules” shall mean the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor as required by section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules and statements have been or may be supplemented or amended.

1.40 “Secured Claim” shall mean a prepetition Claim against the Debtor secured by a Lien on property of the Debtor, which Lien is valid, perfected, and enforceable under applicable law, is not subject to avoidance under the Bankruptcy Code or other applicable non-bankruptcy law, and is duly established in the Bankruptcy Case, but only to the extent of the value of the Collateral that secures payment of such Claim.

1.41 “Subordinated Claim” shall mean any Claim against the Debtor (1) subordinated by contract or by order of the Bankruptcy Court to the right of payment of General Unsecured Claims (2) that would be paid pursuant to Bankruptcy Code section 726(a)(2)(c), (a)(3), (a)(4) or (a)(5), if these Bankruptcy Case were cases under chapter 7 of the Bankruptcy Code.

PLAN EXHIBIT 1

1.42 “Trust” or “Plan Trust” shall mean the Frymire Liquidating Trust established pursuant to the terms of this Trust Agreement and Article VI of the Plan.

1.43 “Trustee” or “Plan Trustee” shall mean the individual designated in Section 5.1 below (or the duly appointed replacement or successor).

1.44 “Trust Estate” or “Trust Property” or “Trust Assets” shall mean all property had from time to time by the Trustee for the Trust.

ARTICLE II

CREATION AND ADMINISTRATION OF THE TRUST ESTATE

2.2 Establishment of the Trust.

(a) On the Effective Date, the Trustee shall execute the Trust Agreement and the Trust shall be created for the purpose of liquidating the Trust Assets for the benefit of the Creditors and satisfying Claims consistent with the Plan. From and after the Effective Date, the Trust shall exist and manage the Debtor’s Assets that are transferred to the Trust. The Debtor shall execute any documents or other instruments as may be necessary to cause title to the Trust Assets to be transferred to the Trust; however, notwithstanding the execution of such documents, title to the Trust Property will automatically vest in the Trust on the Effective Date.

(b) The Trust shall be entitled and authorized to engage in the conduct of the trade or business of the Debtor solely to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Trust. Subject to the Bankruptcy Court’s approval, the Plan Trustee shall be named in the Confirmation Order and shall be disclosed prior to the Confirmation Hearing. The Plan Trustee shall receive any and all assets coming into or becoming a part of the Trust and disburse the proceeds from revenues realized from the operation, lease, assignment, sale or other similar transaction involving the property constituting the Trust consistent with the terms of this Plan. The Beneficiaries of the Trust will be treated as the grantors and deemed owners of the Trust. The Plan Trustee will be entitled to file federal income tax returns for the Trust as a grantor trust pursuant to section 1.671-4(a) of the Federal Income Tax Regulations, unless the Plan Trustee determines that filing such federal income tax return violates applicable law, regulation, statute, or Revenue ruling.

(c) From and after the Effective Date, the Trust shall exist and manage the Trust Assets. The Debtor shall continue to exist to the extent necessary to consummate the Plan. However, upon the Effective Date, all current officers and directors shall be deemed to have resigned, and the Plan Trustee (or the Trustee’s designee, which shall not be an Affiliate of, nor affiliated with, the Debtor prior to the Effective Date) shall become the Chief Executive Officer and sole director of the Debtor. All Professional Persons employed by the Debtor, and not previously discharged, shall be discharged upon the Effective Date except to the extent necessary to file and prosecute their final fee applications.

(d) The Trust shall be known as the “Frymire Liquidating Trust.” The Trust may do business under any name the Plan Trustee deems advisable and is appropriate.

PLAN EXHIBIT 1**2.3 Funding of the Trust**

To fund the Trust, by operation of the Confirmation Order, the Plan Trustee shall be in possession of and have title to all Trust Assets as of the Effective Date, including any unsold equipment, cash, bank deposits, certificates of deposit, inventory, furniture, fixtures, equipment, real property, rights, contracts, claims and causes of action, garnishments, and all documents evidencing and relating to the ownership of estate property. The conveyances of all Trust Assets shall be accomplished pursuant to the Plan and the Confirmation Order and shall be effective upon the Effective Date, without the need of further documentation or instruments of conveyance, other than the Plan and the Confirmation Order. Upon the Effective Date, the Trust shall also be deemed to have taken (a) an assignment of all Estate Actions, and (b) an assignment, bill of sale, deed and/or release covering all remaining Trust Assets. The Plan Trustee may present such orders as may be necessary to require third parties to accept and acknowledge such conveyance to the Trust. Such orders may be presented without further notice other than as has been given in this Plan. The Beneficiaries of the Trust shall be holders of Allowed Claims and Interests in accordance with this Plan.

2.4 Property of the Trust Estate.

(a) On the Effective Date, the Debtor will be deemed to have transferred pursuant to 11 U.S.C. § 363(f) all of the Debtor's right, title and interest in and to all Trust Assets to the Trust, free and clear of all Claims, Liens, charges, other encumbrances, and interests, including without limitation all of the Debtor's claims, causes of action, and rights to relief, and all Cash in the Debtor's DIP account.

(b) Proceeds of any litigation conducted by the Trustee will be added to the assets of the Trust and will be considered Trust Property.

(c) The Plan Trustee shall retain the exclusive right to prosecute, settle, or compromise any Estate Action vested in such Trust under the Plan and the Plan Trustee shall be the representative of the Trust for such purposes. To the extent any Estate Action is not transferable by the Debtor to the Trust under applicable law, the Debtor shall retain such Estate Action and the Plan Trustee shall be entitled to prosecute such Estate Action for the benefit of the Trust and shall deliver the proceeds of such Estate Actions to the Trust upon receipt. The Trust shall also retain and may prosecute and enforce all defenses, counterclaims, and rights that have been asserted or could be asserted by the Debtor against or with respect to all Claims asserted against the Debtor or property of the Debtor's estate.

(d) No claim, right, cause of action, Estate Action, or other asset shall be deemed waived or otherwise forfeited by virtue of the Debtor's failure to identify such property in the Debtor's Schedules or the Disclosure Statement accompanying the Plan unless otherwise ordered by the Bankruptcy Court.

2.5 Authority of the Trustee.

The Trustee shall have the power and authority to perform the following acts:

(a) Perfect and secure his right, title, and interest to any and all Trust Property;

PLAN EXHIBIT 1

- (b) Reduce all of the Trust Property to his possession and conserve, protect, collect, and liquidate or otherwise convert all Trust Property into Cash;
- (c) Distribute the net proceeds of Trust Property as specified herein;
- (d) Release, convey, or assign any right, title, or interest in or to the Trust Property;
- (e) Pay and discharge any costs, expenses, fees, or obligations deemed necessary to preserve the Trust Property or any part thereof or to preserve the Trust;
- (f) Purchase insurance as is necessary for ongoing operations to insure and protect Trust Property, and/or to protect the Trust and the Trustee from liability;
- (g) Deposit Trust funds and draw checks and make disbursements thereof;
- (h) Employ such attorneys, accountants, engineers, agents, tax specialists, other professionals, and clerical assistance as the Trustee may deem necessary. The Trustee shall be entitled to rely upon the advice of retained professionals and shall not be liable for any action taken in reliance on such advice. The fees and expenses of all such professionals shall be charged as expenses of the Trust and be shall paid upon approval of the Trustee;
- (i) Employ brokers, investment brokers, sales representatives, agents, or other persons necessary to manage the Trust Property;
- (j) Exercise any and all powers granted to the Trustee by any agreements or by common law or any statute that serves to increase the extent of the powers granted to the Trustee under the Agreement;
- (k) Take any action required or permitted by the Plan;
- (l) Engage in and carry on any business or undertaking and enter into any partnership with any person, firm, corporation, or any trustee under any other trust;
- (m) Execute obligations, whether negotiable or non-negotiable;
- (n) Sue and be sued;
- (o) Settle, compromise, or adjust by arbitration or otherwise any disputes or controversies in favor of or against the Trust;
- (p) Waive or release rights of any kind;
- (q) Appoint, remove, and act through agents, managers, and employees, and confer upon them such power and authority as may be necessary or advisable;
- (r) Negotiate, renegotiate, or enter into any contracts or agreements binding the Trust, and execute, acknowledge, and deliver any and all investments that are necessary,

PLAN EXHIBIT 1

required, or deemed by the Trustee to be advisable in connection with the performance of his or her duties;

(s) Institute and prosecute all Estate Actions on behalf of the Trust and prosecute or defend all appeals on behalf of the Estate or the Trust;

(t) In general, without in any manner limiting any of the foregoing, deal with the Trust Property or any part or parts thereof in all other ways as would be lawful for any person owing the same to deal therewith, whether similar to or different from the ways above specified, at any time or times hereafter;

(u) The Trustee will be a representative of the Debtor's estate pursuant to Bankruptcy Code section 1123(b)(3) and as such will have the power to prosecute all Estate Actions in the name of the Trust or, as necessary, in the name of the Debtor. Additionally, the Trustee will have power to (1) do all acts contemplated by the Plan to be done by the Trustee and (2) do all other acts that may be necessary or appropriate for the final liquidation and distribution of the Trust Property;

(v) The Trustee will review all Claims made against the Creditors in Classes 1 through 4 and, as set forth herein or in the Plan, shall have the right to object to same;

(w) The Trustee shall be responsible for filing a post-confirmation report with the Bankruptcy Court;

(x) The Trust shall exist after the Effective Date, with all the powers of a trust under applicable law in the jurisdiction in which it was formed;

(y) The Trust shall execute and consummate such assignments, purchase agreements, bills of sale, operating agreements, conveyance documents, and all other transaction documents, contracts, agreements, and instruments as are necessary to implement and consummate the transactions required under or in connection with the Plan on and after the Effective Date; and

(z) Take such other actions, as may be necessary or helpful to consummate the Plan.

2.6 Other Powers.

(a) The enumeration herein of the particular powers shall not be construed to limit or exclude any powers that the Trustee would otherwise have under the Agreement or be entitled to exercise as the absolute owner of the Trust Estate.

(b) The Plan Trustee shall have such other or additional powers as may be vested in or assumed by the Plan Trustee pursuant to the Plan or Bankruptcy Court order or as may be necessary and proper to carry out the provisions of the Plan and the liquidating purposes of the Trust. The Plan Trustee shall exercise such powers in accordance with the provisions of the Plan. The Plan Trustee shall not be required to obtain the approval of the Capital One for day-to-day activities of the Trust, including resolution of issues under \$5,000.00.

PLAN EXHIBIT 1

2.7 Duties of the Trustee

During the term of the Plan, the Trustee shall:

(a) Keep or cause to be kept books containing a description of all property from time to time constituting the estate and an accounting of all receipts and disbursements of Trust property or the proceeds thereof;

(b) Prepare and file quarterly reports in reasonable detail showing all assets received, expended, disbursed, and otherwise administered by the Plan Trustee, and all other assets remaining to be administered;

(c) Maintain insurance for full value with extended coverage at all times with respect to all insurable personal property of the Debtor, now existing or hereafter acquired, against risks of fire, theft, and other risks as Capital One may deem appropriate or as the Court has directed;

(d) Permit access by the Debtor, Capital One, or any Person designated by the Court to all records maintained by the Plan Trustee during business hours; and

(e) Provide the holders of interests in the Plan Trust with valuations of the property transferred to the Plan Trust. Such valuations will be used for all federal income tax purposes.

2.8 Nominee Only.

The Trustee shall have full power to cause any non-Cash Asset of the Trust Estate to be transferred into his own name or into the names of his nominees; provided, however, that, his interest hereunder is that of Trustee only, and he assumes no liability or entitlement or rights as owner.

2.9 Agents.

The Trustee in his discretion may appoint an agent or agents to hold the Trust Estate. The Trustee may at any time and in his discretion revoke the authority of any such agent and may appoint another.

2.10 Limitations on Trustee's Power.

The Plan Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of the Plan Trust, except that the Plan Trustee may deal with the Trust Assets for its own account as permitted by the Plan and this Agreement.

Any business decision that involves more than \$5,000 in a capital expenditure will require the approval of Capital One.

PLAN EXHIBIT 1

2.11 No Bond Required.

The Trustee will not be required to post bond or be audited or monitored except as otherwise provided in the Plan or the Agreement.

2.12 Effectuating Documents; Further Transactions.

On the Effective Date, the Trust, the Trustee, and the employees, agents, attorneys, and professionals of the Trust shall be authorized and directed, without further Order of the Bankruptcy Court, to execute, deliver, file, and record all agreements, instruments, and contracts, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions and consummate the Plan or to otherwise comply with applicable law.

2.13 Assertion of Causes of Action, Defenses, and Counterclaims.

Except as otherwise provided in the Plan, the Confirmation Order, or in any contract, instrument, release, indenture, or other agreement entered into in connection with the Plan and in accordance with section 1123(b)(3) of the Bankruptcy Code, the Debtor shall transfer all Estate Actions to the Trust. The Trust shall retain the exclusive right to prosecute, settle, or compromise any Estate Action vested in it under the Plan and the Agreement.

ARTICLE III

DEPOSITS AND DISTRIBUTIONS FROM THE TRUST

3.1 Trustee to Liquidate All Assets and Distribute Proceeds

The Plan Trustee shall sell, transfer, assign, convey, lease, use, or otherwise liquidate all property of the Trust, and use the proceeds thereof to pay (a) the Trust's administrative costs and expenses and (b) Allowed Administrative Expenses and Allowed Claims in Classes 1 - 4 as designated within the Plan, unless the Plan Trustee deems any asset to be of inconsequential value or burdensome to the Trust. Further, the Plan Trustee may abandon any other asset upon approval by Capital One. The proceeds of such liquidation shall be distributed as provided in the Plan. Further, the proceeds of such liquidation shall, to the extent possible, be distributed in the same taxable year in which received or obtained by the Trust; provided, however, that the Trust may retain an amount of such funds as may be reasonably necessary to maintain the value of the Trust Assets or to meet claims and contingent liabilities (including disputed claims) and U.S. Trustee fees. The Plan Trustee's efforts to liquidate the Trust Assets shall be continual so that it may make timely distribution and will not unduly prolong the duration of the Trust.

3.2 Distributable Cash; Investment.

The Trustee shall collect all funds constituting Trust Property and, pending distribution, shall deposit such funds so that they are adequately insured. Notwithstanding the foregoing, the Trustee may invest all Cash funds received into the Trust (including any earnings thereon or proceeds therefrom) in the same manner required of chapter 7 trustees pursuant to the United States Trustee Guidelines, provided that the Trustee shall invest funds held in only demand and time deposits in banks or savings institutions or other temporary, liquid, and low-risk

PLAN EXHIBIT 1

investments, such as Treasury bills. The Trustee shall hold all such funds until they are distributed pursuant to the Plan to Creditors with Allowed Claims.

3.3 Timing and Manner of Distributions.

Any Distributions and deliveries to be made under the Plan shall be made, as provided in the Plan, and/or as the Bankruptcy Court may order.

3.4 Distributions to be Pro Rata Within a Class.

Except as otherwise provided in the Plan, all distributions constituting a partial payment to Holders of Allowed Claims or Interests within a specific Class shall be made on a pro rata basis to the Holders of Allowed Claims or Interests in such Class.

3.5 Means of Cash Payment.

Cash payments made pursuant to the Plan shall be in U.S. funds, by check drawn on a domestic bank, or, at the Plan Trustee's option, by wire transfer from a domestic bank, except that payments made to foreign creditors holding Allowed Claims may be paid in such funds and by such means as are customary or as may be necessary in a particular foreign jurisdiction.

3.6 Delivery of Distributions.

Distributions shall be made as set forth in the Plan.

3.7 Unclaimed Property.

Any Distributions that become unclaimed property shall be retained by the Trust free and clear of any claims or restrictions, and any entitlement of any holder of any Claim or Interest to such Distributions shall be extinguished and forever barred. Unclaimed property shall be deposited into a pool for redistribution to other Holders of Allowed Claims or Interests in the same Class as the intended recipient of the unclaimed property.

ARTICLE IV

THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

4.1 Parties Dealing with the Trustee.

As to any party dealing with the Trustee in any manner whatsoever in relation to the Trust Estate and any related litigation, the power of the Trustee to act or otherwise deal with said parties and Claims shall be absolute.

Any creditor, including Capital One, shall have the right to deal with the Trust upon such terms and conditions as would be extended to a third party, provided that, if Capital One is a party to any such transaction, Capital One may not vote on the transaction.

PLAN EXHIBIT 1

4.2 Recourse against Trustee, Trust, and Representatives.

Outside of the Bankruptcy Court, no recourse shall ever be had, directly or indirectly, against the Trustee personally, any member or representative of Capital One, or against any agent or employee of the Trustee or Capital One by legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge, note, or upon any promise, contract instrument, undertaking, obligation, covenant, or agreement whatsoever executed by the Trustee under this Agreement.

4.3 Limitation of Trustee's Liability.

The Trustee shall not be liable for actions taken or omitted in his capacity as the Trustee, except those acts arising out of his own willful fraud or misconduct or gross negligence. Anything herein to the contrary notwithstanding, in exercising the rights granted hereunder, the Trustee, in his capacity as Trustee shall assume liability for and the obligations to make the distributions required to be made under the Plan. The Trustee shall exercise his best judgment to the end that the affairs of the Trust shall be properly managed and the interests of the Beneficiaries safeguarded, and in acting on such matters, will likewise exercise his best judgment.

4.4 Indemnification.

The Trust shall, to the fullest extent permitted by the laws of the state of Texas, indemnify and hold harmless the officers, directors, agents, representatives, attorneys, professionals, and employees of the Trust (each an "Indemnified Party") from and against any and all liabilities, losses, damages, claims, costs, and expenses, including but not limited to attorneys' fees and costs, arising out of or due to their actions or omissions with respect to the Trust or the implementation or administration of the Plan, if the Indemnified Party acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe its conduct was unlawful. The Trustee shall be entitled to indemnification and reimbursement for all losses, fees, and expenses in defending any and all of his actions or inactions in his capacity as the Trustee, except for any actions or inactions involving his own fraud, willful misconduct, or gross negligence. Any indemnification claim of the Trustee shall be satisfied from the assets of the Trust.

4.5 Release.

The Trustee will be released by the Trust for all obligations and liabilities of the Debtor and the Trust, save and except for those duties and obligations of the Trustee set forth in the Plan and those attributable to the fraud, willful misconduct, or gross negligence of the Trustee.

PLAN EXHIBIT 1

ARTICLE V

SELECTION, REMOVAL AND COMPENSATION OF THE TRUSTEE

5.1 Management.

The initial Trustee will be _____ [to be identified in the Confirmation Order]. The Trustee will serve from and after the Effective Date until (i) the Trust terminates or (ii) his or her successor is duly elected or appointed.

5.2 Compensation of Trustee and Compensation and Retention of Professionals.

The Trustee will be compensated for services provided at a rate of no more than \$250.00 per hour for his services. The Trustee will serve from and after the Effective Date until his successor is duly elected or appointed.

The Trustee may retain Professionals to aid in the administration of the Trust Estate. Professionals retained by the Trust shall be entitled to reasonable compensation for services rendered and reimbursement of expenses incurred. The payment of the fees and expenses of Trust-retained professionals shall be made subject to the interim compensation procedures established under the Court's order at Docket 94.

5.3 Dismissal.

Capital One may petition the Bankruptcy Court to dismiss the Plan Trustee for cause as outlined in section 324 of the Bankruptcy Code at any time and may thereafter name a successor Plan Trustee.

5.4 Death or Resignation.

The Plan Trustee may resign at any time by giving written notice of his intention to do so filed with the Bankruptcy Court and addressed to Capital One and Capital One counsel, and such resignation shall be effective upon the date and time provided in an instrument in writing, signed and acknowledged by the Capital One and delivered to the resigning Plan Trustee, which instrument shall also name the successor Plan Trustee. In the case of the death or resignation of the Trustee, a successor Trustee shall thereafter be appointed by Capital One, whereupon such resigning Trustee shall convey, transfer, and set over to such successor Trustee, all of the Trust Property then un conveyed or otherwise undisposed of and all other assets then in his possession and held under the Plan or the Trust Agreement (by appropriate instrument or instruments). Without further act, deed, or conveyance, a successor Trustee shall be vested with all the rights, privileges, powers, and duties of the Trustee, except that the successor Trustee shall not be liable for the acts or omissions of his predecessor(s). Each succeeding Trustee may in like manner resign and another may in like manner be appointed in his place. Capital One has the right to petition the Bankruptcy Court to remove the Trustee for cause as outlined in section 324 of the Bankruptcy Code and Section 10.6 of the Plan.

PLAN EXHIBIT 1

ARTICLE VI

MAINTENANCE OF RECORDS AND REPORTING DUTIES

6.1 Maintenance and Control of Books and Records.

On and after the Effective Date, the Plan Trustee shall have complete and exclusive access to, and control of, all books and records of the Debtor. Upon written request, the Debtor, any management personnel, brokers, appraisers, and other professionals shall immediately surrender all such books and records to the Plan Trustee on the Effective Date.

The Trustee shall maintain books containing a description of all property from time to time constituting the Trust Estate and an accounting of receipts and disbursements. Said books shall be opened to inspection by any Beneficiary at any reasonable time during business hours. The Trustee shall furnish to the Beneficiaries upon written request an annual statement of receipts and disbursements for the Trust.

6.2 Budgets; Cash Reports.

Within thirty (30) days of the Effective Date, the Trustee will prepare and submit to Capital One a proposed budget for the period from the Effective Date through December 31, 2017. The Trustee will prepare and submit to Capital One a proposed quarterly budget. The budget will include proposed projected expenses, proposed projected revenues, and a proposed operating reserve. The Trust, the Trustee, and Capital One will operate within the approved budgets as they may be modified with the consent of Capital One. Upon the reasonable request of Capital One, the Trustee will prepare and submit to Capital One reports on available Cash in the Trust.

6.3 Reporting Duties.

Thirty (30) days after the end of each calendar quarter of the Trust and thirty (30) days after termination of the Trust, the Trustee will file with the Bankruptcy Court an un-audited written report and account showing (i) the assets and liabilities of the Trust at the end of such quarter or upon termination, (ii) any changes in the Trust Property that have not been previously reported, and (iii) any material action taken by the Trustee in the performance of its duties under the Trust and under the Plan that has not been previously reported. The form of such reports also shall substantially comply with the post-Confirmation reports required by the Office of the United States Trustee for the Northern District of Texas.

ARTICLE VII

DURATION OF TRUST

7.1 Duration.

The Trust shall become effective upon the Effective Date. Thereupon, the Trust shall remain and continue in full force and effect until the Trust Property has been wholly converted to Cash or abandoned, all costs, expenses, and obligations incurred in administering the Trust have

PLAN EXHIBIT 1

been fully paid, and all remaining income and proceeds of the Trust Property have been distributed in payment of Allowed Claims and, if applicable, Allowed Interests pursuant to the provisions of the Plan. The Trust shall in no event remain in existence for longer than one (1) year; provided, however, that upon approval of the Bankruptcy Court and upon a finding that an extension of such one-year term, or any prior extension thereof, is necessary to the liquidating purpose of the Trust, the term of the Trust may be extended for a finite term of no more than six (6) months based on the particular facts and circumstances, and each extension must be approved by the Bankruptcy Court within thirty (30) days of the beginning of the extended term. Upon the occurrence of the termination of the Trust, the Plan Trustee shall file with the Bankruptcy Court a report thereof, seeking an order discharging the Plan Trustee and providing such injunctive relief required with respect to Claims that are discharged, and provide notice thereof to all Creditors whose Claims were not paid in full pursuant to the Plan.

ARTICLE VIII**TAX TREATMENT****8.1 Tax Treatment of the Trust.**

It is intended that the Trust will be treated as a liquidating trust described in Treasury Regulations Section 301.7701-4 and as a grantor trust subject to the provisions of Subchapter J, Subpart E of the Code that is owned by its beneficiaries as grantors. Accordingly, for federal income tax purposes, the transfer and assignment of the Debtor's assets, subject to the assumption of liabilities, shall be treated as a deemed transfer and assignment of such assets to the holders of Allowed Claims in classes 1-4 followed by a deemed transfer and assignment by such holders to the Trust. As a result, the holders of Allowed Claims in classes 1-4, as Beneficiaries of the Trust, will be treated as the grantors and deemed owners of the Trust. The Plan Trustee shall provide the holders of Allowed Claims in classes 1-4 with consistent valuations of the assets transferred to the Trust, and such valuations shall be used by the Trust and the holders of Allowed Claims in classes 1-4 for all federal income tax purposes. All items of income, deduction, credit, or loss of the Trust shall be allocated for federal, state, and local income tax purposes among the holders of Claims in classes 1-4; provided, however, that to the extent that any item of income cannot be allocated in the taxable year in which it arises, the Trust shall pay the federal, state, and local taxes attributable to such income net of related deductions, and the amount of such taxes shall be treated as having been received by, and paid on behalf of, the holders of Allowed Claims in classes receiving the distributions attributable to such allocations when such distributions are ultimately made. The Trustee shall operate and maintain the Trusts in compliance with the guidelines for liquidating trusts as set forth in Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Section 1.671-4(a) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service. The Trustee shall treat all trust income as subject to tax on a current basis. All Trust beneficiaries shall each report their share of the net income of the Trust and pay any tax owing thereon on a current basis.

PLAN EXHIBIT 1

ARTICLE IX

REVESTING

9.1 Revesting.

The Trustee shall have discretion to request that the Bankruptcy Case be converted to chapter 7 with approval Capital One and to the extent the Bankruptcy Case has not been closed. If such a request is granted on the motion of the Trustee, and not on the motion of any other party, then all the assets of the Trust shall automatically be deemed transferred to the chapter 7 estate when the Order for conversion becomes a Final Order.

ARTICLE X

MISCELLANEOUS

10.1 Limitation on Transferability.

It is understood and agreed that the interest of each Beneficiary in this Trust shall be non-assignable during the term of this Agreement except by operation of law. An assignment by operation of law 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 the Beneficiary until receipt of proper notification and proof of assignment by operation of law; provided, however, that any Beneficiary may create a security interest or lien upon the interest of such Beneficiary under the Trust and payments may be made to the holder of such security interest or lien by the Trustee upon receipt of proper written notification and proof of creating such security interest or lien.

10.2 Notices.

All notices to be given to Beneficiaries may be given by ordinary mail, facsimile, electronic mail, or may be delivered personally to the holders at the addresses appearing on the books kept by the Trustee.

10.3 Amendments.

This Trust Agreement may be amended from time to time in any and every particular by the consent in writing of Capital One and the Trustee in conformance with the Plan.

10.4 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made to be performed in that State.

10.5 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.

PLAN EXHIBIT 1

10.6 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,” “hereunder,” and similar terms shall refer to this Agreement and not to any particular Section or Article of this Agreement.

10.7 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.

[SIGNATURE PAGE TO FOLLOW]

PLAN EXHIBIT 1

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

Dated this ____ day of _____, 2017.

Debtor Frymire Services, Inc.:

By: _____
George R. Frymire
President

Plan Trustee:

By: _____

Capital One, N.A.

By: _____

Its: _____