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

IN RE: § CHAPTER 11  
§  
DEPENDABLE AUTO SHIPPERS, INC.,<sup>1</sup> § CASE NO. 16-34855-bjh11  
§ (Jointly Administered)  
Debtors. §  
§

**DEPENDABLE AUTO SHIPPERS, INC.'S THIRD AMENDED DISCLOSURE  
STATEMENT IN SUPPORT OF SECOND AMENDED PLAN OF LIQUIDATION**

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<sup>1</sup> The debtors in these Cases are: Dependable Auto Shippers, Inc. (Case No. 16-34855); DAS Global Services, Inc. (Case No. 16-34857); DAS Government Services, LLC (Case No. 16-34858). Their address is 3020 East Highway 80, Mesquite, Texas 75149.

**PLEASE NOTE THAT THIS DISCLOSURE STATEMENT AND THE ATTACHED PLAN ONLY PERTAIN TO DEPENDABLE AUTO SHIPPERS, INC. (“DAS” OR THE “DEBTOR”) AND ITS CREDITORS. DAS GLOBAL SERVICES, INC. (“DAS GLOBAL”) AND DAS GOVERNMENT SERVICES, LLC (“DAS GOV’T”) HAVE FILED MOTIONS WITH THE COURT REQUESTING EITHER THE DISMISSAL OF THEIR CHAPTER 11 CASES OR THEIR CONVERSION TO CASES UNDER CHAPTER 7 OF THE UNITED STATES BANKRUPTCY CODE. THEREFORE, CREDITORS HOLDING CLAIMS AGAINST DAS GLOBAL AND DAS GOV’T WILL NOT BE ENTITLED TO VOTE WITH RESPECT TO THE PROPOSED PLAN AND WILL NOT RECEIVE ANY DISTRIBUTIONS UNDER THE PROPOSED PLAN.**

**THIS PROPOSED DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE COURT AS CONTAINING “ADEQUATE INFORMATION” AS DEFINED IN SECTION 1125(a) OF THE CODE FOR USE IN SOLICITATION OF ACCEPTANCES OR REJECTIONS OF A CHAPTER 11 PLAN. THE FILING AND DISSEMINATION OF THIS DISCLOSURE STATEMENT ARE NOT INTENDED TO BE, AND SHOULD NOT IN ANY WAY BE CONSTRUED AS, A SOLICITATION OF VOTES ON THE DEBTOR’S PLAN OF LIQUIDATION, NOR SHOULD THE INFORMATION CONTAINED IN THIS PROPOSED DISCLOSURE STATEMENT BE RELIED UPON FOR ANY PURPOSE BEFORE THE COURT DETERMINES THAT THE PROPOSED DISCLOSURE STATEMENT CONTAINS ADEQUATE INFORMATION OF A KIND, AND IN SUFFICIENT DETAIL, AS FAR AS IS REASONABLY PRACTICABLE IN LIGHT OF THE NATURE AND HISTORY OF THE DEBTOR AND THE CONDITION OF THE DEBTOR’S BOOKS AND RECORDS, THAT WOULD ENABLE A HYPOTHETICAL INVESTOR OR CREDITOR OF THE RELEVANT CLASS TO MAKE AN INFORMED JUDGMENT ABOUT THE PLAN. THE DEBTOR RESERVES THE RIGHT TO AMEND OR SUPPLEMENT THIS PROPOSED DISCLOSURE STATEMENT AT ANY TIME BEFORE THE HEARING TO CONSIDER WHETHER THE SAME CONTAINS “ADEQUATE INFORMATION” AND AUTHORIZE THE SOLICITATION OF ACCEPTANCES AND REJECTIONS OF THE DEBTOR’S PLAN OF LIQUIDATION.**

**A SEPARATE NOTICE OF HEARING WILL BE SERVED BY THE DEBTOR TO NOTIFY PARTIES IN INTEREST OF THE DATE AND TIME SCHEDULED FOR A HEARING ON THE APPROVAL OF THIS PROPOSED DISCLOSURE STATEMENT.**

The Dependable Auto Shippers, Inc. submits this *Third Amended Disclosure Statement in Support of Second Amended Plan of Liquidation* (the “Disclosure Statement”) pursuant to 11 U.S.C. § 1125. This Disclosure Statement is to be used in connection with the solicitation of votes on the Debtor’s *Second Amended Plan of Liquidation* (the “Plan”, as further amended and modified). A copy of the Plan is attached hereto as **Exhibit A**. Unless otherwise defined herein, terms used herein have the meanings ascribed thereto in the Plan (see Article I of the Plan entitled “Defined Terms”). All information contained herein was provided by the Debtor.

## I. NOTICE TO HOLDERS OF CLAIMS

### A. Generally

The purpose of this Disclosure Statement is to enable creditors whose Claims are impaired to make an informed decision in exercising their right to vote to accept or reject the Plan.

THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN. PLEASE READ THIS DOCUMENT WITH CARE.

On \_\_\_\_\_, the Court entered an order pursuant to Section 1125 of the Code (the “Solicitation Order”) approving this Disclosure Statement as containing information of a kind, and in sufficient detail, adequate to enable a hypothetical, reasonable investor, typical of the solicited Holders of Claims against and Interests in the Debtor, to make an informed judgment with respect to the acceptance or rejection of the Plan. A copy of the Solicitation Order is included in the materials accompanying this Disclosure Statement. APPROVAL OF THIS DISCLOSURE STATEMENT BY THE COURT DOES NOT CONSTITUTE A DETERMINATION BY THE COURT REGARDING THE FAIRNESS OR MERITS OF THE PLAN.

Each Holder of a Claim entitled to vote to accept or reject the Plan should read this Disclosure Statement and the Plan in their entirety before voting. No solicitation of votes to accept or reject the Plan may be made except pursuant to this Disclosure Statement and Section 1125 of the Code. No person has been authorized to use or promulgate any information concerning the Debtor, its business, or the Plan, other than the information contained herein, in connection with the solicitation of votes to accept or reject the Plan. No Holder of a Claim entitled to vote on the Plan should rely upon any information relating to the Debtor, its business, or the Plan other than that contained in the Disclosure Statement and the exhibits hereto. Unless otherwise indicated, the source of all information set forth herein is the Debtor.

After carefully reviewing this Disclosure Statement, including the attached exhibits, please indicate your acceptance or rejection of the Plan by voting in favor of, or against, the Plan on the enclosed ballot and returning the same to the address set forth on the ballot, so that it will be received by the Balloting Agent, no later than 4:00 p.m., Central Time, on [\_\_\_\_\_, 2017] (the “Voting Deadline”).

If you do not vote to accept the Plan, or if you are the Holder of an unimpaired Claim or Interest, you may be bound by the Plan if it is accepted by the requisite number of Claimants and amount of Claims. See Article X hereof.

TO BE SURE YOUR BALLOT IS COUNTED, YOUR BALLOT MUST BE RECEIVED NO LATER THAN 4:00 P.M., CENTRAL TIME, ON [\_\_\_\_\_, 2017]. For detailed voting instructions and the name, address, and phone number of the person you may contact if you have questions regarding the voting procedures, see Section A of Article X of this Disclosure Statement.

Pursuant to Section 1128 of the Code, the Court has scheduled a hearing to consider confirmation of the Plan (the "Confirmation Hearing"), on [\_\_\_\_\_, 2017 at \_\_\_\_\_.m.], Central Time, in the United States Court for the Northern District of Texas, Dallas Division.

The Court has directed that objections, if any, to confirmation of the Plan be filed and served on or before [\_\_\_\_\_.m., on \_\_\_\_\_, 2017], in the manner described under Article X of this Disclosure Statement.

The Debtor supports confirmation and urges all Claimants to vote to accept the Plan.

## **B. Summary of the Plan**

The following is an estimate of the numbers and amounts of classified Claims to receive treatment under the Plan, and a summary of the proposed treatment of such Claims and Interests under the Plan. Reference should be made to the entire Disclosure Statement and to the Plan for a complete description of the classification and treatment of Claims and Interests. To the extent of any inconsistency between this Disclosure Statement and the Plan, the Plan shall control.

**Please note that this Disclosure Statement and the attached Plan only pertain to Dependable Auto Shippers, Inc. ("DAS" or the "Debtor") and its Creditors. DAS Global Services, Inc. ("DAS Global") and DAS Government Services, LLC ("DAS Gov't") have filed motions with the Court requesting either the dismissal of their Chapter 11 cases or their conversion to cases under Chapter 7 of the United States Bankruptcy Code. Therefore, Creditors holding Claims against DAS Global and DAS Gov't will not be entitled to vote with respect to the proposed Plan and will not receive any distributions under the proposed Plan.**

Collectively, the Debtor has approximately 3,000 general unsecured creditors with unsecured claims totaling approximately \$13 million. All assets of any value are held by DAS. Nearly \$6 million of the general unsecured claims against DAS are held by two creditors, Carsarrive Network, Inc. ("Carsarrive"), an affiliate of ADESA, and Drive America. Carsarrive's Claim is approximately \$3.5 million. Drive America's Claim is approximately \$2.5 million. The largest Secured Creditor is ADESA. ADESA holds a secured claim totaling approximately \$7,573,000.00 which accrued prepetition and a Secured Claim which will total approximately \$2,600,000 on account of it providing debtor in possession financing. On the first day of filing bankruptcy, approximately \$780,000 in critical vendor payments to general unsecured creditors were approved and paid. These payments reduced the pool of general unsecured creditors. The Plan includes a sale of nearly all of the Debtor's Assets to ADESA, or its assignee, or to a higher bidder. The Plan also calls for the creation of and funding of a Liquidating Trust. The Liquidating Trust will be funded with \$50,000.00 and all Causes of Action. Basically, Causes of Action include claims the Debtor has against other parties including claims under chapter 5 of the Bankruptcy Code, commonly referred to as avoidance actions. Causes of Action do not include claims to recover accounts receivable outstanding as of

the Effective Date of the Plan. Not including recoveries from Causes of Action, it is estimated that the return to general unsecured creditors will be approximately 1%. The estimated recovery also does not account for a reduction in the overall pool of claims if objections to claims are successful. The Debtor believes that recoveries on the Causes of Action may be as high as \$250,000.00. If the Plan is not confirmed, there will be no possibility of recovery to unsecured creditors of any Debtor.

## II. EXPLANATION OF CHAPTER 11

### A. Overview of Chapter 11

The commencement of a chapter 11 case creates an estate comprising all the legal and equitable interests of the debtor in property as of the date the petition is filed. Sections 1101, 1107, and 1108 of the Code provide that a debtor may continue to operate its business and remain in possession of its property as a “debtor in possession” unless the Court orders the appointment of a trustee. In the present Case, the Debtor has remained in possession of its property and has continued to function as a debtor-in-possession.

The filing of a chapter 11 petition also triggers the automatic stay provisions of the Code. Section 362 of the Code provides, *inter alia*, for an automatic stay of all attempts to collect pre-petition claims from the debtor or otherwise interfere with its property or business. Except as otherwise ordered by the Court, the automatic stay remains in full force and effect until the effective date of a confirmed plan for the Debtor.

The formulation of a plan of reorganization is the principal purpose of a chapter 11 case. The plan sets forth the means for satisfying the claims against and interests in the debtor. Unless a trustee is appointed, only the debtor may file a plan during the first 120 days of a chapter 11 case (the “Exclusive Period”). However, Section 1121(d) of the Code permits the court to extend or reduce the Exclusive Period upon a showing of “cause.” In this matter, the Exclusive Period was not extended and the Debtor filed its Plan contemporaneously with the filing of the Disclosure Statement. No other plan has been proposed.

### B. Plan

Although commonly referred to as a plan of reorganization, a plan may provide anything from a complex restructuring of a debtor's business and its related obligations to a simple liquidation of the debtor's assets. In this case, the Plan proposes to sell the Assets to ADESA, Inc., the senior secured lender of DAS and the debtor-in-possession financier, or an entity affiliated with ADESA, Inc., as its assignee, subject to a higher and better offer. Here, the Plan is referred to as a Plan of Liquidation. All Executory Contracts not specifically assumed under the Plan will be rejected. Holders of Allowed Unsecured Claims will be satisfied as specified in the Plan either through an approved settlement or by receiving a Pro Rata payment from the Liquidating Trust.

Generally, after a plan has been filed, the holders of claims against or interests in a debtor are permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, Section 1125 of the Code requires the debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. This Disclosure Statement is presented

to holders of Claims against and Interests in the Debtor to satisfy the requirements of Section 1125 of the Code.

If all classes of claims and interests accept a plan of reorganization, the Court may nonetheless still not confirm the plan unless the court independently determines that the requirements of Section 1129 of the Code have been satisfied. Section 1129 sets forth the requirements for confirmation of a plan and, among other things, requires that a plan meet the “best interest” test and be “feasible.” The “best interests” test generally requires that the value of the consideration to be distributed to the holders of claims and interests under a plan may not be less than those parties would receive if the debtor were liquidated pursuant to a hypothetical liquidation occurring under chapter 7 of the Code. Under the “feasibility” requirement, the court generally must find that there is a reasonable probability that the debtor will be able to meet its obligations under its plan without the need for further financial reorganization.

**The Debtor believes that the Plan satisfies all the applicable requirements of Section 1129(a) of the Code, including, in particular, the “best interests of creditors” test and the “feasibility” requirement. The Debtor supports confirmation of the Plan and urges all holders of Impaired Claims entitled to vote to accept the Plan.**

Chapter 11 does not require that each holder of a claim against or interest in a debtor vote in favor of a plan of reorganization in order for the Court to confirm the plan. At a minimum, however, the plan must be accepted by a majority in number and two-thirds in amount of those claims actually voting in at least one class of impaired claims under the plan. The Code also defines acceptance of the plan by a class of interests (equity securities) as acceptance by holders of two-thirds of the number of shares actually voting. In the present case, only the holders of Claims or Interests who actually vote will be counted as either accepting or rejecting the Plan.

In addition, classes of claims or interests that are not “impaired” under a plan of reorganization are conclusively presumed to have accepted the plan and thus are not entitled to vote. Accordingly, acceptances of a plan will generally be solicited only from those persons who hold claims or interests in an impaired class. A class is “impaired” if the legal, equitable, or contractual rights attaching to the claims or interests of that class are modified in any way under the plan. However, if holders of the claims or interests in a class do not receive or retain any property on account of such claims or interests, then each such holder is deemed to have voted to reject the plan and does not actually cast a vote to accept or reject the plan.

Claims and their estimated amounts are classified and their proposed treatment under the Plan is as follows:

<p><b>Class 1: Priority Claims.</b> To the extent not classifiable pursuant to Section 1123(a)(1) of the Code, Priority Claims are included in Class 1 for convenience only. Class 1 Claims are Unimpaired.</p> <p>Approximately \$386,075.15. This does not include professional fees of the Debtor which are budgeted at approximately \$20,000 per week for the life the case.</p>	<p>Each Holder of a Class 1 Claim will be paid on the later of the Effective Date or within seven (7) days of the claim becoming Allowed. Each Holder of an Allowed Priority Claim shall receive, in full and final satisfaction of such Claim, one of the following treatments, in the sole discretion of the Debtor or the Trustee, as the case may be: (i) full payment in Cash</p>
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<p>Professional fees are subject to Court approval. Additionally, fees for the noticing agent employed by the Debtor are estimated at \$60,000.00.</p>	<p>of its Allowed Priority Claim or (ii) treatment of its Allowed Priority Claim in a manner that leaves such Claim Unimpaired. Priority Claims will be paid by the Buyer. Claims in these classes are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of these claims are conclusively presumed to accept this Plan and are not entitled to vote to accept or reject this Plan, and the votes of such Holders will not be solicited.</p>
<p><u>Class 2: The ADESA Claim:</u> Class 2 Claim is impaired.</p> <p>Paragon PrePetition Obligations: \$6,076,476</p> <p>Pre-Petition Credit Agreement: \$1,070,960.00</p> <p>Debtor-in-Possession Financing: \$2,600,000.00</p>	<p>If ADESA is the highest bidder for the Assets pursuant to Article VII of this Plan, the ADESA Claim shall be satisfied by the transfer of title of the Assets to ADESA pursuant to the terms of an Asset Purchase Agreement substantially in the form attached to the Plan as <u>Exhibit B</u>, plus, ADESA's payment of the Contribution to the Liquidating Trust and ADESA's payment of Allowed Administrative Expense Claims; or If ADESA is not the successful purchaser for the Assets pursuant to Article VII, ADESA shall receive on account of the ADESA Claim the full amount of the ADESA Claim in cash at Closing; if there is any dispute respecting the amount of the Class 2 Claim, the Court shall adjudicate such dispute at Confirmation. The ADESA Claim is Impaired. The Holder of the ADESA Claim is entitled to vote on the Plan.</p>
<p><u>Class 3: Other Secured Claims:</u> Class 3 Claims are Unimpaired.</p> <p>Expected to be \$0.00 but potentially contains the Claim of American Express Bank, FSB which is approximately \$50,000.00.</p>	<p>The Claims of Creditors in Class 3 are Unimpaired. Class 3 shall contain separate subclasses for each Other Secured Claim against the Debtor, to the extent an Other Secured Claim exists. The treatment of each separate class will be treated as follows: Except to the extent that a holder of an Allowed Other Secured Claim agrees to less favorable treatment, each holder of an Allowed Other Secured Claim shall, in</p>

	<p>full and final satisfaction of such Allowed Other Secured Claim be paid Cash in an amount equal to the Allowed amount of such Claim as determined in accordance with section 506(a) of the Bankruptcy Code, on the Effective Date or as soon thereafter as practicable, or receive the Collateral securing its Allowed Other Secured Claim on the Effective Date or as soon thereafter as practicable.</p> <p>Notwithstanding any other provision in § 4.3 of the Plan, any Holder of a Class 3 Claim may agree to any treatment of such Claim, which treatment may include preservation of such Holder’s lien; provided that such treatment shall not provide a return to such Holder, by reason of such Class 3 Claim, having a present value in excess of the amount of such Secured Claim. The Holders of Claims in Class 3 are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of these claims are conclusively presumed to accept this Plan and are not entitled to vote to accept or reject this Plan, and the votes of such Holders will not be solicited.</p> <p>There are not expected to be any Claims in this Class, however, there is a possibility that American Express Bank, FSB’s Claim will fall within this Class.</p>
<p><u>Class 4: Secured Tax Claims:</u> Class 4 Claims are Unimpaired.</p> <p>Approximately \$390,000.00</p>	<p>On or as soon as reasonably practicable after the Effective Date or the Allowance of Class 4 Claim, the Holder of an Allowed Class 4 Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Claim, (a) Cash equal to the value of such Claim, including interest thereon at the rate provided under applicable non-bankruptcy law or (b) such other treatment as may be agreed upon in writing by the applicable Debtor and such Holder.</p>
<p><u>Class 5 Secured Claim of Engs Commercial Finance:</u> Class 5 Claims are</p>	<p>On or as soon as reasonably practicable after the Effective Date or the Allowance</p>



<p>impaired.</p> <p>Approximately \$304,000.00</p>	<p>of the Class 5 Claim, Eng Commercial Finance (“Eng”) shall take possession of its collateral in full satisfaction of its Claim. The Claim of Eng is Impaired. The Holder of the Eng Claim is entitled to vote on the Plan.</p>
<p><u>Class 6: Unsecured Claims:</u> Class 6 Claims are impaired.</p> <p>Approximately \$12,873,091.72.</p>	<p>Each Holder of a Class 6 Claim shall receive periodic Pro Rata distributions from the Liquidation Trust. Cisco Systems Capital Corporation’s (“Cisco”) claim will be resolved by: (1) the Agreement to Lease Equipment No. 8351-MM001-0 between Cisco and DAS (the “Cisco Lease”) being rejected no later than Closing; (2) returning to Cisco its equipment; (3) Cisco having an Allowed Administrative Expense Claim calculated by determining the benefit to the Debtor of use of the equipment under the Cisco Lease Post-Petition; and (4) Cisco having an Allowed General Unsecured Claim equal to damages incurred based on the rejection of the Cisco Lease. For purposes of voting, American Express Bank, FSB’s claim will be treated as a Class 6 Claim. To the extent that American Express Bank, FSB’s claim is secured, its Allowed Claim will be treated as a Class 3 Claim.</p> <p>The Holders of Class 6 Claims are Impaired. The Holders of Class 6 Claims are entitled to vote on the Plan.</p>
<p><u>Class 7: Interests of DAS:</u> Class 7 Interests are impaired.</p>	<p>Each Holder of Interests in Class 7 shall receive nothing on account of such Interests. All Interests shall be cancelled effective at Closing. Holders of Claims in this class are conclusively deemed to reject the Plan and are not entitled to vote to accept or reject the Plan.</p>

The Court may also confirm a plan of reorganization even though fewer than all the classes of impaired claims and interests accept it. For a plan of reorganization to be confirmed despite its rejection by a class of impaired claims or interests, the proponents of the plan must show, among other things, that the plan does not “discriminate unfairly” and that the plan is “fair

and equitable” with respect to each impaired class of claims or interests that has not accepted the plan.

Under Section 1129(b) of the Code, a plan is “fair and equitable” as to a class of rejecting claims if, among other things, the plan provides: (a) with respect to secured claims, that each such holder will receive or retain on account of its claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; and (b) with respect to unsecured claims and interests, that the holder of any claim or interest that is junior to the claims or interests of such class will not receive or retain on account of such junior claim or interest any property at all unless the senior class is satisfied to the full extent of the claims or interests.

A plan does not “discriminate unfairly” against a rejecting class of claims if (a) the relative value of the recovery of such class under the plan does not differ materially from that of any class (or classes) of similarly situated claims, and (b) no senior class of claims is to receive more than 100% of the amount of the claims in such class.

The Debtor believes that the Plan has been structured so that it will satisfy these requirements as to any rejecting Class of Claims, and can therefore be confirmed, if necessary, over the objection of any Classes of Claims. The Debtor reserves the right to request confirmation of the Plan under the “cramdown” provisions of Section 1129 of the Code.

### **III. THE DEBTOR AND ITS BUSINESS**

#### **A. ADESA’s Financing Arrangement with the Debtor.**

On or about December 19, 2016, ADESA entered into that certain Sale, Assignment, and Assumption Agreement (the “Paragon Debt Purchase Agreement”) with Independent Bankers Capital Fund II, L.P. (“IBCF”), Paragon Mezzanine Finance Group, LLC (“Paragon” and collectively with IBCF, the “Assignors”) selling, transferring and assigning to ADESA all of the Assignors interest in that certain Securities Purchase Agreement, dated as of August 1, 2011 (as amended to date, the “Paragon Loan Agreement”), pursuant to which the Assignors had extended credit to DAS as evidenced by a Senior Secured Note, dated August 1, 2011 in the original principal amount of \$4,000,000 and a Senior Secured Note in the original principal amount of \$1,300,000 (collectively, the “Paragon Notes”) in the current aggregate outstanding principal amount of \$6,076,476 plus interest, fees and expenses (the “Paragon Pre-Petition Obligations”) originally secured by a first priority security interest (the “Paragon Pre-Petition Liens”) in certain of the assets of DAS and the shares of the capital stock of DAS (the “Paragon Pre-Petition Collateral, as more particularly set forth in the “Security Agreement,” the “Stock Pledge Agreement” and the “Collateral Assignment Agreements” (the “Paragon Collateral Documents” and together with the Paragon Purchase Agreement, Paragon Loan Agreement, the Paragon Notes, and all other agreements, documents and instruments executed in connection therewith, the “Paragon Loan Documents”). The Paragon Pre-Petition Collateral is comprised of certain assets and interests of DAS, including, but not limited to, equipment, intellectual property and proceeds thereof, and interests in a certain facility lease in Mesquite, Texas, all of which are included in Pre-Petition Collateral and encumbered by the Pre-Petition Liens. DAS repurchased all shares of capital stock of DAS pursuant to that certain Securities Repurchase Agreement between the Assignors and DAS on December 19, 2016; and, as such, the Paragon Pre-Petition Collateral no longer includes any equity interests in DAS and the Paragon Pre-Petition Liens no longer encumber any equity interests in DAS.

On or about December 20, 2016, pursuant to a pre-petition Credit Agreement of the same date, supplemented and amended or otherwise modified from time to time (the "Pre-Petition Credit Agreement"), the Debtor borrowed \$1,070,960.00 plus interest, fees and expenses (the "Pre-Petition Obligations") from ADESA upon the terms and conditions described in the Pre-Petition Credit Agreement (the "Pre-Petition Secured Loan"). The Pre-Petition Secured Loan was evidenced by a pre-petition Promissory Note (Revolving Note) dated as of December 20, 2016 (the "Pre-Petition Note"). The Pre-Petition Note is secured by a first priority security interest in all of the Debtor's assets (the "Pre-Petition Collateral") pursuant to and as more fully described in the Security Agreement dated December 20, 2016 (the "Pre-Petition Security Agreement" together with the Pre-Petition Credit Agreement, the Pre-Petition Note, and all other agreements, documents and instruments executed in connection therewith, collectively the "Pre-Petition Financing Documents").

The Debtor sought the right to use Cash Collateral and to enter into a \$2.6 million debtor-in-possession financing facility with ADESA as the lender on December 21, 2016 [Docket Nos. 10 and 11]. The Debtor operated under extended Interim Cash Collateral Orders beginning in December 23, 2016, when the First Interim Cash Collateral Order was entered [Docket Nos. 29 and 30]. On February 6, 2017, the Court entered a final order authorizing the use of cash collateral and approving the proposed debtor-in-possession financing (the "Final Cash Collateral Order") with the corresponding budget (the "Budget") attached [Docket Nos. 109 and 110]. The Budget and Final Cash Collateral Order are incorporated herein by reference.

## **B. History of the Debtor and Entity Structure**

DAS's history dates back to 1954 when Sam London formed Dependable Car Travel Services in the heart of New York City. Originally, DAS offered "drive-away" service catering to snowbirds who headed down to Florida for the winter. The snowbirds would have their cars driven from New York to Florida.

Demand soon outgrew the ability to offer "drive-away" services and DAS began connecting customers wanting to relocate their cars and auto transporters looking to fill their trailers. DAS's reputation for providing high quality service grew and in 1990, DAS became a full-service vehicle transport carrier.

Over the subsequent years, DAS grew into a fleet of auto carriers, created a network of more than 97 storage facilities and created a proprietary web presence. This expansive network improved operational facilities and enabled DAS to have more control during the relocation of vehicles and to maintain its high standards from pick-up to delivery. In fact, DAS is unique in the market in that it controls the auto shipping process from origin to destination and was the first consumer auto-shipper to create such a network.

In 1993, DAS began assisting corporations with the relocation of their vehicles and the vehicles of their relocating employees. In 1996, DAS Global was formed and incorporated in Delaware to handle the shipping of cars across borders. DAS Global is a wholly owned subsidiary of DAS. By 1999 DAS's transportation fleet had grown to 48 trucks. In 2000, DAS was incorporated by the combining of DAS-NJ, DAS-CA and DAS-TX into a single entity. DAS continued to expand by opening offices in Chicago and Atlanta. In 2004, DAS' transport fleet peaked at 122 trucks. By 2008, annual revenue had grown to exceed \$125 million. In 2009, the

legacy owners of the company retired. That same year, DAS Gov't was formed in New Jersey to service the relocation of vehicles owned by government employees. DAS Gov't is a wholly owned subsidiary of DAS.

The Debtor uses an accrual basis for accounting. The Debtor's tax accountants are Fish & Davis, PC.

### **C. Events leading to bankruptcy.**

Unfortunately, the upward trajectory of DAS was not sustainable. As the economy took a hit, so did DAS' revenue. In 2010 DAS consolidated the all of its operations into the Mesquite, Texas office and only DAS remained operating. In 2011, while projecting revenues of \$70 million, it entered into a strategic partnership with IBCF and Paragon. The funding included \$4 million in senior secured notes and preferred shares being issued to IBCF and \$1.3 million in senior secured notes and preferred shares being issued to Paragon or the Paragon Notes described above.

In 2015, seeing improvement on the horizon, DAS shifted into high gear once again and acquired 25 trucks with debt. It entered into a factoring agreement with Triumph Savings Bank, SSB, d/b/a Triumph Commercial Finance (as predecessor-in-interest to TBK Bank, SSB) ("Triumph") on June 11, 2015 (the "Triumph Debt"). Triumph took a lien on DAS's assets and entered into a subordination agreement with IBCF and Paragon.

As it turned out, an error in the accounting structure of the company had been made with respect to the allocation of expenses and DAS's cash flow was in fact not as robust as first thought. Coupling the accounting error with continued decreased revenue and the increased debt load, it became impossible for DAS to service the Triumph Debt and the IBCF Debt.

In early 2016, IBCF and Paragon infused an additional \$3 million into the company by purchasing Series B preferred equity. The capital was infused on the premise that improved operations by paying off past due creditors would bring Corporate Accounts back to DAS. Unfortunately, the capital was too late and Corporate Accounts did not respond to operational improvements. Revenue for 2016 was on pace with 2015 up through March, however, the majority of a year's revenue for DAS comes in the peak summer months when relocation services are strongest. The ten largest Corporate Accounts for DAS suspended service in early April and May, therefore killing the peak season for DAS. Revenue in the Corporate Channel, which is 75% of all DAS revenue, went from 70% of prior year in April to 30% of prior year starting in July and 20% of prior year starting in September. The suspension of Corporate Accounts resulting in over 80% of the overall loss of revenue from prior year. Despite the best efforts of IBCF and Paragon, it became apparent that DAS would not be able to sustain its debt load. DAS's estimated revenue for 2016 has fallen to less than \$20,000,000.

DAS began selling its trucks in order to improve its debt position and as of the filing of this Disclosure Statement owns two trucks, which are being marketed for sale. It is not expected that the sale of the two trucks will net the Debtor any cash as the two trucks are fully encumbered. Despite its challenges, DAS has maintained its network and ability to offer a one-stop, from pick up to delivery, consumer car transport service and its web based intellectual property assets. IBCF and Paragon began the process of marketing DAS, both as a going

concern and for asset value more than a year preceding the Petition Date. Given the service nature of DAS's business and the value of its network, there was, and is, little question that DAS's value is highest as a going concern.

Problems were compounded when the insurance policy for the directors and officers expired on September 30, 2016 and DAS elected not to renew the policy, therefore all members of the board resigned as well as the two officers, Tim Higgins as Secretary and Ben Long as Treasurer. At that time, DAS reached out to one of its largest vendors, ADESA, and asked if it would be interested in purchasing the company as a going concern. Following lengthy negotiations, ADESA, purchased IBCF and Paragon's notes without the equity interests.

All members of the board of directors of DAS resigned months prior to IBCF, Paragon and ADESA reaching an agreement with respect to the IBCF Debt. Tim Higgins continued his role of managing the Debtor as Executive Vice President.

Along the way, DAS had entered into a factoring agreement (the "Triumph Debt") with TBK Bank, SSB/f.k.a Triumph Savings Bank SSB ("TBK"). TBK obtained a senior lien position on the Debtor's assets pursuant to a subordination agreement entered into with IBCF. Prepetition, the Debtor and ADESA worked to negotiate a resolution to pay-off the Triumph Debt. On December 19, 2016, DAS and ADESA entered into the Pre-Petition Financing Documents pursuant to which ADESA loaned funds to DAS for the satisfaction of the Triumph Debt and to fund other expenses of DAS. As of filing, DAS owed not less than \$1,070,960.00 pursuant to the Pre-Petition Secured Loan. Through the Pre-Petition Secured Loan and the payoff of the Triumph Debt, ADESA obtained a first priority lien position on nearly all of the Debtor's assets. ADESA's claims are more fully described below. Since the Petition Date, Triumph has been paid in full.

#### **D. Current ownership and management of the Debtor.**

Tim Higgins has been employed by the Debtor since 2012 and has been managing the Debtor and its subsidiaries since May of 2016 and continues to do so. He is currently the Executive Vice President. DAS currently has approximately eighteen employees and is located at 3020 East Highway 80 Mesquite, Texas 75149. Rick London ("London") owns 68.1% of the shares of DAS and John Roehll ("Roehll") owns 25.2% of the shares of DAS. As of the Effective Date of the Plan, the Debtor will no longer continue to employ its employees. DAS Gov't and DAS Global are owned by DAS. To clarify, DAS Gov't and DAS Global are not operating and have no assets of value. DAS Gov't and DAS Global are requesting either dismissal or conversion to Chapter 7 of their Chapter 11 bankruptcy cases.

### **IV. THE CHAPTER 11 CASES**

#### **A. The Debtor's Professionals**

The Debtor is represented by Bonds Ellis Eppich Schafer Jones LLP ("BEESJ"). No committee of unsecured creditors has been formed or appointed in this Case. No financial advisors have been retained in this Case. JND Legal Administration has been retained as noticing agent.

## **B. Current Operations and Events in Bankruptcy**

On December 21, 2016 (the “Petition Date”), the Dependable Auto Shippers, Inc., Case No. 16-34855 (the “DAS Case”) and two of its subsidiaries, DAS Government Services, LLC, Case No. 16-34858, and DAS Global Services, Inc., Case No. 16-34857 (collectively with the DAS Case, the “Cases”), each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (as amended, the “Code”).

On January 9, 2017, the Debtor applied to the Court to employ Bonds Ellis Eppich Schafer Jones LLP (“BEESJ”) as counsel [Docket No. 64]. The Court approved the employment of BEESJ on February 10, 2017 [Docket No. 118]. An order approving the employment of JND Corporate Restructuring as Notice and Solicitation Agent was entered on February 24, 2017 [Docket No. 132]. The Cases are currently being jointly administered pursuant to Bankruptcy Rule 1015 for procedural purposes only pursuant to an order entered on December 23, 2016 [Docket No. 22]. No committees have been appointed in these Cases.

The Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Code. DAS continues to ship cars across the country and around the world.

Prior to filing for chapter 11 relief, the Debtor entered into negotiations with ADESA to provide prepetition financing and post-petition financing. Significant negotiations ensued between the Debtor and ADESA and then with Triumph as the Debtor worked to payoff the factoring agreement entered into with Triumph. Both pre-petition and post-petition loan agreements were successfully negotiated and the factoring agreement was paid prior to filing for bankruptcy. A hearing to approve final orders for the use of cash collateral and debtor in possession financing pursuant to *Debtors’ Motions for an Interim and Final Order (I) Authorizing the Debtors to use Cash Collateral of Existing Secured Lender; (II) Granting Adequate Protection for use Thereof; (III) Authorizing the Debtors to Obtain Postpetition Financing Pursuant to Sections 364(b), 364(c), and 364(d) of the Code; (IV) Modifying the Automatic Stay to Allow for the Relief Requested Herein; and Scheduling Final Hearing* [Docket Nos. 10 and 11] was heard by the Court on January 26, 2017 (the “Final DIP Order”). Attached to the Final DIP Order is a budget (the “Budget”).

Post-petition, negotiations with Triumph continued as the Debtor worked to payoff Triumph’s remaining equipment loan which was secured by a single truck. Ultimately, an expedited motion to sell the truck was approved. An agreement was also reached with Triumph regarding the offset and disbursement of hold-back and remaining account receivable funds in its possession.

Through the approval of the debtor-in-possession financing, and with approval of the Court, DAS was able to pay approximately \$780,000 in critical vendor claims.

Also within the first weeks of seeking relief, DAS entered into negotiations with numerous creditors with respect to their claims. On February 24, 2017, an Amended Summary of Assets and Liabilities was filed for DAS [Docket No. 134] (the “Amended Summary”). The Amended Summary lists an asset value of \$13,180,774.43 and total liabilities of \$21,533,807.46. The largest of the Debtor’s assets is a net operating loss from 2014 in the amount of

\$11,839,228. The next largest asset are goodwill, \$1,436,847, and outstanding accounts receivable, \$562,000 at the time of filing which the majority are expected to be collectible and much of which has been collected.

As part of a restructuring effort, the Debtor has negotiated heavily with various creditors and with ADESA to create a plan that will allow the Debtor to satisfy as many creditors as possible and continue operating and serving the needs of its clients-albeit under a different corporate umbrella and ownership of its assets. As a part of this effort and following negotiations with various creditors, DAS Global and DAS Gov't, because they are no longer operating and hold no assets of value, have filed motions seeking to either dismiss their Cases or convert their Cases to cases under Chapter 7.

**C. Estimated Administrative Expenses, Including Professional Fees**

As of the Petition Date, the balance of BEESJ's retainer is \$0.00. A carve-out for professional fees is provided for in the budget approved in conjunction with the Final Cash Collateral Order. The Budget reflects a carve-out for professional fees incurred by Debtor's counsel of approximately \$20,000 per week through the life of the case which totals approximately \$440,000. It is estimated that the retained noticing agent, JND, will incur approximately \$60,000 in fees. As of the date of filing this Disclosure Statement, BEESJ had not received any partial payments from the Debtor. The Debtor expects to be required to pay certain administrative tax expenses especially where those taxing authorities also hold a priority lien position on the assets of the Debtor. The Budget sets forth certain potential administrative expenses including professional fees and U.S. Trustee Fees. DAS's schedules list priority unsecured claims at \$386,075.15. Certain of those priority claims are listed as disputed, unliquidated or contingent. These include certain tax claims. It is estimated that there may be an additional, approximate \$60,000.00 in payment for the post-petition use of leased equipment under executory contracts.

**V. LITIGATION INVOLVING DEBTOR**

**A. Pre-Petition and Post-Petition Litigation**

DAS is a party to numerous causes of action. A summary of the litigation is attached as **Exhibit C**. DAS does not view any of these lawsuits as material claims, in that the overall dollar value of these claims is rather small.

**B. Causes of Action**

All Causes of Action owned by the Debtor will be transferred to the Liquidating Trust. As is expressly stated in the Plan, Causes of Action do not include any actions which may be brought to recover accounts receivables outstanding as of the Effective Date.

**C. Preference Actions and Fraudulent Transfer Claims**

Section 547 of the Code enables a debtor in possession to avoid a transfer to a creditor made within ninety days before the petition date (or within one year before the petition date in the case of a transfer to an insider) if the transfer was made on account of an antecedent debt and enabled the creditor to receive more than it would in a liquidation. A creditor has defenses to the

avoidance of such a preferential transfer based upon, among other things, the transfer's occurring as part of the ordinary course of the debtor's business or that, subsequent to the transfer, the creditor provided the debtor with new value. To the extent that a Creditor had a right of setoff ninety (90) days prior to the Petition Date, the determination of whether a preferential payment was made by the Debtor, and thus a "Preference Action" exists and may be reserved under the Plan, must include an analysis of: (a) the net obligation owing by the Debtor at the beginning of the application ninety (90) day period, with (b) the net obligations owed by the Debtor as of the Petition Date. This analysis may be particularly relevant for any Creditor that paid money to the Debtor during the same ninety (90) day period related to a rebate or similar program.

Section 548 of the Code allows a debtor in possession to avoid a transfer to a creditor made within two years before the petition date if (i) the transfer was made with actual intent to hinder, delay, or defraud other creditors or (ii) the transfer was for less than reasonably equivalent value and the debtor was insolvent or undercapitalized at the time of the transfer or became insolvent or undercapitalized as a result of the transfer ("Fraudulent Transfer").

DAS has listed possible Preference Actions against insiders and non-insiders in their Statements of Financial Affairs, which are incorporated herein by reference, and as included on the attached **Exhibit D**. The exclusion of Preference Actions against Insiders shall not be construed as a waiver of such Preference Actions against Insiders. All Preference Actions and Fraudulent Transfer actions will be assigned to the Liquidating Trust on the Effective Date. DAS believes that there are potentially recoverable Preference Actions. An estimated value is difficult to determine, but it may be as high as \$250,000.00.

The Debtor reserves the right to amend or supplement the list of potential Causes of Action prior to the Voting Deadline and Confirmation.

## **VI. THE PLAN**

### **A. Classification and Treatment**

THE FOLLOWING IS A SUMMARY OF THE MATTERS CONTEMPLATED TO OCCUR EITHER PURSUANT TO OR IN CONNECTION WITH THE CONSUMMATION OF THE PLAN. THIS SUMMARY HIGHLIGHTS THE SUBSTANTIVE PROVISIONS OF THE PLAN AND IS NOT, NOR IS IT INTENDED TO BE, A COMPLETE DESCRIPTION OR A SUBSTITUTE FOR A FULL AND COMPLETE REVIEW OF THE PLAN. THE FOLLOWING SUMMARY IS COMPLETELY QUALIFIED BY THE TERMS OF THE PLAN. IN THE EVENT OF ANY CONFLICT BETWEEN THE FOLLOWING SUMMARY AND THE PLAN, THE PLAN WILL CONTROL.

The Plan classifies the various Claims against and Interests in the Debtor. These Classes take into account the different nature and priority of Claims against the Debtor. In addition, in accordance with Section 1123(a)(1) of the Code, Administrative Expenses are not classified for purposes of voting or receiving distributions under the Plan. Rather, all such Claims are treated separately as unclassified Claims.

#### **Unclassified Claims Against the Debtor**

Unclassified Claims against the Debtor consist of Administrative Expenses, including



Professional Fee Claims. The Code requires that the Plan not classify administrative expense claims. Thus, this section of the Disclosure Statement is merely a brief summary of the treatment for such claims. The provisions concerning allowance and treatment of such claims may be found in Articles III, IV, and VI of the Plan. The Plan proposes to pay all Allowed Administrative Claims in full. Each Holder of an Allowed Priority Tax Claim, on or as soon as practicable after the Effective Date, shall receive, in full satisfaction, release, and discharge thereof, (i) payment in full in Cash, (ii) other treatment consistent with Section 1129(a)(9) of the Code or (iii) such other terms as agreed to among the Debtor and such Holder.

**Classified Claims and Interests**

Claims and Interests are classified as set forth in Article III of the Plan. A Claim or Interest shall be deemed classified within a particular class only to the extent that the Claim or Interest fits the description of that class. To the extent that any portion of a Claim or Interest does not fit the description of such class, but fits the description of a different class, the Claim or Interest shall be classified in such different class. A creditor may have a Claim that falls within one or more classes. Those Claims specified in Sections 507(a)(1), 507(a)(2), and 507(a)(8) of the Code and included within the definition of Classes 1 have been so described therein for convenience only, and shall not be deemed classified for purposes of Section 1123(a)(1) of the Code.

The proposed treatments for the seven Classes are as follows:

<p><u>Class 1: Priority Claims.</u> To the extent not classifiable pursuant to Section 1123(a)(1) of the Code, Priority Claims are included in Class 1 for convenience only. Class 1 Claims are Unimpaired.</p> <p>Approximately \$386,075.15. This does not include professional fees of the Debtor which are budgeted at approximately \$20,000 per week for the life the case. Professional fees are subject to Court approval. Additionally, fees for the noticing agent employed by the Debtor are estimated at \$60,000.00.</p>	<p>Each Holder of a Class 1 Claim will be paid on the later of the Effective Date or within seven (7) days of the claim becoming Allowed. Each Holder of an Allowed Priority Claim shall receive, in full and final satisfaction of such Claim, one of the following treatments, in the sole discretion of the Debtor or the Trustee, as the case may be: (i) full payment in Cash of its Allowed Priority Claim or (ii) treatment of its Allowed Priority Claim in a manner that leaves such Claim Unimpaired. Priority Claims will be paid by the Buyer. Claims in these classes are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of these claims are conclusively presumed to accept this Plan and are not entitled to vote to accept or reject this Plan, and the votes of such Holders will not be solicited.</p>
<p><u>Class 2: The ADESA Claim:</u> Class 2</p>	<p>If ADESA is the highest bidder for the Assets pursuant to Article VII of this Plan,</p>

<p>Claim is impaired.</p> <p>Paragon PrePetition Obligations: \$6,076,476</p> <p>Pre-Petition Credit Agreement: \$1,070,960.00</p> <p>Debtor-in-Possession Financing: \$2,600,000.00</p>	<p>the ADESA Claim shall be satisfied by the transfer of title of the Assets to ADESA pursuant to the terms of an Asset Purchase Agreement substantially in the form attached to the Plan as <u>Exhibit B</u>, plus, ADESA's payment of the Contribution to the Liquidating Trust and ADESA's payment of Allowed Administrative Expense Claims; or If ADESA is not the successful purchaser for the Assets pursuant to Article VII, ADESA shall receive on account of the ADESA Claim the full amount of the ADESA Claim in cash at Closing; if there is any dispute respecting the amount of the Class 2 Claim, the Court shall adjudicate such dispute at Confirmation. The ADESA Claim is Impaired. The Holder of the ADESA Claim is entitled to vote on the Plan.</p>
<p><u>Class 3: Other Secured Claims:</u> Class 3 Claims are Unimpaired.</p> <p>Expected to be \$0.00 but potentially contains the Claim of American Express Bank, FSB which is approximately \$50,000.00.</p>	<p>The Claims of Creditors in Class 3 are Unimpaired. Class 3 shall contain separate subclasses for each Other Secured Claim against the Debtor, to the extent an Other Secured Claim exists. The treatment of each separate class will be treated as follows: Except to the extent that a holder of an Allowed Other Secured Claim agrees to less favorable treatment, each holder of an Allowed Other Secured Claim shall, in full and final satisfaction of such Allowed Other Secured Claim be paid Cash in an amount equal to the Allowed amount of such Claim as determined in accordance with section 506(a) of the Bankruptcy Code, on the Effective Date or as soon thereafter as practicable, or receive the Collateral securing its Allowed Other Secured Claim on the Effective Date or as soon thereafter as practicable. Notwithstanding any other provision in §4.3 of the Plan, any Holder of a Class 3 Claim may agree to any treatment of such Claim, which treatment may include preservation of such Holder's lien;</p>

	<p>provided that such treatment shall not provide a return to such Holder, by reason of such Class 3 Claim, having a present value in excess of the amount of such Secured Claim. The Holders of Claims in Class 3 are Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of these claims are conclusively presumed to accept this Plan and are not entitled to vote to accept or reject this Plan, and the votes of such Holders will not be solicited.</p> <p>There are not expected to be any Claims in this Class, however, there is a possibility that American Express Bank, FSB's Claim will fall within this Class.</p>
<p><u>Class 4: Secured Tax Claims:</u> Class 4 Claims are Unimpaired.</p> <p>Approximately \$390,000.00</p>	<p>On or as soon as reasonably practicable after the Effective Date or the Allowance of Class 4 Claim, the Holder of an Allowed Class 4 Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Claim, (a) Cash equal to the value of such Claim, including interest thereon at the rate provided under applicable non-bankruptcy law or (b) such other treatment as may be agreed upon in writing by the applicable Debtor and such Holder.</p>
<p><u>Class 5 Secured Claim of Eng Commercial Finance:</u> Class 5 Claims are impaired.</p> <p>Approximately \$304,000.00</p>	<p>On or as soon as reasonably practicable after the Effective Date or the Allowance of the Class 5 Claim, Eng Commercial Finance ("<u>Eng</u>") shall take possession of its collateral in full satisfaction of its Claim. The Claim of Eng is Impaired. The Holder of the Eng Claim is entitled to vote on the Plan.</p>
<p><u>Class 6: Unsecured Claims:</u> Class 6 Claims are impaired.</p> <p>Approximately \$12,873,091.72.</p>	<p>Each Holder of a Class 6 Claim shall receive periodic Pro Rata distributions from the Liquidation Trust. Cisco Systems Capital Corporation's ("<u>Cisco</u>") claim will be resolved by: (1) the Agreement to Lease Equipment No. 8351-MM001-0 between Cisco and DAS (the "<u>Cisco Lease</u>") being rejected no later than Closing; (2) returning</p>

	<p>to Cisco its equipment; (3) Cisco having an Allowed Administrative Expense Claim calculated by determining the benefit to the Debtor of use of the equipment under the Cisco Lease Post-Petition; and (4) Cisco having an Allowed General Unsecured Claim equal to damages incurred based on the rejection of the Cisco Lease. For purposes of voting, American Express Bank, FSB’s claim will be treated as a Class 6 Claim. To the extent that American Express Bank, FSB’s claim is secured, its Allowed Claim will be treated as a Class 3 Claim.</p> <p>The Holders of Class 6 Claims are Impaired. The Holders of Class 6 Claims are entitled to vote on the Plan.</p>
<p><u>Class 7: Interests of DAS:</u> Class 7 Interests are impaired.</p>	<p>Each Holder of Interests in Class 7 shall receive nothing on account of such Interests. All Interests shall be cancelled effective at Closing. Holders of Claims in this class are conclusively deemed to reject the Plan and are not entitled to vote to accept or reject the Plan.</p>

**B. Further Estimation of Amounts of Claims<sup>2</sup>**

The amounts of all Claims contained herein are estimated as of the date of this Disclosure Statement. The Debtor has begun, but not completed, the process of verifying proofs of Claim and reconciling the amounts sought therein with the Debtor’s books and records. As of the date of filing this Disclosure Statement, the Bar Date had not run. The Debtor anticipates that adjustments in the amounts of the Claims set forth herein may be necessary after the claim verification process is completed. Pursuant to the Plan, the Liquidating Trust will have the right to object to Claims.

Prepetition Secured Claims of DAS	\$8,442,094.50
Priority Unsecured Claims of DAS	\$386,075.15
General Unsecured Claims of DAS	\$12,873,091.72
Debtor In Possession Financing	\$2,600,000.00

**VII. MEANS FOR IMPLEMENTATION OF THE PLAN**

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<sup>2</sup> The Debtor’s Schedules and Statements of Financial Affairs, as amended and updated, are incorporated herein by reference.

**A. Sale of the Assets**

A sale free and clear of all claims and encumbrances of substantially all of the Assets to ADESA or its designated affiliate shall be approved by the Court at Confirmation and shall be consummated at Closing pursuant to the terms of the Asset Purchase Agreement and subject to the terms of Section 7.2 of the Plan. If ADESA or its assignee is the Buyer, the consideration for the Assets shall be the satisfaction of the ADESA Claim, ADESA's payment of the Contribution to the Liquidating Trust, and the satisfaction of Allowed Administrative Expense Claims; provided, however, ADESA is not obligated to bid the full amount of the ADESA claim for the Assets. Otherwise, the Buyer shall pay cash to ADESA equal to the ADESA Claim and shall pay the Contribution to the Liquidation Trust in consideration of the Assets. Allowed Administrative Claims, including Allowed Professional Fee Claims, as defined herein, shall be paid by the Buyer.

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtor or its Estate, except as are set forth in the Asset Purchase Agreement which is attached to this Plan as Exhibit B.

Except as is otherwise provided in the Asset Purchase Agreement, the Buyer's purchase of all right, title, and interest in and to the Assets shall be free and clear of all Encumbrances to the maximum extent permitted by Section 363 of the Code, including a sale free of any claims of successor liability, with such Encumbrances to attach to the proceeds of the purchased Assets with the same validity and priority as such Encumbrances currently exist against the Assets. Such Buyer shall be determined to have operated in good faith and be entitled to the protections found in Section 363(m).

Closing of the sale referenced in § 6.1 of the Plan shall take place within seven (7) days after the Confirmation Order becomes final and non-appealable. The date, time and place of Closing shall be fixed by the Buyer. The Buyer shall give notice to any party that may assert a claim for cure related to the assumption of an executory contract of the date, time, and place of Closing.

At Closing, the following will occur:

The Buyer shall:

- (1) deliver the Contribution to the Liquidating Trustee;
- (2) satisfy the obligations under §§ 4.1 and 4.3 of the Plan;
- (3) satisfy the ADESA Claim;
- (4) satisfy all Allowed Administrative Expense Claims
- (5) deliver to the Debtor any excess proceeds from the sale of the Assets; and
- (6) cure any assumed executory contracts.

DAS shall:

- (1) transfer the Assets to the Buyer;
- (2) deliver to the Buyer a bill of sale and those other documents the Buyer may reasonably require to evidence the sale of the Assets and as otherwise provided in the Asset Purchase Agreement;
- (3) deliver to ADESA and Carsarrive a general release; and
- (4) deliver the Liquidating Trust Assets to the Liquidating Trust and assign to the Liquidating Trust the Causes of Action.

**B. The Buyer**

The Buyer shall be ADESA unless § 7.2 of the Plan is satisfied.

Section 7.2 of the Plan provides that any entity other than ADESA may be the Buyer under the terms of this Plan if:

- a. Such entity, in writing, provides notice to DAS, ADESA and the Court, within five (5) days after the Confirmation Date, that it desires to purchase the Assets of the Debtor and to become the Buyer under the Plan;
- b. Contemporaneously with the notice required, such entity provides (i) proof of financial wherewithal satisfactory to Debtor and ADESA in their sole discretion that such entity has the ability to pay the ADESA Claim in full, the Contribution, and satisfy all allowed Administrative Expense Claims, and (ii) to DAS a deposit in the amount of Fifty Thousand and 00/100 Dollars (\$50,000) to be placed in its counsel's IOLTA account pending further order of the Court; such deposit to cover the Contribution under the Plan;
- c. Such entity provides written evidence that enables the Debtor and ADESA, and their respective advisors to determine in their sole discretion whether said entity has the financial, operational, and other ability to close the sale of the Assets and provides adequate assurance of future performance under all contracts and leases to be assumed and assigned in connection with the purchase of the Assets including the ability to satisfy outstanding Administrative Claims and amounts owed to Secured Claims; and
- d. Such entity executes an asset purchase agreement substantively similar to the Asset Purchase Agreement, which is attached to the Plan and proposed for approval by this Court.

Should an entity satisfy § 7.2 of the Plan:

- a. No later than five (5) days after the Confirmation Date, the Debtor, in a form reasonably acceptable to ADESA, shall file (i) a notice indicating that another entity has satisfied the requirements of the Plan; and (ii) a

motion seeking the Court's approval of the entity as the alternative Buyer under the Plan and in place of ADESA.

- b. Upon entry of an order by the Court approving the sale of the assets to the alternative purchaser, the alternative purchaser shall have fourteen (14) days to close the sale of the Assets. If the alternative purchaser fails to close the sale of the Assets within fourteen (14) days of the entry of the order approving such sale of the Assets, then Debtor shall provide notice to the Court and immediately close the sale of the Assets with ADESA. Notwithstanding the entry of an order by the Court approving the replacement of ADESA as Buyer with an alternative purchaser, ADESA shall remain obligated to consummate the transactions contemplated under this Plan unless and until the alternative Buyer closes the sale of the Assets, subject to the terms and conditions of the Plan and ADESA's rights under the Plan and the Asset Purchase Agreement.
- c. The Court shall resolve any dispute as to the identity of the Buyer at any hearing to replace ADESA with an alternative purchaser and approve the sale of the Assets to such purchaser.

**C. Effective Date of the Plan**

The Effective Date of the Plan shall be the day on which Closing is complete.

**D. Claim Objections**

The Buyer and the Liquidating Trustee may file objections to Claims until six (6) months after the Effective Date, which date may be extended upon order from the Court.

**E. Distribution Procedures**

Any payments or distributions to be made by the applicable Debtor or the Liquidating Trust as required by the Plan shall be made only to the Holders of Allowed Claims. Any payments or distributions to be made pursuant to the Plan shall be made on or about the Effective Date of such Plan, or as soon thereafter as practicable, except as otherwise provided for in the Plan. Any payment, delivery or distribution pursuant to the Plan, to the extent delivered by the United States mail, shall be deemed made when deposited by the Debtor or the Liquidating Trust into the United States mail. Distributions or deliveries required to be made by the Plan on a particular date shall be deemed to have been made on such date if actually made on such date or as soon thereafter as practicable taking into account the need to establish reserves and account for Disputed Claims. No payments or other distributions of property shall be made on account of any Claim or portion thereof unless and until such Claim or portion thereof is Allowed. The Liquidating Trust will establish reserves for Disputed Claims, and defer or delay distributions to ensure an equitable and ratable distribution to Holders of Allowed Claims, in accordance with the terms of the Plan. Neither the Debtor nor the Liquidating Trust will make distributions upon a Claim held by a party against whom any cause of action asserted under chapter 5 of the United States Code is asserted until resolution of the avoidance action by settlement or judgment or as otherwise provided by Court order.

**F. Directors and Officers**

Currently there are no Directors or Officers employed by the Debtor. As of the Effective Date, the Debtor will no longer have employees.

**G. Preservation of Rights of Action**

In accordance with Section 1123(b) of the Code, and except as expressly provided herein, the Liquidating Trust shall be assigned all Causes of Action, if any, of the Debtor.

**H. Liquidating Trust**

**Establishment and Administration of Liquidating Trust**

On the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (i) investigating and, if appropriate, pursuing Causes of Action (ii) administering and pursuing the Liquidating Trust Assets, (iii) resolving all Disputed Claims, and (iv) making all distributions from the Liquidating Trust as provided for in the Plan and the Liquidating Trust Agreement. The Liquidating Trust Agreement is incorporated herein in full and is made a part of this Plan as if set forth herein.

Upon execution of the Liquidating Trust Agreement, the Liquidating Trustee shall be authorized to take all steps necessary to complete the formation of the Liquidating Trust; provided, that, prior to the Effective Date, the Debtor or the Liquidating Trustee, as applicable, may act as organizers of the Liquidating Trust and take such steps in furtherance thereof as may be necessary, useful or appropriate under applicable law to ensure that the Liquidating Trust shall be formed and in existence as of the Effective Date. The Liquidating Trust shall be administered by the Liquidating Trustee in accordance with the Liquidating Trust Agreement. The Liquidating Trust shall have authority to incur indebtedness in furtherance of its objectives.

It is intended that the Liquidating Trust be classified for federal income tax purposes as a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d) and as a “grantor trust” within the meaning of Sections 671 through 679 of the Internal Revenue Code. In furtherance of this objective, the Liquidating Trustee shall, in its business judgment, make continuing best efforts not to unduly prolong the duration of the Liquidating Trust. All assets held by the Liquidating Trust on the Effective Date shall be deemed for federal income tax purposes to have been distributed by the Debtor on a Pro Rata basis to Holders of Allowed Unsecured Claims and then contributed by such Holders to the Liquidating Trust in exchange for the Liquidating Trust Interests. All Holders of Unsecured Claims have agreed to use the valuation of the assets transferred to the Liquidating Trust as established by the Liquidating Trustee for all federal income tax purposes. The beneficiaries under the Liquidating Trust will be treated as the deemed owners of the Liquidating Trust. The Liquidating Trust will be responsible for filing information on behalf of the Liquidating Trust as grantor trust pursuant to Treasury Regulation Section 1.671-4(a).



### **Assets of the Liquidating Trust**

On the Effective Date, or as soon as reasonably practicable thereafter, the Debtor will transfer and assign to the Liquidating Trust the Liquidating Trust Assets, which shall be deemed vested in the Liquidating Trust. On and after the Effective Date, the Liquidating Trustee shall have discretion with respect to the timing of the transfers of Liquidating Trust Assets. Any checks of the Debtor issued prior to the Effective Date that remain un-cashed three (3) months after the Confirmation Date shall revert to the Liquidating Trust. The Liquidating Trust will hold and administer, among other things, (i) Cash in bank account(s) and (ii) the Disputed Claims Reserve.

### **Rights and Powers of the Liquidating Trust and the Liquidating Trustee**

The Liquidating Trustee shall be deemed the Estate's representative in accordance with Section 1123 of the Code and shall have all the rights and powers set forth in the Liquidating Trust Agreement, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Code and Rule 2004 of the Bankruptcy Rules, including without limitation, the right to (i) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Liquidating Trust Agreement; (ii) prosecute, settle, abandon or compromise any Causes of Action without the need of Court approval; (iii) make distributions contemplated by the Plan and the Liquidating Trust Agreement, (iv) establish and administer any necessary reserves for Disputed Claims that may be required; (v) object to Disputed Claims and prosecute, settle, compromise, withdraw or resolve in any manner approved by the Court such objections; (vi) employ and compensate professionals (including professionals previously retained by the Debtor), provided, however, that any such compensation shall be made only out of the Liquidating Trust Assets; and (vii) file all federal, state and local tax returns if necessary.

The Liquidating Trust shall assume any outstanding responsibility of the Debtor under the Plan.

The Liquidating Trustee shall have the full authority to take any steps necessary to administer the Liquidating Trust Agreement, including without limitation, the duty and obligation to liquidate Liquidating Trust Assets, to make distributions therefrom in accordance with the provisions of this Plan and to pursue, settle or abandon any Causes of Action all in accordance with the Liquidating Trust Agreement.

On or before the Effective Date, the Debtor shall transfer to the Liquidating Trustee the Debtor's evidentiary privileges, including the attorney/client privilege, solely as they relate to Causes of Action. The Plan shall be considered a motion pursuant to sections 105, 363 and 365 of the Code for such relief. Upon such transfer, the Debtor and the Estate shall have no other further rights or obligations with respect thereto.

On the Effective Date, each Holder of an Allowed Unsecured Claim shall, by operation of the Plan, receive its Pro Rata share of the Liquidating Trust Interests. Liquidating Trust Interests shall be reserved for Holders of Disputed Unsecured Claims and issued by the Liquidating Trust to, and held by the Liquidating Trustee in, the Disputed Claims Reserve pending allowance or disallowance of such Disputed Unsecured Claims. No other entity, shall

have any interest, legal, beneficial, or otherwise, in the Liquidating Trust, its assets or causes of action upon their assignment and Transfer to the Liquidating Trust.

The Liquidating Trust Interests shall be uncertificated and shall be non-transferable except upon death of the Holder or by operation of law. Holders of Liquidating Trust Interests, in such capacity, shall have no voting rights with respect to such interests. The Liquidating Trust shall have a term of five (5) years from the Effective Date, without prejudice to extend such term conditioned upon the Liquidating Trust not becoming subject to the Securities Exchange Act of 1934 (as now in effect or hereafter amended).

### **Appointment of a Liquidating Trustee**

The initial Liquidating Trustee shall be Corky Sherman. The appointment of the Liquidating Trustee shall be approved by the Confirmation Order and such appointment shall be effective on the Effective Date. The Liquidating Trustee shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Liquidating Trust Agreement.

The Liquidating Trustee shall serve pursuant to the terms of the Liquidating Trust Agreement and the Plan. Any successor Liquidating Trustee shall be designated by the previous Liquidating Trustee or the Court.

The Liquidating Trustee and his/her professionals shall be exculpated and indemnified pursuant to and in accordance with the terms of the Plan and the Liquidating Trust Agreement.

### **Liquidating Trust Distributions**

**Interim Distributions.** The Liquidating Trustee may make interim distributions: (i) to Holders of the Liquidating Trust Interests solely in accordance with this Plan and the Liquidating Trust Agreement and (ii) from the Disputed Claims Reserve.

**Final Distributions.** The Liquidating Trust shall be dissolved and its affairs wound up and the Liquidating Trustee shall make the final distributions, upon the earlier of (i) the date which is five (5) years after the Effective Date, and (ii) that date when, (A) in the reasonable judgment of the Liquidating Trustee, substantially all of the assets of the Liquidating Trust have been liquidated and there are no substantial potential sources of additional Cash for Distribution; and (B) there remain no substantial Disputed Unsecured Claims. Notwithstanding the foregoing, on or prior to a date not less than six (6) months prior to such termination, the Court, upon motion by a party in interest, may extend the term of the Liquidating Trust for one or more finite terms based upon the particular facts and circumstances at that time, if an extension is necessary to the liquidating purpose of the Liquidating Trust. The date on which the Liquidating Trustee determines that all obligations under the Plan and the Liquidating Trust Agreement have been satisfied is referred to as the "Trust Termination Date". On the Trust Termination Date, the Liquidating Trustee shall promptly request the Court enter an order closing the Cases (unless this has already been done).

After final distributions have been made in accordance with the terms of the Plan and the Liquidating Trust Agreement, if the amount of remaining cash is less than \$1,000, the Liquidating Trustee, may donate such amount to a charity.

## **VIII. PROCEDURES FOR RESOLVING AND TREATING CONTESTED AND CONTINGENT CLAIMS**

### **A. Objections to Claims**

The Debtor and, after Closing, the Buyer and the Liquidating Trust shall have sole authority to file objections to Claims, and to withdraw any objections to such Claims that the Debtor or the Liquidating Trust file. The Debtor and, after Closing, the Liquidating Trust, respectively, shall have authority to settle, compromise, or litigate to judgment any objections to Claims that they file. The Debtor, and after Closing, the Liquidating Trust may settle or compromise any Disputed Claim outside the Court under applicable governing law.

As soon as practicable, but no later than the Claims Objection Deadline, the Debtor and, after Closing, the Buyer and Liquidating Trust, as applicable, may file objections with the Court and serve such objections on the Creditors holding the Claims to which such objections are made. Nothing contained therein, however, shall limit the right of the Debtor or the Liquidating Trust, as applicable, to object to Claims, if any, filed or amended after the Claims Objection Deadline. The Claims Objection Deadline may be extended by the Court upon motion by the Debtor or the Liquidating Trust, as applicable.

Unless otherwise agreed to in writing by the Debtor, any proof of claim filed after the Claims Bar Date shall be of no force and effect and need not be objected to by the Liquidating Trust except as allowed by applicable law or the Court.

### **B. Disputed Claims and Estimation of Claims**

Notwithstanding any other provision of the Plan, no payments or distributions shall be made with respect to any disputed portion of a Claim unless and until all objections to such disputed portion of the Claim have been settled or withdrawn or have been determined by Final Order.

The Debtor, the Buyer and Liquidating Trust may at any time request that the Court estimate for all purposes any contingent or unliquidated Claim pursuant to Code Section 502(c), regardless of whether the Liquidating Trust or any Debtor has previously objected to such Claim or whether the Court has ruled on any objection, and the Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal related to any such objection. In the event the Court estimates any contingent or unliquidated Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor or the Buyer and the Liquidating Trust may elect to pursue any supplemental proceedings to object to any ultimate payment of such Claim. All of the aforementioned objection, estimation and resolution procedures are cumulative and are not necessarily exclusive of one another.

### **C. Schedules Deemed Amended to Reflect Payments Made**

Notwithstanding the contents of the Schedules, Claims listed therein as undisputed,

liquidated and not contingent shall be reduced by the amount, if any, that was paid by the Debtor prior to the Effective Date including pursuant to orders of the Court. To the extent such payments are not reflected in the Schedules, such Schedules will be deemed amended and reduced to reflect that such payments were made. Nothing in the Plan shall preclude the Plan Agent from paying Claims that the Debtor was authorized to pay pursuant to any Final Order entered by the Court prior to the Effective Date.

**D. Offsets and Defenses**

The Debtor and the Liquidating Trustee, as applicable, shall be vested with and retain all defenses of the Estate against any Claim, including without limitation all rights of Setoff or recoupment and all counterclaims against any Claimant.

**E. Distributions After Allowance**

The Liquidating Trust shall make payments and distributions from a distribution reserve to each Holder of a Disputed Claim that has become an Allowed General Unsecured Claim in accordance with the provisions of the Plan.

**F. Compliance with Tax Requirements/Allocations**

In connection with the Plan, to the extent applicable, the Liquidating Trust shall comply with all tax withholding and reporting requirements imposed on them by any governmental unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Liquidating Trust shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of a distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes with respect to such distribution, withholding distributions pending receipt of information necessary to facilitate such distribution, or establishing any other mechanisms it believes are reasonable and appropriate. The Liquidating Trust reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens and encumbrances. Unless otherwise provided in the Plan, distributions in respect of Allowed Claims shall be allocated first to the principal amount (as determined for U.S. federal income tax purposes) of such Allowed Claims, and then, to the extent the consideration exceeds the principal amount of such Allowed Claims, to any portion of such Allowed Claims for accrued, but unpaid interest.

**G. Expunging of Certain Claims**

Any Claim that is in the amount of \$0.00 or designated as “contingent, unliquidated or disputed” on the Debtor’s Schedules and for which no proof of claim has been timely filed, shall be deemed disallowed and such claim may be expunged without the necessity of filing a claim objection and without any further notice to, or action, order or approval of the Court.

**H. Rights Under Section 505**

The Debtor and to the extent applicable, the Liquidating Trust, shall retain and be entitled

to assert all rights pursuant to Section 505 of the Code.

## **IX. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

### **A. Assumption/Rejection**

ADESA shall provide Debtor with a list of contracts to be assumed and assigned no later than five (5) days following entry of an order approving the Disclosure Statement; provided, however, Buyer may amend the designation of contracts to be assumed and assigned at any time prior to the Effective Date. Debtor shall file with the Court a notice of the contracts to be assumed and assigned and a proposed cure amount. Notice will be provided to each counterparty to the contract. Counterparties to the contracts shall have 30 days to object to the proposed cure and assumption and assignment of the contract.

Debtor shall use its best efforts to resolve any disputes concerning any cure amounts or other objections to assumption and assignment. Buyer is entitled to rely on the cure amounts established by the Court and will not incur any additional liability to the non-debtor parties for cure obligations. Buyer shall have demonstrated the ability to satisfy the conditions of Sections 365(b)(1)(C) of the Bankruptcy Code to the extent necessary to permit the assumption by Buyer and the assignment by Debtor of the Assigned Executory Contracts.

Any executory contract or unexpired lease which has not expired by its own terms on or prior to the Effective Date, which has not been assumed, assumed and assigned, is the subject of a motion seeking to assume and assign the executory contract, the subject of a notice requesting the assumption and assignment of the contract, or rejected with the approval of the Court, or which the Debtor has obtained the authority to reject but have not rejected as of the Effective Date, shall be deemed rejected on the Effective Date, and the entry of the Confirmation Order by the Court shall constitute approval of such rejection pursuant to sections 365(e) and 1123(b)(2) of the Code.

Claims arising out of the rejection of an executory contract or an unexpired lease pursuant to the Plan shall be filed and served upon the Liquidating Trustee within thirty (30) days of the Effective Date, and in accordance with any order entered by the Court pursuant to sections 105, 501, 502 and 1111(a) of the Code and Bankruptcy Rules 2002 and 3003(c)(3) establishing a bar date for the filing of Proofs of Claim.

### **B. Pass-Through**

Except as otherwise provided in the Plan, any rights or arrangements necessary or useful to the consummation of the Plan not otherwise addressed as a Claim or Interest, and other executory contracts not assumable under Code Section 365(c), shall, in the absence of any other treatment under the Plan or Confirmation Order, be passed through the DAS Case for the benefit of the Liquidating Trust and the counterparty unaltered and unaffected by the bankruptcy filings or DAS Case.

### **C. Reservation of Rights**

Nothing contained in the Plan shall constitute an admission by the Debtor that any

particular contract is in fact an executory contract or unexpired lease or that the Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Liquidating Trust, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter and to provide appropriate treatment of such contract or lease.

## **X. CONFIRMATION AND CONSUMMATION OF THE PLAN**

### **A. Solicitation of Votes; Voting Procedures<sup>3</sup> Ballots and Voting Deadlines**

A ballot to be used for voting to accept or reject the Plan is enclosed with all copies of this Disclosure Statement mailed to all holders of Claims and Interests entitled to vote (See Attached Exhibit B). **BEFORE COMPLETING YOUR BALLOT, PLEASE READ CAREFULLY THE INSTRUCTION SHEET THAT ACCOMPANIES THE BALLOT.**

The Court has directed that, in order to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be received no later than **4:00 p.m., Central Time, on [ ]**, at the following address:

#### **Bonds Ellis Eppich Schafer Jones LLP**

Attn: D. Michael Lynn  
John Y. Bonds, III  
Joshua N. Eppich  
420 Throckmorton St., Suite 1000  
Fort Worth, Texas 76102

**YOUR BALLOT MAY NOT BE COUNTED IF IT IS RECEIVED AT THE ABOVE ADDRESS AFTER 4:00 P.M., CENTRAL TIME, ON [\_\_\_\_\_].**

### **Parties in Interest Entitled to Vote**

The Holder of a Claim may vote to accept or reject the Plan only if the Plan impairs the Class in which such Claim is classified. Therefore, all holders of Claims in Impaired Classes may vote to accept or reject the Plan, except to the extent a Claim has been disallowed or is otherwise disputed by the Debtor. Holders of Claims in Class 1 are unimpaired and are, therefore, deemed to accept the Plan.

Any Claim as to which an objection has been filed is not entitled to vote unless the Court, upon application of the Holder to whose Claim an objection has been made, temporarily allows such Claim in an amount that it deems proper for the purpose of accepting or rejecting the Plan. Any such application must be heard and determined by the Court on or before commencement of the Confirmation Hearing. A vote may be disregarded if the Court determines, after notice and a hearing, that such vote was not solicited or procured in good faith or in accordance with the provisions of the Code.

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<sup>3</sup> Attached hereto as Exhibit B is a proposed solicitation package. Through this Disclosure Statement, the Debtor requests approval of the form of the solicitation package.

IF YOU HAVE ANY QUESTIONS REGARDING THE PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT DEBTOR'S COUNSEL AT THE FOLLOWING ADDRESSES:

John Y Bonds, III,  
Joshua N. Eppich, or  
Bonds Ellis Eppich Schafer Jones LLP  
420 Throckmorton St., Suite 1000  
Fort Worth, Texas 76102

[John@bondsellis.com](mailto:John@bondsellis.com)  
[Joshua@bondsellis.com](mailto:Joshua@bondsellis.com)

**COUNSEL FOR THE  
DEBTOR-IN-POSSESSION**

### **Vote Required for Class Acceptance**

The Code defines acceptance of a plan by a class of claims as acceptance by holders of at least two-thirds in dollar amount, and more than one-half in number, of the claims of that class which actually cast ballots for acceptance or rejection of the Plan. Thus, class acceptance takes place only if at least two-thirds in amount and a majority in number of the holders of claims voting cast their ballots in favor of acceptance.

### **B. Confirmation Hearing**

Section 1128(a) of the Code requires the Court, after notice, to hold a hearing on confirmation of a plan. By order of the Court, the Confirmation Hearing has been scheduled for [ **2017 at .m.**], Central Time, in the United States Court for the Northern District of Texas, Dallas Division. The Confirmation Hearing may be adjourned from time to time by the Court without further notice except for an announcement made at the confirmation hearing or any adjournment thereof.

Section 1128(b) of the Code provides that any party in interest may object to confirmation of a plan. Any objection to confirmation of the Plan must be made in writing and filed with the Court on or before **4:00 pm Central Time on [ 2017]**, in accordance with applicable local and federal rules and any Order of the Court.

### **C. Objections to Confirmation**

In addition, any such objection must be served upon the following parties, together with proof of service, on or before **4:00 pm Central Time on [ , 2017]**:

John Y Bonds, III,  
Joshua N. Eppich, or  
Bonds Ellis Eppich Schafer Jones LLP  
420 Throckmorton St., Suite 1000  
Fort Worth, Texas 76102

[John@bondsellis.com](mailto:John@bondsellis.com)  
[Joshua@bondsellis.com](mailto:Joshua@bondsellis.com)

## **COUNSEL FOR THE DEBTOR-IN-POSSESSION**

### **D. Conditions Precedent to Confirmation and Effectiveness**

The following are conditions precedent to the occurrence of Confirmation:

- The Confirmation Order shall have been entered in form and substance reasonably acceptable to the Debtor and ADESA and such order shall have become a Final Order;
- A notice of the Effective Date shall have been filed and thereafter served upon all Creditors and parties in interest;
- All the requirements of Article VI of the Plan shall have occurred or been met; and
- Each of the conditions set forth above may be waived in whole or in part by the Debtor or ADESA, as applicable.

### **E. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent plans of reorganization. If the Debtor revokes or withdraws the Plan, or if Confirmation or substantial consummation of the Plan does not occur, then (i) the Plan shall be null and void in all respects and (ii) nothing contained in the Plan, and no acts taken in preparation for Consummation of the Plan, shall (a) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person, (b) prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor, or (c) constitute an admission of any sort by the Debtor or any other Person.

### **F. Substantial Consummation**

On the Effective Date, the Plan shall be deemed to be substantially consummated under Sections 1101 and 1127(b) of the Code.

### **G. Non-Material Modifications**

The Debtor may alter, amend, or modify the Plan or any exhibits thereto under Code Section 1127(a) at any time prior to the Confirmation Date. After the Confirmation Date and prior to “Substantial Consummation” of the Plan, as defined in Code Section 1101(2) the Liquidated Debtor may, under Code Section 1127(b), institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan, so long as such proceedings do not materially adversely affect the treatment of Holders of Claims or Interests under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Court.



Notwithstanding the foregoing, all modifications made to the Plan after solicitation of votes on the Plan has commenced, as reflected in the Confirmation Order, as set forth on the record at the Confirmation Hearing, or as reflected in the Plan, satisfy the requirements of Section 1127(a) of the Code and Bankruptcy Rule 3019, are not material or do not adversely affect the treatment and rights of the Holders of any Claims or Interests under the Plan who have not otherwise accepted such modifications. Accordingly, the Debtor has satisfied Section 1127(c) of the Code and Bankruptcy Rule 3019 with respect to the Plan, as modified; and Holders of Claims or Interests that have accepted or rejected the Plan (or are deemed to have accepted or rejected the Plan) are deemed to have accepted or rejected, as the case may be, the Plan as modified on the date of the Confirmation Order, pursuant to Section 1127(d) of the Code and Bankruptcy Rule 3019.

#### **H. Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Court must determine whether the Code's requirements for confirmation of the Plan have been satisfied, in which event the Court will enter an order confirming the Plan. As set forth in Section 1129 of the Code, these requirements are as follows:

- The Plan complies with the applicable provisions of the Code;
- The Debtor complied with the applicable provisions of the Code;
- The Plan has been proposed in good faith and not by any means forbidden by law;
- Any payment made or promised by the Debtor 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 case, has been approved by, or is subject to the approval of the Court as reasonable;
- The Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as the director, officer, or a successor to the Debtor under the Plan;
- Any governmental regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Debtor has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval;
- With respect to each Impaired class of claims or interests:
  - each holder of a claim or interest of such class has accepted the Plan or will receive or retain under the Plan on account of such claim or interest property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated on such date under chapter 7 of the Code on such date; or
  - if Section 1111(b)(2) of the Code applies to the claims of such class, the holder of a claim of such class 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 value of such holder's interest in the estate's interest in the property that secures such claims.

- With respect to each class of claims:
  - such class has accepted the Plan; or
  - such class 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:
  - with respect to a claim of a kind specified in Section 507(a)(1) or 507(a)(2) of the Code, on the effective date of the Plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
  - with respect to a class of claims of a kind specified in Section 507(a)(3), 507(a)(4), 507(a)(5) or 507(a)(6) of the Code, each holder of a claim of such class will receive:
    - if such class has accepted the Plan, deferred cash payments of a value, as of the effective date of the Plan, equal to the allowed amount of such claim; or
    - if such class has not accepted the Plan, cash on the effective date of the Plan equal to the allowed amount of such claim; and
  - with respect to a claim of a kind specified in Section 507(a)(7) of the Code, the holder of a claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the Plan, equal to the allowed amount of such claim.
- If a class of claims is impaired under the Plan, at least one class of claims that is impaired has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a claim of such class;
- Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan;
- All fees payable under 28 U.S.C. § 1930, as determined by the Court at the hearing on confirmation of the Plan, have been paid or the Plan provides for the payments of all such fees on the Effective Date of the Plan.
- The Debtor had no retiree benefits obligations as that term is defined in Section 1114 of the Code.

The Debtor believes that the Plan satisfies all the statutory requirements of chapter 11 of

the Code, that it has complied or will have complied with all the requirements of chapter 11, and that the Plan is proposed in good faith.

The Debtor further believes that Holders of all Allowed Claims and Interests impaired under the Plan will receive payments under the Plan having a present value as of the Effective Date not less than the amounts likely to be received if the Debtor were liquidated in a case under chapter 7 of the Code. At the Confirmation Hearing, the Court will determine whether Holders of Allowed Claims or Allowed Interests would receive greater distributions under the Plan than they would receive in a liquidation under chapter 7.

The Debtor also believes that the feasibility requirement for confirmation of the Plan is satisfied by the fact that the Assets will be transferred to the Buyer and that Liquidating Trust will be funded to provide a return to Holders of Allowed Unsecured Claims. These facts and others demonstrating the confirmability of the Plan will be shown at the Confirmation Hearing.

## **I. Cramdown**

Pursuant to Section 1129(b) of the Code, the Court may confirm the Plan despite the non-acceptance of the Plan by an Impaired Class. This procedure is commonly referred to as a “cramdown.” Section 1129(b) provides that, upon request of the proponent of the Plan, the Court shall confirm the Plan despite the lack of acceptance by an Impaired Class or Classes if the Court finds that (a) the Plan does not discriminate unfairly with respect to each non-accepting Impaired Class, (b) the Plan is “fair and equitable” with respect to each non-accepting Impaired Class, (c) at least one Impaired Class has accepted the Plan (without counting acceptances by insiders), and (d) the Plan satisfies the requirements set forth in Section 1129(a) other than Section 1129(a)(8). In general, Section 1129(b) permits Confirmation notwithstanding non-acceptance by an Impaired Class if that Class and all more junior Classes are treated in accordance with the “absolute priority” rule, which requires that the dissenting Class be paid in full before a junior Class may receive anything under the Plan.

## **XI. EFFECT OF CONFIRMATION**

### **A. Compromise and Settlement**

Pursuant to Code Section 363 and Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Interests and controversies resolved pursuant to the Plan, including, without limitation, all Claims arising prior to the Petition Date, whether known or unknown, foreseen or unforeseen, asserted or unasserted, arising out of, relating to or in connection with the business or affairs of, or transactions with, the Debtor. The entry of the Confirmation Order shall constitute the Court’s approval of each of the foregoing compromises or settlements, and all other compromises and settlements provided for in the Plan, and the Court’s findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, the Estate, Creditors and other parties in interest, and are fair, equitable and within the range of reasonableness.

It is not the intent of the Debtor that confirmation of the Plan shall in any manner alter or amend any settlement and compromise that has been previously approved by the Court between

the Debtor and any Person (each, a “Prior Settlement”). To the extent of any conflict between the terms of the Plan and the terms of any Prior Settlement, the terms of the Prior Settlement shall control and such Prior Settlement shall be enforceable according to its terms.

**B. Satisfaction of Claims**

Except as otherwise provided in the Plan or any other Plan Document, the rights afforded in the Plan and the treatment of all Claims and Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever against the Debtor or its estate, assets, properties, or interests in property. Except as otherwise provided in the Plan or any other Plan Document, on the Effective Date, all Claims against and Interests in the Debtor shall be satisfied, discharged, and released in full. Except as otherwise provided in the Plan or any other Plan Document, all Persons and Entities shall be precluded and forever barred from asserting against the Debtor and its Affiliates, successors or assigns, or their Estates, Assets, properties, or interests in property any event, occurrence, condition, thing, or other or further Claims or Causes of Action based upon any act, omission, transaction, or other activity of any kind or nature that occurred or came into existence prior to the Effective Date, whether or not the facts of or legal bases therefore were known or existed prior to the Effective Date.

**C. Discharge**

Upon entry of the Confirmation Order, Debtor shall be discharged of all debts incurred or arising prior to commencement of the Case.

**PURSUANT TO SECTION 1141(d) OF THE CODE, AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN AND/OR THE CONFIRMATION ORDER, THE PLAN DISTRIBUTIONS, RIGHTS, AND TREATMENT THAT ARE PROVIDED IN THE PLAN SHALL BE IN COMPLETE SATISFACTION, DISCHARGE, AND RELEASE, EFFECTIVE AS OF THE EFFECTIVE DATE, OF ALL CLAIMS, INTERESTS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS OR INTERESTS FROM AND AFTER THE PETITION DATE, WHETHER KNOWN OR UNKNOWN, AGAINST, LIABILITIES OF, LIENS ON, OBLIGATIONS OF, RIGHTS AGAINST, AND INTERESTS IN, THE DEBTOR OR ANY OF ITS ASSETS OR PROPERTIES, REGARDLESS OF WHETHER ANY PROPERTY SHALL HAVE BEEN DISTRIBUTED OR RETAINED PURSUANT TO THE PLAN ON ACCOUNT OF SUCH CLAIMS AND INTERESTS, INCLUDING DEMANDS, LIABILITIES, AND CAUSES OF ACTION THAT AROSE BEFORE THE EFFECTIVE DATE, ANY LIABILITY (INCLUDING WITHDRAWAL LIABILITY) TO THE EXTENT SUCH CLAIMS OR INTERESTS RELATE TO SERVICES PERFORMED BY EMPLOYEES OF THE DEBTOR BEFORE THE EFFECTIVE DATE AND THAT ARISE FROM A TERMINATION OF EMPLOYMENT OR A TERMINATION OF ANY EMPLOYEE OR RETIREE BENEFIT PROGRAM, REGARDLESS OF WHETHER SUCH TERMINATION OCCURRED BEFORE OR AFTER THE EFFECTIVE DATE, ANY CONTINGENT OR NON-CONTINGENT LIABILITY ON ACCOUNT OF REPRESENTATIONS OR WARRANTIES ISSUED ON OR BEFORE THE EFFECTIVE DATE, AND ALL DEBTS OF THE KIND SPECIFIED IN SECTION 502(g),**

**502(h), or 502(i) OF THE CODE, IN EACH CASE WHETHER OR NOT: (A) A PROOF OF CLAIM OR INTEREST BASED UPON SUCH DEBT, RIGHT, CLAIM, OR INTEREST IS FILED OR DEEMED FILED PURSUANT TO SECTION 501 OF THE CODE OR BANKRUPTCY RULE 3003; (B) A CLAIM OR INTEREST BASED UPON SUCH CLAIM, DEBT, RIGHT, OR INTEREST IS ALLOWED PURSUANT TO SECTION 502 OF THE CODE; OR (C) THE HOLDER OF SUCH A CLAIM OR INTEREST HAS ACCEPTED THE PLAN. SUBJECT TO THE TERMS OF THE PLAN AND/OR THE CONFIRMATION ORDER, ANY DEFAULT BY THE DEBTOR WITH RESPECT TO ANY CLAIM OR INTEREST THAT EXISTED IMMEDIATELY BEFORE OR ON ACCOUNT OF THE FILING OF THESE CHAPTER 11 CASES SHALL BE DEEMED SATISFIED ON THE EFFECTIVE DATE. SUBJECT TO THE TERMS OF THE PLAN, THE CONFIRMATION ORDER SHALL BE A JUDICIAL DETERMINATION OF THE DISCHARGE OF ALL CLAIMS AND INTERESTS SUBJECT TO THE EFFECTIVE DATE OCCURRING. SUBJECT TO THE TERMS OF THE PLAN, THE CONFIRMATION ORDER SHALL BE A JUDICIAL DETERMINATION OF DISCHARGE OF ALL LIABILITIES OF THE DEBTOR, ITS ESTATE, THE LIQUIDATING DEBTOR AND ALL SUCCESSORS THERETO. AS PROVIDED IN SECTION 524 OF THE CODE, SUBJECT TO THE TERMS OF THE PLAN AND/OR THE CONFIRMATION ORDER SUCH DISCHARGE SHALL VOID ANY JUDGMENT AGAINST THE DEBTOR, ITS ESTATE, THE LIQUIDATING DEBTOR OR ANY SUCCESSORS THERETO AT ANY TIME OBTAINED TO THE EXTENT IT RELATES TO A CLAIM OR INTEREST DISCHARGED, AND OPERATES AS AN INJUNCTION AGAINST THE PROSECUTION OF ANY ACTION AGAINST THE LIQUIDATING DEBTOR OR ITS PROPERTY AND ASSETS TO THE EXTENT IT RELATES TO A DISCHARGED CLAIM OR INTEREST.**

**D. Permanent Injunction**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR ANY OTHER ORDER ENTERED PREVIOUSLY BY THIS COURT WITH RESPECT TO A COMPROMISE, ALL PERSONS WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS AGAINST, OR INTERESTS IN, THE DEBTOR ARE PERMANENTLY ENJOINED, ON AND AFTER THE EFFECTIVE DATE, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS SUCH LAW MAY BE EXTENDED OR INTEGRATED AFTER THE EFFECTIVE DATE, FROM (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTOR, THE LIQUIDATING DEBTOR, OR ITS ASSETS WITH RESPECT TO ANY SUCH CLAIM OR INTEREST IN ANY VENUE OTHER THAN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS; (B) THE ENFORCEMENT, ATTACHMENT, COLLECTION, OR RECOVERY BY ANY MANNER OR MEANS OF JUDGMENT, AWARD, DECREE OR ORDER AGAINST THE DEBTOR, THE LIQUIDATING DEBTOR, OR ITS ASSETS ON ACCOUNT OF ANY SUCH CLAIM OR INTEREST IN ANY VENUE OTHER THAN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS; (C) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST THE DEBTOR, THE LIQUIDATING DEBTOR, OR ITS ASSETS ON ACCOUNT OF ANY SUCH CLAIM OR**

**INTEREST IN ANY VENUE OTHER THAN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS; AND (D) ASSERTING ANY RIGHT OF SETOFF, RECOUPMENT OR SUBROGATION OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTOR, THE LIQUIDATING DEBTOR, OR ITS ASSETS ON ACCOUNT OF ANY SUCH CLAIM OR INTEREST IN ANY VENUE OTHER THAN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS. THE FOREGOING INJUNCTION WILL EXTEND TO SUCCESSORS OF THE DEBTOR AND LIQUIDATING DEBTOR AND THEIR RESPECTIVE PROPERTY AND INTERESTS IN THE PROPERTY.**

**E. Releases by Holders of Claims and Interests and Other Related Persons.**

**EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, THE CONFIRMATION ORDER AND THE MUTUAL RELEASE, AS OF THE EFFECTIVE DATE, EACH HOLDER OF A CLAIM OR AN INTEREST THAT VOTED IN FAVOR OF THE PLAN OR HAS NOT OPTED OUT OF THE RELEASES AS PROVIDED ON THE BALLOT, WHETHER SUCH HOLDER OF A CLAIM OR AN INTEREST VOTES TO REJECT THE PLAN, AND EACH RELEASED PERSON SHALL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND FOREVER, RELEASED AND DISCHARGED THE DEBTOR, THE LIQUIDATING DEBTOR, AND THE RELEASED PERSONS FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED ON BEHALF OF THE DEBTOR, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, THAT SUCH ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY), BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THIS CHAPTER 11 CASE, THE DEBTOR'S RESTRUCTURING, THE DIP CLAIM, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PERSONS, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THIS CHAPTER 11 CASE, THE NEGOTIATION, FORMULATION OR PREPARATION OF THE PLAN, THE DISCLOSURE STATEMENT, THE PLAN SUPPLEMENT OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS, UPON ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT OR OTHER OCCURRENCE RELATING TO THE DEBTOR TAKING PLACE ON OR BEFORE THE CONFIRMATION DATE, OTHER THAN CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION OF A RELEASED PERSON THAT CONSTITUTES WILLFUL MISCONDUCT (INCLUDING FRAUD) OR GROSS NEGLIGENCE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE RELEASE SET FORTH ABOVE DOES NOT RELEASE ANY POST-EFFECTIVE DATE OBLIGATIONS OF ANY PARTY UNDER THE PLAN OR ANY DOCUMENT, INSTRUMENT OR AGREEMENT EXECUTED TO IMPLEMENT THE PLAN.**

**F. Releases by the Debtor and its Estate**

**PURSUANT TO SECTION 1123(b) OF THE CODE, AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER OR PURSUANT TO ANY OTHER ORDER PREVIOUSLY ENTERED BY THIS COURT, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE SERVICE OF THE PARTIES RELEASED HEREIN TO FACILITATE THE EXPEDITIOUS REORGANIZATION OF THE DEBTOR AND THE IMPLEMENTATION OF THE RESTRUCTURING CONTEMPLATED BY THE PLAN, ON AND AFTER THE EFFECTIVE DATE, ALL RELEASED PERSONS, INCLUDING THE DEBTOR'S PROFESSIONALS, ARE DEEMED RELEASED AND DISCHARGED BY THE DEBTOR AND ITS ESTATE, AND THE LIQUIDATING DEBTOR, FROM ANY AND ALL CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF THE DEBTOR, OR THE LIQUIDATING DEBTOR, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, THAT THE DEBTOR, ITS ESTATE, THE LIQUIDATING DEBTOR, OR ITS RESPECTIVE AFFILIATES WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT IN THEIR OWN RIGHT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM OR INTEREST OR OTHER ENTITY, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THE LIQUIDATING DEBTOR, THIS CASE, THE DEBTOR'S RESTRUCTURING, THE DIP CLAIM, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PERSONS, THE RESTRUCTURING OF CLAIMS AND INTERESTS BEFORE OR DURING THIS CASE, THE NEGOTIATION, FORMULATION OR PREPARATION OF THE PLAN AND DISCLOSURE STATEMENT, OR RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS, UPON ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE CONFIRMATION DATE, OTHER THAN CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION OF A RELEASED PERSON OR A FORMER OFFICER OR DIRECTOR OF THE DEBTOR THAT CONSTITUTES WILLFUL MISCONDUCT (INCLUDING FRAUD) OR GROSS NEGLIGENCE. THE FOREGOING RELEASE SHALL NOT APPLY TO ANY EXPRESS CONTRACTUAL OR FINANCIAL OBLIGATIONS OR ANY RIGHT OR OBLIGATIONS ARISING UNDER OR THAT IS PART OF THE PLAN OR ANY AGREEMENTS ENTERED INTO PURSUANT TO, IN CONNECTION WITH, OR CONTEMPLATED BY THE PLAN.**

**G. Automatic Stay**

The automatic stay pursuant to Section 362 of the Code, except as previously modified by the Court, shall remain in effect until the Effective Date of the Plan as to the Debtor and all Assets. Upon the Effective Date, the automatic stay shall be replaced by the injunction set forth herein.

**XII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

THE PLAN AND ITS RELATED TAX CONSEQUENCES ARE COMPLEX. MOREOVER, MANY OF THE INTERNAL REVENUE CODE PROVISIONS DEALING WITH THE FEDERAL INCOME TAX ISSUES ARISING FROM THE PLAN HAVE BEEN THE SUBJECT OF RECENT LEGISLATION AND, AS A RESULT, MAY BE SUBJECT TO AS YET UNKNOWN ADMINISTRATIVE OR JUDICIAL INTERPRETATIONS. THE DEBTOR HAS NOT REQUESTED A RULING FROM THE INTERNAL REVENUE SERVICE (THE "IRS") OR AN OPINION OF COUNSEL WITH RESPECT TO THESE MATTERS. ACCORDINGLY, NO ASSURANCE CAN BE GIVEN AS TO THE INTERPRETATION THAT THE IRS WILL ADOPT. THERE ALSO MAY BE STATE, LOCAL OR OTHER TAX CONSIDERATIONS APPLICABLE TO EACH CREDITOR. CREDITORS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE CONSEQUENCES OF THE PLAN TO THEM UNDER FEDERAL AND APPLICABLE STATE, LOCAL AND OTHER TAX LAWS.

**XIII. VALUES**

**A. Estimated Liquidation Value of the Debtor**

As a condition to confirmation of a plan, Section 1129(a)(7)(A)(ii) of the Code requires that each impaired class of claims or interests must receive or retain at least the amount of value it would receive if the debtor were liquidated under chapter 7 of the Code on the effective date of the plan. ADESA holds a properly perfected lien on nearly all of the Debtor's assets. ADESA asserts that it holds a first priority lien on all of the Debtor's assets. The Debtor has stipulated to ADESA's secured position. To the extent that ADESA does not hold a first priority lien then its second lien position will likely be upheld. There is little question that the Assets, especially if liquidated, have a value of significantly less than the \$9.6 million owed to ADESA under its three loans. Therefore, following a liquidation, it is believed that all Allowed Secured Claims would not be satisfied, leaving a zero-cent return to unsecured creditors. The Liquidation Analysis was prepared by the Debtor's management, and the Debtor's management believes it to be reasonably accurate.

In general terms, the liquidation analysis contemplates the liquidation of the Debtor's assets and a distribution of the proceeds thereof to the Debtor's creditors in accordance with the priorities set forth in the Code.

**XIV. RISK FACTORS**

The following is intended as a summary of certain risks associated with the Plan, but it is not exhaustive and must be supplemented by the analysis and evaluation made by each holder of



a Claim or Interest of the Plan and this Disclosure Statement as a whole with such holder's own advisors.

**A. Expenses**

The Liquidated Debtor and the Liquidating Trust will incur expenses relating to the transfer of the Assets and objecting to Claims. It is difficult to estimate the post-confirmation expenses to be incurred by the Liquidated Debtor and the Liquidating Trust due to the number of creditors in the Case.

**B. Bankruptcy Risks**

There can be no assurance that any impaired Class of Claims under the Plan will accept the Plan or that the Proponents will be able to use the cramdown provisions of the Code for confirmation of the Plan. The Debtor has made concerted efforts to propose a Plan that would be accepted by a sufficient number of Claimants and a sufficient amount of Claims to confirm the Plan.

**C. Confirmation Risks**

The following specific risks exist with respect to confirmation of the Plan:

- Any objection to confirmation of the Plan can either prevent confirmation of the Plan, or delay such confirmation for a significant period of time.
- Since the Debtor may be seeking to obtain approval of the Plan over the rejection of one or more impaired Classes of Claims, the cramdown process could delay confirmation.

**D. Conditions Precedent**

Confirmation of the Plan and occurrence of the Effective Date are subject to certain conditions precedent that may not occur. The Debtor, however, is working diligently with all parties in interest to ensure that all conditions precedent are satisfied.

**XV. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

The Debtor has evaluated several alternatives to the Plan, including the liquidation of the Debtor through a chapter 7 case. After studying the alternatives, the Debtor has concluded that the Plan is the best alternative and will maximize recoveries by Holders of Claims, assuming confirmation of the Plan and consummation of the transactions contemplated by the Plan. The following discussion provides a summary of the Debtor's analysis leading to its conclusion that the Plan will provide the highest value to holders of Claims.

**A. Chapter 7 Liquidation Alternative**

The Debtor's analysis reflects a liquidation value that is lower than the value that may be realized through the Plan. Conversion to a chapter 7 liquidation will not produce a greater recovery for Claimants because: (i) additional administrative expenses involved in the

appointment of a trustee or trustees, attorneys, accountants, and other professionals to assist such trustee(s) in the case of a chapter 7 proceeding; (ii) additional expenses and claims, some of which would be entitled to priority in payments, which would arise by reason of the liquidation; (iii) substantial time which would elapse before creditors would receive any distribution in respect of their Claims; (iv) the Assets would likely be liquidated in a fire sale process; and (v) no funds would be available to pay any remaining Allowed Unsecured Claims because the value of the Assets is less than the amount of the ADESA Claim. Consequently, the Debtor believes that the Plan provides a greater return to Holders of Allowed Claims than would a chapter 7 liquidation. In fact, it is likely that the return to claimholders will be zero if the case is converted.

#### **B. Alternatives If Plan Is Not Confirmed**

If the Plan is not confirmed, any other party in interest in the DAS Case could attempt to formulate and propose a different plan or plans of reorganization. Further, if no plan of reorganization can be confirmed, the DAS Case may be converted to a liquidation proceeding under chapter 7 of the Code. In a chapter 7 case, a trustee would be elected or appointed to liquidate the assets of the Debtor. The proceeds of the liquidation would be distributed to the creditors of the Debtor in accordance with the priorities established by the Code.

### **XVI. CONCLUSION**

The Debtor urges holders of Claims in impaired Classes to vote to **ACCEPT** the Plan and to evidence such acceptance by returning their ballots so that they will be received on or before **4:00 p.m., Central Time, on [\_\_\_\_\_, 2017]**.

DATED: March 7, 2017

/s/ Joshua N. Eppich

D. Michael Lynn

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