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

IN RE:

JRJR33, INC.,

98-0534701
2950 N. Harwood Street
Suite 2200
Dallas, TX 75201

Debtor.

Case No.: 18-32123-SGJ-11

Case No.: 18-32124-SGJ-11

Chapter: 11

IN RE:

THE LONGABERGER COMPANY,

31-1311748
2950 N. Harwood Street
Suite 2200
Dallas, TX 75201

Debtor.

JOINTLY ADMINISTERED UNDER:

Case No.: 18-32123-SGJ-11

**DISCLOSURE STATEMENT FOR
THE LONGABERGER COMPANY'S PLAN OF REORGANIZATION
[DATED October 19, 2018]**

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ARTICLE I
INTRODUCTION

This Disclosure Statement ("**Disclosure Statement**") and the accompanying ballots ("**Ballots**") are being furnished by The Longaberger Company ("**Debtor**" or "**Longaberger**") to you, the holders of Claims against and Interests in the Debtor, pursuant to section 1125 of the United States Bankruptcy Code in connection with the solicitation of ballots for the acceptance of the Debtor's Plan of Reorganization ("**Plan**") under Chapter 11 ("**Chapter 11**") of Title 11 of the United States Code ("**Code**" or "**Bankruptcy Code**"). **Capitalized terms used in this Disclosure Statement and not defined herein shall have their respective meanings set forth in the Plan or, if not defined in the Plan, as defined in the Bankruptcy Code.**

On **June 29, 2018**, (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division ("**Court**" or "**Bankruptcy Court**").

On **October 19, 2018**, the Debtor filed the Plan. If you are receiving this Disclosure Statement the Debtor was authorized to solicit votes under the Plan.

A. **Purpose of This Disclosure Statement.** The purpose of this Disclosure Statement is to enable those persons whose Claims against and Interests in the Debtor are Impaired and entitled to vote under the Plan to make an informed decision with respect to the Plan before exercising their rights to vote to accept or reject the Plan. *Holders of Claims and Interests should read this Disclosure Statement and the Plan in its entirety before voting on the Plan.* No solicitation of votes with respect to the Plan may be made except pursuant to this Disclosure Statement. No statement or information concerning the Debtor (particularly as to results of operations or financial condition, or with respect to distributions to be made under the Plan) or any of the respective assets, properties or businesses of the Debtor that is given for the purpose of soliciting acceptances or rejections of the Plan is authorized, other than as set forth in this Disclosure Statement. In the event of any inconsistencies between the provisions of the Plan and this Disclosure Statement, the provisions of the Plan shall control. A copy of the Plan is attached hereto as **Exhibit "1"** to this Disclosure Statement.

This Disclosure Statement was *conditionally approved* by the Bankruptcy Court as containing information, of a kind and in sufficient detail, to enable persons whose votes are being solicited to make an informed judgment with respect to acceptance or rejection of the Plan. **The Bankruptcy Court's conditional approval of this Disclosure Statement does not constitute either a guarantee of the accuracy or completeness of the information contained herein or an endorsement of any of the information contained in this Disclosure Statement or the Plan.**

B. **Summary of Entities Entitled to Vote and Votes Needed for Confirmation.** Pursuant to the provisions of the Bankruptcy Code, only holders of Allowed Claims or Interests in Classes of Claims or Interests that are impaired are entitled to vote to accept or reject a proposed chapter 11 plan of reorganization. Classes of Claims or Interests in which the holders of Claims or Interests are unimpaired under a chapter 11 plan are deemed to have accepted the plan and are not entitled to vote to accept or reject the plan. Classes of Claims or Interests in which the holders of Claims or Interests that are impaired but are not entitled to receive or retain any property on account of such Claims or Interests are deemed to have rejected the plan and similarly are not entitled to vote to accept or reject the plan.

Only holders of allowed Claims in Classes 1A, 1B, 1C, 3 and 4 (including all subclasses thereof) (collectively, the “**Voting Classes**”), are entitled to vote on the Plan because such Classes are the only Classes that are “impaired,” within the meaning of section 1124 of the Bankruptcy Code, and that will receive or retain property under the Plan. Classes 1D, 1E, 1F, 1G, 1H and 2 are unimpaired and therefore not entitled to vote on the Plan. Entities holding Administrative Claims and Priority Tax Claims are not classified and are not entitled to vote on the Plan. See Article V of the Plan for a description of the various Classes of Claims, and of the treatment of such Claims and Interests under the Plan. See Article IV of the Plan for an explanation of impairment and the entities that are entitled to vote on the Plan.

The Bankruptcy Court may confirm the Plan only if at least one Class of impaired Claims has voted to accept the Plan (without counting the votes of any insiders whose Claims are classified within that Class), and if certain statutory requirements are met as to both nonconsenting members within a consenting and as to dissenting Classes. A Class of Claims has accepted the Plan only when more than one-half in number and at least two-thirds in amount of the Allowed Claims actually voting in that Class vote in favor of the Plan. The Plan may be confirmed even if all of the Voting Classes do not accept the Plan and do not receive payments or property equal to the full amount of their respective Allowed Claims as of the Effective Date, so long as at least one Class of impaired Claims has voted to accept the Plan.

C. **Confirmation Hearing and Voting Procedures.** If you are entitled to vote to accept or reject the Plan, a Ballot is enclosed for the purpose of voting on the Plan. If you hold a Claim in more than one Class and you are entitled to vote Claims in more than one Class, you will receive separate Ballots that must be used for each separate Class of Claims. **Please vote and return your Ballot(s).**

After carefully reviewing this Disclosure Statement and all exhibits and schedules attached hereto, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot.

BALLOTS SHOULD BE MARKED, SIGNED, DATED AND RETURNED SO THAT THEY ARE STAMPED AS HAVING BEEN RECEIVED BY NO LATER THAN 5:00 P.M., CENTRAL STANDARD TIME, ON [_____, 2018] (THE “VOTING DEADLINE”) AT THE FOLLOWING ADDRESS, AS SET FORTH ON THE ENCLOSED RETURN ENVELOPE:

LONGABERGER
C/O DEMARCO•MITCHELL, PLLC
1255 WEST 15TH STREET, 805
PLANO, TEXAS 75075

IT IS OF UTMOST IMPORTANCE TO THE DEBTOR THAT YOU VOTE PROMPTLY TO ACCEPT THE PLAN BY COMPLETING AND SIGNING THE BALLOT ENCLOSED HERewith AND RETURNING IT TO COUNSEL FOR THE DEBTOR AT THE ADDRESS SET FORTH IN THE BALLOT INSTRUCTIONS THAT ACCOMPANY THE BALLOTS. SHOULD YOU HAVE ANY QUESTIONS REGARDING THE VOTING PROCEDURES, YOUR BALLOT, OR THE BALLOT INSTRUCTIONS, OR IF YOUR BALLOT IS DAMAGED OR LOST, CONTACT COUNSEL FOR THE DEBTOR AT THE ADDRESS LISTED ABOVE.

D. **Confirmation Hearing and Deadlines for Objections.** The Disclosure Statement Order fixes [_____, 2018, at __:___ .m. Central Daylight Time], in the Courtroom of the Honorable Stacy Jernigan, United States Bankruptcy Judge, United States Bankruptcy Court for the Northern District of Texas, Dallas Division, as the date, time, and place for the hearing on

Confirmation of the Plan, and fixes [_____, 2018] as the date by which all objections to Confirmation of the Plan must be filed with the Bankruptcy Court and received by the counsel for the Debtor and certain other persons identified in the Disclosure Statement Order. The Debtor will request Confirmation of the Plan at the Confirmation Hearing.

E. **Important Notices and Cautionary Statements.** This Disclosure Statement has been compiled by the Debtor to accompany the Plan. The factual statements, projections, financial information, and other information contained in this Disclosure Statement have been taken from documents prepared by the Debtor, the unaudited Schedules and Statement of Financial Affairs, the Monthly Operating Reports, pleadings filed in the Bankruptcy Case, and information obtained in the Chapter 11 Case. Any information provided in the Disclosure Statement should not be relied upon unless such information has been independently verified. *Nothing contained in this Disclosure Statement shall have any preclusive effect against the Debtor (whether by waiver, admission, estoppel or otherwise) in any cause or proceeding which may exist or occur in the future.* This Disclosure Statement shall not be construed or deemed to constitute an acceptance of fact or an admission by the Debtor with regard to any of the statements made herein, and all rights and remedies of the Debtor is expressly reserved in this regard. This Disclosure Statement contains statements which constitute the Debtor's, or other third parties' view of certain facts. All such disclosures should be read as assertions of such parties. To the extent any paragraph does not contain an express reference that it constitutes an assertion of a particular party, it should be read as an assertion of the party indicated by the context and meaning of such paragraph. The statements contained in this Disclosure Statement are made as of the Petition Date unless another time is specified herein, and neither delivery of this Disclosure Statement nor any exercise of rights granted in connection with the Plan shall, under any circumstances, create an implication that there has been no change in the information set forth herein since the date of this Disclosure Statement.

Some of the information contained in this Disclosure Statement, by its nature, is forward looking, contains estimates and assumptions which may prove to be inaccurate, and contains projections which may prove to be wrong, or which may be materially different from actual future results. Each Claimant or Interest holder should independently verify and consult its individual attorney and accountant as to the effect of the Plan on such individual Claimant or Interest holder. The Debtor strongly urges each recipient entitled to vote on the Plan to review carefully the contents of this Disclosure Statement, the Plan, and the other documents that accompany or are referenced in this Disclosure Statement in their entirety before making a decision to accept or reject the Plan.

F. **Additional Information.** If you have any questions about the procedures for voting on the Plan, desire another copy of a Ballot, or seek further information about the timing and deadlines with respect to confirmation of the Plan, please contact DeMarco•Mitchell, PLLC (contact information is provided *infra*). Note that DeMarco•Mitchell, PLLC, cannot and will not provide holders of Claims or Interests with any advice, including advice regarding how to vote on the Plan, or the legal effect that confirmation of the Plan will have upon Claims against the Debtor and/or Interests in the Debtor. **Under no circumstances will an inquiry to DeMarco•Mitchell, PLLC, change the Voting Deadline.**

As provided in the Plan, material modifications to the Plan, exhibits to the Plan or documents related to the Plan may be made. Finally, all pleadings filed in the Case are on file with the Bankruptcy Court and are available for review during normal business hours. Written requests for a copy of any specific pleading or document may also be made to DeMarco•Mitchell, PLLC.

ARTICLE II
BACKGROUND INFORMATION

A. **Purpose of Chapter 11.** Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Nonetheless, individuals may file for Chapter 11 as well in order to restructure their finances. Formulation of a plan of reorganization is the principal purpose of a Chapter 11 case. A plan is the vehicle for satisfying the holders of claims a debtor.

The commencement of a Chapter 11 case creates an “estate” comprised of all the legal and equitable interests of the debtor. Sections 1101, 1107, and 1108 of the Bankruptcy Code provide that a debtor may remain in possession of its property as a “debtor in possession” (“**DIP**”) unless a Chapter 11 trustee is appointed. Thus, the Debtor has been operating in the ordinary course of business and under the supervision of the Bankruptcy Court. Additionally, as of the Petition Date, all litigation and actions by creditors to collect claims arising on or before the Petition Date, were stayed absent a specific Bankruptcy Court order authorizing the Debtor to pay such claims.

B. **Summary Description of Debtor’s Condition.** The Debtor is a corporate entity that operated brick a mortar stores in Dresden, Ohio as well as a multi-level marketing program. The business operations involved the sale of Longaberger baskets and related merchandise. The Debtor was forced to cease operations early this year as a result of a non-monetary default of its obligation to JGB. The non-monetary default stemmed from JGB concerns respecting the business operations of certain affiliates. As a result, JGB froze all of the Debtor’s accounts.

At this juncture, it is the Debtor’s desire to liquidate its assets through a Liquidating Trust. The Liquidating Trust will serve the purpose of protecting and preserving the Trust Assets during the liquidation process. Further, it will serve the purpose of providing an efficient methodology for the liquidation and distribution of the proceeds from the Trust Assets to the holders of Allowed Claims.

C. **Events Leading to Bankruptcy.** The primary causes of this bankruptcy filing was the non-monetary default discussed *supra*, and litigation with other creditor parties.

D. **Significant Events Since the Petition Date.** There have been no significant post-petition events at this juncture. Nonetheless, the following matters are currently pending:

- a. Motion to Appoint a Trustee or Convert this Case filed by the JGB.

ARTICLE III
CLAIMS AGAINST THE DEBTOR

A. **Bar Date.** The Court established November 5, 2018, as the claims bar date for all creditors.

B. **Filed Proofs of Claim.** As of the date of this Disclosure Statement there were thirty eight (38) proofs of claim filed against the Debtor asserting aggregate claims in the amount of **\$8,662,645.82**.

C. **Debtor’s Review of Proofs of Claims.** The Debtor has reviewed their books and records and the Proofs of Claims filed. Based upon that review the Debtor posits as follows:

	Creditor		Unsecured		Secured		Priority
1	Gayla Johnson		\$14,904.00		\$0.00		\$0.00
2	West Virginia State Tax Dept.		\$27,055.42		\$121,565.16		\$105,915.86

3	Idaho State Tax Commission		\$250.00		\$0.00	\$1,267.10
4	Wingert Grebing et al		\$,5018.42		\$0.00	\$0.00
5	Missouri Department of Revenue		\$0.00		\$0.00	\$110,704.84
6	Missouri Department of Revenue		\$16,585.66		\$0.00	\$0.00
7	Missouri Department of Revenue		\$50,030.45		\$0.00	209,957.90
8	Fitzpatrick & Weller		\$18,488.70		\$0.00	\$0.00
9	Commonwealth of Kentucky Dept. of Rev.		\$13,481.51		\$0.00	\$33,044.79
10	FedEx Corp. Services		\$368,781.77		\$0.00	\$0.00
11	NY State Dept of Tax		\$11,968.38		\$0.00	\$41,857.97
12	IRS		\$54,103.14		\$0.00	\$129,177.20
13	Bruce Smith		\$4,418.53		\$0.00	\$0.00
14	Dimension Hardwood Veneers		\$15,384.12		\$0.00	\$0.00
15	Ohio Dept. Of Job & Family		\$6,114.93		\$0.00	\$17,079.28
16	Theresa Sajewski		\$600.00		\$0.00	\$0.00
17	Gayla Johnson		\$14,904.00		\$0.00	\$0.00
18	Pitney Bowes		\$4,829.85		\$0.00	\$0.00
19	Ohio Dept. of Taxation		\$330,749.44		\$0.00	\$1,031,166.03
20	Judith Summer		\$166.58		\$0.00	\$0.00
21	Sheila Williamson		\$400.00		\$0.00	\$0.00
22	JoAnn Grewe		\$747.50		\$0.00	\$0.00
23	Ohio Dept. of Commerce		\$705.27		\$0.00	\$6,922.20
24	Georgia Dept. of Revenue		\$2,597.97		\$0.00	\$11,439.01
25	Texas Comptroller		\$0.00		\$1,273.00	\$0.00
26	Texas Comptroller		\$0.00		\$11,272.33	\$0.00
27	Rachel Longaberger Stukey		\$0.00		\$3,193,272.64	\$0.00
28	Pennsylvania Dept. of Revenue		\$206,004.83		\$475,932.70	\$775,311.16
29	Nevada Department of Taxation		\$867.56		\$12,325.25	\$5,538.32
30	Carolyn Morning		\$306.48		\$0.00	\$0.00
31	Texas Comptroller		\$0.00		\$0.00	\$5,559.53
32	Ohio Workers Comp		\$1,018,061.61		\$0.00	\$0.00
33	Ohio Workers Comp		\$91,793.35		\$0.00	\$0.00
34	Columbus Gas of Ohio		\$2,562.80		\$0.00	\$0.00
35	Patricia Dillon		\$5,000.59		\$0.00	\$12,475.83
36	Louisiana Department of Revenue		\$258.48		\$0.00	\$645.96
37	DeLage Landen Financial		\$58,491.40		\$0.00	\$0.00

38	South Dakota Dept of Revenue		\$0.00		\$0.00		\$3,306.36
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D. **Scheduled Claims: No Proof of Claim Filed.** Several creditors were listed in the Debtor's schedules, which creditors did not file a proof of claim. The Debtor estimates the aggregate sum of all such non-contingent, liquidated and undisputed Secured Claims to be approximately **\$13,864,989.00**. It was not necessary for these creditors to file a proof of claim pursuant to Federal Rule of Bankruptcy Procedure 3003(c)(2) in order for such creditors to participate in the voting process or to share in any distributions under the Plan. Those creditors are as follows:

Creditor		Unsecured		Secured		Priority
JGB Collateral LLC		\$0.00		\$5,264,989.00		\$0.00
Rochon Capital Partners		\$0.00		\$8,600,000.00		\$0.00

The total of all such non-contingent, liquidated and undisputed Unsecured Claims to be in excess of **\$2,000,000.00**.

The holders of Allowed Claims, other than JGB, will share in the Trust Contribution of \$100,000.00 contributed by the Trust Funder and any recovery from the Trust Causes of Action on a pro rate basis as discussed more fully in the Liquidating Trust. Due to the size of the JGB Claim vis a vis the value of the total assets in this Bankruptcy Estate, JGB is the sole Secured Claim holder. JGB will receive all proceeds from the liquidation of this Bankruptcy Estate.

E. **Additional Claim Objections.** Except to the extent that a claim is already allowed pursuant to a final non appealable order and/or the validity and amount is acknowledged in the Plan, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld.

ARTICLE IV **ASSETS OF THE DEBTOR**

A. **Bankruptcy Schedules.** The following is a summary description of the Debtor's principal assets. The information has been compiled from the Debtor's financial records as reflected in the Debtor's Schedules and Statements.

1. **Deposits.** As of the Petition Date, the aggregate balance in its checking, savings and/or other financial accounts, certificates of deposit, security deposits and the like was negligible.

2. **Accounts Receivable.** As of the Petition Date, the Debtor estimated it had accounts receivables valued at approximately **\$29,795.00**.

3. **Inventory.** As of the Petition Date, the Debtor had Inventory valued (Retail Value) at **\$10,910,252.00**.

4. **Fixtures and Equipment.** As of the Petition Date, the Debtor had fixtures and equipment valued in excess of **\$1,288,660.00** (Cost Basis).

5. **General Intangibles.** As of the Petition Date, the Debtor had general intangibles valued at **\$40,000.00**.

B. **Avoidance Actions.** The Debtor has not yet completed their investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Creditors' Trust may seek to avoid such transfer.

ARTICLE V

PLAN SUMMARY

The Debtor believes that confirmation of the Plan provides the best opportunity for maximum recoveries for their respective creditors. The Debtor further believes, and will demonstrate to the Court, that their creditors will receive at least as much, and likely more, in value under the Plan than they would receive in a liquidation under chapter 7 of the Bankruptcy Code.

References in this Disclosure Statement as to the amount of Claims are based on the information reflected in the Debtor's Schedules and Statements or in proofs of Claims filed with the Bankruptcy Court and are not intended to be admissions regarding the Allowed amount of Claims or waivers of Debtor's rights to assert any otherwise available defense, recoupment, setoff, or counterclaim. The Debtor has not completed an audit of the filed proofs of Claims and will consider objecting to the allowance of some Claims, if appropriate.

A. **Liquidating Trust.** Confirmation of the Plan shall effect the formation of the Liquidating Trust. The function of the Liquidating Trust shall be limited to the following:

a. to own, hold, pursue, manage and dispose of the Trust Assets and the Trust Causes of Action.

1. **Conduct of Trade or Business.** The Liquidating Trust shall not continue or engage in the conduct of a trade or business.

2. **Termination of Liquidating Trust.** The Liquidating Trust shall terminate upon the earliest to occur of: (a) the fulfillment of the trust purpose by the conclusion of all of the Causes of Action and the distribution of the Net Recoveries therefrom and the Sales Proceeds or (b) the term of five (5) years from the Effective Date. The Trustee may apply to the Bankruptcy Court to terminate the Liquidating Trust prior to the expiration of the five (5) year term in the event all activities of the Liquidating Trust are completed or if all of the Causes of Action have been concluded and the Net Recoveries therefrom and the Sales Proceeds have been distributed in accordance with the Plan. The Trustee may extend the term of the Liquidating Trust if the conclusion of the Causes of Action and distribution of the Net Recoveries therefrom and the Sales Proceeds have not been completed or if other circumstances require such extension.

3. **Liquidating Trust Beneficiaries.** The beneficiaries of the Liquidating Trust shall be the holder of Allowed Claims.

4. **Liquidating Trust Trustee.** The initial Trustee has not yet been identified, but will be identified prior to the confirmation hearing. The Trustee shall administer the Trust Assets and make the payments to the Liquidating Trust Beneficiaries as provided in the Plan and the Liquidating Trust Agreement.

B. **Administrative Expense Claims of Professionals.** The Debtor estimates \$20,000.00 in administrative expense claims will be due under the Plan. This claim is attributable to the fees and expenses incurred by professionals retained by the Debtor pursuant to sections 327 and 330 of the Bankruptcy Code. The only such professional presently employed by the Debtor is the Debtor's general bankruptcy counsel. Counsel for the Debtor has agreed to accept payment of its Allowed fees within nine (9) months of the Effective Date.

ARTICLE VI
DEBTOR'S CURRENT AND HISTORICAL FINANCIAL DATA

The Debtor has no financial data to provide as it has not operated since the Petition Date.

ARTICLE VII
DEBTOR'S PROJECTIONS

The Debtor has not developed projections in connection with the confirmation of the Plan. The Plan, as discussed *supra*, involves the transfer of all assets to the Liquidating Trust, the purpose of which is to liquidate those assets and make distributions to the holders of Allowed Claims.

The Debtor anticipates he will have ample revenue to make the distributions necessary to fund the obligations arising from the remaining creditor Classes. Alternatively, the Debtor's non-exempt equity in his non-exempt real property holdings is more than sufficient to satisfy the holders of Allowed Claims.

ARTICLE VIII
RISK FACTORS

CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

A. Bankruptcy Considerations.

1. Non-Confirmation of the Plan. While the Debtor believes the Plan satisfies all of the requirements necessary for confirmation by the Court, there can be no assurance that the Court will reach the same conclusion. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate the resolicitation of votes to accept the Plan, as modified.

2. Non-Occurrence of the Effective Date. Although the Debtor believes the Effective Date will occur during December, 2018, there can be no assurance as to the timing or that conditions to the Effective Date contained in the Plan will occur.

3. Conversion to Chapter 7 or Appointment of Trustee. It is possible this case will be converted to one under chapter 7 of the Bankruptcy Code or a chapter 11 trustee will be appointed. **Further, it should be noted that JGB has filed a motion seeking the conversion of this case to one under chapter 7.**

ARTICLE IX
CONFIRMATION REQUIREMENTS AND PROCEDURES

A. **Requirements for Confirmation.** At the Confirmation Hearing, the Court will determine whether the provisions of section 1129 of the Code have been satisfied. Section 1129 of the Bankruptcy Code, as applicable here, provides as follows:

The Plan must comply with the applicable provisions of the Code, including section 1123 which specifies the mandatory contents of a plan and section 1122 which requires that Claims and Interests be placed in Classes with "substantially similar" Claims and Interests (section 1129(a)(1)). To summarize, the proponents of the Plan must comply with the applicable provisions of the Code (section 1129(a)(2)); the Plan must have been proposed in good faith and not by any means forbidden by law (section 1129(a)(3)); any payment made or to be made by the Debtor, 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, must be disclosed to the Court and approved or be subject to the approval of the Court as reasonable (section 1129(a)(4)); the Debtor must disclose the identity and affiliations of any individual proposed to serve, after Confirmation of the Plan, as a director, officer, or voting trustee of the reorganized debtor, of an affiliate of the Debtor participating in a plan with the Debtor, or of a successor to the Debtor under the Plan; and the Debtor must also disclose the identity of any insider that will be employed or retained by the reorganized debtor and the nature of any compensation for such insider (section 1129(a)(5)).

The Plan must further meet the “best interest of creditors” test which requires that each holder of a Claim or Interest of a Class of Claims or Interests that is impaired under the Plan either accept the Plan or 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 receive or retain if the Debtor was liquidated on such date under Chapter 7 of the Code. If the holders of a Class of Secured Claims make an election under section 1111(b) of the Code, each holder of a Claim in such electing Class must receive or retain under the Plan on account of its Claim property of a value, as of the Effective Date of the Plan, that is not less than the value of its interest in the Debtor’s interest in the property that secures its Claim (section 1129(a)(7)). To calculate what non-accepting holders would receive if the Debtor was liquidated under Chapter 7, the Court must determine the dollar amount that would be generated upon disposition of the Debtor’s assets and reduce such amount by the costs of liquidation.

Finally, each Class of Claims or Interests must either accept the Plan or not be impaired under the Plan (section 1129(a)(8)); except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan must provide that holders of Administrative Claims and Priority Claims (other than tax claims) will be paid in full in cash on the Effective Date of the Plan, and that holders of priority tax Claims will receive on account of such Claims deferred cash payments, over a period not exceeding five (5) years after the date of assessment of such tax, of a value, as of the Effective Date of the Plan, equal to the Allowed amount of such Claim (section 1129(a)(9)); at least one impaired Class must accept the Plan, determined without including the acceptance of the Plan by any insider holding a Claim of such Class (section 1129(a)(10)); the Plan must be “feasible” -- it cannot be likely that confirmation of the Plan will 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 is proposed in the Plan (section 1129(a)(11)); all fees required to be paid under the Code have been paid or the Plan provides for such payment on its Effective Date (section 1129(a)(12)); and the Plan provides for the continuation after the Effective Date of the payment of all retiree benefits at the level established prior to Confirmation, pursuant to the provisions of §1114 of the Code (section 1129(a)(13)).

B. Who May Vote or Object. Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met. Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired. The Debtor, in Article IV of the Plan, set forth which Claims are impaired and which Claims are not impaired.

1. **What Is an Allowed Claim or an Allowed Equity Interest?** Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either: (A) the Debtor has scheduled the

claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (B) the creditor has filed a proof of claim or equity interest, and no objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

2. What Is an Impaired Claim or Impaired Equity Interest? As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is impaired under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. Who is Not Entitled to Vote? The holders of the following five types of claims and equity interests are not entitled to vote:

- a. holders of Claims and Equity Interests that have been disallowed by an order of the Court;
- b. holders of other Claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes.
- c. holders of claims or equity interests in unimpaired classes;
- d. holders of Claims entitled to priority pursuant to §507(a)(2), (a)(3), and (a)(8) of the Code; and
- e. holders of claims or equity interests in classes that do not receive or retain any value under the Plan; and
- f. holders of administrative expense Claims.

Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.

4. Who Can Vote in More Than One Class? A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

C. Votes Necessary to Confirm the Plan. If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by "cram down" on non-accepting classes, as discussed *infra*.

1. Votes Necessary for a Class to Accept the Plan. A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half ($\frac{1}{2}$) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds ($\frac{2}{3}$) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds ($\frac{2}{3}$) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. Treatment of Nonaccepting Classes. Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by §1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of §1129(a)(8) of the Code, does not “discriminate unfairly,” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

D. Ballots and Voting. Holders of Allowed Claims entitled to vote on the Plan have been sent a Ballot, together with instructions for voting, with this Disclosure Statement. Claimants should read the Ballot carefully and follow the instructions contained therein. In voting for or against the Plan, please use only the Ballot(s) that accompanies this Disclosure Statement.

IF YOU ARE A MEMBER OF A CLASS ENTITLED TO VOTE ON THE PLAN AND DID NOT RECEIVE A BALLOT, OR IF YOUR BALLOT IS DAMAGED OR LOST, OR IF YOU HAVE ANY QUESTIONS CONCERNING VOTING PROCEDURES, YOU SHOULD CONTACT COUNSEL FOR THE DEBTOR:

**ROBERT T. DeMARCO
DEMARCO-MITCHELL, PLLC
1255 WEST 15TH STREET, 805
PLANO, TEXAS 75075**

THE VOTING DEADLINE IS 5:00 P.M., CENTRAL STANDARD TIME, ON _____, 2018 IN ORDER TO BE COUNTED, BALLOTS MUST BE ACTUALLY RECEIVED BY COUNSEL FOR THE DEBTOR ON OR BEFORE 5:00 P.M., CENTRAL STANDARD TIME, ON THE VOTING DEADLINE AT THE ADDRESS SET FORTH IN THE BALLOT INSTRUCTIONS WHICH ACCOMPANY THE ENCLOSED BALLOT. EXCEPT TO THE EXTENT ALLOWED BY THE BANKRUPTCY COURT, BALLOTS RECEIVED AFTER THE VOTING DEADLINE MAY NOT BE ACCEPTED OR USED IN CONNECTION WITH THE DEBTOR’S REQUEST FOR CONFIRMATION OF THE PLAN OR ANY MODIFICATION THEREOF.

E. Incomplete or Irregular Ballots. Ballots which fail to designate the Class to which they apply shall be counted in the appropriate Class as determined by the Debtor, subject only to contrary determinations by the Bankruptcy Court. Ballots of claimants that are signed and returned, but do not indicate a vote either for acceptance or rejection of the Plan, shall be counted as ballots for the acceptance of the Plan if permitted by the Bankruptcy Court.

F. Contested and Unliquidated Claims. Contested Claims are not entitled to vote to accept or reject the Plan. If you are the holder of a Contested Claim, you may ask the Bankruptcy Court pursuant to Bankruptcy Rule 3018 to have your Claim temporarily Allowed for the purpose of voting.

G. Possible Reclassification of Creditors and Interest Holders. The Debtor is required pursuant to § 1122 of the Bankruptcy Code to place Claims and Interests into Classes that contain substantially similar Claims or Interests. While the Debtor believes it has classified all Claims and Interests in compliance with § 1122, it is possible that a Claimant or Interest holder may challenge the classification of its Claim or Interest. If the Debtor is required to reclassify any Claims or Interests of any Claimants or Interest holders under the Plan, the Debtor, to the extent permitted by the Bankruptcy Court, intend to continue to use the acceptances received from such Claimants or Interest holders pursuant to the solicitation of acceptances using this Disclosure Statement for the purpose of obtaining the approval of the Class or Classes of which such Claimants or Interest holders are ultimately deemed to be a member. Any reclassification of Claimants or Interest

holders should affect the Class in which such Claimants or Interest holders were initially a member, or any other Class under the Plan, by changing the composition of such Class and the required vote thereof for approval of the Plan.

ARTICLE X

FEASIBILITY

A. **Feasibility.** The Court must find that 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, unless such liquidation or reorganization is proposed in the Plan.

1. **Ability to Fund Plan.** The Plan is effectively a liquidating Plan that provides for the liquidation of the Trust Assets combined with a contribution of \$1.5 million from John Rochon.

2. **Source of Liquidating Trust Contribution.** The source of the \$1.5 million that Mr. Rochon will contribute to the Liquidating Trust is derived from the sale of an entity commonly known as Bond Street. The purchaser of Bond Street is a fund called RCPIV, which fund has monetary commitments in excess of what is necessary to close. While there is no financial impediment to closing the sale of Bond Street, Mr. Rochon anticipates he will need a few months (approximately ninety (90) days from the Effective Date) to close the Bond Street sale.

ARTICLE XI

BEST INTEREST TEST / LIQUIDATION ANALYSIS

With respect to each Impaired Class of Claims, confirmation of the Plan requires that each holder of an Allowed Claim either: (A) accept the Plan; or (B) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. To determine what holders of Allowed Claims in each Impaired Class would receive if the Debtor was liquidated under chapter 7, the Court must determine the dollar amount that would be generated from the liquidation of the Debtor's assets in the context of a chapter 7 liquidation case – a liquidation analysis. The cash amount that would be available for the satisfaction of Allowed Claims would consist of the proceeds resulting from the disposition of the unencumbered non-exempt assets of the Debtor less the costs and expenses of liquidation and additional administrative claims resulting from the chapter 7 process.

The Debtor's costs of liquidation under chapter 7 would include the fees payable to a chapter 7 bankruptcy trustee, as well as those fees that might be payable to attorneys and other professionals engaged by the chapter 7 trustee. In addition, Claims would arise by reason of the breach or rejection of obligations incurred and leases and executor contracts assumed or entered into by the Debtor during the pendency of the bankruptcy case. To determine if the Plan is in the best interests of each Impaired Class, the value of the distributions from the proceeds of a liquidation under chapter 7 of the Debtor's unencumbered and non-exempt assets after subtracting the costs associated with such a liquidation are then compared with the value of the property offered to such Classes of Claims under the Plan.

After considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to holders of Allowed Claims, including: (A) the increased costs and expenses of a chapter 7 liquidation; and (B) the likely erosion in value of the Debtor's unencumbered assets in the context of an expeditious liquidation and "forced sale" atmosphere that would prevail under chapter 7, the Debtor has determined that confirmation of the Plan will

provide each holder of an Allowed Claim with a recovery that is not less than such holder would receive pursuant to a chapter 7 liquidation.

The Debtor is not providing a liquidation analysis *per se*. All Assets are being transferred to the Liquidating Trust under the Plan. The Liquidating Trust will provide the mechanism for liquidating those assets and making distributions to the holders of Allowed Claims..

ARTICLE XII

ALTERNATIVES TO CONFIRMATION

If the Plan is not confirmed and consummated, the alternatives to the Plan include: (A) liquidation of the Debtor under chapter 7 of the Bankruptcy Code; and (B) an alternative plan of reorganization or liquidation.

A. **Alternative Plan or Plan of Liquidation.** If the Plan is not confirmed, the Court could confirm a different plan. A different plan might include a different form of restructuring or liquidation. The Debtor believes that the Plan enables creditors to realize the highest and best value under the circumstances. Other alternatives would involve diminished recoveries, significant delay, uncertainty, and additional administrative costs.

B. **Liquidation Under Chapter 7.** If no Plan is confirmed, the Chapter 11 case may be converted to one under chapter 7 pursuant to which a trustee will be appointed to liquidate the Debtor's assets on a contingent fee type arrangement as opposed to the hourly reate proposed by the Debtor in the Creditors' Trust Agreement.

ARTICLE XIII

CRAMDOWN [§ 1129(b) OF THE BANKRUPTCY CODE]

In the event any Impaired Class of Claims shall fail to accept the Plan in accordance with § 1129(a) of the Bankruptcy Code, the Debtor shall request the Bankruptcy Court to confirm the Plan in accordance with the provisions of § 1129(b) of the Bankruptcy Code.

The Court may confirm a plan, even if it is not accepted by all impaired Classes, if the Plan has been accepted by at least one impaired Class of Claims and the Plan meets the "cramdown" provisions set forth in § 1129(b) of the Code. The "cramdown" provisions require that the Court find that a plan "does not discriminate unfairly" and is "fair and equitable" with respect to each non-accepting impaired Class. In the event that all impaired Classes do not vote to accept the Plan, the Debtor will request that the Bankruptcy Court nonetheless confirm the Plan pursuant to the provisions of § 1129(b) of the Code.

The Court may find that the Plan is "fair and equitable" with respect to a Class of non-accepting impaired Interests only if (a) the holder of an Interest will receive or retain under the Plan property of a value as of the Plan's Effective Date equal to the greatest of any fixed liquidation preference or redemption price or the value of such Interest or (b) the holder of any Interest that is junior to such Interest will not receive or retain any property under the Plan.

The Court may find that the Plan is "fair and equitable" with respect to a Class of non-accepting impaired Unsecured Claims only if (a) each impaired unsecured Creditor receives or retains under the Plan property of a value as of the Effective Date of such Plan equal to the amount of its Allowed Claim, or (b) the holder of any Claim or Interest that is junior to the Claims of the dissenting Class will not receive or retain any property under the Plan.

The Court may find that the Plan is "fair and equitable" with respect to a Class of non-accepting Secured Claims, only if, under the Plan, (a) the holder of each Secured Claim in such Class retains such holder's lien and receives deferred cash payments totaling at least the Allowed amount of

such Secured Claim and having a value, as of the Effective Date of the Plan, equal to or in excess of the value of such holder's interest in the estate's interest in the collateral for the Secured Claim, (b) the collateral for such Secured Claim is sold, the lien securing such Claims attached to the proceeds, and such liens on proceeds are afforded the treatment described under clause (a) or (c) of this sentence, or (c) the holders of such Secured Claims realize the "indubitable equivalent" of their claims.

ARTICLE XIV **EFFECT OF CONFIRMATION**

1. **Discharge and Release of Debtor.** Confirmation of this Plan does not discharge any Claim provided for in this Plan until the Court grants a discharge on completion of all payments under this Plan, or as otherwise provided in §1141(d)(5) of the Bankruptcy Code. Further, the Debtor will not be discharged from any debt excepted from discharge under §523 of the Bankruptcy Code, except as provided in Bankruptcy Rule 4007(c).

2. **Release.** None of the officers, shareholders, financial advisors, attorneys, or employees of the Debtor ("**Released Parties**") shall have any liability for actions taken or omitted to be taken in good faith under or in connection with the Plan or financial obligations and claims dealt with in this Plan or in the bankruptcy case.

3. **Temporary Injunction.** Confirmation of the Plan shall result in a temporary injunction enjoining all Creditors from commencing or continuing any proceeding against any guarantor, partner, officer, manager or member of the Debtor that would otherwise be liable to such Creditor so long as the Reorganized Debtor is not in default respecting that Creditor's treatment under the Plan. The temporary injunction terminates as to each such Creditor when: (i) the Reorganized Debtor fails to cure any default as set forth in Section O of Article XIII of the Plan; or (ii) the Reorganized Debtor has tendered all payments to such Creditor as provided for in this Plan. Any statute of limitations relating to the collecting of an obligation from any guarantor, partner, officer, manager or member of the Debtor that is subject to the foregoing temporary injunction is tolled during the temporary injunction period.

ARTICLE XV **CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

THE DEBTOR DOES NOT PURPORT TO PROVIDE TAX ADVICE TO THE HOLDERS OF CLAIMS. THE FOLLOWING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF POSSIBLE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE FOREGOING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS OF CLAIMS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN ON THEIR TAX RETURNS AND TAX LIABILITIES.

A. **Tax Consequences of the Plan.** Implementation of the Plan may result in federal income tax consequences to holders of Claims, Equity Interest Holders, and to the Debtor. Tax consequences to a particular Creditor or Equity Interest Holder may depend on the particular circumstances or facts regarding the Claim of the Creditor or the interests of the Equity Interest Holder. IRS Publication 908, entitled "Bankruptcy Tax Guide" provides valuable information regarding the federal income tax aspects of bankruptcy. The "Bankruptcy Tax Guide" is available

from the Debtor upon request made to robert@demarcomitchell.com, or directly from the IRS online at <http://www.irs.gov/pub/irs-pdf/p908.pdf>.

B. **Cancellation of Debt.** Cancellation of the Debtor's debt ("**COD**") is generally considered as taxable income of the Debtor. COD is the amount by which the indebtedness discharged exceeds any consideration given in exchange. However, there are exceptions which prevent COD from being treated as taxable income. To the extent the Debtor is insolvent or the Debtor is discharged in a bankruptcy proceeding, as is the case at bar, the Internal Revenue Code excludes COD from income. The statutory exclusion for COD from the Debtor's gross income in a chapter 11 bankruptcy case arises where a discharge is granted by the Court as is requested in the Plan.

C. **Consequences of COD.** The Debtor will, however, have certain tax attributes reduced to the COD income. The tax attributes are generally reduced in the following order: (i) Net Operating Loss ("**NOL**") for the year of the discharge and NOL carryovers from prior years; (ii) general business tax credit carryovers; (iii) minimum tax credit available as of the beginning of the year following the year of the discharge; (iv) net capital loss for the year of the discharge and capital loss carryovers from prior years; (v) basis of the Debtor's assets; (vi) passive activity loss and credit carryovers from the year of discharge; and foreign tax credit carryovers to or from the year of discharge. As a result of the implementation of the Plan, the Debtor will have COD and potential tax attribute reduction. *Because any reduction in tax attributes does not effectively occur until the first day of the taxable year following the taxable year in which the COD is incurred, the resulting COD, on its own, should not impair the ability of the Debtor to use their tax attributes (to the extent otherwise available) to reduce its tax liability, if any, otherwise resulting from the Plan implementation.*

D. **Holders of Allowed Claims.** The tax consequences associated with distributions under the Plan to the holders of Allowed Claim will depend on, among other things: (i) the consideration received or deemed to have been received by the holder of any such Claim; (ii) whether the Allowed Claim holder reports income on an accrual or cash basis; (iii) the taxable year in which any distributions under the Plan are received by the Allowed Claim holder; whether the Claim was allowed or disputed as of the Effective Date; and whether such Allowed Claim holder had previously written the obligation off as bad debt.

ALLOWED CLAIM HOLDERS ARE URGED TO CONSULT WITH THEIR TAX ADVISORS ABOUT THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

ARTICLE XVI

RECOMMENDATION OF THE DEBTOR

The Debtor believes that the Plan is in the best interests of all Creditors. Accordingly, the Debtor recommends that you vote for acceptance of the Plan and hereby solicit your acceptance of the Plan.

Respectfully submitted,

Dated: **October 19, 2018**

/s/ John Rochon

John Rochon, President

Presented by:

/s/ Robert T. DeMarco

DeMarco•Mitchell, PLLC

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

IN RE:

JRJR33, INC.,
98-0534701
2950 N. Harwood Street
Suite 2200
Dallas, TX 75201

Debtor.

Case No.: 18-32123-SGJ-11

Case No.: 18-32124-SGJ-11

Chapter: 11

IN RE:

THE LONGABERGER COMPANY,
31-1311748
2950 N. Harwood Street
Suite 2200
Dallas, TX 75201

Debtor.

JOINTLY ADMINISTERED UNDER:

Case No.: 18-32123-SGJ-11

**THE LONGABERGER COMPANY'S PLAN OF REORGANIZATION
[DATED October 19, 2018]**

Pursuant to section 1121(a) of the Bankruptcy Code, The Longaberger Company, the debtor and debtor-in-possession in this Case (defined *infra*) hereby proposes this Plan of Reorganization.

**ARTICLE I
INTRODUCTION**

A. **Purpose of the Plan.** The purpose of this Plan (defined *infra*) is to provide the details of the Debtor's (defined *infra*) proposed reorganization and proposed distributions of money and/or property to its Creditors (defined *infra*). After the Plan has been confirmed, the Bankruptcy Court (defined *infra*) will retain jurisdiction to determine the allowance of all Claims (defined *infra*) and to effectuate and enforce the terms of this Plan.

B. **Plan Summary.** In summary, the Plan provides for the following:

1. **Liquidation:** The Plan provides for a liquidation of the Debtor's assets to the extent necessary to pay all Allowed Claims (defined *infra*) in full.

2. **Liquidating Trust:** The Plan provides for formation of the Liquidating Trust (defined *infra*) for the benefit of JGB (defined *infra*) and other holders of Allowed Claims. The purpose of the Liquidating Trust will be to protect, preserve and liquidate the assets transferred to it.

EXHIBIT "1"

3. **Distribution**: The Debtor intends to fund the Plan from the Liquidating Trust and capital contributions from the Trust Funder.

ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION

A. **Specific Definitions**. Unless the context otherwise requires, the following terms shall have the following meanings when used in initially capitalized form in this Plan. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in initially capitalized form in this Plan that is not defined herein, but that is defined in the Bankruptcy Code, shall have the meaning assigned to such term in the Bankruptcy Code.

1. **Administrative Claim** means any right to payment constituting a cost or expense of administration of the Case of a kind specified under § 503(b) of the Bankruptcy Code and entitled to priority under §§ 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (i) any actual and necessary costs and expenses of preserving the Estate (defined *infra*); (ii) all compensation and reimbursement of expenses to the extent awarded by the Court under §§ 330, 331 or 503 of the Bankruptcy Code; and (iii) any fees or charges assessed against the Estate under § 1930 of chapter 123 of title 28 of the United States Code.

2. **Administrative Claim Carve-Out** means that portion of the Liquidating Trust that is set aside for the *Pro Rata* distribution to the holders of an Allowed Administrative Claim.

3. **Allowed Amount** means the amount in lawful currency of the United States of any Allowed Claim.

4. **Allowed** means, with reference to any Claim: (i) a Claim against the Debtor, proof of which, if required, was filed on or before the Bar Date, which is not a Contested Claim; (ii) if no proof of claim was so filed, a Claim against the Debtor that has been or hereafter is listed by the Debtor in the Schedules as liquidated in amount and not disputed or contingent as such Schedules may be amended from time to time in accordance with Bankruptcy Rule 1009; or (iii) a Claim allowed hereunder or by Final Order. Moreover, the following Claims or not Allowed: (i) any Claim allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Court; (ii) any Claim, or any portion thereof, which is subsequently withdrawn, disallowed, released or waived by the holder thereof, by this Plan, or pursuant to a Final Order; and (iii) any Claim, or any portion thereof, which is attributable to punitive damages or penalties.

5. **Avoidance Action** means any claim or cause of action belonging to the Debtor and arising under the Bankruptcy Code including, but not limited to, §§ 544, 547, 548 and 550.

6. **Ballot** means each of the ballot forms distributed with the Disclosure Statement to each holder of an impaired Claim (other than to holders not entitled to vote on the Plan) upon which is to be indicated, among other things, acceptance or rejection of the Plan.

7. **Bankruptcy Code** means Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as in effect on the date hereof.

8. **Bankruptcy Court** means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

9. **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under § 2075 of title 28 of the United States Code, and local rules of the Court, as the context requires, and as in effect on the date hereof.

10. **Bar Date** means the deadline by which a Claim must have been timely filed. The Bar Date for all Administrative Claims is the date that is ninety (90) days after the Effective Date.

11. **Business Day** means any day other than a Saturday, a Sunday or a “legal holiday” as that phrase is defined in Bankruptcy Rule 9006(a).

12. **Case** means the above entitled and numbered case which was commenced by the Debtor’s filing of a voluntary petition for relief pursuant to the Bankruptcy Code.

13. **Causes of Action** means any and all claims, rights and causes of action that have been or could have been brought by or on behalf of the Debtor arising before, on or after the Petition Date, known or unknown, in contract or in tort, at law or in equity or under any theory of law, including, but not limited to any and all claims, rights and causes of action the Debtor or the Estate may have against any Person arising under chapter 5 of the Bankruptcy Code, or any similar provision of state law or any other law, rule, regulation, decree, order, statute or otherwise, Avoidance Actions under the Code, and any other causes of action belonging to the Debtor or the Estate.

14. **Claim** means: (i) right of payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

15. **Claimant** means the holder of a Claim.

16. **Claims Objection Deadline** means the date by which parties authorized by the Plan may file any objection to a Claim, which date shall be ninety (90) days after the Effective Date, except with respect to Administrative Claims if otherwise provided for herein.

17. **Class** means all of the holders of Claims with respect to the Debtor that has been designated as a class in Article IV hereof.

18. **Confirmation** means the entry by the Bankruptcy Court of the Confirmation Order.

19. **Confirmation Date** means the date of entry by the Bankruptcy Court of an order confirming the Plan.

20. **Confirmation Hearing** means the hearing or hearings to be held before the Bankruptcy Court in which the Debtor shall seek Confirmation of this Plan.

21. **Confirmation Order** means the Final Order confirming this Plan.

22. **Contested**, when used with respect to a Claim, means a Claim against the Debtor that is: (i) listed in the Debtor’s Schedules as disputed, contingent, or unliquidated and as to which a proof of claim has been timely filed; (ii) listed in the Debtor’s Schedules as undisputed, liquidated, and not contingent and as to which a proof of Claim or Interest has been filed with the Bankruptcy Court, to the extent the proof of Claim amount exceeds the amount provided for in the Debtor’s Schedules; or (iii) the subject of an objection which has been or may be timely filed by any party in interest or the United States Trustee and which claim has not been disallowed by Final Order. To the extent an objection relates to the allowance of only a part of a Claim, such a Claim shall be a Contested Claim only to the extent of the objection.

23. **Creditor** means holder of a Claim as of the Petition Date.

24. **Debtor** means the Debtor in this Case as the context requires.
25. **Disclosure Statement** means the Disclosure Statement for this Plan, together with any supplements, amendments, or modifications thereto.
26. **Effective Date** means the date on which the Confirmation Order becomes a Final Order.
27. **Entity** includes any individual, partnership, corporation, estate, trust, governmental unit, person, and the United States Trustee.
28. **Equity Interests** means all previously issued and outstanding common stock, preferred stock, limited liability company membership interests, or other equity interests in the Debtor outstanding immediately prior to the Effective Date, including, without limitation, treasury stock and all options, warrants, calls, rights, puts, awards, commitments, or any other agreements of any character to convert, exchange, exercise for, or otherwise receive such common stock, preferred stock, limited liability company membership interests, or other equity interests.
29. **Estate** means the bankruptcy estate of the Debtor created by Section 541 of the Bankruptcy Code upon the commencement of this Case.
30. **FI** means Frazeyburg Investments.
31. **Final Judgment** means: (i) a judgment entered by a Court of competent jurisdiction as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing, shall then be pending or, (ii) in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such judgment shall have been affirmed by the highest court to which such judgment may be appealed, or certiorari has been denied, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired.
32. **Final Order** means: (i) an order of the Bankruptcy Court as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing, shall then be pending or, (ii) in the event that an appeal, writ of certiorari, reargument or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been affirmed by the highest court to which such order may be appealed, or certiorari has been denied, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that the Confirmation Order may be treated as a Final Order if no stay pending appeal has been obtained.
33. **Initial Distribution Date** means the first Business Day on which a distribution is made under the Plan to holders of Allowed Claims.
34. **JGB** means JGB Collateral, LLC.
35. **Lien** means all valid and enforceable liens, security interests, claims and encumbrances against any property of the Estate, which is permitted by, or not avoided pursuant to the Bankruptcy Code.
36. **Liquidating Trust** means the trust established pursuant to the terms of this Plan.
37. **Liquidating Trust Agreement** means the agreement memorializing the terms of the ADM Trust, a copy of which is attached hereto as Exhibit "1".

38. **Petition Date** means **June 29, 2018**, the date the Debtor filed a voluntary bankruptcy petition commencing this Case.

39. **Plan** means this “*The Longaberger Company’s Plan of Reorganization [Dated October 19, 2018]*”, including all exhibits and attachments, each of which is hereby incorporated and made part thereof, as modified or amended from time to time in accordance with § 1127 of the Bankruptcy Code.

40. **Plan Rate** means the, Prime Rate (defined *infra*) as of the Effective Date or such other rate of interest as is determined by the Bankruptcy Court.

41. **Prime Rate** means the prime interest rate quoted and published from time-to-time in the "Money Rates" section of the *Wall Street Journal*.

42. **Priority Claim** means all Claims entitled to priority under §§ 507(a)(2)-(a)(7) and (a)(9)-(a)(10) of the Bankruptcy Code.

43. **Priority Claim Carve-Out** means that portion of the Liquidating Trust that is set aside for the *Pro Rata* distribution to the holders of an Allowed Administrative Claim.

44. **Priority Tax Claim** means all Claims for Taxes entitled to priority under § 507(a)(8) of the Bankruptcy Code, exclusive of any Tax Claims secured by assets of the Estate.

45. **Pro Rata** means proportionately, so that with respect to a particular Allowed Claim, the ratio of: (i) the monies or property disbursed on account of such Allowed Claim to the amount of such Allowed Claim, is the same as the ratio of (ii) the monies or property disbursed on account of all Allowed Claims of the Class in which such Allowed Claim is included to the amount of all Allowed Claims in that Class.

46. **Professionals** means those Entities: (i) employed under §§ 327 or 1103 of the Bankruptcy Code; and (ii) entitled, under §§ 330, 503(b), 506(b), and 507(a)(2) of the Bankruptcy Code, to seek compensation for legal, accounting and/or other professional services and the costs and expenses related to such services from the Debtor and/or the Estate.

47. **Rejection Damages Deadline** means the later of the Bar Date, or thirty (30) days after the entry of an order approving the rejection of an executory contract or unexpired lease.

48. **Reorganized Debtor** means The Longaberger Company after the entry of the Confirmation Order.

49. **Schedules** means those schedules, statements and lists filed with the Court by the Debtor pursuant to and in accord with § 521(a)(1) of the Bankruptcy Code and Bankruptcy Rule 1007(b) as amended.

50. **Secured Claim** means a Claim secured by a Lien on any property of the Estate, but only to the extent of the value of the interest of the holder of such Claim in the interest of the Estate in such property, the calculation of which shall not include any demand for default interest, penalty interest or other similar demands.

51. **Secured Claim Interest Rate** means a fixed interest rate of 5.00% or such other rate as the Bankruptcy Court determines at the Confirmation Hearing is necessary to provide the holders of Allowed Secured Claims with the present value of their collateral.

52. **Subordinated Claim** means: (i) any Claim, or portion of a Claim, that is subject to subordination under § 510 of the Bankruptcy Code; and (ii) any Claim, or portion of a Claim, for

finances, penalties, forfeitures, for multiple, exemplary, or punitive damages, or other non-pecuniary, direct or non-proximate damages.

53. **Tax** means and includes any federal state, county and local income, *ad valorem*, excise, stamp and other tax of any type or nature whatsoever.

54. **Tax Claim** means any and all Secured or Priority Claims of the Debtor for the payment of any Taxes: (i) accorded a priority pursuant to § 507(a)(8) of the Code; or (ii) secured by valid Liens on property of the Estate existing on the Confirmation Date.

55. **Trust Assets** shall consist of all assets of the Estate as of the Effective Date, including, but not limited to:

- a. The inventory identified in Part 5 of the Debtor's Amended Schedule A/B filed with the Court on September 5, 2018, Docket Entry No. 41;
- b. the Retained Causes of Action;
- c. any proceeds realized or received from such assets;
- d. all rights of setoff, recoupment, and other defenses against Claims to the extent the holder of a Claim seeks recovery from the Liquidating Trust; and
- e. all documents, communications, and information protected by the attorney-client privilege, the work-product privilege, and any other applicable evidentiary privileges.

56. **Trust Beneficiary** means, at any given point and time, the holder of an Allowed Claim.

57. **Trust Causes of Action** shall consist of all Causes of Action and all Avoidance Actions.

58. **Trust Funder** means John Rochon.

59. **United States Trustee** means the Office of the United States Trustee for Region Six.

60. **Unsecured Claim** means a Claim that is not an Administrative Claim, a Priority Claim, a Priority Tax Claim, or a Secured Claim.

61. **Unsecured Claim Carve-Out** means that portion of the Liquidating Trust that is set aside for the *Pro Rata* distribution to the holders of an Allowed Unsecured Claim.

B. Rules of Interpretation, Construction and Computation of Time.

1. Any capitalized term used in the Plan that is not defined herein, or other exhibits hereto, but that is defined and used in the Disclosure Statement has the meaning ascribed to that term in the Disclosure Statement.

2. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Plan as a whole and not to any particular article, section, subsection or clauses contained in the Plan.

3. Unless otherwise specified, a reference to an article or a section is a reference to that article or section of the Plan.

4. Any reference in the Plan to a document being in a particular form or on particular terms and conditions meant that the document shall be substantially in such form or substantially on such terms and conditions.

5. Any reference in the Plan to an existing document means such document, as it may have been amended, modified or supplemented from time to time as of the Effective Date.

6. The rules of construction set forth in § 102 of the Bankruptcy Code shall apply to the Plan.

7. The computation of any time periods prescribed or allowed by the Plan shall be governed by Bankruptcy Rule 9006.

8. All exhibits to the Plan are incorporated into the Plan and shall be deemed to be part of the Plan.

9. The provisions of the Plan shall control over the contents of the Disclosure Statement. The provisions of the Final Confirmation Order shall control over the contents of the Plan.

10. Unless otherwise provided for in the Plan, whenever a distribution of property must be made, or an act required on a particular date, the distribution or act shall occur on such date, or as soon as practicable thereafter.

ARTICLE III PAYMENT OF ADMINISTRATIVE EXPENSES AND THE TREATMENT OF UNCLASSIFIED CLAIMS

A. **Summary.**

Pursuant to § 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Claims for Professional Fees, and Priority Tax Claims against the Debtor are not classified for purposes of voting on, or receiving distributions under, the Plan. **Holders of such Claims are not entitled to vote on the Plan.** All such Claims are instead treated separately in accordance with this **Article III** and in accordance with the requirements set forth in § 1129(a)(9)(A) of the Bankruptcy Code.

B. **Administrative Claims.**

1. **In General.** Except as otherwise provided herein, all requests for payment of an Administrative Claim incurred before the Effective Date (except for those Claims arising under 28 U.S.C. § 1930) shall be filed before the Bar Date. Each holder of an Allowed Administrative Claim, except as otherwise set forth in this ARTICLE III (and specifically excluding Priority Tax Claims as set forth below), shall receive from the **Liquidating Trust**: (i) with respect to Administrative Claims which are Allowed Claims on the Effective Date, unless the holder of a particular Allowed Claim agrees to a different treatment, the amount of such holder's *Pro Rata* share of the Administrative Claim Carve-Out; and (ii) with respect to Administrative Claims which become Allowed Claims after the Effective Date, unless the holder of a particular Allowed Claim agrees to a different treatment, the amount of such holder's *Pro Rata* share of the Administrative Claim Carve-Out on the date such claim becomes an Allowed Administrative Claim.

2. **Administrative Claims of Professionals.** Each professional whose retention with respect to the Case has been approved by the Bankruptcy Court or who holds, or asserts, an Administrative Claim shall be required to file with the Bankruptcy Court a final fee application within ninety (90) days after the Confirmation Date. Allowed Administrative Claims of

professionals shall receive from the **Liquidating Trust** the amount of such holder's *Pro Rata* share of the Administrative Claim Carve-Out.

3. **Priority Tax Claims.** Each holder of an Allowed Priority Tax Claim against the Debtor shall receive on shall receive from the **Liquidating Trust** the amount of such holder's *Pro Rata* share of the Administrative Claim Carve-Out.

ARTICLE IV CLASSIFICATION OF CLAIMS

A. **Manner of Classification of Claims.** Except for Claims of a kind specified in §§ 507(a)(1), (2) or (8) of the Bankruptcy Code, all Claims against the Debtor with respect to all property of the Debtor and the Estate, are defined and hereinafter designated in their respective Classes as mandated by 11 U.S.C. § 1123(a)(1). The Plan is intended to deal with all Claims against the Debtor, of whatever character, whether known or unknown, whether or not with recourse, whether or not contingent or unliquidated, and whether or not previously allowed by the Court pursuant to § 502 of the Bankruptcy Code. Only the holders of Allowed Claims, however, will receive any distribution under the Plan. For purposes of determining *Pro Rata* distributions to holders of Allowed Claims under the Plan, Contested Claims shall be included in the Class in which such Claims would be included if they were Allowed Claims.

B. **Classification.** Pursuant to § 1122 of the Bankruptcy Code, set forth below is a designation of the classes of Claims against the Debtor. A Claim is placed in a particular Class only to the extent such Claim is an Allowed Claim in that Class and such Claim or has not been paid, released or otherwise settled or paid prior to the Effective Date. Any Claims described in **Article III** of this Plan are unclassified, and therefore, are not included in the Classes below. The Allowed Claims, except for Claims described above and which are not required to be classified pursuant to § 1123(a)(1) of the Bankruptcy Code, are divided into the following Classes.

CLASS	DESCRIPTION	STATUS	VOTING RIGHTS
Class 1	Secured Claim of JGB	Impaired	Entitled to Vote
Class 2	Priority Claims [11 U.S.C. § 1123(a)(1)]	Impaired	Entitled to Vote
Class 3A	General Unsecured Claims	Impaired	Entitled to Vote
Class 3B	Subordinated Claim of Rochon Capital Partners	Impaired	Deemed to Reject; Not Entitled to Vote
Class 4	Class of Equity Interests	Impaired	Deemed to Reject; Not Entitled to Vote

C. **Impairment.** A Class of Claims are impaired if their prepetition rights are modified pursuant to the terms of this Plan.

ARTICLE V TREATMENT OF CLAIMS

The Claims as classified in Article IV hereof shall be satisfied in the manner set forth in this Article V. The treatment of, and the consideration to be received by Entities holding Claims against the Debtor pursuant to this Plan shall be in full settlement, release, and discharge of their respective Claims against the Debtor, but shall not affect the liability of any other Entity on such Claim except as otherwise provided pursuant to the terms of this Plan or the Confirmation Order, in the form as originally entered or as may be later amended or modified. All **classified** Claims against the Debtor shall be treated as follows:

A. **CLASS 1 – Secured Claim of JGB.**

1. **Class 1 Summary.** Class 1 consists of the Secured Claim of **JGB**, and is secured by substantially all of the Debtor's assets. **JGB** asserts the principal balance due and owing **JGB** is **\$5,264,988.92**. The Allowed Class 1 Claim shall be modified as set forth herein and paid as follows.

a. **Interest.** Simple interest shall accrue on the unpaid balance owed to the Allowed Class 1 Claim holder at the **Secured Claim Interest Rate** from and after the Confirmation Date.

b. **Payments.** The Allowed Class 1 Claim holder shall be paid the amount of its Allowed Claim, plus interest thereon, from the **Liquidating Trust**, in accord with the terms of thereof.

c. **Maturity.** The maturity date shall be the first (1st) day of the **12th** month after the first full calendar month following the Effective Date, at which time the remaining balance due and owing shall be paid in full.

d. **Collateral.** Except to the extent inconsistent herewith or with the law, the validity and priority of the lien and security interest securing the Class 1 Claim shall remain in full force and effect following the Effective Date.

2. **Temporary Injunction.** Once the Trust Funder has made the Initial Trust Contribution (see, Article VII, Paragraph C, of this Plan) the Class 1 Claim holder shall be temporarily enjoined from commencing or continuing any proceeding against any guarantor, partner, officer, manager or member of the Debtor that would otherwise be liable to the Class 1 Claim holder. The temporary injunction terminates as to the Class 1 Claim holder when the Trust Funder makes the Final Trust Contribution (see, Article VII, Paragraph C, of this Plan). Any statute of limitations relating to the collecting of the Class 1 Claim from any guarantor, partner, officer, manager or member of the Debtor that is subject to the foregoing temporary injunction is tolled during the temporary injunction period.

3. Class 1 is impaired under the Plan.

B. **CLASS 2 – Priority Claims [Other].**

1. Class 2 consists of all Allowed Priority Claims against the Debtor. Class 2 does not include any Priority Tax Claims, all of which shall be treated in accordance with Article III of this Plan.

2. On, or as soon as reasonably practicable after the Effective Date, the holder of an Allowed Class 2 Claim shall receive from the Liquidating Trust, in full satisfaction, settlement, and release of and in exchange for such Claim, (i) its *Pro Rata* share of the **Priority Claim Carve-Out**, or (ii) such other less favorable treatment as to which such holder and the **Liquidating Trust** shall have agreed upon in writing.

3. Class 2 is unimpaired under the Plan.

C. **CLASS 3A – Unsecured Claims.**

1. Class 3A consists of Allowed Claims against the Debtor (including Claims arising from the rejection of executory contracts and/or unexpired leases) other than: (i) Administrative Claims; (ii) Priority Tax Claims; or (iii) Claims included within any other Class designated in this Plan. Class 3A shall be deemed to include those Creditor(s) holding an alleged Secured Claim against the Debtor for which: (y) no collateral exists to secure the alleged Secured Claim; and/or (z) liens, security interests, or other encumbrances that are senior in priority to the alleged Secured Claim exceed the fair market value of the collateral securing such alleged Secured Claims as of the Petition Date.

2. On, or as soon as reasonably practicable after the Effective Date, the holder of an Allowed Class 3A Claim shall receive from the Liquidating Trust, in full satisfaction, settlement, and release of and in exchange for such Claim, (i) its *Pro Rata* share of the **Unsecured Claim Carve-Out**, or (ii) such other less favorable treatment as to which such holder and the **Liquidating Trust** shall have agreed upon in writing.

3. Class 3A is impaired under the Plan.

D. **CLASS 4 – Subordinated Claims.**

1. Class 3B consists of the subordinated Claim of Rochon Capital Partners against the Debtor. Rochon Capital Partners has agreed to subordinate its Claim against the Debtor.

2. The holder of a Class 3B Claims shall not be entitled to, and shall not receive or retain, any property or interest in property under the Plan on account of such Claim.

3. Class 3B is deemed to have rejected the Plan.

E. **CLASS 4 – Subordinated Claims.**

1. Class 4 consists of the equity interests in the Debtor.

2. As of the Effective Date, all Equity Interests of any kind shall be deemed void, cancelled, and of no further force and effect and the holders thereof shall not receive or retain any property or interest in property under the Plan on account of such Equity Interests.

3. Class 4 is deemed to have rejected the Plan.

F. **Provision Governing Allowance and Defenses to Claims.** On and after the Effective Date, the Liquidating Trust shall have all of the Debtor's and the Estate's rights under section 558 of the Bankruptcy Code. Nothing under the Plan shall affect the rights and defenses of the Debtor, the Estate, and the Liquidating Trust in respect of any Claim not allowed by Final Order, including all rights in respect of legal and equitable objections, defenses, setoffs, or recoupment against such Claims. The Liquidating Trust may, but shall not be required to, setoff against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made) any claims of any nature whatsoever that the Estate or the Liquidating Trust may have against the Claim Holder, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Trust of any such Claim it may have against such Claim Holder.

ARTICLE VII
ACCEPTANCE OR REJECTION OF THE PLAN

- A. **Voting.** Each holder of an Allowed Claim in an impaired Class of Claims that is entitled to vote on the Plan shall be entitled to vote separately to accept or reject the Plan as provided in such order as is entered by the Bankruptcy Court establishing procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other order or orders of the Bankruptcy Court. In the event no holder of an Allowed Claim in an impaired Class of Claims submits a Ballot accepting or rejecting the Plan, such Class of Claims shall be deemed to have voted to reject the Plan.
- B. **Class Entitled to Vote.** The Classes of Claims identified as “impaired” in Article IV of this Plan are entitled to vote to accept or reject this Plan. The Classes of Claims identified as “unimpaired” in Article IV of this Plan are conclusively presumed to have accepted this Plan pursuant to § 1126(f) of the Bankruptcy Code.
- C. **Non-Consensual Confirmation.** If a Class of Claims fails to accept this Plan by the statutory majorities provided in § 1126(c) of the Bankruptcy Code, the Debtor reserves the right to request the Bankruptcy Court to confirm this Plan as to such rejecting Class of Claims.
- D. **Elimination of Vacant Class.** Any Class of Claims that does not have a holder of an Allowed Claim or a Claim temporarily allowed under Bankruptcy Rule 3018 as of the date of commencement of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class of Claims pursuant to § 1129(a)(8) of the Bankruptcy Code.

ARTICLE VIII
PLAN IMPLEMENTATION

- A. **Creation of the Liquidating Trust.** Confirmation of the Plan shall effect the formation of the Liquidating Trust. The specific terms, condition, and rules governing the Liquidating Trust are contained within the Liquidating Trust Agreement.
- B. **Funding the Liquidating Trust.** The Debtor, on the Effective Date shall transfer the Trust Assets to the Liquidating Trust.
- C. **Trust Funder.** Trust Funder shall contribute the sum of \$1,500,000.00 to the Liquidating Trust on the Effective Date (“**Initial Trust Contribution**”). Trust Funder shall contribute a sum equal to the difference between \$3,600,000.00 and the sum of all monies received by the Liquidating Trust from FI no later than twelve (12) months after the Effective Date (“**Final Trust Contribution**”).
- D. **Debtor’s Directors and Officers.** On the Effective Date, each of the Debtor’s directors, officers, members, and managers shall be terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtor following the occurrence of the Effective Date.
- E. **Wind-Up and Dissolution of the Debtor.** The Debtor shall be dissolved automatically effective on the Effective Date without the need for any corporate action or approval and without the need for any corporate filings, and neither the Debtor nor the Liquidating Trustee shall be required to pay any taxes or fees attributable to the dissolution. On the Effective Date or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall wind-up the affairs of the Debtor, if any, and file final tax returns for the Debtor. The Liquidating Trust shall bear the cost

and expense of the wind-up of the affairs of the Debtor, if any, and the cost and expense of the preparation and filing of the final tax returns for the Debtor.

F. **Consummation.** For all purposes, Consummation (and substantial consummation of this Plan) shall occur the instant upon which: (1) the Liquidating Trust has been formed, (2) the Trust Causes of Action have been transferred to the Liquidating Trust; (3) the Trust Assets have been transferred to the Liquidating Trust; and (4) the first distributions of cash or property have been made to any class of Creditors under this Plan, at which time this Plan will be deemed fully consummated and on which the Plan will be fully effective.

G. **Revesting of Property.** On the Effective Date, title to all assets not otherwise reverting in the Debtor or to be transferred to the Liquidating Trust shall vest and/or revert in Debtor, and thereafter, Debtor shall own and retain such assets free and clear of all liens, claims, Claims, and interests except as expressly provided in this Plan. From and after the Effective Date, except as otherwise described in this Plan, Debtor shall own assets without further supervision by or jurisdiction of this Court, except as otherwise provided herein.

H. **Incorporation of Rule 9019.** To the extent necessary to effectuate and implement the compromises and releases contained in this Plan, the Plan shall be deemed to constitute a motion under Bankruptcy Rule 9019 seeking the Bankruptcy Court's approval of all of the compromises and releases contained herein.

ARTICLE IX EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. **Executory Contracts and Unexpired Leases to be Assumed.** All executory contracts and unexpired leases of the Debtor as set forth in **Exhibit "2"** hereto shall be assumed pursuant to the provisions of §§ 365 and 1123 of the Bankruptcy Code. Such assumed executory contracts and unexpired leases shall, as of the Effective Date, vest in Reorganized Debtor. The Reorganized Debtor reserves the right to remove any of the contracts or leases specified in Exhibit "2" from the list of assumed contracts and leases, in their discretion, thereby causing the rejection of such contract or lease pursuant to section C of this Article VIII, by filing a written election, prior to the Confirmation Hearing and serving such election on the parties to such contract or lease.

B. **Cure Amounts.** Amounts due under § 365(b)(1)(A) of the Bankruptcy Code with respect to any executory contract or unexpired lease assumed pursuant to section A of this Article VIII shall be paid by the Reorganized Debtor in full, in Cash, on the Effective Date (except for amounts due under any contracts and leases that were assumed by the Debtor prior to the Confirmation Date, which amounts shall be paid in accordance with the Bankruptcy Court's order(s) authorizing such assumption – any unpaid obligations to cure arrearages under such contracts or leases over time shall become obligations of Reorganized Debtor if they have not otherwise been paid or assigned to a third party prior to the Effective Date); provided, however, that as to any disputed portion of such cure amounts, payments shall be made on or as soon as practicable after such disputed portion is resolved by Final Order.

C. **Rejection of All other Executory Contracts.** All executory contracts and unexpired leases of the Debtor, other than those described in section A of this Article VIII, are deemed rejected pursuant to this Plan and the Confirmation Order.

D. **No Effect on Insurance Policies.** To the extent possible, and without impacting the existing coverage under any insurance policy, the rejection of any executory contracts as provided herein shall not apply to, and shall have no effect upon, any insurance policy.

ARTICLE X
CONDITIONS TO CONSUMMATION

A. **Conditions to Consummation.** The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived by the Debtor:

1. The Confirmation Order must have become a Final Confirmation Order.
2. No request for revocation of the Confirmation Order under § 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending; and
3. All actions, documents and agreements necessary to implement the Plan shall have been effectuated or executed.

B. **Waiver of Conditions.** Each of the conditions set forth above may be waived in whole or in part by the Debtor in his/her sole and absolute discretion, without any notice to parties in interest or the Bankruptcy Court, and without a hearing. The Debtor's waiver of any one condition shall not be deemed a waiver of any other condition.

ARTICLE XI
EFFECT OF CONFIRMATION

A. **Bankruptcy Court Jurisdiction.** Until the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Debtor, his/her assets and the Estate. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matters set forth in Article XI of this Plan.

B. **Binding Effect.** Except as otherwise provided in § 1141(d) of the Bankruptcy Code, on and after the Confirmation Date, the provisions of this Plan shall bind any holder of a Claim against the Debtor and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

C. **Non-Discharge and Injunction.**

1. **Non-Discharge of the Debtor.** In accordance with section 1141(d)(3) of the Bankruptcy Code, this Plan does not discharge the Debtor. Section 1141(c) of the Bankruptcy Code nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Equity Interests against the Debtor. As such, no Entity holding a Claim or claim against the Debtor may receive any payment from, or seek recourse against, any assets that are to be distributed under this Plan other than assets required to be distributed to that Entity under the Plan. As of the Confirmation Date, all parties are precluded from asserting against any property to be distributed under this Plan any Claims, claims, rights, causes of action, liabilities, or Equity Interests based upon any act, omission, transaction, or other activity that occurred before the Effective Date except as expressly provided in this Plan or the Confirmation Order.

2. **Permanent Injunction.** Except as otherwise expressly provided for in the Plan or in obligations issued pursuant to the Plan, all Parties and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Equity Interest, from:

- a. commencing or continuing in any manner any action or other proceeding of any kind against the Estate, the Liquidating Trust, their successors and assigns, and any of their assets and properties;

- b. enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Estate, the Liquidating Trust, their successors and assigns, and any of their assets and properties;
- c. creating, perfecting or enforcing any encumbrance of any kind against the Estate, the Liquidating Trust, their successors and assigns, and any of their assets and properties; or
- d. asserting any right of setoff or subrogation of any kind against any obligation due from the Estate, the Liquidating Trust or their successors and assigns, or against any of their assets and properties, except to the extent a right to setoff or subrogation is asserted with respect to a timely filed proof of claim.

D. **Exculpation.** The Debtor and his/her representatives, Professionals, advisors, attorneys, investment bankers, officers, directors, or agents shall neither have nor incur, and are hereby released from, any Claim, claim, obligation, Cause of Action or liability to one another or to any holder of a Claim, or any other party in interest, or any of its members, representatives, advisors, attorneys, financial advisors, investment bankers, agents or affiliates, or any of its successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Case, the pursuit of Confirmation of the Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under the Plan, except for: (i) claims which arise or relate to actions or omissions arising prepetition; and (ii) willful misconduct or gross negligence at any time. In all respects the Debtor shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under this Plan.

ARTICLE XII JURISDICTION

A. **Retention of Jurisdiction.** The Bankruptcy Court shall retain exclusive jurisdiction over this Case after Confirmation, notwithstanding consummation or substantial consummation, for the following purposes:

- 1. to consider and effect any modification of this Plan under § 1127 of the Bankruptcy Code;
- 2. to hear and determine all controversies, suits and disputes that arise in connection with the interpretation, implementation, effectuation, consummation or enforcement of this Plan;
- 3. to hear and determine all requests for compensation and/or reimbursement of expenses for the period commencing on the Petition Date through the Confirmation Date;
- 4. to hear and determine all objections to Claims, and to determine the appropriate classification of any Claim, and other controversies, suits and disputes that may be pending at or initiated after the Confirmation Date, except as provided in the Confirmation Order;
- 5. to hear and determine all claims that the Debtor, as debtor-in-possession *qua* trustee, could assert under the Bankruptcy Code;
- 6. to consider and act on such other matters consistent with this Plan as may be provided in the Confirmation Order;
- 7. to make such orders as are necessary and appropriate to carry out and implement the provisions of this Plan;

8. to approve the reasonableness of any payments made or to be made, within the meaning of § 1129(a)(4) of the Bankruptcy Code;

9. to exercise the jurisdiction granted pursuant to §§ 505(a) and (b) of the Bankruptcy Code to determine any and all federal, state, local and foreign tax liabilities of, and any and all refunds of such taxes paid by the Debtor;

10. to hear and determine any issues or matters in connection with any property not timely claimed as provided in this Plan;

11. to hear and determine any controversies with respect to any settlements approved by the Bankruptcy Court;

12. to determine any and all motions, applications, adversary proceedings and contested matters whether pending in the Case as of the Effective Date or brought subsequently by the Reorganized Debtor; and

13. to enter a final decree closing the Case.

B. **Failure of the Bankruptcy Court to Exercise Jurisdiction.** If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, in or related to the Estate, including with respect to the matters set forth herein, this Article XI shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

ARTICLE XIII THE LIQUIDATING TRUST

A. **Purposes of the Liquidating Trust.** Confirmation of the Plan shall effect the formation of the Liquidating Trust. The function of the Liquidating Trust shall be limited to the following:

1. to own, hold, pursue, manage and dispose of the Trust Assets;
2. to litigate, prosecute, settle or otherwise resolve the Trust Causes of Action;
3. to defend any counterclaims relating to the Trust Causes of Action; and
4. to do anything necessary, related or incidental to the foregoing.

B. **Conduct of Trade or Business.** The Liquidating Trust shall not continue or engage in the conduct of a trade or business.

C. **Term.** The Liquidating Trust shall terminate upon the earliest to occur of: (a) the fulfillment of the trust purpose by the conclusion of all of the Trust Causes of Action and the distribution of the Net Recoveries therefrom and the Sales Proceeds or (b) the term of five (5) years from the Effective Date. The Trustee may apply to the Bankruptcy Court to terminate the Liquidating Trust prior to the expiration of the five (5) year term in the event all activities of the Liquidating Trust are completed or if all of the Causes of Action have been concluded and the Net Recoveries therefrom and the Sales Proceeds have been distributed in accordance with this Plan. The Trustee of the Liquidating Trust may extend the term of the Liquidating Trust if the conclusion of the Causes of Action and distribution of the Net Recoveries therefrom and the Sales Proceeds have not been completed or if other circumstances require such extension.

D. **Beneficiaries of the Trust.** The beneficiaries of the Trust shall be the holders of Allowed Claims.

E. **The Trustee.** The initial Trustee of the Liquidating Trust has not yet been identified, but will be identified prior to the confirmation hearing. The Trustee of the Liquidating Trust shall

administer the Trust Assets and have the authority to initiate or continue all Trust Causes of Action and make the payments to Creditors as provided in this Plan and the Liquidating Trust Agreement.

F. **Powers of Trustee.** Except as otherwise provided in this Plan, the Trustee of the Liquidating Trust shall have all of the following rights and powers:

1. Receive and hold, to have exclusive possession and control thereof as permissible under applicable law, maintain and administer the Liquidating Trust Assets;
2. Employ, retain or replace professional persons, including attorneys, accountants, appraisers, investment advisors, expert witnesses, insurance adjustors, or other persons whose services may be necessary or advisable, in the judgment of the Trustee of the Liquidating Trust, to advise or assist him/her in the discharge of the duties of the Trustee of the Liquidating Trust, or otherwise in the exercise of any powers vested in the Trustee of the Liquidating Trust or as the Bankruptcy Court may direct and, subject to the provisions of the Liquidating Trust, to pay to such professionals reasonable compensation;
3. Collect, compromise, settle or discharge any claim of the Liquidating Trust and pursue, in his/her discretion, on behalf of the Liquidating Trust as the designated representative of the Debtor, to either judgment, order, compromise or settlement, any of the Trust Causes of Action, except to the extent that any such claims have been specifically compromised, settled and released pursuant to the Plan or the Liquidating Trust Agreement, and to defend any counterclaims, cross-actions or other offsets;
4. Distribute the cash and proceeds from the sale, liquidation, settlement, prosecution or other distribution of the Liquidating Trust Assets;
5. Seek a determination from the Bankruptcy Court of the Allowed Amount of any Claim or Interest against the Liquidating Trust, except to the extent provided otherwise herein, including filing objections thereto and pursuing any contest or adversary proceedings with regard thereto and entering into any compromise or settlement thereof, and to execute any contract, including, without limitation, any release in connection with any such compromise or settlement. However, any Claim which is compromised, settled and/or released in connection with any such compromise or settlement agreement set forth in this Plan is excluded;
6. Maintain possession of the originals of any and all instruments and documents pertaining to the Trust Assets and any liabilities of the Liquidating Trust;
7. pay all expenses incurred in connection with the administration of the Liquidating Trust;
8. calculate and make distribution to holders of Allowed Claims all as set forth in this Plan;
9. Sue and be sued, including filing and defending contested matters and adversary proceedings in the Bankruptcy Court and actions or other proceedings in any other court or before any administrative agency and to pursue or defend any appeal from any judgment or order therefrom, including, without limitation, pursuing claims of the Liquidating Trust, filing suit or adversary proceedings or contested matters in connection therewith and defending any counterclaims, cross-actions or other offsets in connection therewith and entering into any compromise, settlement, release, discharge or dismissal of any of the claims;
10. Release, convey or assign any right, title or interest in or about the Liquidating Trust Assets;

11. Enter into contracts binding upon the Liquidating Trust (but not the Trustee of the Liquidating Trust) which are reasonably incident to the administration of the Liquidating Trust and which the Trustee of the Liquidating Trust, in the exercise of his/her best judgment, believes to be in the best interests of the Liquidating Trust;

12. Abandon and charge off as worthless, in whole or in part, those actions which in the judgment of the Trustee of the Liquidating Trust, are in whole or in part uncollectible;

13. Pay taxes and excises lawfully owing by or chargeable against the Liquidating Trust or property in the possession or control of the Trustee of the Liquidating Trust and to take any action necessary or advisable to obtain the prompt determination of any such tax liability;

14. Allocate items, receipts or disbursements either to corpus or income (or partially to corpus and partially to income) of the Liquidating Trust as the Trustee of the Liquidating Trust, in the exercise of his best judgment and discretion, deems to be proper, without thereby doing violence to clearly established and generally recognized principles of accounting;

15. Deal with any governmental regulatory authority in obtaining such approvals or exemptions as may, in the opinion of the Trustee of the Liquidating Trust, be necessary or desirable with respect to the administration of the Liquidating Trust;

16. Sell, market, lease or otherwise dispose of the Real Property and Vehicles for cash or notes; and

17. Exercise the rights and benefits afforded by §§ 108 and 546 of the Bankruptcy Code, which may increase the enumerated powers of the Trustee of the Liquidating Trust otherwise granted herein, and engage in any and all other activities, not in violation of any other terms of the Plan and Liquidating Trust Agreement, which, in the judgment of the Trustee of the Liquidating Trust, are necessary or appropriate for the proper liquidation, management, investment and distribution of the assets of the Liquidating Trust in accordance with the provisions of the Liquidating Trust Agreement, to effectuate the provisions of the Plan, and to perform such other tasks as the Bankruptcy Court may direct.

G. **Payment of Trust Fees and Expenses.** The Trustee may establish reserves and accounts at banks and other financial institutions, in a clearly specified fiduciary capacity, into which cash and property may be deposited and checks drawn or withdrawals made to pay or distribute such amounts as permitted or required for fees, expenses and Liquidating Trust liabilities pursuant to this Plan and the Liquidating Trust Agreement. Such funds shall not be subject to any claim by any entity except as provided under this Plan. All fees and expenses of the Liquidating Trust, and its agents and employees incurred in connection with (i) the objection to, and settlement, liquidation and payment of claims and interests against the Debtor; (ii) the liquidation or acquisition of assets; or (iii) administering the Liquidating Trust and completion of the Plan shall, subject to the review and approval of the Trustee of the Liquidating Trust, be paid.

H. **Compensation of Trustee and Persons Employed by the Trust.** The Trustee of the Liquidating Trust shall be paid in accordance with his/her customary hourly rate with respect to the administration of the Liquidating Trust. All compensation paid to the Trustee of the Liquidating Trust shall be subject to the review and approval of the Bankruptcy Court. All persons or entities employed by the Trustee of the Liquidating Trust shall be entitled to compensation from the Liquidating Trust and such compensation shall be subject to the review and approval of the Trustee of the Liquidating Trust and the Bankruptcy Court.

I. **Authorization.** All Classes of creditors that vote to accept the Plan hereby authorize the Trustee to act on behalf and in place of such creditor to the extent provided herein and in any document and instrument delivered hereunder or in connection herewith and to take such other action as may be incidental thereto, including, without limitation, the exercise of any discretion in connection with any determination or decision required for the administration of this Plan and the granting of any waiver, consent, amendment, suspension, supplementation, extension, renewal or other modification with respect to any and all provisions of this Plan on a conditional or unconditional basis.

J. **Exculpation.** The Trustee of the Liquidating Trust shall be entitled to rely upon advice and opinions of counsel concerning legal matters, the authenticity of affidavits, letters, telegrams, cablegrams and other methods of communication in general use and usually accepted by businessmen as genuine and what they purport to be, and upon this Plan and any schedule, certificate, statement, report, notice or other writing which it believes to be genuine or to have been presented by a proper entity. Except for its or their own intentional misconduct, neither the Trustee, nor any of his employees or agents shall (a) be responsible for any recitals, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of this Plan, (b) be under any duty to inquire into or pass upon any matter or to make any inquiry concerning the validity of any representation or warranty of the Debtor or the performance by the Debtor of its obligation or (c) in any event, be liable as such for any action taken or omitted by it. Each creditor agrees and acknowledges that the Trustee of the Liquidating Trust makes no representations or warranties with respect to the legality, validity, sufficiency or enforceability of this Plan.

K. **Liability of Trustee.** No recourse shall ever be had, directly or indirectly, against the Trustee of the Liquidating Trust by legal or equitable proceedings or by virtue of any statute or otherwise, or by virtue of any deed of trust, mortgage, pledge or note, or by virtue of any promises, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Trustee of the Liquidating Trust for any purposes authorized, it being expressly understood and agreed that all such liabilities, covenants and agreements of the Trustee of the Liquidating Trust, whether in writing or otherwise, shall be enforceable only against and be satisfied only by the Liquidating Trust, and every undertaking, contract, covenant or agreement entered into in writing by the Trustee of the Liquidating Trust may provide expressly against the personal liability of the Trustee of the Liquidating Trust. The Trustee of the Liquidating Trust shall not be liable for any act he may do or admit to do as the Trustee of the Liquidating Trust hereunder while acting in good faith. The Trustee of the Liquidating Trust shall not be liable in any event except for his own negligence or willful fraud or misconduct. The Trustee shall be indemnified and held harmless by the Liquidating Trust for any and all loss by reason of his acts or contracts for the Liquidating Trust except for loss arising out of the Trustee of the Liquidating Trust's own negligence or willful fraud or misconduct. This provision does not eliminate the Trustee of the Liquidating Trust's responsibilities and obligations regarding the filing of federal tax returns and the payment of any taxes that are due.

L. **Books and Records.** The Trustee of the Liquidating Trust shall keep or cause to be kept books containing a description of all Claims, assets, receipts, disbursements and escrows, which records shall be open to inspection at all reasonable times upon reasonable request of any Unsecured Creditor.

- M. **Delegation of Powers.** The Trustee of the Liquidating Trust shall be entitled to delegate such authority to his employees and agents as he shall reasonably deem necessary to perform his responsibilities under this Plan.
- N. **Resignation, Death or Removal.** The Trustee of the Liquidating Trust or any successor trustee may resign upon (thirty) 30 days written notice. In that event, or in the event of the death of the Trustee of the Liquidating Trust or a successor trustee, upon motion of any Creditor with an Allowed Claim and/or the resigning Trustee of the Liquidating Trust, the Bankruptcy Court will appoint a substitute or successor Trustee of the Liquidating Trust to perform the duties, functions and obligation and to exercise the rights and authority of the Trustee of the Liquidating Trust as described in the Plan.
- O. **Investment of Funds.** All proceeds and other cash (except for amounts which the Trustee of the Liquidating Trust determines, in his sole discretion, are needed for immediate payments and distributions) shall be invested and reinvested by the Liquidating Trust in United States Treasury Bills or in certificates of deposits, demand deposit or interest-bearing accounts of banking institutions acceptable to the Liquidating Trust or such other investments as shall be prudent and appropriate under the circumstances, in such amounts and upon such terms as a reasonable and prudent fiduciary would select and with a view toward sufficient liquidity to make the distributions contemplated by this Plan. All interest earned on such proceeds and other cash shall be retained by the Liquidating Trust and distributed in accordance with this Plan.
- P. **Reserves.** Prior to any distribution of cash or proceeds, the Trustee of the Liquidating Trust shall establish adequate reserves for the operation of the Liquidating Trust and Contested Claims that may become Allowed Claims after the Effective Date.
- Q. **Interim Distribution.** If and when, in the opinion of the Trustee of the Liquidating Trust, there is sufficient cash and proceeds to justify an interim distribution to creditors holding Allowed Unsecured Claims, he/she may make such interim distributions to holders of such Allowed Claims as he deems appropriate in his sole and absolute discretion; provided that he/she shall maintain sufficient reserves as required in this Section. In any event the Trustee of the Liquidating Trust shall make distributions at least annually as funds are available.
- R. **Unclaimed Distributions.** Any proceeds or other cash held for the benefit of any holder of an Allowed Claim, if unclaimed by the distributee within three months after the distribution, shall be redeposited into the fund and made available for other Allowed Claims and Allowed Interests, and all liability and obligations of the Debtors and the Liquidating Trust to such distributee with respect thereto shall thereupon cease.
- S. **Termination.** Upon termination of the Liquidating Trust, the powers and responsibilities of the Trustee of the Liquidating Trust and his representatives shall terminate.
- T. **Tax Treatment.** The Liquidating Trust shall be treated as a grantor trust in accordance with the provisions of the Internal Revenue Code. The transfers of the Trust Assets to the Liquidating Trust shall be treated as a transfer to the Creditors. The Trust Beneficiaries will be treated as the grantors and deemed owners of the Liquidating Trust. Any valuations of the Liquidating Trust assets used by the Liquidating Trust and the Trust Beneficiaries shall be consistent with each other.
- U. **Representative of Estate.** The Liquidating Trust Trustee is appointed as the representative of the estate pursuant to §1123(b)(3) of the Code to pursue the Trust Causes of Action and shall have exclusive authority to pursue actions to recover preferences, fraudulent conveyances, and all other avoidance actions under Chapter 5 of the Bankruptcy Code. Unless the

Liquidating Trust Trustee consents, or unless otherwise ordered by the Bankruptcy Court, no other party shall have the right or obligation to pursue any such actions. Any creditor determined to have received a transfer that is voidable pursuant to Sections 544, 547, 548, 549, and/or 550 of the Bankruptcy Code or any other applicable law shall be required to remit to the Liquidating Trust the determined amount of the avoided transfer prior to receiving any distribution.

ARTICLE XIV MISCELLANEOUS

A. **Request for Relief Under Section 1129(b)**. In the event any Class of Creditors shall fail to accept this Plan in accordance with § 1129(a) of the Bankruptcy Code, the Debtor requests the Bankruptcy Court to confirm this Plan in accordance with the provisions of § 1129(b) of the Bankruptcy Code.

B. **Modification**. The Debtor may alter, amend or modify this Plan under § 1127 of the Bankruptcy Code or as otherwise permitted by law at anytime prior to Confirmation. Further, the Reorganized Debtor may also seek to modify the Plan at anytime after Confirmation and prior to substantial consummation of the Plan so long as the treatment of the holders of Allowed Claims is not materially or adversely affected.

C. **Headings**. All headings utilized in this Plan are for convenience and reference only, and shall not constitute a part of this Plan for any other purpose.

D. **Due Authorization**. Each and every Claim holder who elects to participate in the distributions provided for herein warrant that such Claim holder is authorized to accept, in consideration of such Claim against the Debtor, the distributions provided for in this Plan and that there are not outstanding commitments, agreements, or understandings, expressed or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by such Claim holder under this Plan.

E. **Further Assurances and Authorizations**. The Debtor and/or the Reorganized Debtor, if and to the extent necessary, shall seek such orders, judgments, injunctions, and rulings that may be required to carry out further the intentions and purposes, and to give full effect to the provisions, of this Plan.

F. **Applicable Law**. Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights, duties and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the internal laws of the State of Texas without reference to the laws of other jurisdictions.

G. **Privileged Communications; Work Product**. For purposes of any proprietary, confidential or privileged information or communication, including attorney-client privileged communications, and documents that would otherwise constitute attorney work product, the Reorganized Debtor shall succeed to the interest of the Debtor and the Estate, to the extent provided by applicable law.

H. **No Interest**. Except as expressly stated in this Plan, or allowed by the Bankruptcy Court, no interest, penalty or late charge is to be Allowed on any Claim subsequent to the Filing Date.

I. **No Attorneys' Fees**. No attorneys' fees will be paid with respect to any Claim, other than Claims of professionals employed by the Debtor, except as specified herein or as allowed by a prior order of the Bankruptcy Court.

J. **Post-Confirmation Actions**. After Confirmation, the Reorganized Debtor may, with the approval of the Bankruptcy Court, and so long as it does not materially or adversely affect the

interest of Creditors, remedy any defect or omission, or reconcile any inconsistencies in this Plan or in the Confirmation Order, in such manner as may be necessary to carry out the purposes and effect of this Plan.

K. **Post-Confirmation Conversion and/or Dismissal.** Any Creditor or interested party, in the event of a default under the terms of this Plan, may file a motion to dismiss or convert this case pursuant to § 1129 of the Bankruptcy Code after the Plan is confirmed. If the Bankruptcy Court orders the case converted to one under Chapter 7, then all property that had been property of the chapter 11 bankruptcy estate, and not previously disbursed under the terms of this Plan, shall revert in the Chapter 7 bankruptcy estate. Further, to the extent relief from stay had not previously been granted during the chapter 11 bankruptcy process, a new automatic stay shall be reimposed upon all property of the Chapter 7 bankruptcy estate.

L. **Substantial Consummation.** The Plan shall be deemed to have been substantially consummated when the Reorganized Debtor makes an initial distribution pursuant to the terms of the Plan.

M. **Notices.** All notices, requests, elections or demands in connection with the Plan shall be in writing and shall be deemed to have been given when received or, if mailed, five (5) days after the date of mailing provided such writing shall have been sent by registered or certified mail, postage prepaid, return receipt requested. Any notices required to be delivered to the Reorganized Debtor shall be addressed as follows:

The Longaberger Company
Attention: John Rochon
2950 North Harwood, Suite 2200
Dallas, TX 75201

With a copy to:

Robert T. DeMarco
DeMarco Mitchell, PLLC
1255 W. 15th Street, 805
Plano, TX 75075

N. **Notices and Distributions.** On and after the Effective Date, all notices, requests and distributions to Claimants shall be sent to the last known address of: (1) the Claimant or its/his/her attorney of record as reflected in the Claimant's proof of claim; or (2) if there is no such evidence of a last known address, to the last known address of the Claimant according to the books and records of the Debtor. Any Claimant may designate another address for the purposes of this Section by providing the Reorganized Debtor written notice of such address, which notice will be effective upon receipt by the Reorganized Debtor.

O. **Unclaimed Property.** If any property distributed under the Plan by the Reorganized Debtor remains unclaimed for a period of two (2) years the initial date of the attempted delivery such unclaimed property shall be forfeited by the Claimant and the unclaimed property and the right to receive it shall revert to and vest in the Reorganized Debtor free and clear of any claims, rights or interests.

P. **Setoff.** Except as specifically provided in the Plan, no Creditor shall retain any contractual or statutory right to set off any asset in which the Debtor or Reorganized Debtor has an interest in satisfaction of that Creditor's pre-petition Claim. Any right to set off a claim against an asset of Debtor or the Reorganized Debtor which is not specifically retained is waived.

Q. **No Admissions.** Notwithstanding anything herein to the contrary, nothing contained in this Plan shall be deemed an admission by the Debtor with respect to any matter set forth herein, including, without limitation, liability on any Claim or Interest or the propriety, any classification of any Claim or Interest, or the valuation of any property.

Respectfully submitted,

Dated: October 19, 2018

/s/ John Rochon

John Rochon, President

Presented by:

/s/ Robert T. DeMarco

DeMarco•Mitchell, PLLC

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**Attorneys for the Debtor
and Debtor-in-Possession**

TRUST AGREEMENT AND DECLARATION OF TRUST

This Trust Agreement and Declaration of Trust ("**Agreement**") is made and entered into as of this ____ day of _____, 2018, ("**Effective Date**"), by and among The Longaberger Company ("**Longaberger**") and _____, trustee (the "**Trustee**").

WHEREAS, Longaberger filed a petition for relief under chapter 11 of the United States Bankruptcy Code on **June 29, 2018**, (the "**Petition Date**"), in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division ("**Court**" or "**Bankruptcy Court**").

WHEREAS, on the ____ day of _____, 2018, the Bankruptcy Court entered an order confirming Douglas Harrington's Plan of Reorganization [Dated **October 19, 2018**] (the "**Plan**").

WHEREAS, the Plan provides for the creation of a creditors' trust to receive and disburse the proceeds from the liquidation of the Trust Assets.

A. CREATION OF THE TRUST

1. **Appointment of the Trustee.** In accordance with the provisions of the Plan, _____, is hereby named as the Trustee to hold, manage, liquidate, and distribute the Trust Assets for the benefit of the Trust beneficiaries; to litigate, prosecute, settle or otherwise resolve Trust Causes of Action; and to distribute the Net Recoveries from the Trust Causes of Action pursuant to the terms of this Agreement and the Plan.

2. **Acceptance by the Trustee.** The Trustee is willing and does hereby accept the appointment to serve as trustee, and to administer the Trust Assets pursuant to the terms of this Agreement and the Plan.

3. **Name of the Trust.** The Trust established hereby shall bear the name "**The Longaberger Liquidating Trust**" ("**Trust**"). In connection with the exercise of his powers as trustee, the Trustee may use such name or such variation thereon as he sees fit, or may use his own name, as trustee, or otherwise.

4. **Purposes of the Trust.** Confirmation of the Plan shall effect the formation of the Trust. The function of the Trust shall be limited to the following:

- a. to own, hold, pursue, manage and dispose of the Trust Assets;
- b. to litigate, prosecute, settle or otherwise resolve the Trust Causes of Action;
- c. to defend any counterclaims relating to the Trust Causes of Action; and
- d. to do anything necessary, related or incidental to the foregoing.

5. **Trade or Business.** The Trust shall not continue or engage in the conduct of a trade or business.

6. **Assets of the Trust.** The Trust Assets and all Trust Causes of Action to the extent not released under the Plan.

7. **Transfer of Assets to the Trust.** In accordance with the provisions of the Plan, right, title and interest in and to the Trust Assets are hereby vested in the Trust and preserved for the benefit of the Trust Beneficiaries. From and after the Effective Date of this Agreement, the Trust Assets shall be administered by the Trustee on behalf of the Trust Beneficiaries. Prior to, or contemporaneously with the execution of this Agreement, the Debtor shall have executed and delivered to, or to the order of, the Trustee any and all documents and other instruments as may be necessary or useful to conform title to the Trust Assets.

8. **Resolution of Trust Causes of Action.** Subject to the terms of the Plan, resolution of the Causes of Action shall be effected in a manner reasonably calculated under the then existing circumstances to maximize the proceeds within the period necessary to fund timely the payments contemplated under the Plan.

9. **Appointment of Successor Trustee.** The Trustee or any successor trustee may resign upon (thirty) 30 days written notice. In that event, or in the event of the death of the Trustee or a successor trustee, upon motion of any Creditor with an Allowed Claim and/or the resigning Trustee, the Bankruptcy Court will appoint a substitute or successor Trustee to perform the duties, functions and obligation and to exercise the rights and authority of the Trustee as described in the Plan.

10. **Distributions.** Pursuant to the terms of the Plan, the Trustee shall make distributions to the Trust Beneficiaries. All distributions to Secured, Administrative, and Priority Creditors holding Allowed Claims shall be in accordance with the priority scheme established by the Bankruptcy Code and the Plan. Distributions to Creditors holding Allowed Unsecured Claims shall be *pro rata*. Distributions of less than \$100.00 shall not be made except, within the Trustee's sole and complete discretion, the Trustee elects to make such distribution. Further, Trustee may condition distribution on receipt from the Trust Beneficiary of a valid Federal Tax ID number.

11. **Reserves.** Prior to any distribution of cash or proceeds, the Trustee shall establish adequate reserves for the operation of the Trust and Contested Claims that may become Allowed Claims after the Effective Date.

12. **Interim Distribution.** If and when, in the opinion of the Trustee, there is sufficient cash and proceeds to justify an interim distribution to creditors holding Allowed Claims, he may make such interim distributions to holders of such Allowed Claims as he deems appropriate in his sole and absolute discretion; provided that he shall maintain sufficient reserves as required in this Section. In any event the Trustee shall make distributions at least quarterly as funds are available.

13. **Unclaimed Distributions.** Any proceeds or other cash held for the benefit of any holder of an Allowed Claim, if unclaimed by the distributee within three months after the distribution, shall be redeposited into the fund and made available for other Allowed Claims and Allowed Interests, and all liability and obligations of the Debtors and the Trust to such distributee with respect thereto shall thereupon cease.

B. BENEFICIAL INTEREST OF THE TRUSTE BENEFICIARIES

1. **Beneficiaries of the Trust.** The beneficiaries of the Trust shall be the holders of Allowed Claims not satisfied. Only Trust Beneficiary claims will receive K-1 Forms or substitute forms from the Trust tax returns. Payments made on fixed, non-beneficiary claims will be reported on a Form 1099 under normal 1099 rules.

2. **Beneficial Interest Only.** The beneficial interests held by the Trust Beneficiaries hereunder shall not entitle any Trust Beneficiary to any title or direct ownership interest in or to any of the Trust Assets or to any right to call for a partition or division of the same, or to require an accounting except as specially required by the terms hereof.

3. **Evidence of Beneficial Interest.** Ownership of a beneficial interest in the Trust Assets hereunder shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever.

4. **Interest of Trust Beneficiaries.** The Trust Beneficiaries shall have a beneficial interest in the Trust Assets only to the extent specified under the Plan and this Agreement. The Trust Beneficiaries' proportionate beneficial interest in the Trust Assets as thus determined shall not be transferable, except pursuant to the laws of descent and distribution or otherwise by operation of law.

5. **No Partnership.** The only relationship created by this Agreement is the trustee-beneficiary relationship between the Trustee and the Trust Beneficiaries. No other relationship or liability is created hereby or under the terms of the Plan.

6. **Death, Incapacity, Bankruptcy.** The death, incapacity or bankruptcy of any of the Trust Beneficiaries during the term of this Trust shall not operate to terminate the Trust, nor shall it entitle the representative(s) of creditors of the subject Trust Beneficiary to an accounting, or to take any action in Bankruptcy Court or elsewhere to compel distribution of Trust Assets or for a partition thereof. Further, such event shall not affect the rights and obligations of any of the other Trust Beneficiaries under the Trust.

7. **Term.** The Trust shall terminate upon the earliest to occur of: (a) the fulfillment of the trust purpose by the conclusion of all of the Causes of Action and the distribution of the Net Recoveries therefrom and the Sales Proceeds or (b) the term of five (5) years from the Effective Date. The Trustee may apply to the Bankruptcy Court to terminate the Trust prior to the expiration of the five (5) year term in the event all activities of the Trust are completed or if all of the Causes of Action have been concluded and the Net Recoveries therefrom and the Sales Proceeds have been distributed in accordance with this Plan. The Trustee may extend the term of the Trust if the conclusion of the Causes of Action and distribution of the Net Recoveries therefrom and the Sales Proceeds have not been completed or if other circumstances require such extension.

8. **Obligations of Trust Beneficiary.** The Trust Beneficiaries shall each be responsible for notifying the Trustee of any address change, which notice must be made in writing.

C. RIGHTS, POWERS AND DUTIES OF THE TRUSTEE

1. **Powers of Trustee.** Except as otherwise provided in the Plan, the Trustee shall have all of the following rights and powers:

a. Receive and hold, to have exclusive possession and control thereof as permissible under applicable law, maintain and administer the Trust Assets;

b. Employ, retain or replace professional persons, including attorneys, accountants, appraisers, investment advisors, expert witnesses, insurance adjustors, or other persons whose services may be necessary or advisable, in the judgment of the Trustee, to advise or assist him in the discharge of the duties of the Trustee, or otherwise in the exercise of any powers vested in the Trustee or as the Bankruptcy Court may direct and, subject to the provisions of the Trust, to pay to such professionals reasonable compensation;

c. Collect, compromise, settle or discharge any claim of the Trust and pursue, in his discretion, on behalf of the Trust as the designated representative of the Debtor, to either judgment, order, compromise or settlement, any of the Trust Causes of Action, except to the extent that any such claims have been specifically compromised, settled and released pursuant to the Plan or the Trust Agreement, and to defend any counterclaims, cross-actions or other offsets;

d. Distribute the cash and proceeds from the sale, liquidation, settlement, prosecution or other distribution of the Trust Assets;

e. Seek a determination from the Bankruptcy Court of the Allowed Amount of any Claim or Interest against the Trust except for the Claims of Beard, Continental and/or Wells Fargo, including filing objections thereto and pursuing any contest or adversary proceedings with regard thereto and entering into any compromise or settlement thereof, and to execute any contract, including, without limitation, any release in connection with any such compromise or settlement. However, any Claim which is compromised, settled and/or released in connection with any such compromise or settlement agreement set forth in this Plan is excluded;

f. Maintain possession of the originals of any and all instruments and documents pertaining to the Trust assets and any liabilities of the Trust;

g. Pay all expenses incurred in connection with the administration of the Trust;

h. Calculate and make distribution to holders of Allowed Claims all as set forth in this Plan

i. Sue and be sued, including filing and defending contested matters and adversary proceedings in the Bankruptcy Court and actions or other proceedings in any other court or before any administrative agency and to pursue or defend any appeal from any judgment or order therefrom, including, without limitation, pursuing claims of the Trust, filing suit or adversary proceedings or contested matters in connection therewith

and defending any counterclaims, cross-actions or other offsets in connection therewith and entering into any compromise, settlement, release, discharge or dismissal of any of the claims;

j. Release, convey or assign any right, title or interest in or about the Trust Assets;

k. Enter into contracts binding upon the Trust (but not the Trustee) which are reasonably incident to the administration of the Trust and which the Trustee, in the exercise of his best judgment, believes to be in the best interests of the Trust;

l. Abandon and charge off as worthless, in whole or in part, those actions which in the judgment of the Trustee, are in whole or in part uncollectible;

m. Pay taxes and excises lawfully owing by or chargeable against the Trust or property in the possession or control of the Trustee and to take any action necessary or advisable to obtain the prompt determination of any such tax liability;

n. Allocate items, receipts or disbursements either to corpus or income (or partially to corpus and partially to income) of the Trust as the Trustee, in the exercise of his best judgment and discretion, deems to be proper, without thereby doing violence to clearly established and generally recognized principles of accounting;

o. Deal with any governmental regulatory authority in obtaining such approvals or exemptions as may, in the opinion of the Trustee, be necessary or desirable with respect to the administration of the Trust;

p. Sell, market, lease or otherwise dispose of the Trust Assets for cash or notes as set forth herein; and

q. Exercise the rights and benefits afforded by §§ 108 and 546 of the Bankruptcy Code, which may increase the enumerated powers of the Trustee otherwise granted herein, and engage in any and all other activities, not in violation of any other terms of the Plan and Trust Agreement, which, in the judgment of the Trustee, are necessary or appropriate for the proper liquidation, management, investment and distribution of the assets of the Trust in accordance with the provisions of the Trust Agreement, to effectuate the provisions of the Plan, and to perform such other tasks as the Bankruptcy Court may direct.

2. **Representative of Estate.** The Trustee is appointed as the representative of the Estate pursuant to section 1123(b)(3) of the Bankruptcy Code to pursue Trust Causes of Action and shall be the only entity authorized to pursue actions to recover preferences, fraudulent conveyances, and all other avoidance actions under Chapter 5 of the Bankruptcy Code. Unless the Trustee consents, or unless otherwise ordered by the Bankruptcy Court, no other party shall have the right or obligation to pursue any such actions. Any Creditor determined to have received a transfer that is void or voidable pursuant to sections 542, 543, 544, 547, 548, 549, and/or 550 of the Bankruptcy Code or any other applicable law shall be required to remit to the Trustee the determined amount of the avoided transfer prior to receiving any distribution hereunder.

3. **Compromise and Settlement.** The Trustee shall have the right to pursue, compromise or settle any claim or cause of action transferred to the Trust, and the compromise and settlement by the Trustee of any Trust Cause of Action may be effectuated without the necessity of Court approval pursuant to Bankruptcy Rule 9019.

4. **Payment of Trust Fees and Expenses.** The Trustee may establish reserves and accounts at banks and other financial institutions, in a clearly specified fiduciary capacity, into which cash and property may be deposited and checks drawn or withdrawals made to pay or distribute such amounts as permitted or required for fees, expenses and Trust liabilities pursuant to this Plan and the Trust Agreement. Such funds shall not be subject to any claim by any entity except as provided under this Plan. All fees and expenses of the Trust, and its agents and employees incurred in connection with (i) the objection to, and settlement, liquidation and payment of claims and interests against the Debtor; (ii) the liquidation or acquisition of assets; or (iii) administering the Trust and completion of the Plan shall, subject to the review and approval of the Trustee, be paid.

5. **Compensation of Trustee and Persons Employed by the Trust.** The Trustee shall be paid in accordance with his customary hourly rate with respect to the administration of the Trust. All compensation paid to the Trustee shall be subject to the review and approval of the Bankruptcy Court. All persons or entities employed by the Trustee shall be entitled to compensation from the Trust and such compensation shall be subject to the review and approval of the Trustee and the Bankruptcy Court.

6. **Authorization.** All Classes of creditors that vote to accept the Plan hereby authorize the Trustee to act on behalf and in place of such creditor to the extent provided herein and in any document and instrument delivered hereunder or in connection herewith and to take such other action as may be incidental thereto, including, without limitation, the exercise of any discretion in connection with any determination or decision required for the administration of this Plan and the granting of any waiver, consent, amendment, suspension, supplementation, extension, renewal or other modification with respect to any and all provisions of this Plan on a conditional or unconditional basis.

7. **Exculpation.** The Trustee shall be entitled to rely upon advice and opinions of counsel concerning legal matters, the authenticity of affidavits, letters, telegrams, cablegrams and other methods of communication in general use and usually accepted by businessmen as genuine and what they purport to be, and upon this Plan and any schedule, certificate, statement, report, notice or other writing which it believes to be genuine or to have been presented by a proper entity. Except for its or their own intentional misconduct, neither the Trustee, nor any of his employees or agents shall (a) be responsible for any recitals, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of this Plan, (b) be under any duty to inquire into or pass upon any matter or to make any inquiry concerning the validity of any representation or warranty of the Debtor or the performance by the Debtor of its obligation or (c) in any event, be liable as such for any action taken or omitted by it. Each creditor agrees and acknowledges that the Trustee makes

no representations or warranties with respect to the legality, validity, sufficiency or enforceability of this Plan.

8. **Liability of Trustee.** No recourse shall ever be had, directly or indirectly, against the Trustee by legal or equitable proceedings or by virtue of any statute or otherwise, or by virtue of any deed of trust, mortgage, pledge or note, or by virtue of any promises, contract, instrument, undertaking, obligation, covenant or agreement whatsoever executed by the Trustee for any purposes authorized, it being expressly understood and agreed that all such liabilities, covenants and agreements of the Trustee, whether in writing or otherwise, shall be enforceable only against and be satisfied only by the Trust, and every undertaking, contract, covenant or agreement entered into in writing by the Trustee may provide expressly against the personal liability of the Trustee. The Trustee shall not be liable for any act he may do or admit to do as the Trustee hereunder while acting in good faith. The Trustee shall not be liable in any event except for his own negligence or willful fraud or misconduct. The Trustee shall be indemnified and held harmless by the Trust for any and all loss by reason of his acts or contracts for the Trust except for loss arising out of the Trustee's own negligence or willful fraud or misconduct. This provision does not eliminate the Trustee's responsibilities and obligations regarding the filing of federal tax returns and the payment of any taxes that are due.

9. **Books and Records.** The Trustee shall keep or cause to be kept books containing a description of all Claims, assets, receipts, disbursements and escrows, which records shall be open to inspection at all reasonable times upon reasonable request of any Unsecured Creditor.

10. **Delegation of Powers.** The Trustee shall be entitled to delegate such authority to his employees and agents as he shall reasonably deem necessary to perform his responsibilities under this Plan.

11. **Investment of Funds.** All proceeds and other cash (except for amounts which the Trustee determines, in his sole discretion, are needed for immediate payments and distributions) shall be invested and reinvested by the Trust in United States Treasury Bills or in certificates of deposits, demand deposit or interest-bearing accounts of banking institutions acceptable to the Trust or such other investments as shall be prudent and appropriate under the circumstances, in such amounts and upon such terms as a reasonable and prudent fiduciary would select and with a view toward sufficient liquidity to make the distributions contemplated by this Plan. All interest earned on such proceeds and other cash shall be retained by the Trust and distributed in accordance with this Plan.

12. **No Liability for Acts of Predecessors.** No successor trustee shall be in any way responsible for the acts or omissions of any trustee in office prior to the date on which he becomes a trustee, unless a successor trustee expressly assumes such responsibility.

13. **Termination.** Upon termination of the Trust, the powers and responsibilities of the Trustee and his representatives shall terminate.

14. **Tax Treatment.** The Trust shall be treated as a grantor trust in accordance with the provisions of the Internal Revenue Code. The transfers of the Trust Assets to the Trust shall be treated as a transfer to the Creditors. The Trust Beneficiaries will be treated as the grantors and

deemed owners of the Trust. Any valuations of the Trust assets used by the Trust and the Trust Beneficiaries shall be consistent with each other.

D. CONSIGNMENT AND LIQUIDATION OF TRUST ASSETS

1. Longaberger has located a company in Dresden, Ohio, named Frazeyburg Investments (“**FI**”) that has expressed an interest in reopening and staffing local retail shops in Dresden to sell the inventory component of the Trust Assets (“**Inventory**”) and certain fixed assets and intellectual property (“**Miscellaneous Assets**”) on consignment. The terms of the agreement are as follows:

- a. Title to the Inventory and Miscellaneous Assets shall remain in the name of the Trust;
- b. The Trustee shall enter into a consignment agreement with FI which agreement will provide as follows:
 - i. The Trust shall receive 100% of the net sales proceeds derived from the liquidation of the Inventory and Miscellaneous Assets less a ten percent (10%) fee;
 - ii. The Trust shall not be responsible for any other costs associated with the liquidation of the Inventory and Miscellaneous Assets;
 - iii. FI shall guaranty the payment of \$2.5 million to the Trust from the sale and disposition of the Inventory and Miscellaneous Assets;
 - iv. If, within nine (9) months of the Effective Date, FI has not tendered the sum of \$2.5 million to the Trust, FI shall tender to the Trust three percent (3%) of total sales revenue irrespective of whether the revenue is derived from the liquidation of the Inventory or the sales of post-Effective Date assets until the \$2.5 million obligation is paid in full;
 - v. FI may leverage the Inventory as a source of funds for the purpose of extinguishing the \$2.5 million obligation;
 - vi. JRJR33, Inc. (“**JRJR**”) is not precluded from being a customer of FI the terms of which will require FI to sell to JRJR for cost plus twenty percent (20%); and
 - vii. JRJR will not compete with FI and its future basket business in the sales channels of brick and mortar retail shops or multi-level marketing markets.
- c. The Trustee shall transfer title to FI of all remaining Trust Assets, if any, once the Liquidating Trust has received the sum of \$2.5 million.
- d. The \$2.5 million obligation will be guaranteed by real property owned by John Rochon’s family (“**Family Farm**”) with an estimated value of \$10 million, which obligation will be amortized over 30 years with interest accruing at the Secured Claim Interest Rate.

E. CONTRIBUTIONS TO THE TRUST

1. Trust Funder shall contribute the sum of \$1.5 million to the Liquidating Trust no later than thirty (30) days after the Effective Date ("**Initial Trust Contribution**"). The Initial Trust Contribution will be secured by the Family Farm if the Initial Trust Contribution is not available on or before the Effective Date.

2. Trust Funder shall contribute a sum equal to the difference between \$3.6 million and the sum of all monies received by the Liquidating Trust from FI no later than twelve (12) months after the Effective Date ("**Final Trust Contribution**"). The Final Trust Contribution will also be secured by the Family Farm which obligation will be due and payable after twelve (12) months from the Effective Date and shall accrue interest at the Secured Claim Interest Rate.

F. THE INITIAL TRUST CONTRIBUTION DISTRIBUTIONS

1. JGB shall have the right to receive only \$1.4 million of the Initial Trust Contribution.
2. The holders of other Allowed Claims shall have the right to receive the sum of \$100,000.00 of the Initial Trust Distribution.

G. TRUST CARVE-OUT

1. The Allowed Claim holders, other than the Allowed Class 1 Claim holder, shall receive a distribution under this Agreement solely pursuant to the terms of the "carve-out" ("**Carve-Out**") provisions of this Agreement.

2. The Trust Carve-Out, in the aggregate, shall be the sum of \$100,000.00 received by the Liquidating Trust from the Initial Trust Contribution plus all recoveries from the Trust Causes of Action. JGB shall not receive any distribution from the Trust relative to the Trust Causes of Action until all Allowed Claim holders, other than the holder of an Allowed Class 1 Claim, are paid in full.

H. ALLOCATION OF TRUST FUNDS RE: THE TRUST CARVE-OUT

1. This Agreement provides for three (3) different carve-out classes, which classes are identified in the Plan. Those classes are identified as follows:

a. **Administrative Claim Carve-Out Class** which consists of the holders of an Allowed Administrative Claim;

b. **Priority Claim Carve-Out Class** which consists of the holders of an Allowed Administrative Claim; and

c. **Unsecured Claim Carve-Out Class** which consists of the holders of an Allowed Unsecured Claim (collectively, the "**Carve-Out Claim Classes**").

2. The Carve-Out Claim Classes shall each receive a *Pro Rata* share of the Carve-Out based upon the total amount of all such Allowed Claims in each respective Carve-Out Claim Class.

3. Distribution amongst the various holders of Allowed Claims within each Carve-Out Claim Class shall be made upon a *Pro Rata* basis of the Allowed Claims within such Class.

I. CONSTRUCTION OF AGREEMENT

1. **Applicable Law.** The Trust created herein shall be construed, regulated and administered under the laws of the State of Texas and the United States of America. The Trustee agrees and consents that the Bankruptcy Court shall retain jurisdiction to enforce this Agreement in order to effectuate the provisions of the Plan.

2. **Amendments.** This Agreement may be amended, modified, terminated, revoked or altered only upon consent of the Trustee or as otherwise ordered by the Bankruptcy Court.

3. **Interpretation and Capitalized Terms.** The enumeration and headings contained herein are for the convenience of reference only and are not intended to have any substantive effect. Unless the context otherwise requires, whenever used in this Agreement the singular shall include the plural and the plural shall include the singular. **Capitalized terms herein are ascribed the meanings assigned to them in the Plan unless otherwise specifically defined herein.**

4. **Severability.** If any provision of this Agreement shall for any reason be held invalid or unenforceable by any court, government agency or arbitrator of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision hereof, but this Agreement shall be construed as if such offending provision had never been contained herein.

5. **Entire Agreement.** This Agreement (including recitals) constitutes the entire agreement by and among the parties and there are no representations, warranties, covenants or obligations except as set forth herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise specifically provided herein and in the Plan, nothing in this Agreement is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Trust Beneficiaries any rights or remedies against the Trust, the Trustee or the Trust Assets.

6. **Notices.** Any notice or other communication by the Trustee to any of the Trust Beneficiaries shall be deemed to have been sufficiently given, for all purposes, when mailed by first class mail, postage prepaid, and addressed to such Trust Beneficiary at its address as shown in the records of the Trustee which records shall be initially based upon records provided by the Debtor and its counsel. Any notice or other communication which may be or is required to be given, served or sent to the Trustee shall be in writing and shall be mailed by registered certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, addressed to the Trustee at his address as set forth on the signature page hereof. A Trust Beneficiary may designate by notice in writing to the Trustee a new address to which any distribution, notice, demand, request or communication shall be mailed or delivered in the manner described above and such change shall be effective from and after receipt by the Trustee.

Exhibit 2

1. All leases and or executory contracts are rejected.