

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

BOOMERANG TUBE, LLC, a Delaware limited liability  
company, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-11247 (MFW)

Jointly Administered

Docket No. 766

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER UNDER  
SECTIONS 1125 AND 1129 OF THE BANKRUPTCY CODE AND BANKRUPTCY  
RULES 3017 AND 3020 (A) APPROVING THE DEBTORS' DISCLOSURE  
STATEMENT ON A FINAL BASIS AND (B) CONFIRMING DEBTORS' SECOND  
AMENDED JOINT CHAPTER 11 PLAN**

**RECITALS**

I. On December 29, 2015, the Debtors filed the *Debtors' Second Amended Joint Chapter 11 Plan*, dated December 29, 2015 [Docket No. 766] (together with all exhibits and as further amended, modified, and supplemented in with accordance the Plan and the Confirmation Order, the "**Plan**") and the *Disclosure Statement for Debtors' Second Amended Joint Chapter 11 Plan*, dated December 29, 2015 (and as further amended, modified, and supplemented in accordance with the Plan and the Confirmation Order, the "**Disclosure Statement**") [Docket No. 767].

II. On December 29, 2015, the Bankruptcy Court entered an Order [Docket No. 764] (the "**Combined Hearing Order**") (a) approving the Disclosure Statement on a preliminary basis; (b) scheduling a combined hearing (the "**Combined Hearing**") on confirmation of the Plan and the adequacy of the Disclosure Statement for January 27, 2016; (c) approving the form

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Boomerang Tube, LLC (9415); BTCSP, LLC (7632); and BT Financing, Inc. (6671). The location of the Debtors' corporate headquarters is 14567 North Outer Forty, Suite 500, Chesterfield, Missouri 63017.

and manner of notice of the Combined Hearing (the “**Combined Hearing Notice**”); and (d) establishing procedures for the solicitation and tabulation of votes to accept or reject the Plan, including, among other things, approval of (i) the forms of ballots for submitting votes on the Plan, (ii) the deadline for submission of such ballots, and (iii) the proposed solicitation packages to be distributed to creditors for solicitation of votes on the Plan.

III. Class 3 (ABL Facility Claims), Class 4 (Term Loan Facility Claims), Class 5 (Heat Treat Line Secured Claims), and Class 6 (General Unsecured Claims) (collectively, the “**Voting Classes**”), are the classes designated under the Plan to vote to accept or reject the Plan.

IV. As required by the Combined Hearing Order, and as evidenced by an affidavit filed with the Bankruptcy Court on January 6, 2016 [Docket No. 788] the Solicitation Agent timely mailed to holders, as of the Voting Record Date, of claims in the Voting Classes solicitation packages (the “**Solicitation Packages**”) containing copies of: (a) the Disclosure Statement, including the Plan as an exhibit thereto; (b) the Solicitation Procedures; (c) the Combined Hearing Notice, which provided written notice of (i) the Bankruptcy Court’s preliminary approval of the Disclosure Statement, (ii) the deadline for voting on the Plan, (iii) the date of the Combined Hearing, and (iv) the deadline and procedures for filing objections to confirmation of the Plan; (d) a cover letter from the Debtors; (e) the appropriate Ballot; and (f) with respect to Class 6 only, the Committee Letter.

V. As required by the Combined Hearing Order, the Solicitation Agent timely mailed a Disputed Claim Notice to any holder of a Claim (i) for which a proof of claim was filed and for which an objection had been asserted prior to the Voting Record Date or (ii) which was listed in the Schedules as one or more of disputed, contingent or unliquidated and for which no superseding proof of claim was filed on or prior to the Voting Record Date.

VI. As required by the Combined Hearing Order the Solicitation Agent timely mailed to all holders of Claims that are Unclassified under the Plan, which are Administrative Claims, DIP Facility Claims, Professional Claims, and Priority Tax Claims, or included in the Unimpaired Classes (as defined below), which are Class 1 (Other Secured Claims), Class 2 (Other Priority Claims), Class 7 (Intercompany Claims), and Class 8 (Intercompany Interests), a copy of the Presumed to Accept Notice and the Combined Hearing Notice.

VII. As required by the Combined Hearing Order, the Solicitation Agent timely mailed to all holders of Claims and Interests that are included in the Deemed Rejecting Classes, which are Class 9 (Boomerang Preferred Units), Class 10 (Boomerang Common Units), Class 11 (Boomerang Other Equity Securities), and Class 12 (Section 510(b) Claims), a copy of the Deemed to Reject Notice and the Combined Hearing Notice.

VIII. As required by the Combined Hearing Order, and as evidenced by a certification of publication filed with the Bankruptcy Court on January 11, 2016 [Docket No. 796], the Debtors caused notice of the Combined Hearing to be published in the National Edition of *The New York Times* on January 7, 2016.

IX. As further required by the Combined Hearing Order, on January 15, 2016, the Debtors filed with the Bankruptcy Court and served on the applicable counterparties identified therein: (i) the *Notice to Counterparties to Executory Contracts and Unexpired Leases Potentially Being Assumed Under the Plan* [Docket No. 814] (the “**Assumption Notice**”) or (ii) the *Notice to Counterparties to Executory Contracts and Unexpired Leases Proposed to be Rejected Under the Plan* [Docket No. 815] (the “**Rejection Notice**”). Affidavits of service evidencing this service of the Assumption Notice and Rejection Notice were filed with the Bankruptcy Court on January 21, 2016 [Docket Nos. 826 & 827]. Additionally, on January 15,

2016, the Debtors filed the *Notice of Debtors' Election with Respect to Treatment of the Class 5 Claim held by SB Boomerang Tubular, LLC* [Docket No. 812].

X. On January 15, 2016, the Debtors filed the Plan Supplement [Docket No. 816], which was amended and supplemented on January 26, 2016 [Docket No. 847]. The Plan Supplement included, as exhibits thereto, draft forms of the following documents relating to the Plan and/or to be executed, delivered, assumed, and/or performed in connection with the consummation of the Plan on the Effective Date (as may be amended, modified, or supplemented from time to time, collectively, the “**Plan Supplement Documents**”):

| <b>Exhibit</b> | <b>Plan Supplement Document</b>   |
|----------------|---|
| 1.1            | Exit ABL Facility – Commitment Letter                                   |
| 1.2            | Exit ABL Facility – Exit ABL Facility Fee Letter                        |
| 2              | Exit Intercreditor Agreement  |
| 3              | Exit Term Facility Loan Agreement                                       |
| 3.1            | Exit Term Facility – Exit Commitment Letter                             |
| 3.2            | Exit Term Facility – Exit Fee Letter                                    |
| 4              | Financial Projections Supplement  |
| 5              | List of Contracts to be Assumed under Section 5.1 of the Plan           |
| 6              | New Holdco Bylaws   |
| 7              | New Holdco Certificate of Incorporation                                 |
| 8              | New Holdco Shareholders Agreement                                       |
| 9              | New Opco Certificate of Formation                                       |
| 10             | New Opco LLC Agreement  |
| 11             | Nonexclusive list of retained Causes of Actions                         |
| 12             | Class 5 Note – SBI  |
| 13             | Class 5 Note – SBI Lender   |
| 14             | Section 1129(a)(5) Disclosure of Directors and Officers                 |
| 15             | Subordinated Notes Agreement  |
| 16             | Subordinated Notes Intercreditor Agreement                              |
| 17             | Amended and Restated Certificate of Incorporation of BT Financing, Inc. |

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|----|--|
| 18 | Amended and Restated By-Laws of BT Financing, Inc.                     |
| 19 | Amended and Restated Limited Liability Company Agreement of BTCSP, LLC |
| 20 | Amendment to Certificate of Formation of BTCSP, LLC                    |
| 21 | Duties of Ombudsman  |
| 22 | Professional Fee Escrow Account Agreement                              |
| 23 | GUC Consideration Escrow Account Agreement                             |

All such materials comply with the terms of the Plan, and the filing and notice of such Plan Supplement Documents is good and proper and no other or further notice is or shall be required.

XI. Pursuant to the Combined Hearing Order, the voting deadline for the Voting Classes was 5:00 p.m. (prevailing Eastern Time) on January 21, 2016, unless such deadline was extended by the Debtors.

XII. On January 25, 2016, the Debtors filed the *Declaration of Jung W. Song on Behalf of Donlin, Recano & Company, Inc. Regarding Voting and Tabulation of Ballots Accepting and Rejecting Debtors' Second Amended Joint Chapter 11 Plan* [Docket No. 837] attesting to, and certifying the method and results of, the ballot tabulation for the Voting Classes (the "**Voting Report**"). The voting results, as certified in the Voting Report, are reflected in the following chart:

| Debtor Name         | Class | Class Description         | Accepting        |        | Rejecting    |        | Class Voting Result |
|---------------------|-------|---------------------------|------------------|--------|--------------|--------|---------------------|
|                     |       |                           | Amount           | Number | Amount       | Number |                     |
|                     |       |                           | %                | %      | %            | %      |                     |
| Boomerang Tube, LLC | 3A    | ABL Facility Claims       | \$3,274,000.00   | 2      | \$0.00       | 0      | Accept              |
|                     |       |                           | 100%             | 100%   | 0%           | 0%     |                     |
| BT Financing, Inc.  | 3B    | ABL Facility Claims       | \$3,274,000.00   | 2      | \$0.00       | 0      | Accept              |
|                     |       |                           | 100%             | 100%   | 0%           | 0%     |                     |
| BTCSP, LLC          | 3C    | ABL Facility Claims       | \$3,274,000.00   | 2      | \$0.00       | 0      | Accept              |
|                     |       |                           | 100%             | 100%   | 0%           | 0%     |                     |
| Boomerang Tube, LLC | 4A    | Term Loan Facility Claims | \$204,125,000.00 | 27     | \$0.00       | 0      | Accept              |
|                     |       |                           | 100%             | 100%   | 0%           | 0%     |                     |
| BT Financing, Inc.  | 4B    | Term Loan Facility Claims | \$204,125,000.00 | 27     | \$0.00       | 0      | Accept              |
|                     |       |                           | 100%             | 100%   | 0%           | 0%     |                     |
| BTCSP, LLC          | 4C    | Term Loan Facility Claims | \$204,125,000.00 | 27     | \$0.00       | 0      | Accept              |
|                     |       |                           | 100%             | 100%   | 0%           | 0%     |                     |
| Boomerang Tube, LLC | 6A    | General Unsecured Claims  | \$25,674,752.96  | 71     | \$156,933.36 | 4      | Accept              |
|                     |       |                           | 99.39%           | 94.67% | 0.61%        | 5.33%  |                     |
| BT Financing, Inc.  | 6B    | General Unsecured Claims  | \$7.00           | 7      | \$0.00       | 0      | Accept              |
|                     |       |                           | 100%             | 100%   | 0%           | 0%     |                     |
| BTCSP, LLC          | 6C    | General Unsecured Claims  | \$7.00           | 7      | \$1.00       | 1      | Accept              |
|                     |       |                           | 87.5%            | 87.5%  | 12.5%        | 12.5%  |                     |

The Voting Report further certified that as of the Voting Record Date, no holders of claims in Class 5A (SBI Lender Secured Claim) or Class 5B (SBI Secured Claim) against Debtor Boomerang Tube, Inc. cast a vote prior to the voting deadline. Additionally, there were no holders of Claims eligible to vote in Class 5 against Debtors BT Financing Inc. and BTCSP, LLC.

XIII. Pursuant to the Combined Hearing Order, the deadline to file objections to the Plan was 5:00 p.m. (prevailing Eastern Time) on January 21, 2016, unless such deadline was extended by the Debtors. No objections to final approval of the Disclosure Statement were filed and only two limited objections to confirmation of the Plan were filed with the Bankruptcy Court

by the U.S. Trustee [Docket No. 821] and SB Boomerang Tubular, LLC [Docket No. 825] (the “**SBI Limited Objection**”).

XIV. On January 25, 2016, the Debtors filed the (i) *Debtors’ Memorandum of Law in Support of and in Response to Objections to Confirmation of Debtors’ Second Amended Joint Chapter 11 Plan* [Docket No. 841] (the “**Confirmation Memorandum**”); and (ii) the *Declaration of Kevin Nystrom In Support of Confirmation of Debtors’ Second Amended Joint Chapter 11 Plan* [Docket No. 840] (the “**Nystrom Declaration**”).

XV. The Combined Hearing was held before the Bankruptcy Court on January 27, 2016.

NOW, THEREFORE, based upon the Bankruptcy Court’s review of the Plan, the Disclosure Statement, the Confirmation Memorandum, the Nystrom Declaration, the Voting Report, and upon all of the evidence proffered or adduced and the arguments of counsel made at or in connection with the Combined Hearing, the record of these Chapter 11 Cases, and upon all the proceedings heretofore had in these Chapter 11 Cases, and after due deliberation thereon and good and sufficient cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact and conclusions of law:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157, 1334(a), 1408, and 1409). The Bankruptcy Court has jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. Venue is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of

the Plan is a core proceeding under 28 U.S.C. § 157(b)(2), and the Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

B. Burden of Proof. The Debtors, as proponents of the Plan, have the burden of proving the elements of section 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for confirmation of the Plan. As set forth below, the Debtors have met that burden.

C. Judicial Notice. The Bankruptcy Court takes judicial notice of the docket in these Chapter 11 Cases maintained by the Clerk of the Bankruptcy Court and/or its duly appointed agent, including, without limitation, all pleadings, notices, and other documents filed, all orders entered, and all evidence and arguments made, proffered or adduced at or in connection with the hearings held before this Bankruptcy Court during these Chapter 11 Cases, including, without limitation, the Combined Hearing.

D. Transmittal and Mailing of Materials; Adequate and Sufficient Notice. The Solicitation Packages and the Combined Hearing Notice were transmitted and served, and the Combined Hearing Notice was published, in compliance with the Combined Hearing Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), and such transmittal, service, and publication was adequate and sufficient, and no other or further notice is or shall be required. Adequate and sufficient notice, including by publication, of the Combined Hearing, the Combined Hearing Order, and the dates and deadlines provided for in the Combined Hearing Order was given in compliance with the Combined Hearing Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other



or further notice or publication is or shall be required. All parties in interest in these Chapter 11 Cases had a full and fair opportunity to appear and be heard at the Combined Hearing and no other or further notice is or shall be required.

E. Approval of Disclosure Statement. The Disclosure Statement contains “adequate information” (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein. The filing of the Disclosure Statement with the clerk of the Court satisfied Bankruptcy Rule 3016(b).

F. Technical Modifications to the Plan. The modifications to the Plan set forth in the next four subparagraphs (collectively, the “**Modifications**”) comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The filing and service of the Modifications and the description of the Modifications on the record at the Confirmation Hearing constitutes due and sufficient notice thereof under the circumstances of the Chapter 11 Cases. The Modifications are not material, do not adversely change the treatment of any holder of a Claim or Interest under the Plan, do not require the re-solicitation of any Voting Class, and are hereby approved pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019. In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Modifications. No holder of a Claim that has voted to accept the Plan shall be permitted to change its acceptance to a rejection as a consequence of the Modifications.

(i) Section 4.15 of the Plan shall be amended and restated as follows:

Except as otherwise provided herein, on and after the Effective Date, subject to any Final Order, and without limiting any authority provided to the New Board under the Debtors’ respective

certificates of incorporation, bylaws and other formation and constituent documents, the Reorganized Debtors shall: (a) amend, adopt, assume and/or honor in the ordinary course of business, any contracts, agreements, policies, programs, and plans, in accordance with their respective terms, for, among other things, compensation, including any incentive plans, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity from and after the Petition Date; and (b) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date and not otherwise paid pursuant to a Bankruptcy Court order. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

For the avoidance of doubt, it is anticipated that all employee contracts will expire by their terms prior to the Effective Date and none of those contracts are being assumed, adopted, or otherwise reinstated under the Plan. As a result of the expiration of the current employment contracts prior to the Effective Date, or the rejection of such contracts, the Reorganized Debtors shall have no further obligation under these employment contracts and are not obligated to pay to any employee, among other things, any severance or bonus payments that relate to work performed prior to the Petition Date (unless such payments otherwise represent Allowed Claims entitled to either (i) priority treatment under Section 507(a) of the Bankruptcy Code or (ii) pro rata distribution as General Unsecured Claims pursuant to Class 6 of the Plan). The Debtors and/or the Reorganized Debtors, as applicable, will work with certain employees to negotiate mutually acceptable employment contracts.

- (ii) The proviso at the end of Section 8.2 of the Plan is amended to delete the term "Plan Support Agreement" and restated as follows:

*provided, however*, that the foregoing "Debtor Release" shall not operate to waive or release any Claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities in respect of any Released Party solely to the extent arising under the Plan or any agreements entered into pursuant to the Plan.

- (iii) To resolve the U.S. Trustee's objection to the Plan, Section 12.10 of the Plan shall be amended and restated as follows:

On the Effective Date, the Creditors Committee shall dissolve and members thereof shall be released from all rights and duties from or related to the Chapter 11 Cases, except the Creditors Committee will remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Claims ("Post-Effective Date Fee Prosecution"). The Debtors and Reorganized Debtor shall have no obligation to pay any fees or expenses incurred after the Effective Date by the Creditors Committee or the Committee Members, other than such fees and expenses as may be allowed by the Court; *provided, however*, that payment of such fees and expenses shall be limited in its entirety to the Creditors Committee's portion of the Professional Fee Payment Amount.

- (iv) The definition of Professional Fee Payment Amount shall be amended to increase the amount set forth in Section 1.1(133)(a) of the Plan by the amount of actual fees and expenses incurred by Debevoise & Plimpton LLP in rendering legal opinions required by the terms of the Exit ABL Facility Documents, Exit Term Facility Documents, or Subordinated Notes Facility Documents or requested by the Exit ABL Facility Agent, Exit ABL Facility Lenders, Exit Term Facility Agent, Exit Term Facility Lenders, Subordinated Notes Facility Agent, or Subordinated Notes Facility Lenders in connection with the Exit ABL Facility, Exit Term Facility, or Subordinated Notes Facility.

G. Voting Results. As described more fully in the Voting Report:

- (i) Class 3 voted to accept the Plan with respect to each Debtor;
- (ii) Class 4 voted to accept the Plan with respect to each Debtor;
- (iii) Class 5A (consisting of the SBI Lender Secured Claim) did not vote to accept or reject the Plan;
- (iv) Class 5B (consisting of the SBI Secured Claim) did not vote to accept or reject the Plan; and
- (v) Class 6 voted to accept the Plan with respect to each Debtor.

H. Plan Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth below, the Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

- (i) Proper Classification of Claims and Interests (11 U.S.C. §§ 1122, 1123(a)(1)). In addition to DIP Facility Claims, Administrative Claims, Professional Claims, and Priority Tax Claims, which need not be classified under the Plan, the Plan designates twelve (12) Classes of Claims and Interests in the Debtors. The Claims or Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be, in such Class. Valid business, factual, and/or legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and therefore the Plan does not unfairly discriminate among holders of Claims or Interests. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.
- (ii) Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article III of the Plan specifies that Classes 1, 2, 7, and 8 are unimpaired under the Plan (collectively, the “**Unimpaired Classes**”), thereby satisfying section 1123(a)(2) of the Bankruptcy Code.
- (iii) Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article III of the Plan designates Classes 3 through 6 and Classes 9 through 12 as impaired under the Plan (collectively, the “**Impaired Classes**”), and specifies the treatment of Claims and Interests in the Impaired Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.
- (iv) Equal Treatment Within Classes (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Interest in a particular Class unless the holder of a particular Claim or Interest in such Class has agreed to a less favorable treatment of its Claim or Interest, as the case may be, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.
- (v) Implementation of Plan (11 U.S.C. § 1123(a)(5)). In compliance with section 1123(a)(5) of the Bankruptcy Code, Article IV and Article V of the Plan, and various other provisions of the Plan, set forth the means for implementation of the Plan, which means are adequate and proper. All documents necessary to implement the Plan, including, without limitation, those contained in the Plan Supplement and all other relevant and necessary documents, have been developed and negotiated in good faith and at arms’ length and, subject to and upon the occurrence of the Effective Date, shall be valid, binding, and enforceable agreements and not be in conflict with any federal or state law.

- (vi) Charter Provisions (11 U.S.C. § 1123(a)(6)). In compliance with section 1123(a)(6) of the Bankruptcy Code, the charter or analogous governance documents of New Holdco and each Reorganized Debtor will prohibit the issuance of nonvoting equity interests to the extent that the issuance of nonvoting securities is prohibited under section 1123(a)(6) of the Bankruptcy Code.
- (vii) Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). Pursuant to Section 4.14 of the Plan, the identities and affiliations of all individuals proposed to serve as the initial board members of New Holdco and the Reorganized Debtors as of the Effective Date were disclosed and filed with the Bankruptcy Court as part of the Plan Supplement. Upon the occurrence of the Effective Date, the board of New Holdco will be a seven-member board comprised of the chief executive officer of New Holdco and six individuals designated by the holders of New Holdco Common Stock, as more fully specified in Section 4.14 of the Plan. The officers of the Debtors serving as of the Effective Date will remain in place following the Effective Date. The provisions of the Plan for the selection of directors and officers of New Holdco and the Reorganized Debtors are consistent with the interests of creditors and equity holders and with public policy, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.
- (viii) Additional Plan Provisions (11 U.S.C. § 1123(b)). The provisions of the Plan are appropriate and consistent with the provisions of the Bankruptcy Code.
- (ix) Impairment/Unimpairment of Classes of Claims and Equity Interests (11 U.S.C. § 1123(b)(1)). Pursuant to Article III of the Plan, Classes 3 through 6 and 9 through 12 are impaired, and Classes 1, 2, 7, and 8 are unimpaired, as contemplated by section 1123(b)(1) of the Bankruptcy Code.
- (x) Assumption and Rejection of Executory Contracts (11 U.S.C. § 1123(b)(2)). Section 5.1 of the Plan provides for the rejection of the Executory Contracts and Unexpired Leases of the Debtors as of the Effective Date, except for any Executory Contract or Unexpired Lease (a) that has previously been assumed or rejected by the Debtors, (b) that previously expired or terminated pursuant to its own terms, (c) that is subject to a separate motion to assume or reject under section 365 of the Bankruptcy Code pending on the Effective Date, or (d) that is identified in the Plan Supplement to be assumed, as contemplated by section 1123(b)(2) of the Bankruptcy Code.
- (xi) Establishment of Escrow Accounts (11 U.S.C. § 1123(a)(5)(B) and (b)(6)). Section 2.3 and 4.8 of the Plan provide for the creation and funding of the Professional Fee Escrow Account and GUC Consideration

Escrow Account for payment of Professional Claims and making distributions of the GUC Consideration, respectively.

- (xii) Cure of Defaults (11 U.S.C. § 1123(d)). Section 5.4 of the Plan provides for satisfaction of default claims associated with each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code. All Cure amounts will be determined in accordance with the underlying agreements and applicable bankruptcy and nonbankruptcy law. Thus, the Plan complies with section 1123(d) of the Bankruptcy Code.
- (xiii) Bankruptcy Rules 3016(a), (b), and (c). The Plan is dated and identifies the entities submitting it, thereby satisfying Rule 3016(a) of the Bankruptcy Rules. The filing of the Disclosure Statement with the Clerk of the Bankruptcy Court satisfied Bankruptcy Rule 3016(b). The Plan and Disclosure Statement set forth in bold text all acts to be enjoined and identify all entities subject to the injunction provided by the Plan in satisfaction of Bankruptcy Rule 3016(c).

I. Debtors' Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically:

- (i) the Debtors are proper debtors under section 109 of the Bankruptcy Code and proper proponents of the Plan under section 1121(a) of the Bankruptcy Code;
- (ii) the Debtors have complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Bankruptcy Court; and
- (iii) the Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Combined Hearing Order in transmitting the Solicitation Packages and in soliciting and tabulating votes on the Plan.

J. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Debtors, the Creditors Committee, the Term Loan Agent, and certain holders of Term Loan Facility Claims participated in good faith in negotiating, at arms' length, the Plan and the contracts, instruments, releases, agreements, and

documents related to or necessary to implement, effectuate, and consummate the Plan, including, without limitation, the Plan and Plan Supplement Documents. Each of these parties and their respective counsel and advisors also participated in good faith in each of the actions taken to bring about, and in satisfying each of the conditions precedent to, confirmation and consummation of the Plan. The Debtors' good faith is evidenced from the record of the Chapter 11 Cases, including, among other things, the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the record of the Combined Hearing, the formulation of the Plan and all related pleadings, exhibits, statements, and comments regarding confirmation of the Plan, and other proceedings held in these Chapter 11 Cases. The Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate and honest purpose of effecting a reorganization of the Debtors.

K. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Except for the fees and expenses of professionals payable under the DIP ABL Facility Order or DIP Term Facility Order, any payment made or to be made by the Debtors for services or for costs and expenses in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, have been approved by, or are subject to the approval of, the Bankruptcy Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code. Payment of the fees and expenses due under the DIP ABL Facility Order and DIP Term Facility Order will be paid in accordance with those respective orders.

L. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. Exhibit 14 to the Plan Supplement discloses the identities and affiliations of the individuals proposed to serve, as of the Effective Date, as directors or officers of New Holdco and the Reorganized Debtors. The appointment of

such individuals to such positions is consistent with the interests of holders of Claims and Interests and public policy, thereby satisfying section 1129(a)(5) of the Bankruptcy Code.

M. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Debtors' business operations are not subject to rate regulation by any governmental regulatory commission; therefore, section 1129(a)(6) of the Bankruptcy Code is not applicable to confirmation of the Plan and these Chapter 11 Cases.

N. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The unaudited liquidation analysis attached as Exhibit E to the Disclosure Statement, the Nystrom Declaration, and the other evidence proffered or adduced at or in connection with the Combined Hearing in support of the Plan (i) is persuasive and credible, (ii) has not been controverted by other evidence, and (iii) establishes that each holder of a Claim or Interest in an Impaired Class either (x) has accepted the Plan or (y) will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that it would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

O. Acceptance By the Requisite Classes of Creditors and Interest Holders (11 U.S.C. § 1129(a)(8)). Classes 3 through 6 are the only Impaired Classes entitled to vote on the Plan. As evidenced in the Voting Report, Classes 3, 4, and 6 voted to accept the Plan with respect to each Debtor. No Voting Class voted to reject the Plan. As of the date hereof, there are no holders of Claims that have been temporarily Allowed for voting purposes in Class 5 with respect to Debtors BTCSP, LLC and BT Financing, Inc. No holders of Claims or Interests eligible to vote in Class 5A or Class 5B against Boomerang Tube, LLC (the "**Non-Voting Classes**") voted to accept or reject the Plan. Pursuant to Section 3.5 of the Plan, the Debtors are



requesting that the Non-Voting Classes be deemed to accept the Plan. Classes 1, 2, 7, and 8 are unimpaired under the Plan, and therefore are deemed to have accepted the Plan. The Plan provides that holders of Claims and Interests in Classes 9 through 12 will not receive any distribution or retain any property on account of such Claims or Interests, as the case may be, and these Classes are therefore deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code (collectively, the “**Deemed Rejecting Classes**”). Notwithstanding that section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to all Classes, through section 1129(b) of the Bankruptcy Code, the Plan may be confirmed over the failure of Classes 5A and 5B to affirmatively accept the Plan and the deemed rejection of the Deemed Rejecting Classes.

P. Treatment of Priority Claims (11 U.S.C. § 1129(a)(9)). The Plan’s treatment of Allowed Administrative Claims, DIP Facility Claims, Professional Claims, Priority Tax Claims, Other Secured Claims, and Other Priority Claims satisfies section 1129(a)(9) of the Bankruptcy Code.

Q. Acceptance By at Least One Impaired Class (11 U.S.C. § 1129(a)(10)). As evidenced by the Voting Report, Classes 3, 4, and 6 with respect to each Debtor, which, in each instance, are Impaired Classes, voted to accept the Plan in requisite numbers and amounts, without the need to include any acceptance of the Plan by any insider. Pursuant to Section 3.5 of the Plan, the Debtors have requested the Court to deem Classes 5A and 5B to have accepted the Plan with respect to Debtor Boomerang Tube, LLC. Consequently, section 1129(a)(10) of the Bankruptcy Code is satisfied.

R. Feasibility (11 U.S.C. § 1129(a)(11)). The Debtors have established, by a preponderance of the evidence, that confirmation of the Plan is not likely to be followed by the

liquidation, or the need for further financial reorganization, of the Reorganized Debtors. To satisfy their burden under section 1129(a)(11) of the Bankruptcy Code, as set forth in the Nystrom Declaration, the Debtors, among other things, prepared and included the financial projections attached as Exhibit F to the Disclosure Statement, as supplemented by Exhibit 4 to the Plan Supplement (together, the “**Financial Projections**”), and obtained additional financing commitments through the Exit Term Facility and Exit ABL Facility. The Financial Projections and the Nystrom Declaration, along with the other evidence proffered or adduced at or in connection with the Combined Hearing, support the finding that the Debtors will have sufficient liquidity to meet their obligations arising under the Plan or otherwise. The Bankruptcy Court finds that the Financial Projections and the evidence proffered or adduced at or in connection with the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence, and (iii) establish that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors, thus satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

S. Payment of Certain Fees (11 U.S.C. § 1129(a)(12)). Section 12.2 of the Plan provides that all fees payable pursuant to 28 U.S.C. § 1930(a) will be paid until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first, at the times specified in Section 12.2 of the Plan. Accordingly, the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

T. Continuation of Retiree Benefits; Domestic Support Obligations; Unsecured Claims Against Individual Debtors; Transfers by Non-Profit Organizations (11 U.S.C. §§ 1129(a)(13)–(16)). The Debtors do not have any “retiree benefits” programs as

such term is defined in section 1114 of the Bankruptcy Code, and none of the Debtors have domestic support obligations, are individuals, or are nonprofit organizations; therefore, sections 1129(a)(13)–(16) of the Bankruptcy Code are not applicable to confirmation of the Plan and these Chapter 11 Cases.

U. Confirmation of Plan Over Non-Acceptance of Certain Impaired Classes  
(11 U.S.C. §1129(b)). The classification and treatment of Claims and Interests in the Plan is proper pursuant to section 1122 of the Bankruptcy Code and does not discriminate unfairly pursuant to section 1129(b)(1) of the Bankruptcy Code notwithstanding the Deemed Rejecting Classes (collectively, the “**Rejecting Classes**”) were deemed to reject the Plan. Based on the evidence proffered, adduced, and/or presented at the Confirmation Hearing, the Plan does not discriminate unfairly with respect to the Rejecting Classes, as required by sections 1129(b)(1) and (b)(2) of the Bankruptcy Code, because:

- (i) with respect to Class 5 against Boomerang Tube, LLC, the holders of Claims in such Class are receiving the treatment specified in section 1129(b)(2)(A)(iii) of the Bankruptcy Code by receiving the indubitable equivalent of their secured claims by receiving the return of the SBI Heat Treat Line Collateral; and
- (ii) there is no holder of any Claim against or Interest in the applicable Debtor that is junior to a holder in a Deemed Rejecting Class that is receiving or retaining any property under the Plan on account of such junior claim or interests, and the holders of Claims against or Interests in the Debtors that are senior to the Deemed Rejecting Classes are receiving distributions, the value of which is less than 100% of the Allowed amount of their Claims.

Intercompany Claims and Intercompany Interests are not being impaired by the Plan and are being reinstated (unless the Debtors elect to cancel any Intercompany Claim); however, the sole reason for this treatment of Intercompany Claims and Intercompany Interests is to maintain the existing corporate structure of the Debtors and the Reorganized Debtors and the administrative convenience associated therewith. Accordingly, the requirements of sections 1129(b)(1) and

(b)(2) of the Bankruptcy Code are satisfied with respect to the Rejecting Classes, and the Plan does not violate the absolute priority rule, does not discriminate unfairly, and is fair and equitable with respect to the Rejecting Classes. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129(b) of the Bankruptcy Code.

V. Only One Plan (11 U.S.C. §1129(c)). Other than the Plan (including previous versions thereof which were subsequently amended), no other plan has been filed in the Chapter 11 Cases. As a result, the requirements of section 1129(c) of the Bankruptcy Code have been satisfied.

W. Purpose of the Plan (11 U.S.C. §1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the requirements of section 5 of the Securities Act, and there has been no filing by any governmental unit asserting any such attempted avoidance, thereby satisfying the requirements of section 1129(d) of the Bankruptcy Code.

X. Satisfaction of Confirmation Requirements. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code.

Y. Good Faith Solicitation and Participation (11 U.S.C. § 1125(e)). Based upon the record before the Bankruptcy Court, the Debtors, the Creditors Committee (with respect to the Committee Letter), and their respective attorneys, advisors, and agents have acted in good faith within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the Disclosure Statement Order and the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules in connection with the solicitation of acceptances of the Plan, and the Debtors and their attorneys, advisors, and agents have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules in the offer, issuance, sale, solicitation, and/or purchase of the securities

offered and sold under the Plan and the offer, issuance, sale, or purchase of securities in connection with the Plan, and therefore are not, and on account of such offer, issuance, sale, solicitation, and/or purchase will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or offer, issuance, sale, or purchase of the securities offered and sold under the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the injunctive and exculpatory provisions set forth in the Plan.

Z. Executory Contracts and Unexpired Leases. The parties to the Executory Contracts or Unexpired Leases to be assumed pursuant to the Plan were afforded with good and sufficient notice of such assumption and an opportunity to object and be heard. The Debtors have satisfied the provisions of section 365 of the Bankruptcy Code with respect to the assumption or rejection of Executory Contracts and Unexpired Leases as contemplated by the Plan, including without limitation, the provisions relating to adequate assurance of future performance. The evidence with respect to adequate assurance of future performance proffered or adduced by the Debtors at the Combined Hearing and in the Nystrom Declaration is reasonable, persuasive, credible, and accurate, and has not been controverted by other evidence, and supports a finding that the Debtors are providing counterparties with adequate assurance of future performance.

AA. Exit Facilities. The Exit Facilities are essential elements of the Plan and entry into and consummation of the transactions contemplated by the Exit Facilities are in the best interests of the Debtors, the Estates, and holders of Claims and Interests and are approved. The Debtors have exercised reasonable business judgment in connection with the Exit Facilities and have provided sufficient and adequate notice thereof. The proposed terms thereunder have been

negotiated in good faith and at arms' length, are supported by reasonably equivalent value and fair consideration, and are fair and reasonable. The guarantees, mortgages, pledges, Liens, and other security interests, and all other consideration granted pursuant to or in connection with the Exit Facilities are or will be (as the case may be), and are hereby deemed to be, granted in good faith, for good and valuable consideration and for legitimate business purposes as an inducement to the Exit ABL Facility Lenders and Exit Term Facility Lenders to extend credit thereunder and shall be, and hereby are, deemed not to constitute a fraudulent conveyance or fraudulent transfer and shall not otherwise be subject to avoidance or recharacterization and shall not subject the Exit ABL Facility Lenders, Exit ABL Facility Agent, Exit Term Facility Lenders, and Exit Term Facility Agent to any liability by reason of incurrence of such obligation or grant of such Liens, guarantees or security interests under applicable federal or state law, including, but not limited to, successor or transferee liability.

BB. Plan Settlement. As set forth in Section 8.9 of the Plan, in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim may have with respect to any Allowed Claim, or any distribution made on account of such Allowed Claim (the "**Plan Settlement**"). The Plan Settlement is in the best interests of the Debtors, their Estates, and holders of Claims and Interests, and is fair, equitable, and reasonable.

CC. Releases by the Debtors. The Debtor Release set forth in Section 8.2 of the Plan represents a valid exercise of the Debtors' business judgment. Pursuing any such claims against the Released Parties is not in the best interests of the Debtors and their various constituencies as the Debtor Release was a bargained for element of the Plan Settlement and the costs involved

likely would outweigh any potential benefits from pursuing such claims. In addition, the Released Parties provided good and valuable consideration in exchange for the Debtor Release, including services and funding, as the case may be, by the Released Parties and otherwise facilitating the reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan.

DD. Releases of the Released Parties by the Debtors are critically important to the success of the Plan, which embodies the Plan Settlement, agreed to by the Debtors' primary stakeholders and reflects and implements the concessions and compromises made by the Sponsor, ABL Facility Lenders, and the Term Loan Lenders, who are contemplated to be the owner of the Reorganized Debtors on a go-forward basis, to the restructuring transactions contemplated by the Plan and ensuring that a cash recovery, in the form of the GUC Consideration, was made available to General Unsecured Creditors on the Effective Date. The Debtors received value from or on behalf of, and were aided in the reorganization process by, the Released Parties. The Released Parties played an integral role in the formulation and implementation of the Plan, including in ensuring that value is delivered to creditors at all levels of the Debtors' capital structure. The Plan reflects the settlement and resolution of several complex issues, and the Debtor Release is an integral part of the consideration to be provided in exchange for the compromises and resolutions embodied in the Plan.

EE. Based on the record and the facts and circumstances of the Chapter 11 Cases, the Bankruptcy Court hereby determines that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims released by the Debtor Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made

after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates from asserting any Claim or Cause of Action released pursuant to the Debtor Release.

FF. Releases by Holders of Claims. The circumstances of the Chapter 11 Cases render the Third-Party Releases set forth in Section 8.3 of the Plan critical to the success of the Plan. Under the Plan, the Third-Party Releases are only given by (i) the current officers and directors of the Debtors, who are also beneficiaries of the Debtor Release and Third-Party Release; (ii) the Term Loan Agent and holders of Term Loan Facility Claims; (iii) the ABL Facility Agent and holders of ABL Facility Claims; (iv) the DIP ABL Facility Agent and holders of DIP ABL Facility Claims; (v) the DIP Term Facility Agent and holders of DIP Term Facility Claims; (vi) the Sponsor; (vii) the ABL Facility Guarantor; or (viii) holders of Claims that are unimpaired and deemed under the Plan to have accepted the Plan, in consideration for the obligations of and distributions from the Debtors and Reorganized Debtors under the Plan and other contracts, instruments, releases, agreements, or documents executed and delivered in connection with the Plan. No party granting a Third-Party Release under the Plan has objected to the Third-Party Release.

GG. Based upon the record and the facts and circumstances of the Chapter 11 Cases, the Bankruptcy Court hereby determines that the Third-Party Releases are: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released by the holders of Claims and Interests granting the Third-Party Releases pursuant to the terms of the Plan; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, reasonable, and necessary to the Debtors' reorganization; (5) given and made after notice and opportunity for hearing; and (6) a bar to any



of the Releasing Parties granting the Third-Party Releases from asserting any claims released by the Third-Party Releases against any of the Released Parties.

HH. Exculpation. The Exculpation provisions set forth in Section 8.4 of the Plan are also essential to the Plan. The record in the Chapter 11 Cases fully supports the Exculpation, and the Exculpation is appropriately tailored to protect the Exculpated Parties from inappropriate litigation.

II. Injunctions. The injunction provisions set forth in Section 8.5 of the Plan (the “**Injunctions**”) are essential to the Plan and are necessary to preserve and enforce the Debtors’ discharge provided for herein and in the Plan, the Debtor Release, the Third-Party Releases, and the Exculpation, and are appropriately tailored to achieve that purpose. After the expiration of the Consultation Period (as defined below), the Injunctions contained in the Plan shall not apply to, and will not bar, prohibit or enjoin actions of the SBI Lender or SBI in foreclosing upon or taking possession of the SBI Heat Treat Line Collateral. For avoidance of doubt, nothing herein modifies the jurisdiction provisions of the Plan or any party’s rights and defenses with respect to the proper jurisdiction and venue for commencing and/or prosecuting any action related to foreclosing upon, or taking possession of, the SBI Heat Treat Line Collateral, including any actions to determine the validity and amount of any claims and damages arising therefrom.

JJ. The Debtor Release, the Third-Party Releases, the Exculpation, and the Injunctions: (1) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. §§ 157(b)(1), 157(b)(2), 1334(a), 1334(b), and 1334(d) and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; (2) an essential means of implementing the Plan pursuant to section 1123(b) of the Bankruptcy Code; (3) an integral element of the transactions embodied by and

incorporated in the Plan; (4) in exchange for the good and valuable consideration provided by the Released Parties; (5) a good faith settlement and compromise of the Claims released by the Debtor Release and Third-Party Releases and exculpated by the Exculpation; (6) in the best interests of the Debtors and all holders of Claims and Interests; (7) fair, equitable, and reasonable; (8) given and made after due notice and opportunity for hearing; and (9) are consistent with sections 105, 363, 1123, and 1129 of the Bankruptcy Code, Bankruptcy Rule 9019, and other applicable law. Based upon the record of the Chapter 11 Cases and the evidence proffered, adduced, and presented at the Combined Hearing, the Bankruptcy Court finds that the Debtor Release, the Third-Party Releases, the Exculpation, and the Injunctions are consistent with the Bankruptcy Code and applicable law.

KK. Characterization of SBI Financing Agreement and Value of SBI Heat Treat Line Collateral. Based on the evidence proffered, adduced, and presented in connection with the October 5, 2015 hearing, and as previously determined in the Court's November 9, 2015 oral ruling, the Court finds that (i) the SBI Financing Agreement is properly characterized as a secured financing, (ii) the SBI Heat Treat Line Collateral is property of Boomerang's bankruptcy estate, and (iii) the value of the SBI Heat Treat Line Collateral as proposed in a previous version of the Plan, which the Court did not confirm, was \$9.75 million; and (iv) the Court has not made a determination as to the value of the Heat Treat Line Collateral for purposes of the Plan as currently proposed and all parties reserve their rights with respect to the value of such property for purposes of the Plan.

LL. SBI Lender Secured Claim. The SBI Lender Secured Claim is secured by a security interest in the SBI Heat Treat Line Collateral, and thus constitutes a claim against Boomerang pursuant to Sections 102(2) and 1111(b)(1)(A) of the Bankruptcy Code. The SBI

Lender Secured Claim has priority over the SBI Secured Claim under applicable non-bankruptcy law.

MM. SBI 1111(b)(2) Election. The Court set a deadline of January 8, 2016 for SBI to make any election under 1111(b)(2) with respect to claims in Class 5. SBI did not make such an election.

NN. Retention of Jurisdiction. The Bankruptcy Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan as provided for herein.

### **DECREES**

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, DECREED AND DETERMINED THAT:**

1. Findings of Fact; Conclusions of Law. The findings of fact and conclusions of law herein constitute the Bankruptcy Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. Any finding of fact shall constitute a finding of fact even if it is referred to as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is referred to as a finding of fact.

2. Approval of Disclosure Statement. The Disclosure Statement is approved.

3. Confirmation. The Plan, a copy of which is annexed hereto as **Exhibit A**, and as modified by this Confirmation Order, is hereby CONFIRMED under and pursuant to section 1129 of the Bankruptcy Code, as set forth herein. The Plan Supplement Documents and each of the provisions thereof are hereby approved. The terms of the Plan (subject to any further modifications pursuant to the terms of the Plan) are hereby approved. The terms of the Plan, the Plan Supplement Documents, and any exhibits thereto are incorporated by reference into, and are an integral part of, this Confirmation Order, and shall be effective and binding as of the Effective

Date, without any requirement of further action by any of the Debtors' or Reorganized Debtors' boards of directors or managers, as applicable, or security holders.

4. Resolution of Confirmation Objections. All parties have had a full and fair opportunity to litigate all issues raised by the Confirmation Objections, or which might have been raised, and the Confirmation Objections have been fully and fairly litigated. As presented at the Combined Hearing, the consensual resolution of certain Confirmation Objections as provided for herein satisfies all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules, is in the best interest of the Debtors and their estates, and is supported by the record of the Combined Hearing, and therefore is hereby approved. Any Confirmation Objections or any other responses and reservation of rights with respect to confirmation of the Plan not previously resolved, resolved herein, or withdrawn are hereby overruled as set forth herein and on the record of the Combined Hearing.

5. Record Closed. The record of the Combined Hearing is hereby closed.

6. Provisions of Plan and Confirmation Order Nonseverable and Mutually Dependent. The provisions of the Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are nonseverable and mutually dependent.

7. Plan Classification Controlling. The classification of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to, or returned by, the holders of Claims in the Voting Classes (i) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (ii) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes, and (iii) shall not be binding on the Debtors, their estates, or the

Reorganized Debtors. The classification scheme of the Plan and the treatment of all Claims and Interests as provided thereunder are hereby approved.

8. Deemed Acceptance. Class 5A (SBI Lender Secured Claims) and Class 5B (SBI Secured Claims) are deemed to accept the Plan (as modified by this Confirmation Order) notwithstanding the fact that the holders of claims in those Classes failed to timely submit a ballot; *provided, however*, that neither SBI nor the SBI Lender shall be deemed to be Releasing Parties who are providing Third Party Releases pursuant to the Plan or this Confirmation Order..

9. Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan (as modified herein) shall bind any holder of a Claim or Interest and such holders' respective successors and assigns, whether or not the Claims or Interests of such holders are impaired under the Plan and whether or not such holders have voted to accept the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

10. Debtor-in-Possession Transactions. All transactions effected by the Debtors during the pendency of the Chapter 11 Cases from the Petition Date up to the Effective Date are hereby approved and ratified.

11. Plan Settlement. Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan Settlement is hereby approved.

12. Vesting of Assets. Pursuant to sections 1141(b) and (c) of the Bankruptcy Code, and except as otherwise provided in the Plan, or in any agreement, instrument, or other document incorporated in the Plan (including, without limitation, the Exit ABL Facility Documents, Exit Term Facility Documents and the Subordinated Notes Facility Documents, as

applicable), on the Effective Date, all property in each Debtor's Estate, except for the SBI Heat Treat Line Collateral, all Causes of Action (other than Causes of Action expressly released by the Plan), and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action, without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. For the avoidance of doubt, (i) no funds in the GUC Consideration Escrow Account (or any Disputed Claims Reserve funded from the GUC Consideration) shall be property of the Estates or the Reorganized Debtors, or subject to any Lien, upon the occurrence of the Effective Date, and such funds shall be distributed to the holders of Allowed General Unsecured Claims in accordance with the provisions of the Plan, and (ii) no funds in the Professional Fee Escrow Account shall be property of the Estates or the Reorganized Debtors, or subject to any Lien, upon the occurrence of the Effective Date, and such funds shall be distributed to the holders of Professional Claims in accordance with the provisions of the Plan.

13. Release of Liens. On the Effective Date, except (a) with respect to the Liens securing the DIP Term Facility to the extent set forth in the Exit Term Facility Documents, (b) with respect to the Liens securing the Other Secured Claims (depending on the treatment of such Claims), or (c) as otherwise provided herein, in the Plan, or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and the holders of such mortgages, deeds of trust, Liens, pledges, or

other security interests shall execute such documents as may be reasonably requested by the Debtors or the Reorganized Debtors, as applicable, to reflect or effectuate such releases, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns. The Reorganized Debtors covenant and agree not to bring, and upon the Effective Date shall be deemed to have waived and released, any Avoidance Action against any party except for the Eisenberg Parties and SBI Parties.

14. Retention of Causes of Action/Reservation of Rights. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. Subject to section 8.2 of the Plan, the Reorganized Debtors reserve and shall retain all Causes of Action. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of

the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

15. Characterization of SBI Financing Agreement. The SBI Financing Agreement is found and determined to be a secured financing, and the SBI Heat Treat Line Collateral is property of the Debtors.

16. Treatment of SBI Heat Treat Line Collateral. Unless the Reorganized Debtors and SBI agree otherwise, the SBI Heat Treat Line Collateral shall, without any further action of any person or Entity, be abandoned twenty-one (21) days after the Effective Date, and prior to such abandonment the Reorganized Debtors shall (a) no longer use or operate the SBI Heat Treat Line Collateral, (b) use commercially reasonable efforts to preserve and protect the SBI Heat Treat Line Collateral, (c) confer with SBI and SBI Lender regarding a protocol for removing the SBI Heat Treat Line Collateral, and (d) maintain insurance coverage at currently existing levels on the SBI Heat Treat Line Collateral. If the parties cannot agree on a protocol within twenty-one (21) days (the “**Consultation Period**”) after the Effective Date, then each of SBI and SBI Lender may take any and all actions permitted under applicable law to foreclose on and take possession of the SBI Heat Treat Line Collateral. The parties reserve all rights with respect to these issues. Notwithstanding anything in the Plan or Confirmation Order to the contrary, all liens, claims, interests and rights of SBI and the SBI Lender solely in the SBI Heat Treat Line Collateral arising under applicable law ~~and~~ shall continue in the SBI Heat Treat Line Collateral <sup>and</sup> shall not be discharged or released as of the Effective Date or following its abandonment nor enjoined following its abandonment.

17. Treatment of SBI Lender Secured Claim and SBI Secured Claims; SBI Deficiency Claim. The Debtors’ obligations with respect to the SBI Lender Secured Claim and



the SBI Secured Claim shall be deemed performed when the SBI Heat Treat Line Collateral is abandoned by the Debtors and SBI takes actual possession of the SBI Heat Treat Line Collateral. Any amounts that are owed to SBI in connection with the SBI Financing Agreement in excess of \$9,750,000, shall be treated as a General Unsecured Claim (the “**SBI Deficiency Claim**”). The rights of the Debtors, Reorganized Debtors, and SBI to contest the allowance of the SBI Deficiency Claim are reserved and expressly preserved by this Order.

18. Continued Corporate Existence. Except as otherwise provided in the Plan, the Debtors shall continue to exist after the Effective Date as Reorganized Debtors in accordance with the applicable laws of the respective jurisdictions in which they are incorporated or organized and pursuant to the amended certificates of incorporation or formation and amended by-laws or operating agreements, as applicable, of the Reorganized Debtors, for the purposes of satisfying their obligations under the Plan and the continuation of their businesses. On or after the Effective Date, each Reorganized Debtor, in its sole and exclusive discretion, may take such action as permitted by applicable law and such Reorganized Debtor’s organizational documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, but not limited to, causing: (i) a Reorganized Debtor to be merged into another Reorganized Debtor, or its subsidiary and/or affiliate; (ii) a Reorganized Debtor to be dissolved; (iii) the legal name of a Reorganized Debtor to be changed; or (iv) the closure of a Reorganized Debtor’s case on the Effective Date or any time thereafter.

19. Approval of Post-Effective Date Credit Facilities. The Reorganized Debtors’ and New Holdco’s entry into the Exit ABL Facility, Exit Term Facility, and Subordinated Notes Facility is approved, and the Exit ABL Facility Documents, Exit Term Facility Documents, and Subordinated Notes Facility Documents are approved. Subject to the

occurrence of the Effective Date, all transactions contemplated by the Exit ABL Facility Documents, Exit Term Facility Documents, and Subordinated Notes Facility Documents, including, without limitation, the issuance of the Subordinated Notes, any supplemental or additional syndication of the Exit ABL Facility, Exit Term Facility, or Subordinated Notes Facility, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors and New Holdco in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein, are hereby approved and the Reorganized Debtors and New Holdco are authorized to enter into and execute the Exit ABL Facility Documents, Exit Term Facility Documents, and Subordinated Notes Facility Documents and such other documents as may be required to effectuate the treatment afforded by each of the Exit ABL Facility, Exit Term Facility, and Subordinated Notes Facility, respectively.

20. On the Effective Date, the Reorganized Debtors and New Holdco shall execute and deliver the Exit ABL Facility Documents, Exit Term Facility Documents, and Subordinated Notes Facility Documents, which shall become effective and enforceable in accordance with their respective terms and the Plan. Each of the Exit ABL Facility Documents, Exit Term Facility Documents, and Subordinated Notes Facility Documents, once executed, shall constitute a legal, valid, binding, and authorized obligation of the respective parties thereto, enforceable in accordance with their terms. Notwithstanding anything to the contrary in the Plan, this Confirmation Order, or applicable non-bankruptcy law, pursuant to section 1123(a)(5) of the Bankruptcy Code, upon execution and delivery, but subject to the occurrence of the Effective Date, all of the Liens and security interests granted in accordance with the Exit ABL Facility Documents, Exit Term Facility Documents, and Subordinated Notes Facility Documents, respectively, (a) are approved, (b) shall be legal, binding, and enforceable Liens on,

and security interests in, the collateral granted thereunder in accordance with the terms of the respective documents, (c) shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the respective documents, and (d) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law, and this Confirmation Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of such Liens, pledges, and security interests without the need for any further action including, without limitation, the filing or recording of any financing statements or other documents that may otherwise be required under federal or state law in any jurisdiction. On and after the Effective Date, the relative Lien, payment, and enforcement priorities of (i) the Exit ABL Facility and the Exit Term Facility shall be governed by the terms of the Exit Intercreditor Agreement, and (ii) the Exit ABL Facility, the Exit Term Facility, and the Subordinated Notes Facility shall be governed by the terms of the Subordinated Notes Intercreditor Agreement.

21. Securities to be Issued Pursuant to the Plan. On the Effective Date, New Holdco shall issue or cause to be issued the New Holdco Common Stock for distribution in accordance with the terms of the Plan and the New Holdco Certificate of Incorporation, and New Opco shall issue the New Opco Common Units in accordance with the terms of the Plan and the New Opco LLC Agreement, without the need for any further corporate or shareholder action. Pursuant to section 1142(b) of the Bankruptcy Code and without further action by the Bankruptcy Court or by the shareholders, directors, members, or managers of any of New Holdco or the Reorganized Debtors, New Holdco and the Reorganized Debtors are authorized to perform all actions necessary, and to execute and deliver all documents, agreements, and

instruments necessary or appropriate, to issue the New Holdco Common Stock and New Opco Common Units. The New Holdco Shareholders Agreement and the New Opco LLC Agreement shall be adopted on the Effective Date and shall be deemed to be valid, binding, and enforceable in accordance with their respective terms, and each holder of New Holdco Common Stock and New Opco Common Units (as applicable) shall be bound thereby.

22. Exemption from Registration Requirements. The Bankruptcy Court finds and concludes that, in accordance with section 1145(a) of the Bankruptcy Code, the offering, issuance, and distribution of the New Holdco Common Stock and New Opco Common Units are authorized as of the Effective Date and are exempt from the provisions of Section 5 of the Securities Act, including the registration requirements of the Securities Act, and any other applicable federal law and any state or local law requiring registration for offer, issuance, distribution, or sale of a security or registration or licensing of an issuer, underwriter, broker, or dealer in a security. None of the Debtors is an underwriter within the meaning of section 1145(b) of the Bankruptcy Code. Pursuant to section 1145 of the Bankruptcy Code, New Holdco Common Stock and New Opco Common Units issued under the Plan will be freely transferable by the initial recipients thereof, subject to: (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an “underwriter” in section 2(a)(11) of the Securities Act and compliance with applicable federal, state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; (b) the restrictions, if any, on the transferability of such Securities and instruments in the New Holdco Shareholders Agreement; and (c) any other applicable regulatory approval.

23. Exemption from Transfer Taxes. To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan, including: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in New Holdco, the Debtors or the Reorganized Debtors; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; (d) the grant of collateral as security for any or all of the Exit Term Facility, Exit ABL Facility, or Subordinated Notes Facility, as applicable; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment. Upon entry of this Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and

recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. The Debtors are hereby authorized to deliver a notice or short form of this Confirmation Order to any state recording officer to the effect that such officer must accept for filing such security interests without charging any stamp tax or other similar tax or fee within the scope of section 1146(a) of the Bankruptcy Code.

24. Cancellation of Existing Securities and Agreements. On the Effective Date, except to the extent otherwise provided herein or in the Plan, all notes, instruments, Certificates, and other documents evidencing Claims or Interests shall be cancelled and the obligations of the Debtors or the Reorganized Debtors shall also be cancelled; provided, however, that notwithstanding Confirmation or the occurrence of the Effective Date, any credit document or agreement that governs the rights of the holder of a Claim or Interest shall continue in effect (a) solely for purposes of allowing holders of Allowed Claims to receive distributions under the Plan, (b) solely for purposes of allowing and preserving the rights of the Term Loan Agent and any Servicer, as applicable, to make distributions on account of Allowed Claims as provided herein, and (c) with respect to the rights of such holders and obligations that expressly survive the termination thereof. In addition, on the Effective Date, the ABL Facility Sponsor Guaranty shall be cancelled and the obligations of the ABL Facility Guarantor thereunder or in any way related thereto shall be released.

25. Plan Supplement Documents. The forms, terms, and provisions of each of the Plan Supplement Documents have been consented to as necessary by the Required Lenders, the Debtors, and (solely with respect to documentation related to the Ombudsman and GUC Consideration Escrow Account) the Creditors Committee, and are hereby approved. The Plan Supplement Documents shall be deemed incorporated into the Plan by reference and are a part of

the Plan as if set forth in full therein. On or prior to the Effective Date, but subject to the occurrence of the Effective Date, the Debtors are hereby authorized to execute and deliver each of the Plan Supplement Documents, in substantially the respective forms included in the Plan Supplement, including such changes thereto as are consistent with the Plan, without the need for any further corporate or shareholder action. Each of the Plan Supplement Documents, once executed, shall constitute a legal, valid binding and authorized obligation of the respective parties thereto, enforceable in accordance with its terms (except as enforceability may be limited by any bankruptcy or insolvency proceeding filed by any party thereto subsequent to the date of the execution of such document).

26. Designation of Directors Approved. On the Effective Date, the initial board of directors of each of New Holdco and each Reorganized Debtor shall consist of those individuals identified in the Plan Supplement, and such directors shall be deemed elected and authorized to serve as directors of New Holdco and each of the Reorganized Debtors pursuant to the terms of the applicable organizational documents of New Holdco or such Reorganized Debtor and may be replaced or removed in accordance with such organizational documents. Such appointment and designation is hereby approved and ratified as being in the best interests of the Debtors and creditors and consistent with public policy, and such directors hereby are deemed elected and appointed to serve in their respective capacities as of the Effective Date without further action of the Bankruptcy Court, New Holdco, the Reorganized Debtors or their equity holders. The members of the board of directors of each Debtor prior to the Effective Date, in their capacities as such, shall have no continuing obligations to the Debtors or the Reorganized Debtors on or after the Effective Date, and each such member will be deemed to

have resigned or shall otherwise cease to be a director of the applicable Debtor on the Effective Date.

27. Designation or Continuation in Office of Officers Approved. The designation or continuation in office as officers of New Holdco and the Reorganized Debtors of each of the individuals identified in the Plan Supplement is hereby approved and ratified as being in the best interests of the Debtors and creditors and consistent with public policy. Such officers hereby are deemed elected and appointed to serve in their respective capacities as of the Effective Date without further action of the Bankruptcy Court, New Holdco, or the Reorganized Debtors.

28. Designation of Ombudsman. Alvarez & Marsal North America, LLC, by and through Richard Newman, is designated as the Ombudsman, for the purposes and with the powers and responsibilities set forth in the Plan and Plan Supplement.

29. Distributions Under the Plan. All distributions under the Plan shall be made in accordance with the Plan and such methods of distribution are hereby approved.

30. Disputed Claims. The provisions of Articles VI and VII of the Plan, including, without limitation, the provisions governing procedures for resolving Disputed Claims, are found to be fair and reasonable and are hereby approved. From and after the Effective Date, subject to Section 7.5 of the Plan, the Reorganized Debtors shall be permitted to resolve, compromise, or settle the amount of any Claim asserted in these cases without the need for further Bankruptcy Court order.

31. Authorizations. Any action under the Plan or this Confirmation Order to be taken by, or required of, the Debtors, the Reorganized Debtors, or New Holdco, including, without limitation, the adoption or amendment of certificates of incorporation, by-laws, limited



liability company agreements or limited partnership agreements, the issuance of securities and instruments, or the selection of officers or directors, shall be authorized and approved in all respects, without any requirement of further action by any of the Debtors,' Reorganized Debtors,' or New Holdco's boards of directors or managers, as applicable, or security holders.

32. Governmental Approvals. Each federal, state, commonwealth, local, foreign, or other governmental agency is hereby directed and authorized to accept any and all documents, mortgages, deeds of trust, security filings, financing statements, and instruments necessary or appropriate to effectuate, implement, or consummate the transactions contemplated by the Plan and this Confirmation Order. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any federal, state, commonwealth, local, foreign, or other governmental agency with respect to the implementation or consummation of the Plan and any other acts that may be necessary or appropriate for the implementation or consummation of the Plan.

33. Executory Contracts and Unexpired Leases.

- (i) General Treatment. As of and subject to the occurrence of the Effective Date and the payment of any applicable Cure amount, all Executory Contracts and Unexpired Leases identified in the Plan Supplement as an Executory Contract or Unexpired Lease to be assumed by the Reorganized Debtors (the "**Assumption Schedule**"), as may be amended prior to the Effective Date in accordance with Section 5.1 of the Plan, shall be deemed assumed; provided, however, that any Executory Contract or Unexpired Lease that was included on a notice of assumption pursuant to the Plan for which the deadline to object to assumption or the Cure amount set forth in the applicable notice has not passed, shall only be assumed upon the expiration of such objection deadline without any timely filed objection; provided, further, that to the extent any objection has been timely filed to the assumption of any contract included on the Assumption Schedule, the assumption of such Executory Contract or Unexpired Lease shall only occur as set forth in subpart (ii) of this Paragraph. Unless an Executory Contract or Unexpired Lease either (i) has previously been assumed or rejected pursuant to an order entered by the Bankruptcy Court prior to the Effective Date, (ii) is terminated or expires by its terms on or prior to the

Effective Date, (iii) is the subject of a motion pending before the Bankruptcy Court as of the Effective Date seeking to assume or reject such Executory Contract or Unexpired Lease, or (iv) is listed on the Assumption Schedule, such Executory Contract or Unexpired Lease shall be deemed rejected. Subject to the occurrence of the Effective Date, this Confirmation Order shall constitute approval of the assumptions and rejections described in Section 5.1 of the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each of the Executory Contracts and Unexpired Leases assumed pursuant to Section 5.1 of the Plan shall revest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms, except as modified by the provisions of the Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption, or applicable federal law.

- (ii) Objections to assumption. If a party objects to the assumption of an Executory Contract or Unexpired Lease, or the associated Cure Amount, then such Executory Contract or Unexpired Lease shall only be assumed by the later of (i) the Reorganized Debtors and the objecting counter-party reaching a consensual resolution regarding the objection and the treatment of such Executory Contract or Unexpired Lease or (ii) ten (10) business days after the entry of a Final Order resolving such objection, during which period, the Reorganized Debtors may remove such Executory Contract or Unexpired Lease from the Assumption Schedule.
- (iii) Rejection Damages Claims. All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed with the Bankruptcy Court no later than 30 days after entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection (the “**Rejection Damages Bar Date**”). **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claim were not timely filed as set forth in the immediately preceding sentence shall be automatically disallowed, forever barred from assertion and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order or approval of the Bankruptcy Court.** All Allowed Claims arising from the rejection of the Debtors’ Executory Contracts or Unexpired Leases shall be deemed General Unsecured Claims and classified as Class 6 against the appropriate Debtor.
- (iv) Cure Amounts. Except to the extent that less favorable treatment has been agreed to by the non-Debtor party or parties to each such Executory Contract or Unexpired Lease, any monetary defaults arising under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be deemed satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the applicable Cure identified in the

Assumption Schedule (or set forth in such other order of the Bankruptcy Court authorizing the assumption of such Executory Contract or Unexpired Lease) in Cash on the Effective Date or as soon as practicable thereafter; provided that if there is any dispute as to the Cure amount, then payment of Cure shall occur as soon as practicable after entry of a Final Order resolving such dispute. Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

- (v) Pre-Effective Date Amendments to Executory Contracts and Unexpired Leases. Prior to assuming any Executory Contract or Unexpired Lease as provided for herein and in the Plan, pursuant to section 363(b) of the Bankruptcy Code, the Debtors (i) are authorized, in their discretion, to enter into any amendments and modifications to such Executory Contracts and leases, and (ii) are authorized and empowered to take any and all steps and to perform such other and further actions as are necessary to carry out, effectuate, or otherwise enforce the terms, conditions and provisions of any such amendments and modifications, without further notice to or action, order, or approval of the Bankruptcy Court. To the extent that any amendment of an Executory Contract or Unexpired Lease necessitates, or the Debtors or Reorganized Debtors deem it advisable to obtain, entry of a separate order of the Bankruptcy Court approving such an amendment, the Debtors may submit an order under certification of counsel relying upon the authorization contained in this paragraph.
- (vi) Restrictions on Assignment Void. Any Executory Contract or Unexpired Lease assumed by the Debtors during the Chapter 11 Cases shall remain in full force and effect to the benefit of the transferee or assignee in accordance with its terms, notwithstanding any provision in such Executory Contract or Unexpired Lease (including those of the type described in section 541(c)(1) of the Bankruptcy Code) that prohibits, restricts, or conditions such transfer or assignment, including based on any change of control provision. Any provision that prohibits, restricts, or conditions the assignment or transfer of any such Executory Contract or Unexpired Lease, terminates or modifies such Executory Contract or Unexpired Lease or allows the counterparty to such Executory Contract or Unexpired Lease to terminate, modify, recapture, impose any penalty,

condition renewal or extension, or modify any term or condition thereof on any such transfer or assignment (including on account of any change of control provision), constitutes an unenforceable anti-assignment provision and is void and of no force or effect.

- (vii) The Debtors shall retain their rights, subject to the consent of the Majority Term Loan Lenders, which consent shall not be unreasonably withheld or delayed, to amend, modify, or supplement the Assumption Schedule through the Effective Date.

34. Employee Matters. The Debtors, including their officers, directors, and employees, are authorized to take any and all actions necessary to implement Section 4.15 of the Plan, and any such actions shall be deemed appropriate and taken in good faith as necessary to give effect to Section 4.15 of the Plan, and neither the Debtors, their officers, directors, or employees, shall have any responsibility or liability to any person or entity arising from any such actions.

35. Approval of Discharge, Injunctions, Releases, and Exculpation and Limitation of Liability Set Forth In the Plan. In light of all of the circumstances and the record in these Chapter 11 Cases, including, without limitation, the evidence proffered or adduced at or in connection with the Combined Hearing, the Confirmation Memorandum, and the Nystrom Declaration, each of the discharge, injunction, release, and exculpation and limitation of liability provisions set forth in Article VIII of the Plan are hereby approved as being: (i) within the jurisdiction of the Bankruptcy Court to approve under 28 U.S.C. §§ 1334(a), 1334(b), and 1334(d); (ii) an essential means of implementing the Plan pursuant to section 1123(b) of the Bankruptcy Code; (iii) an integral element of the transactions embodied by and incorporated in the Plan; (iv) in exchange for the good and valuable consideration provided by the Released Parties; (v) a good faith settlement and compromise of the Claims released by the Debtor Release and Third-Party Releases and exculpated by the Exculpation; (vi) in the best interests of the Debtors and all holders of Claims and Interests; (vii) fair, equitable, and reasonable; (viii) given

and made after due notice and opportunity for hearing; and (ix) consistent with sections 105, 363, 1123, and 1129 of the Bankruptcy Code, Bankruptcy Rule 9019, and all other applicable provisions of the Bankruptcy Code and Bankruptcy Rules.

36. Discharge of Claims and Termination of Interests. Except as otherwise provided for in the Plan or the Confirmation Order, and effective as of the Effective Date: (a) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their assets, property, or Estates; (b) the Plan shall bind all holders of Claims and Interests, notwithstanding whether any such holders failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (d) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

37. Releases by the Debtors. Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the

Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated in the Plan, and (3) the good faith negotiation of, and participation in, the restructuring contemplated in the Plan, each of the Debtors, the Reorganized Debtors, and the Estates conclusively, absolutely, unconditionally, irrevocably, and forever discharge and release and shall be deemed to have provided a full discharge and release to each Released Party (and each such Released Party so released shall be deemed fully released and discharged by the Debtors, the Reorganized Debtors, and the Estates) and their respective property from any and all Claims, obligations, debts, rights, suits, damages, Causes of Action, Avoidance Actions (other than Avoidance Actions against the Eisenberg Parties and SBI Parties), remedies, and liabilities whatsoever, including any derivative Claims asserted or which could be asserted on behalf of the Debtors and/or the Reorganized Debtors, whether known or unknown, foreseen or unforeseen, existing or arising, in law, equity, or otherwise, that the Debtors, the Reorganized Debtors, the Estates, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Reorganized Debtors, the Transaction, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, negligence, gross negligence, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated

in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Management Agreement, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents; provided, however, that the foregoing “Debtor Release” shall not operate to waive or release any Claims, obligations, debts, rights, suits, damages, remedies, Causes of Action, and liabilities in respect of any Released Party solely to the extent arising under the Plan or any agreements entered into pursuant to the Plan.

38. Releases by Holders of Claims and Interests. Notwithstanding anything contained in the Plan to the contrary (except as set forth in Section 8.8 of the Plan), on the Confirmation Date and effective as of immediately following the occurrence of the Effective Date, the Releasing Parties (regardless of whether a Releasing Party is a Released Party) conclusively, absolutely, unconditionally, irrevocably, and forever discharge and release (and each Entity so discharged and released shall be deemed discharged and released by the Releasing Parties) the Released Parties and their respective property from any and all Claims, Interests, obligations, debts, rights, suits, damages, Causes of Action, Avoidance Actions (other than Avoidance Actions against the Eisenberg Parties and SBI Parties), remedies, and liabilities whatsoever, including any derivative Claims asserted or which could be asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Reorganized Debtors,

the Transaction, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, negligence, gross negligence, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents; provided, however, that the foregoing "Third-Party Release" shall not operate to waive or release any Claims, obligations, debts, rights, suits, damages, remedies, Causes of Action, and liabilities in respect of any Released Party, solely to the extent (1) arising under any agreements entered into pursuant to the Plan, (2) with respect to Claims by Professionals related to Professionals' final fee applications or accrued Professional compensation claims in the Chapter 11 Cases, or (3) arising under (i) any Indemnification Provision or (ii) any indemnification provision contained in the Management Agreement.

39. Exculpation. Notwithstanding anything contained in the Plan to the contrary, the Exculpated Parties shall neither have, nor incur any liability to any Entity for any postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan, or consummating the Plan, the Plan Support Agreement, the Disclosure



Statement, the Plan Supplement, the New Holdco Governance Documents, the New Opco Governance Documents, the Exit Term Facility Documents, the Exit ABL Facility Documents, the Subordinated Notes Facility Documents, the Transaction, the issuance, distribution, and/or sale of any shares of New Holdco Common Stock, the New Opco Common Units, or any other security offered, issued, or distributed in connection with the Plan, the Chapter 11 Cases, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors; provided, however, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; provided, further, that the foregoing "Exculpation" shall have no effect on the liability of any Entity solely to the extent resulting from any such act or omission that is determined in a final order to have constituted gross negligence or willful misconduct; provided, further, that the foregoing "Exculpation" shall have no effect on the liability of any Entity for acts or omissions occurring after the Confirmation Date.

40. Injunction. Except as otherwise provided in the Plan, the Confirmation Order, or for obligations issued pursuant to the Plan, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to Section 8.2 or Section 8.3 of the Plan, discharged pursuant to Section 8.1 of the Plan, or are subject to exculpation pursuant to Section 8.4 of the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Released Parties, or the Exculpated Parties: (a)

commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff (except where timely preserved under Section 6.5 of the Plan) or subrogation of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

41. Continuation of the Automatic Stay. Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases (pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court) and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

42. Bar Date for Administrative Claims. The holder of an Administrative Claim, must file with the Bankruptcy Court and serve on the Reorganized Debtors and their counsel, the Claims Agent, and the U.S. Trustee proof of such Administrative Claim within thirty

(30) calendar days after the Effective Date (the “**Administrative Bar Date**”); provided that the following holders shall not be required to file an Administrative Claim by the Administrative Bar Date: (i) a DIP Facility Claim; (ii) a Professional Claim, which is subject to the next paragraph; (iii) Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code; (iv) a Claim entitled to priority under section 503(b)(9) of the Bankruptcy Code (which claims, for the avoidance of doubt, shall remain subject to the Bar Date previously established by the Court for such claims); (v) an Administrative Claim that has been Allowed on or before the Effective Date; (vi) an Administrative Claim of a governmental unit (as defined in section 101(27) of the Bankruptcy Code) not required to be filed pursuant to section 503(b)(1)(D) of the Bankruptcy Code; and (vii) an Administrative Claim based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim, including for fees and expenses incurred on or after the Petition Date by ordinary course professionals retained by the Debtors pursuant to an order of the Bankruptcy Court; *provided, however*, that any requests for payment and allowance of an Administrative Claim for severance obligations and post-employment benefits or obligations must be filed as provided for herein by the Administrative Bar Date. Such proof of Administrative Claim must include at a minimum: (i) the name of the applicable Debtor that is purported to be liable for the Administrative Claim and if the Administrative Claim is asserted against more than one Debtor, the exact amount asserted to be owed by each such Debtor; (ii) the name of the holder of the Administrative Claim; (iii) the amount of the Administrative Claim; (iv) the basis of the Administrative Claim; and (v) supporting documentation for the Administrative Claim. **Failure to file and serve such proof of Administrative Claim timely**

**and properly shall result in the Administrative Claim being forever barred and discharged without the need for further action, order or approval of or notice to the Bankruptcy Court.**

43. Professional Claims. All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date must be filed no later than thirty (30) days after the Effective Date (the “**Professional Claim Bar Date**”). Objections to such Professional Claims, if any, must be filed and served within twenty-one (21) days of the filing and service of such application, but in no event later than fourteen (14) calendar days after the Professional Claim Bar Date, unless a later date is established by the Bankruptcy Court. Payment of Professional Claims shall be subject to the provisions set forth in Section 2.3 of the Plan.

44. Professional Fee Escrow Account. Professionals shall deliver to the Debtors their estimates for purposes of the Reorganized Debtors computing the Professional Fee Escrow Amount no later than five (5) Business Days prior to the anticipated Effective Date. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. The Debtors shall fund the Professional Fee Escrow Account on the Effective Date with the Professional Fee Payment Amount less all amounts previously paid to the applicable Professionals prior to the Effective Date. No funds in the Professional Fee Escrow Account shall be property of the Estates or the Reorganized Debtors nor shall they be subject to any Lien. Any funds remaining in the Professional Fee Escrow Account after all Allowed Professional Claims have been paid will be turned over to New Opco.

45. Payment of U.S. Trustee Fees. The Debtors and Reorganized Debtors, as applicable, shall pay all fees payable pursuant to 28 U.S.C. § 1930(a) as set forth in Section 12.2 of the Plan.

46. No Post-Effective Date Amendment to Claims; Late-Filed Claims. From and after (i) the Effective Date and (ii) December 7, 2015, solely for Claims asserted or held by Governmental Units, no Claim may be filed to increase or assert additional claims not reflected in an already filed Claim (or Claim scheduled, unless superseded by a filed Claim, on the applicable Debtor's schedules of assets and liabilities filed in the Chapter 11 Cases) asserted by such claimant and any such Claim shall be deemed disallowed and expunged in its entirety without further order of the Bankruptcy Court or any action being required on the part of the Debtors or the Reorganized Debtors unless the claimant has obtained the Bankruptcy Court's prior approval to file such amended or increased Claim. Any Claims filed after the Bar Date, the Administrative Bar Date, or the Rejection Damages Bar Date, as applicable, shall be deemed disallowed and expunged in their entirety without further notice to or action, order, or approval of the Bankruptcy Court or any action being required on the part of the Debtors or the Reorganized Debtors, unless the Person or entity wishing to file such untimely Claim has received Bankruptcy Court authority to do so.

47. Termination of Professionals. On the Effective Date, the engagement of each Professional retained by the Debtors and the Creditors Committee shall be terminated without further order of the Bankruptcy Court or act of the parties; provided, however, that such Professionals shall be entitled to prosecute their respective Professional Claims and represent their respective constituents with respect to applications for payment of Professional Claims. Nothing herein shall preclude any Reorganized Debtor from engaging a Professional on and after

the Effective Date in the same capacity as such Professional was engaged prior to the Effective Date. Nothing herein shall preclude the Ombudsman from engaging a Professional that was previously engaged by the Reorganized Debtors or Creditors Committee.

48. No Change in Ownership or Control. Consummation of the Plan is not intended to and shall not constitute a change in ownership or control, as defined in any employment or other agreement or plan in effect on the Effective Date to which a Debtor is a party.

49. Future Plan Modifications. The Debtors, with the consent of the Required Lenders, or the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

50. Effect of Non-Occurrence of Conditions to Consummation. If prior to Consummation, the Confirmation Order is vacated pursuant to a Final Order, then except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action; (b) prejudice in any manner the rights of any Debtor or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity.

51. Reversal. If any of the provisions of this Confirmation Order are hereafter reversed, modified or vacated by a subsequent order of the Bankruptcy Court or any other court, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations

incurred or undertaken under, or in connection with, the Plan prior to written notice of such order by the Debtors. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on this Confirmation Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order, the Plan, all documents relating to the Plan and any amendments or modifications to the foregoing.

52. Retention of Jurisdiction. Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of this Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157, over all matters arising in, arising under, or related to the Chapter 11 Cases for, among other things, the purposes set forth in Article XI of the Plan.

53. Resolution of Certain Objections.

- (i) United States EPA. Nothing in the Confirmation Order or the Plan discharges, releases, resolves, exculpates, precludes, or enjoins: (i) any environmental liability to any Environmental Governmental Unit that is not a claim, as defined in section 101(5) of the Bankruptcy Code; (ii) any environmental claim of any Environmental Governmental Unit arising on or after the Effective Date; (iii) any environmental liability to any Environmental Governmental Unit on the part of any entity as the owner or operator of property after the Effective Date; (iv) any liability to the United States on the part of any person or entity other than the Debtor or Reorganized Debtor; or (v) any valid right of recoupment of the United States. For purposes of this paragraph, “**Environmental Governmental Unit**” means the United States; any State, Commonwealth or District in the United States; and any department, agency, or instrumentality of the United States; any State, Commonwealth or District in the United States charged with enforcing environmental laws.
- (ii) Certain Tax Authority. Any lien held by any of Cypress-Fairbanks Independent School District, Harris County, Chambers County Tax Office, Sheldon Independent School District, Crosby Independent School District, Parkway Utility District, and Channelview Independent School District (each a “**Taxing Authority**”) pursuant to Article VIII, Section 15

of the Texas Constitution, and Sections 32.01 and Section 32.05(b) of the Texas Property Tax Code, that secures an Allowed Claim against any Debtor shall be retained by the applicable Taxing Authority until such Allowed Claim is satisfied in full. It is not necessary that any Taxing Authority file administrative expense claims or requests for payment in order for 2016 taxes to be deemed an allowed administrative expense. The administrative expense taxes are not discharged by entry of the confirmation order and liens for 2016 taxes shall be retained until such time as all taxes, and any accrued penalties and interest, are paid. If any provision of the Bankruptcy Code requires the payment of interest on an Allowed Claim or Administrative Claim of a Taxing Authority, or the payment of interest to enable a Taxing Authority to receive the present value of the allowed amount of an Allowed Claim, the rate of interest shall be determined in accordance with section 511 of the Bankruptcy Code.

54. Notice of Confirmation and Effective Date and Related Deadlines. On or before three (3) business days after the occurrence of the Effective Date (the “**Notice of Confirmation and Effective Date Service Deadline**”), the Reorganized Debtors shall mail, or cause to be mailed, to the U.S. Trustee, all parties that, as of the date thereof, have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002, and all of the Debtors’ known potential creditors and the Debtors’ Interest holders a notice, substantially in the form attached hereto as Exhibit B (the “**Notice of Confirmation and Effective Date**”), that informs such parties of (i) the entry of this Confirmation Order, (ii) the occurrence of the Effective Date, (iii) the occurrence of the various bar dates established in the Plan and this Confirmation Order, including, without limitation, the Administrative Bar Date, the Professional Claim Bar Date, and the Rejection Damages Bar Date, and (iv) such other matters as the Reorganized Debtors deem appropriate; provided, however, that such notice need not be given or served under or pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or this Confirmation Order to any Person to whom the Debtors mailed a Confirmation Hearing Notice but received such notice returned marked “undeliverable as addressed,” “moved-left no forwarding address,” “forwarding order expired,” or any similar reason unless prior to the Notice of Confirmation and Effective



Date Service Deadline the Debtors or the Reorganized Debtors have been informed in writing by such Person of that Person's new mailing address. The Notice of Confirmation and Effective Date described herein is adequate and appropriate under the particular circumstances of the confirmation of the Plan, the entry of this Confirmation Order, the occurrence of the Effective Date, and the various bar dates established in the Plan and this Confirmation Order, including, without limitation, the Administrative Bar Date, the Professional Claim Bar Date, and the Rejection Damages Bar Date, and no other or further notice is necessary or required pursuant to Bankruptcy Rules 3020(c) and 2002(f) or any other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules.

55. References to Plan Provisions. The terms of the Plan are an integral part of this Confirmation Order and are incorporated herein by reference. The failure specifically to include or reference any particular provision of the Plan in this Confirmation Order shall not in any manner whatsoever affect, diminish, or impair the effectiveness of such provision, it being the intent of the Bankruptcy Court that entry of this Confirmation Order constitutes approval and confirmation of the Plan in its entirety.

56. Confirmation Order Controlling. The provisions of the Plan and this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purpose of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence. The provisions of this Confirmation Order are integrated with each other and are non-severable and mutually dependent.

57. Separate Confirmation Order. This Confirmation Order shall be a separate Confirmation Order with respect to each of the Debtors in each Debtor's separate Chapter 11 Case.

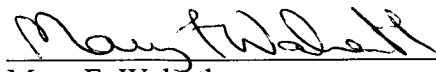
58. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1102 and 1127 of the Bankruptcy Code.

59. Applicable Non-Bankruptcy Law. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order, the Plan, and the Plan Supplement Documents shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

60. Headings. The headings contained within this Confirmation Order are used for the convenience of the parties and shall not alter or affect the meaning of the text of this Confirmation Order.

61. Immediately Effective Order. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), and 7062 (and notwithstanding any other applicable provision of the Bankruptcy Code or the Bankruptcy Rules to the contrary), this Confirmation Order shall be effective and enforceable immediately upon entry.

Dated: January 27, 2016  
Wilmington, Delaware

  
\_\_\_\_\_  
Mary F. Walrath  
United States Bankruptcy Judge

**EXHIBIT A**

**Plan**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

BOOMERANG TUBE, LLC, a Delaware limited liability  
company, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-11247 (MFW)

Jointly Administered

**DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN**

**DEBEVOISE & PLIMPTON LLP**

My Chi To (admitted *pro hac vice*)

Nick S. Kaluk, III (admitted *pro hac vice*)

919 Third Avenue

New York, New York 10022

Telephone: (212) 909-6000

Facsimile: (212) 909-6836

Email: [mcto@debevoise.com](mailto:mcto@debevoise.com)  
[nskaluk@debevoise.com](mailto:nskaluk@debevoise.com)

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

Robert S. Brady (No. 2847)

Sean M. Beach (No. 4070)

Ryan M. Bartley (No. 4985)

Rodney Square

1000 North King Street

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

Email: [rbrady@ycst.com](mailto:rbrady@ycst.com)  
[sbeach@ycst.com](mailto:sbeach@ycst.com)  
[rbartley@ycst.com](mailto:rbartley@ycst.com)

Special Counsel for the Debtors and Debtors in Possession      Counsel for the Debtors and Debtors in Possession

Dated: December 29, 2015

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Boomerang Tube, LLC (9415); BTCSP, LLC (7632); and BT Financing, Inc. (6671). The location of the Debtors' corporate headquarters is 14567 North Outer Forty, Suite 500, Chesterfield, Missouri 63017.

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## **INTRODUCTION**

Boomerang Tube, LLC and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases jointly propose the Plan. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims against and Interests in each Debtor pursuant to the Bankruptcy Code. The Debtors seek to consummate the Transaction on the Effective Date of the Plan. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in ARTICLE III shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, properties and operations, projections, risk factors, a summary and analysis of the Plan, the Transaction, and certain related matters.

## **ARTICLE I**

### **DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES**

#### **1.1. Defined Terms**

1. "*ABL Facility*" means the revolving credit facility under the ABL Loan Agreement.
2. "*ABL Facility Agent*" means Wells Fargo Capital Finance, LLC, in its capacity as administrative and collateral agent (for the benefit of the ABL Facility Lenders) pursuant to the terms of the ABL Facility Documents, and any successor or replacement agent appointed pursuant to the terms of the ABL Loan Agreement.
3. "*ABL Facility Claim*" means any Claim arising under, derived from, or based upon the ABL Facility Documents that has not been repaid on a final and indefeasible basis as of the Effective Date.
4. "*ABL Facility Documents*" means, collectively, the ABL Loan Agreement, the ABL Facility Sponsor Guaranty, each other Loan Document (as defined in the ABL Loan Agreement), and all other agreements, documents, and instruments delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents).
5. "*ABL Facility Guarantor*" means Access Tubulars, LLC, in its capacity as guarantor under the ABL Facility Sponsor Guaranty.
6. "*ABL Facility Lenders*" means each Lender (as defined in the ABL Loan Agreement) that is a party to the ABL Loan Agreement.
7. "*ABL Facility Sponsor Guaranty*" means the Limited Sponsor Guaranty, dated as of March 25, 2015 (as amended, restated, modified, or supplemented from time to time prior to the Petition Date), by the ABL Facility Guarantor in favor of the ABL Facility Agent (for the benefit of the ABL Facility Lenders).
8. "*ABL Loan Agreement*" means the Amended and Restated Credit Agreement, dated as of October 11, 2012 (as amended, restated, modified, or supplemented from time to time prior to the Petition Date), by and among Boomerang, as borrower, the ABL Facility Lenders from time to time party thereto and the ABL Facility Agent.

9. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the Debtors’ businesses; (b) Allowed Professional Claims; and (c) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

10. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code.

11. “*Allowed*” means, as to a Claim or an Interest, a Claim or an Interest allowed under the Plan, under the Bankruptcy Code, or by a Final Order, as applicable, in each case subject to the limitations set forth in section 502 of the Bankruptcy Code.

12. “*Avoidance Actions*” mean any and all Claims that may be brought pursuant to chapter 5 of the Bankruptcy Code, including, for the avoidance of doubt, objections to disallow any claim pursuant to section 502(d) of the Bankruptcy Code.

13. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as may be amended from time to time.

14. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases.

15. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, 28 U.S.C. § 2075, as applicable to the Chapter 11 Cases and the general, local, and chambers rules of the Bankruptcy Court.

16. “*Bar Date*” means August 26, 2015 for all parties other than Governmental Units and December 7, 2015 for Governmental Units, unless a later date has been set for the holder of a Claim to file a Proof of Claim in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court, including that certain *Order, Pursuant to Sections 501 and 502 of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and Local Rule 2002-1, (I) Establishing Bar Dates for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Thereof* [Docket No. 269].

17. “*Boomerang*” means Boomerang Tube, LLC, a Delaware limited liability company and the predecessor to New Opco.

18. “*Boomerang Class A Preferred Units*” means, collectively, all 2008 Class A Preferred Units and 2010 Class A Preferred Units issued by Boomerang.

19. “*Boomerang Class B Preferred Units*” means, collectively, all Class B Preferred Units issued by Boomerang.

20. “*Boomerang Class C Preferred Units*” means, collectively, all Class C Preferred Units issued by Boomerang.

21. “*Boomerang Common Units*” means, collectively, all common units issued by Boomerang.



22. “*Boomerang Other Equity Securities*” means, collectively, all vested and unvested options, unexercised warrants or other rights to acquire Common Units or other equity interests issued or granted by Boomerang, whether or not in-the-money, as well as any other outstanding equity interests issued by Boomerang.

23. “*Boomerang Preferred Units*” means all Boomerang Class A Preferred Units, Boomerang Class B Preferred Units and Boomerang Class C Preferred Units.

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

25. “*Cash*” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

26. “*Causes of Action*” means any and all claims, actions, causes of action, choses in action, suits, debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims (including all claims and any avoidance, recovery, subordination, or other actions against Insiders and/or any other Entities under the Bankruptcy Code) of any of the Debtors and/or the Debtors’ estates, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, that are or may be pending on the Effective Date or commenced by the Reorganized Debtors after the Effective Date against any Entity, based in law or equity, including under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order. For purposes of this Plan, Causes of Action shall (i) expressly exclude all Avoidance Actions other than Avoidance Actions against the Eisenberg Parties and SBI Parties, and (ii) expressly include all Avoidance Actions against the Eisenberg Parties and SBI Parties.

27. “*Certificate*” means any instrument evidencing a Claim or an Interest.

28. “*Chapter 11 Cases*” means the procedurally consolidated Chapter 11 Cases pending for the Debtors in the Bankruptcy Court.

29. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.

30. “*Claims Register*” means the official register of Claims against and Interests in the Debtors maintained by the Solicitation Agent.

31. “*Class*” means a category of holders of Claims or Interests under section 1122(a) of the Bankruptcy Code.

32. “*Class 5 Note*” means a promissory note(s) issued by New Opco in favor of the holder of an Allowed Class 5 Claim, issued as of the Effective Date, which shall (a) be secured by a Lien on the SBI Heat Treat Line Collateral, *provided that*, any Lien securing a Class 5 Note issued on account of an Allowed SBI Secured Claim shall be junior to any Lien(s) securing any SBI Lender Secured Claim; (b) be pre-payable at any time without penalty; (c) be substantially in the form contained in the Plan Supplement; and (d) be determined by the Class 5 Note Base Calculation, but allocated among the holders of Allowed SBI Secured Claims and Allowed SBI Lender Secured Claims as set forth in Section 3.2(e)(2)(A) to reflect Allowed Claim amounts, Lien priorities and other factors.

33. “*Class 5 Note Base Calculation*” means that the terms of the promissory note(s) issued by New Opco in favor of all holders of Allowed Class 5 Claims as of the Effective Date shall be calculated based on (a) an original principal amount of \$9,750,000, (b) an interest rate of four and three-quarters percent (4.75%) per annum, payable in arrears on a monthly basis; (c) a term of seven (7) years; and (d) full amortization over the seven (7) year term pursuant to a schedule of eighty-four (84) monthly payments of combined principal and interest.

34. “*Class 5 1111(b) Election Note*” means a promissory note(s) issued by New Opco in favor of the holder of an Allowed Class 5 Claim, issued as of the Effective Date, which shall (a) be secured by a Lien on the SBI Heat Treat Line Collateral, *provided that*, any Lien securing a Class 5 Note issued on account of an Allowed SBI Secured Claim shall be junior to any Lien(s) securing any SBI Lender Secured Claim; (b) be pre-payable at any time without penalty; (c) be substantially in the form contained in the Plan Supplement; and (d) be determined by the Class 5 1111(b) Election Note Base Calculation, but allocated among the holders of Allowed SBI Secured Claims and Allowed SBI Lender Secured Claims as set forth in Section 3.2(e)(2)(A) to reflect Allowed Claim amounts, Lien priorities and other factors. For the avoidance of doubt, the Class 5 1111(b)(2) Election Note(s) shall only be provided if the required holders of Allowed SBI Secured Claims timely make an election pursuant to section 1111(b)(2) of the Bankruptcy Code to treat such claims as fully secured by the SBI Heat Treat Line Collateral.

35. “*Class 5 1111(b) Election Note Base Calculation*” means that, in the event the holders of Allowed SBI Secured Claims timely make an election pursuant to section 1111(b)(2) of the Bankruptcy Code, the terms of the promissory note(s) issued by New Opco in favor of all holders of Allowed Class 5 Claims as of the Effective Date shall be as follows (a) an original principal amount of \$12,600,000.00, (b) non-interest bearing, (c) a term of 140 months; and (d) full amortization over the term pursuant to a schedule of one-hundred forty (140) monthly payments of \$90,000 (which schedule of payments has a present value of approximately \$9.75 million based on a 4.75% interest rate).

36. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

37. “*Confirmation Date*” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

38. “*Confirmation Hearing*” means the hearing(s) before the Bankruptcy Court under section 1128 of the Bankruptcy Code at which the Debtors seek entry of the Confirmation Order.

39. “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code and approving the Disclosure Statement, which order shall be in form and substance satisfactory to the Required Lenders and the Debtors.

40. “*Consummation*” means the occurrence of the Effective Date.

41. “*Creditor*” has the meaning set forth in section 101(10) of the Bankruptcy Code.

42. “*Creditors Committee*” means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases.

43. “*Creditors Committee Professionals Budget*” means subsection (c)(ii) of the Professional Fee Payment Amount, which does not include services required to respond to or defend any discovery

requests, litigation or contested matters directed to the Creditors Committee Professionals or Creditors Committee members (solely in their capacities as members on the Creditors Committee). If such discovery requests are served or the Creditors Committee or Creditors Committee members are required to respond to a litigation or contested matter, the Creditors Committee shall notify the Debtors and the DIP Term Facility Agent, and the parties will consult in good faith to increase the Professional Fee Payment Amount to include such fees that are reasonable and necessary to respond to such requests, litigation or contested matter. If the parties are unable to reach an agreement, the parties will submit the matter to the Bankruptcy Court to determine a reasonable increase to the Professional Fee Payment Amount to allow the Creditors Committee Professionals to respond to the discovery requests, litigation or contested matter (and the amount determined by the Bankruptcy Court will be added to the Professional Fee Payment Amount). Further, the Creditors Committee Professionals will not be required to reconcile, object to or estimate claims, or file a substantive response to any confirmation objection, and if requested to do so by the Debtors or the DIP Term Facility Agent, the parties will consult in good faith to increase the Professional Fee Payment Amount to account for such work (and any such increase shall require the prior written approval of the DIP Term Facility Agent).

44. “*Cure*” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s defaults under an Executory Contract or an Unexpired Lease assumed by such Debtor under section 365 of the Bankruptcy Code, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

45. “*Debtor Contested Matters*” means any litigation, contested matter, or non-ordinary course activity related to the operation of the business or Confirmation of the Plan.

46. “*Debtor Professionals Budget*” means subsection (a)(ii) of the Professional Fee Payment Amount, which does not include services required to respond to or defend any Debtor Contested Matter. If such Debtor Contested Matter arises, the Debtors shall notify the DIP Term Facility Agent, and the parties will consult in good faith to increase the Professional Fee Payment Amount to include such fees and expenses that are reasonable and necessary for the Debtor Professionals to represent the Debtors with respect to such matters. If the parties are unable to reach an agreement, the Debtor Professionals Budget may only be increased upon order of the Bankruptcy Court.

47. “*Debtors*” means, collectively, each of Boomerang, BTCSP, LLC and BT Financing, Inc.

48. “*DIP ABL Facility*” means that certain \$85.0 million debtor-in-possession revolving credit facility under the DIP ABL Facility Loan Agreement.

49. “*DIP ABL Facility Agent*” means Wells Fargo Capital Finance, LLC, in its capacity as administrative and collateral agent (for the benefit of the DIP ABL Facility Lenders) pursuant to the terms of the DIP ABL Facility Documents, and any successor or replacement agent appointed pursuant to the terms of the DIP ABL Facility Loan Agreement.

50. “*DIP ABL Facility Claims*” means any Claim held by the DIP ABL Facility Lenders or the DIP ABL Facility Agent arising under or related to the DIP ABL Facility Documents.

51. “*DIP ABL Facility Documents*” means, collectively, the DIP ABL Facility Loan Agreement, the DIP ABL Facility Order, each other Loan Document (as defined in the DIP ABL Facility Loan Agreement), and all other agreements, documents, and instruments delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents).

52. “*DIP ABL Facility Lenders*” means those certain lenders party to the DIP ABL Facility Loan Agreement.

53. “*DIP ABL Facility Loan Agreement*” means that certain debtor-in-possession credit agreement, dated as of June 11, 2015 (as amended, restated, modified, or supplemented from time to time), by and among Boomerang, the DIP ABL Facility Agent, and the DIP ABL Facility Lenders from time to time party thereto.

54. “*DIP ABL Facility Order*” means, collectively, the interim and final orders entered by the Bankruptcy Court authorizing the Debtors, among other things, to enter into the DIP ABL Facility Documents and utilize the DIP ABL Facility.

55. “*DIP Budget*” means the “Approved Budget” as defined in the DIP Term Facility Order.

56. “*DIP Facility Claims*” means, collectively, DIP ABL Facility Claims and DIP Term Facility Claims.

57. “*DIP Term Facility*” means that certain \$60.0 million debtor-in-possession credit facility provided under the DIP Term Facility Loan Agreement.

58. “*DIP Term Facility Agent*” means Cortland Capital Market Services LLC.

59. “*DIP Term Facility Claims*” means any Claim held by the DIP Term Facility Lenders or the DIP Term Facility Agent arising under or related to the DIP Term Facility Loan Agreement or the DIP Term Facility Order.

60. “*DIP Term Facility Lenders*” means those certain lenders party to the DIP Term Facility Loan Agreement.

61. “*DIP Term Facility Loan Agreement*” means that certain debtor-in-possession credit agreement, dated as of June 11, 2015 (as amended, restated, modified, or supplemented from time to time), by and among Boomerang, the DIP Term Facility Agent, and the DIP Term Facility Lenders from time to time party thereto.

62. “*DIP Term Facility Order*” means, collectively, the interim and final orders entered by the Bankruptcy Court authorizing the Debtors, among other things, to enter into the DIP Term Facility Loan Agreement and access the DIP Term Facility.

63. “*Disclosure Statement*” means the disclosure statement for the Plan, as may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto, to be approved by the Confirmation Order.

64. “*Disputed*” means, as to a Claim or an Interest, a Claim or an Interest: (a) that is not Allowed; (b) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order, as applicable; and (c) with respect to which a party in interest has filed a Proof of Claim or otherwise made a written request to a Debtor for payment and for which the applicable deadline to object to such Proof of Claim has not expired.

65. “*Disputed Claims Reserve*” means the reserve fund(s) maintained pursuant to Section 6.1(a) of the Plan.

66. “*Distribution Agent*” means, as applicable, the Reorganized Debtors or any Entity that the Reorganized Debtors select to make or to facilitate distributions in accordance with the Plan.

67. “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Debtors or the Reorganized Debtors on or after the Effective Date, upon which the Distribution Agent shall make distributions to holders of Allowed Claims entitled to receive distributions under the Plan, subject to Section 7.5.

68. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Section 9.1 have been satisfied or waived in accordance with Section 9.2.

69. “*Eisenberg Party*” shall mean any of: (i) Gregg Eisenberg, (ii) any trust settled by Mr. Eisenberg (including, without limitation, the Gregg Eisenberg Revocable Living Trust), (iii) any current or former spouse, successor, heir, assign, of Mr. Eisenberg, and (iv) any entity, other than a publicly traded entity that is a Creditor of any Debtor, in which Mr. Eisenberg owns an interest or has a beneficial interest (but expressly excluding any Debtor or Reorganized Debtor).

70. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

71. “*Equity Security*” has the meaning set forth in section 101(16) of the Bankruptcy Code and includes, for the avoidance of doubt, membership interests, Boomerang Preferred Units, Boomerang Common Units, and Boomerang Other Equity Securities.

72. “*Estate*” means the estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor’s Chapter 11 Case.

73. “*Exculpated Party*” means each of the following, in its capacity as such: (a) each Debtor and Reorganized Debtor; (b) the Debtors’ current and former officers and directors; (c) the Creditors Committee and each of its members; and (d) each of the foregoing entities’ respective current and former: predecessors, successors and assigns, and members, limited partners, general partners, principals, partners, members, employees, agents, officers, directors, managers, trustees, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants, in each case solely in their capacity as such; provided that notwithstanding anything to the contrary in the Plan and for the avoidance of doubt, no Eisenberg Party shall be an “Exculpated Party” in any capacity.

74. “*Executory Contract*” means a contract or lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

75. “*Exit ABL Facility*” means a senior secured revolving credit facility under the Exit ABL Facility Loan Agreement.

76. “*Exit ABL Facility Agent*” means the administrative agent for the Exit ABL Facility.

77. “*Exit ABL Facility Documents*” means, collectively, the Exit ABL Facility Loan Agreement, the Exit Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, each other ancillary loan document specified in the Exit ABL Facility Loan Agreement, and all other agreements, documents, and instruments to be delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and

other security documents), each of which shall be satisfactory in form and substance to the Debtors, the Reorganized Debtors, the Majority Term Loan Lenders, and the Exit ABL Facility Lenders.

78. “*Exit ABL Facility Lender*” means each Lender (as defined in the Exit ABL Facility Loan Agreement) that is a party to the Exit ABL Facility Loan Agreement.

79. “*Exit ABL Facility Loan Agreement*” means the credit agreement by and among New Opco, as borrower, the lenders from time to time party thereto, and the Exit ABL Facility Agent, to be effective on the Effective Date, which agreement shall be satisfactory in form and substance to the Debtors, the Reorganized Debtors, the Majority Term Loan Lenders, the Majority Exit Term Facility Lenders, and the Exit ABL Facility Lenders.

80. “*Exit ABL Facility Loans*” means the loans under the Exit ABL Facility.

81. “*Exit Intercreditor Agreement*” means the intercreditor agreement by and among the Reorganized Debtors, the Exit ABL Facility Agent and the Exit Term Facility Agent, to be effective on the Effective Date, which agreement shall be (a) satisfactory in form and substance to the Debtors, the Reorganized Debtors, the Majority Term Loan Lenders, the Majority Exit Term Facility Lenders, the Exit ABL Facility Agent (with the consent of Exit ABL Facility Lenders as determined in accordance with the Exit ABL Facility terms), and the Exit Term Facility Agent (with the consent of the Majority Exit Term Facility Lenders) and (b) substantially in the form contained in the Plan Supplement.

82. “*Exit Term Facility*” means the senior secured term loan facility under the Exit Term Facility Loan Agreement.

83. “*Exit Term Facility Agent*” means Cortland Capital Market Services LLC.

84. “*Exit Term Facility Closing Fee*” means twenty percent (20%) of the New Holdco Common Stock to be issued to the Exit Term Facility Lenders (or their respective designated investment advisors, managers, affiliates, related funds or managed accounts).

85. “*Exit Term Facility Documents*” means, collectively, the Exit Term Facility Loan Agreement, the Exit Intercreditor Agreement, the Subordinated Notes Subordination Agreement, each other Loan Document (as defined in the Exit Term Facility Loan Agreement), and all other agreements, documents, and instruments to be delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents) each of which shall be (a) satisfactory in form and substance to the Debtors, the Reorganized Debtors, the Majority Term Loan Lenders, the Majority Exit Term Facility Lenders, and the Exit ABL Facility Lenders and (b) consistent in all respects with the Exit Term Facility Term Sheet.

86. “*Exit Term Facility Lender*” means each Lender (as defined in the Exit Term Facility Loan Agreement) that is a party to the Exit Term Facility Loan Agreement.

87. “*Exit Term Facility Loan Agreement*” means the credit agreement by and among New Opco, as borrower, the lenders from time to time party thereto, and the Exit Term Facility Agent, to be effective on the Effective Date, which agreement shall be (a) satisfactory in form and substance to the Debtors, the Reorganized Debtors, the Majority Term Loan Lenders, the Majority Exit Term Facility Lenders, and the Exit ABL Facility Lenders, (b) consistent in all respects with the Exit Term Facility Term Sheet, and (c) substantially in the form contained in the Plan Supplement.

88. “*Exit Term Facility Term Sheet*” means the Exit Term Facility Term Sheet attached as Exhibit C to the Disclosure Statement.

89. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

90. “*Final Order*” means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice.

91. “*General Unsecured Claim*” means any Claim other than an Administrative Claim, an Intercompany Claim, a Professional Claim, an Other Secured Claim, a Priority Tax Claim, an Other Priority Claim, an ABL Facility Claim, a Term Loan Facility Claim, a DIP Facility Claim, an SBI Lender Secured Claim, SBI Secured Claim, or a Section 510(b) Claim.

92. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

93. “*GUC Consideration*” means cash in the amount of \$2,250,000.

94. “*GUC Consideration Escrow Account*” shall mean an account established on or prior to the Effective Date for purposes of holding the GUC Consideration, which account and the funds therein shall be maintained exclusively for the benefit of holders of Allowed Class 6 General Unsecured Claims that are entitled to a distribution under the Plan and shall not constitute property of the Reorganized Debtors.

95. “*Impaired*” means, with respect to any Class of Claims or Interests, a Claim or an Interest that is not Unimpaired.

96. “*Indemnification Provisions*” means each of the Debtors’ indemnification provisions currently in place whether in the Debtors’ bylaws, certificates of incorporation, certificates of formation and operating agreements, board resolutions, or indemnification agreements or employment contracts for the current directors, officers, managers, and employees of the Debtors.

97. “*Initial Distribution Date*” means the date on which the Reorganized Debtors shall make their initial Distribution, which shall be a date selected by the Reorganized Debtors subject to Section 7.5.

98. “*Insider*” has the meaning set forth in section 101(31) of the Bankruptcy Code.

99. “*Intercompany Claim*” means any Claim held by a Debtor against another Debtor.

100. “*Intercompany Contract*” means a contract between or among two or more Debtors or a contract between or among one or more Affiliates and one or more Debtors.

101. “*Intercompany Interest*” means an Interest held by a Debtor with respect to any other Debtor.

102. “*Interest*” means any Equity Security of a Debtor existing immediately prior to the Effective Date.

103. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

104. “*Majority Exit Term Facility Lenders*” means Exit Term Facility Lenders who hold, in the aggregate, at least 50.1% of the principal amount of the total commitments under the Exit Term Facility as of such date the Majority Exit Term Facility Lenders make a determination in accordance with the Plan.

105. “*Majority Term Loan Lenders*” means Term Loan Lenders who hold, in the aggregate, at least 50.1% of the principal amount of the total outstanding loans under the Term Loan Agreement held by all Term Loan Lenders as of such date the Majority Term Loan Lenders make a determination in accordance with the Plan.

106. “*Majority Holder*” means Black Diamond Capital Management, L.L.C. (or a group of affiliated holders of, or holders under common control with, Black Diamond Capital Management, L.L.C.), in its capacity as holder of the majority of New Holdco Common Stock on the Effective Date.

107. “*Management Agreement*” means the Second Amended and Restated Management Consulting Agreement, dated as of June 8, 2015, by and between Boomerang and Access Tubulars, LLC.

108. “*New Board*” means New Holdco’s initial board of directors.

109. “*New Holdco*” means Boomerang Tube Holdings, Inc., a new corporation formed under the laws of the State of Delaware, the Reorganized Debtors’ ultimate parent company upon Consummation.

110. “*New Holdco Bylaws*” means the bylaws of New Holdco, substantially in the form contained in the Plan Supplement and satisfactory in form and substance to the Debtors and the Majority Term Loan Lenders.

111. “*New Holdco Certificate of Incorporation*” means the certificate of incorporation of New Holdco, substantially in the form contained in the Plan Supplement and satisfactory in form and substance to the Debtors and the Majority Term Loan Lenders.

112. “*New Holdco Common Stock*” means the common stock of New Holdco.

113. “*New Holdco Governance Documents*” means, as applicable, the New Holdco Certificate of Incorporation, the New Holdco Bylaws, and the New Holdco Shareholders Agreement.

114. “*New Holdco Shareholders Agreement*” means that certain shareholders agreement to be filed as part of the Plan Supplement, effective as of the Effective Date, to which all parties receiving New Holdco Common Stock (and all persons to whom such parties may sell or transfer their equity in the future and all persons who purchase or acquire equity from the Debtors in future transactions) will be required to become or will be deemed parties, in substantially the form included in the Plan Supplement, which agreement shall be in form and substance satisfactory to the Debtors and the Majority Term Loan Lenders.



115. "*New Opco*" means reorganized Boomerang, the direct parent company of each of reorganized BTCSP, LLC and BT Financing, Inc. upon Consummation.

116. "*New Opco Certificate of Formation*" means the amended and restated certificate of formation of New Opco, substantially in the form contained in the Plan Supplement and satisfactory in form and substance to the Debtors and the Majority Term Loan Lenders.

117. "*New Opco Common Units*" means the common units of New Opco.

118. "*New Opco Governance Documents*" means, as applicable, the New Opco Certificate of Formation and the New Opco LLC Agreement.

119. "*New Opco LLC Agreement*" means the limited liability company agreement of New Opco, substantially in the form contained in the Plan Supplement and satisfactory in form and substance to the Debtors and the Majority Term Loan Lenders.

120. "*Ombudsman*" means the Person designated by the Creditors Committee, which designation shall be reasonably satisfactory to the Debtors or Reorganized Debtors (as the case may be) and the DIP Term Facility Agent, who shall act as an advocate for all holders of Claims in Class 6 and whose fees and expenses, not to exceed a cap of \$50,000, shall be paid by the Reorganized Debtors. The Ombudsman shall have the duties set forth in Section 7.5 of the Plan and in the Plan Supplement.

121. "*Other Priority Claim*" means any Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than an Administrative Claim or a Priority Tax Claim.

122. "*Other Secured Claim*" means any Secured Claim other than the following: (a) an ABL Facility Claim; (b) a Term Loan Facility Claim; (c) a DIP Facility Claim; (d) an SBI Secured Claim; or (e) an SBI Lender Secured Claim. For the avoidance of doubt, "Other Secured Claims" includes any Claim arising under, derived from, or based upon any letter of credit issued in favor of one or more Debtors, the reimbursement obligation for which is either secured by a Lien on collateral or is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code that is lawfully exercised on or before the Confirmation Date or timely preserved in accordance with Section 6.5.

123. "*Person*" has the meaning set forth in section 101(41) of the Bankruptcy Code.

124. "*Petition Date*" means the date on which each of the Debtors filed their petitions for relief commencing the Chapter 11 Cases.

125. "*Plan*" means this chapter 11 plan, as it may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof, including the Plan Supplement and all exhibits, supplements, appendices, and schedules, which plan shall be in form and substance satisfactory to the Debtors and the Required Lenders.

126. "*Plan Supplement*" means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan, which shall be filed by the Debtors no later than ten (10) days before the Confirmation Hearing or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement, each of which shall be consistent in all respects with, and shall otherwise contain, the terms and conditions set forth on the exhibits attached hereto, where applicable, and, without limiting the foregoing, shall be satisfactory in form and

substance to the Required Lenders, the Debtors and (solely with respect to documentation related to the Ombudsman and GUC Consideration Escrow Account) the Creditors Committee, except to the extent otherwise expressly provided herein.

127. "*Plan Support Agreement*" means that certain Plan Support Agreement, dated as of June 8, 2015 (as amended, restated, modified, or supplemented from time to time), by and among the Debtors, the Term Loan Lenders, the ABL Facility Lenders, and the Sponsor, which was terminated effective as of November 11, 2015.

128. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

129. "*Professional*" means an Entity: (a) employed in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Effective Date pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code or (b) for which compensation and reimbursement has been Allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code. Solely for purposes of implementing the Professional Fee Payment Amount, Zolfo Cooper Management, LLC and Kevin Nystrom shall be deemed Professionals under this Plan.

130. "*Professional Claim*" means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code or payment of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under section 363 of the Bankruptcy Code.

131. "*Professional Fee Escrow Amount*" means the aggregate amount of unpaid Professional Claims and other unpaid fees and expenses Professionals estimate they have incurred or will incur in rendering services to the Debtors or the Estates prior to and as of the Effective Date, which estimates Professionals shall deliver to the Debtors as set forth in Section 2.3 herein, which, for the Professionals to which the Professional Fee Payment Amount applies, shall not exceed an amount equal to the Professional Fee Payment Amount minus any amounts paid on account of the Professional Claims of such Professionals prior to the Effective Date.

132. "*Professional Fee Escrow Account*" means an interest-bearing account funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Fee Escrow Amount for the purposes of satisfying Professional Claims, which account and the funds therein shall be maintained exclusively for the benefit of holder of Professional Claims and shall not constitute property of the Reorganized Debtors. The Reorganized Debtors shall have a reversionary interest in the Professional Fee Escrow Account solely to the extent of the funds therein that are in excess of the amounts that are sufficient to satisfy all Allowed Professional Claims.

133. "*Professional Fee Payment Amount*" shall mean an amount equal to: (a) for Debevoise & Plimpton LLP, Young Conaway Stargatt & Taylor, LLP, and Zolfo Cooper Management LLC and Kevin Nystrom, collectively, (i) \$5,344,000 for Allowed Professional Claims incurred from the Petition Date through and including November 30, 2015, plus (ii) an amount not to exceed \$1,000,000 for Allowed Professional Claims incurred from December 1, 2015 through and including January 31, 2016, which in each instance shall be allocated by agreement between the foregoing Professionals; (b) for Lazard Frères & Co. LLC, \$1,026,309; and (c) for Alvarez & Marsal North America, LLC, Brown Rudnick LLP, and Morris, Nichols, Arsht & Tunnell LLP, collectively, (i) \$3,256,000 for Allowed

Professional Claims incurred from the Petition Date through and including November 30, 2015, plus (ii) an amount not to exceed \$200,000 for Allowed Professional Claims incurred from December 1, 2015 through and including January 31, 2016, which in each instance shall be allocated pro rata among the foregoing Professionals; provided that the amounts in clauses (a)(ii) and (c)(ii) shall be intended for the limited scope of work described in the Debtor Professionals Budget and the Creditors Committee Professionals Budget, respectively, subject to adjustment by agreement between the affected Professionals and the DIP Term Facility Agent or by order of the Court.

134. "*Proof of Claim*" means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

135. "*Released Party*" means each of the following, in its capacity as such: (a) each Debtor and Reorganized Debtor; (b) the Debtors' current and former officers and directors; (c) the Term Loan Agent; (d) the Term Loan Lenders; (e) the ABL Facility Agent; (f) the ABL Facility Lenders; (g) the DIP Term Facility Agent; (h) the DIP Term Facility Lenders; (i) the DIP ABL Facility Agent; (j) the DIP ABL Facility Lenders; (k) the Sponsor; (l) the ABL Facility Guarantor; and (m) each of the foregoing entities' respective current and former: predecessors, successors and assigns, and stockholders, members, limited partners, general partners, equity holders, Affiliates and its and their subsidiaries, principals, partners, members, employees, agents, officers, directors, managers, trustees, professionals, representatives, advisors, attorneys, financial advisors, accountants, investment bankers, and consultants, in each case solely in their capacity as such; provided that notwithstanding anything to the contrary in the Plan and for the avoidance of doubt, no Eisenberg Party or SBI Party shall be a "Released Party" in any capacity. In addition, solely in each party's capacity as a member or professional to the Creditors Committee, (i) the members of the Creditors Committee (including their employees, officers, directors, agents and their professionals) and (ii) Creditors Committee Professionals, shall each be a Released Party.

136. "*Releasing Parties*" means each of the following in its capacity as such: (a) the Debtors' current officers and directors; (b) the Term Loan Agent; (c) holders of Term Loan Facility Claims; (d) the ABL Facility Agent, (e) holders of ABL Facility Claims; (f) the DIP ABL Facility Agent; (g) holders of DIP ABL Facility Claims; (h) the DIP Term Facility Agent; (i) holders of DIP Term Facility Claims; (j) the Sponsor; (k) the ABL Facility Guarantor; (l) without limiting the foregoing, each other holder of a Claim that is a member of a Class that is unimpaired and presumed to accept the Plan; and (m) with respect to each of the foregoing parties under (a) through (l), any successors or assigns thereof.

137. "*Reorganized Debtor*" means a Debtor, or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the Effective Date.

138. "*Required Lenders*" means, collectively, the ABL Lenders and the Majority Term Loan Lenders.

139. "*Restructuring Transactions*" means the transactions described in Section 4.17.

140. "*SBI*" means SB Boomerang Tubular, LLC.

141. "*SBI Financing Agreement*" means that certain Equipment Lease Agreement, dated as of February 18, 2011, by and between SBI and Boomerang, as subsequently amended, which was determined by the Bankruptcy Court to be a secured financing pursuant to its bench ruling made on November 9, 2015.

142. "*SBI Heat Treat Line Collateral*" means the heat treatment quench and temper equipment manufactured by F&D Furnaces, LLC, owned by Boomerang and installed at Boomerang's manufacturing facility in Liberty, Texas, as described more particularly in the SBI Financing Agreement.

143. "*SBI Lender*" means Wells Fargo Equipment Finance, Inc.

144. "*SBI Lender Financing Agreement*" means Equipment Schedule Series W No. 1 (but not any other schedules) to that certain Master Lease Agreement, dated as of September 12, 2011, by and between SBI and SBI Lender (the latter, as assignee of BB&T Equipment Finance Corporation).

145. "*SBI Lender Financing Agreement Payment Schedule*" means Exhibit A to Rider No. 3 To Equipment Schedule Series W No. 1 (but not any other schedules) to the SBI Lender Financing Agreement, dated as of August 1, 2012, by and between SBI and SBI Lender.

146. "*SBI Lender Secured Claim*" means the Claim against SBI arising under the SBI Lender Financing Agreement, to the extent such Claim is secured by a Lien in the SBI Heat Treat Line Collateral. The SBI Lender Secured Claim shall be Allowed in an amount to be determined by the Bankruptcy Court after notice and a hearing (which hearing may be the Confirmation Hearing) or as stipulated to by the Debtors or Reorganized Debtors and SBI, but not to exceed \$4,663,157.00 as of September 30, 2015.

147. "*SBI Parties*" shall mean any of: (a) SB Boomerang Tubular, LLC, Pinnacle Machine Works, LLC, CST Partners, LLC, SB American Tubulars, LLC, SB International, Inc., and SB Navitas Tubular Inc.; (b) any Affiliate of the entities listed in clause (a); and (c) any direct or indirect equity holder, agent, employee or Insider of the entities identified in clauses (a) or (b), including, without limitation, Arish Gupta, Satish Gupta, Yasmin Gupta, J.P. Wu, and any trust settled by the foregoing; *provided* that for the avoidance of doubt no Debtor or Released Party shall be considered an SBI Party.

148. "*SBI Secured Claim*" means the secured portion of a Claim(s) arising under the SBI Financing Agreement, which collectively shall be equal to \$9,750,000 minus the amount of the Allowed SBI Lender Secured Claim.

149. "*Schedules*" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs Filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

150. "*Section 510(b) Claim*" means any Claim against the Debtors arising from rescission of a purchase or sale of a security or Interest of the Debtors or an Affiliate of the Debtors, for damages arising from the purchase or sale of such a security or Interest, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such a Claim.

151. "*Secured Claim*" means a Claim: (a) secured by a Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code that is lawfully exercised on or before the Confirmation Date or timely preserved in accordance with Section 6.5.

152. "*Securities Act*" means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a-77aa, or any similar federal, state, or local law.

153. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

154. “*Servicer*” means an agent or other authorized representative of holders of Claims or Interests.

155. “*Solicitation Agent*” means Donlin, Recano & Company, Inc., the notice, claims, and solicitation agent retained by the Debtors in the Chapter 11 Cases by Bankruptcy Court order.

156. “*Sponsor*” means, collectively, Access Tubulars, LLC, Access Tubular Lender, LLC, and their respective affiliates, in any capacity, including, without limitation, in their respective capacities as holders of Boomerang Preferred Units, holders of Boomerang Common Units, Term Loan Lenders, Term DIP Facility Lenders, ABL Facility Guarantor and party to the Management Agreement.

157. “*Subordinated Notes*” means the \$55 million of subordinated secured notes of New Opco issued pursuant to the Subordinated Notes Agreement and guaranteed by the other Reorganized Debtors.

158. “*Subordinated Notes Agreement*” means the credit agreement by and among the Reorganized Debtors, as credit parties, the Subordinated Notes Facility Lenders party thereto, as lenders, and the Subordinated Notes Facility Agent, to be effective on the Effective Date, which agreement shall be (a) satisfactory in form and substance to the Debtors, the Majority Term Loan Lenders, the Majority Exit Term Facility Lenders, and the Exit ABL Facility Lenders, (b) consistent in all respects with the Subordinated Notes Facility Term Sheet, and (c) substantially in the form contained in the Plan Supplement.

159. “*Subordinated Notes Facility*” means the subordinated secured notes facility under the Subordinated Notes Agreement.

160. “*Subordinated Notes Facility Agent*” means Cortland Capital Market Services LLC.

161. “*Subordinated Notes Facility Documents*” means, collectively, the Subordinated Notes Agreement, each other Loan Document (as defined in the Subordinated Notes Agreement), and all other agreements, documents, and instruments to be delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents), each of which shall be (a) satisfactory in form and substance to the Debtors, the Majority Term Loan Lenders, the Majority Exit Term Facility Lenders, and the Exit ABL Facility Lenders, and (b) consistent in all respects with the description of the Subordinated Notes Facility in the Subordinated Notes Facility Term Sheet.

162. “*Subordinated Notes Facility Lender*” means each Lender (as defined in the Subordinated Notes Agreement) that is a party to the Subordinated Notes Agreement.

163. “*Subordinated Notes Facility Term Sheet*” means the Subordinated Notes Facility Term Sheet attached as Exhibit D to the Disclosure Statement.

164. “*Subordinated Notes Intercreditor Agreement*” means the subordination and intercreditor agreement by and among the Reorganized Debtors, the Exit ABL Facility Agent, the Exit Term Facility Agent and the Subordinated Notes Facility Agent, to be effective on the Effective Date, which agreement shall be (a) satisfactory in form and substance to the Debtors, the Reorganized Debtors, the Majority Term Loan Lenders, the Exit ABL Facility Agent (with the consent of Exit ABL Facility Lenders as determined in accordance with the Exit ABL Facility terms), and the Exit Term

Facility Agent (with the consent of Majority Exit Term Facility Lenders), and (b) substantially in the form contained in the Plan Supplement.

165. “*Term Loan Agent*” means the Cortland Capital Market Services LLC, in its capacity as administrative agent pursuant to the Term Loan Facility Documents, and its successors, assigns or any replacement agent appointed pursuant to the terms of the Term Loan Agreement.

166. “*Term Loan Agreement*” means the Credit Agreement, dated October 11, 2012 (as amended, restated, modified, or supplemented from time to time prior to the Petition Date), by and among Boomerang, as borrower, the various lenders from time to time party thereto and the Term Loan Agent.

167. “*Term Loan Facility*” means the senior secured term loan facility under the Term Loan Agreement.

168. “*Term Loan Facility Claim*” means any Claim arising under, derived from, or based upon the Term Loan Facility Documents.

169. “*Term Loan Facility Documents*” means, collectively, the Term Loan Agreement, each other Loan Document (as defined in the Term Loan Agreement), and all other agreements, documents, and instruments delivered or entered into in connection therewith (including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents).

170. “*Term Loan Lenders*” means each Lender (as defined in the Term Loan Agreement) that is a party to the Term Loan Agreement.

171. “*Transaction*” means the Debtors’ recapitalization and restructuring.

172. “*Unclaimed Distribution*” means any distribution under the Plan on account of an Allowed Claim to a holder that has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Reorganized Debtors of an intent to accept a particular distribution; (c) responded to the Debtors’ or Reorganized Debtors’ requests for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

173. “*Unexpired Lease*” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

174. “*Unimpaired*” means a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code, after giving effect to the limitations on allowance of claims as set forth in section 502 of the Bankruptcy Code.

## **1.2. Rules of Interpretation**

For purposes of the Plan: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (b) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) unless

otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (d) unless otherwise specified, all references herein to "Articles" and "Sections" are references to Articles and Sections, respectively, hereof or hereto; (e) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to any particular portion of the Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (g) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (i) references to docket numbers of documents filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (j) references to "Proofs of Claim," "Holders of Claims," "Disputed Claims," and the like shall include "Proofs of Interest," "Holders of Interests," "Disputed Interests," and the like as applicable; (k) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company laws; and (l) any immaterial effectuating provisions may be interpreted by the Debtors or the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

### **1.3. Computation of Time**

Bankruptcy Rule 9006(a) applies in computing any period of time prescribed or allowed herein.

### **1.4. Governing Law**

Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to conflict of laws principles.

### **1.5. Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

### **1.6. Reference to the Debtors or the Reorganized Debtors**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors mean the Debtors and the Reorganized Debtors, as applicable, to the extent that the context requires.

### **1.7. Controlling Document**

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and the Plan Supplement, the Plan shall control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

## **ARTICLE II**

### **ADMINISTRATIVE AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims, Professional Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims set forth in ARTICLE III.

#### **2.1. Administrative Claims**

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors, in consultation with the Required Lenders, or the Reorganized Debtors, as applicable, each holder of an Allowed Administrative Claim (other than holders of Professional Claims, which are subject to Section 2.3 of the Plan, and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim either: (a) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due and payable, when such Allowed Administrative Claim is due and payable or as soon as reasonably practicable thereafter); (b) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order Allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (c) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim, without any further action by the holders of such Allowed Administrative Claim; (d) at such time and upon such terms as may be agreed upon by such holder and the Debtors or the Reorganized Debtors, as applicable; or (e) at such time and upon such terms as set forth in an order of the Bankruptcy Court. The U.S. Trustee's right to object to Administrative Claims is reserved.

#### **2.2. DIP Facility Claims**

##### **(1) DIP ABL Facility Claims**

Except to the extent that a holder of a DIP ABL Facility Claim agrees to less favorable treatment, on the Effective Date, each holder of a DIP ABL Facility Claim shall either (a) if the identities of the Exit ABL Facility Agent and Exit ABL Facility Lenders are, respectively, the same as those of the DIP ABL Facility Agent and DIP ABL Facility Lenders, receive its pro rata share (based on the aggregate commitments of the Exit ABL Facility Lenders under the DIP ABL Facility and the ABL Facility) of interests in the Exit ABL Facility Loans and the Exit ABL Facility Documents, or (b) if the identities of the Exit ABL Facility Agent and Exit ABL Facility Lenders are not, respectively, the same as those of the DIP ABL Facility Agent and DIP ABL Facility Lenders, receive Cash in an amount sufficient to pay in full all accrued, and collateralize all contingent, obligations and other amounts owed in accordance with the terms of the DIP ABL Facility Documents.

##### **(2) DIP Term Facility Claims**

Except to the extent that a holder of a DIP Term Facility Claim agrees to less favorable treatment, on the Effective Date, each holder of a DIP Term Facility Claim shall receive Cash in an amount equal to the Allowed amount of such DIP Term Facility Claim.



### **2.3. Professional Claims**

All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date must be filed no later than thirty (30) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. None of the Debtors, Reorganized Debtors, Term Loan Lenders, Term Loan Agent, DIP Term Facility Lenders, DIP Term Facility Agent, Exit Term Facility Lenders, Exit Term Facility Agent, ABL Facility Lenders, ABL Facility Agent, DIP ABL Facility Lenders, DIP ABL Facility Agent, Exit ABL Facility Lenders, Exit ABL Facility Agent, the Creditors Committee or any Professionals of the foregoing shall object to any Professional Claims that comprise the Professional Fee Payment Amount. The U.S. Trustee's right to object to Professional Claims is reserved.

On the Effective Date, or within ten (10) days of their allowance for Professional Claims not Allowed as of the Effective Date (or authorized to be paid pursuant to any interim compensation order entered by the Bankruptcy Court), the Reorganized Debtors shall disburse Cash from the Professional Fee Escrow Account to pay Professional Claims in the amount Allowed by the Bankruptcy Court (or authorized to be paid pursuant to any interim compensation order entered by the Bankruptcy Court), but not to exceed the applicable Professional Fee Payment Amount *less* any amounts paid on account of Professional Claims prior to the Effective Date. The Debtors shall establish the Professional Fee Escrow Account in trust for the Professionals and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount on or prior to the Effective Date. Professionals shall deliver to the Debtors their estimates for purposes of the Reorganized Debtors computing the Professional Fee Escrow Amount no later than five (5) Business Days prior to the anticipated Effective Date. For the avoidance of doubt, no such estimate shall be deemed to limit the amount of the fees and expenses that are the subject of a Professional's final request for payment of Professional Claims filed with the Bankruptcy Court. If a Professional does not provide an estimate, the Debtors may estimate the unpaid and unbilled fees and expenses of such Professional. No funds in the Professional Fee Escrow Account shall be property of the Estates or the Reorganized Debtors nor shall be subject to any Lien. Any funds remaining in the Professional Fee Escrow Account after all Allowed Professional Claims have been paid (subject to the Professional Fee Payment Amount) will be turned over to New Opco.

From and after the Effective Date, (i) any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and (ii) the Debtors or the Reorganized Debtors, as applicable, may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

### **2.4. Priority Tax Claims**

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim, or any portion thereof, due and payable on or before the Effective Date shall receive on the Effective Date, or as soon as practicable thereafter, from the respective Debtor liable for such Allowed Priority Tax Claim, payment in Cash in an amount equal to the amount of such Allowed Priority Tax Claim, or the portion thereof that is then due and payable. To the extent that any Allowed Priority Tax Claim, or any portion thereof, is not due and payable on the Effective Date, such Claim, or portion of such Claim, shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law, or in the ordinary course of business.

## ARTICLE III

### CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS

#### 3.1. Classification of Claims and Interests

The Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in ARTICLE II, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

Below is a chart assigning each Class a number for purposes of identifying each separate Class.

| Class | Claim or Interest                 | Status     | Voting Rights      |
|-------|-----------------------------------|------------|--------------------|
| 1     | Other Secured Claims              | Unimpaired | Presumed to Accept |
| 2     | Other Priority Claims             | Unimpaired | Presumed to Accept |
| 3     | ABL Facility Claims               | Impaired   | Entitled to Vote   |
| 4     | Term Loan Facility Claims         | Impaired   | Entitled to Vote   |
| 5     | Heat Treat Line Secured Claims    | Impaired   | Entitled to Vote   |
| 6     | General Unsecured Claims          | Impaired   | Entitled to Vote   |
| 7     | Intercompany Claims               | Unimpaired | Presumed to Accept |
| 8     | Intercompany Interests            | Unimpaired | Presumed to Accept |
| 9     | Boomerang Preferred Units         | Impaired   | Deemed to Reject   |
| 10    | Boomerang Common Units            | Impaired   | Deemed to Reject   |
| 11    | Boomerang Other Equity Securities | Impaired   | Deemed to Reject   |
| 12    | Section 510(b) Claims             | Impaired   | Deemed to Reject   |

#### 3.2. Treatment of Classes of Claims and Interests

Except to the extent that the Debtors or the Reorganized Debtors, as applicable, and a holder of an Allowed Claim or Interest, as applicable, agree to a less favorable or other treatment, such holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such holder's Allowed Claim or Interest. Unless otherwise indicated or as agreed by the Debtors or the Reorganized Debtors, as applicable, and a holder of an Allowed Claim or Interest, the holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on, or as soon as practicable after, the latest of (i) the Effective Date, (ii) the date on which such Allowed Claim or Interest becomes Allowed, or (iii) the date on which such Allowed Claim or Interest becomes due and payable in the ordinary course of business or pursuant to the terms established by the Debtors and the holder thereof.

##### (a) **Class 1 — Other Secured Claims**

- (1) *Classification:* Class 1 consists of any Other Secured Claims against any Debtor.

- (2) *Treatment:* Upon Allowance, each holder of an Allowed Class 1 Claim shall receive, as the Debtors or the Reorganized Debtors, as applicable, determine:
- A. reinstatement, or such other treatment, such that its Allowed Class 1 Claim is rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code;
  - B. payment in full in Cash of its Allowed Class 1 Claim;
  - C. the collateral (or proceeds thereof, to the extent of the value of such holder's interest in such collateral) securing its Allowed Class 1 Claim and any interest required to be paid pursuant to section 506(b) of the Bankruptcy Code; or
  - D. such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code.
- (3) *Voting:* Class 1 is Unimpaired. Holders of Allowed Class 1 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 1 Claims are not entitled to vote to accept or reject the Plan.

(b) **Class 2 — Other Priority Claims**

- (1) *Classification:* Class 2 consists of any Other Priority Claims against any Debtor.
- (2) *Treatment:* Each holder of an Allowed Class 2 Claim shall receive reinstatement, or such other treatment, such that its Allowed Class 2 Claim is rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.
- (3) *Voting:* Class 2 is Unimpaired. Holders of Allowed Class 2 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the Plan.

(c) **Class 3 — ABL Facility Claims**

- (1) *Classification:* Class 3 consists of any ABL Facility Claims.
- (2) *Allowance:* On the Effective Date, all Class 3 Claims not previously determined to be Allowed pursuant to the DIP ABL Facility Order, or otherwise, shall be deemed Allowed in an amount equal to the then-existing obligations of the Debtors under the ABL Facility Documents.
- (3) *Treatment:* Each holder of an Allowed Class 3 Claim shall release the ABL Facility Limited Sponsor Guaranty and shall:
- A. receive payment in full in Cash of all unpaid amounts allowable as part of such holder's Class 3 Claim under section 506(b) of the Bankruptcy Code; and

- B. if the identities of the Exit ABL Facility Agent and Exit ABL Facility Lenders are, respectively, the same as those of the ABL Facility Agent and ABL Facility Lenders, receive its pro rata share (based on the aggregate commitments of the Exit ABL Facility Lenders under the DIP ABL Facility and the ABL Facility) of interests in the Exit ABL Facility Loans and the Exit ABL Facility Documents; or
    - C. if the identities of the Exit ABL Facility Agent and Exit ABL Facility Lenders are not, respectively, the same as those of the ABL Facility Agent and ABL Facility Lenders, receive Cash in an amount sufficient to pay in full all accrued, and collateralize all contingent, obligations and other amounts owed in accordance with the terms of the ABL Facility Documents.
  - (4) *Voting:* Class 3 is Impaired. Holders of Allowed Class 3 Claims are entitled to vote to accept or reject the Plan.
- (d) **Class 4 — Term Loan Facility Claims**
- (1) *Classification:* Class 4 consists of any Term Loan Facility Claims.
  - (2) *Allowance:* On the Effective Date, Class 4 Claims shall be Allowed in the aggregate principal amount of not less than \$214,000,000, plus any accrued but unpaid interest thereon payable at the applicable non-default interest rate in accordance with the Term Loan Agreement.
  - (3) *Treatment:*
    - A. Each holder of an Allowed Class 4 Claim (or its designated investment advisor, manager, affiliate, related fund or managed account) shall receive:
      - 1. its pro rata share of one hundred percent (100%) of the New Holdco Common Stock (subject to dilution for (x) issuances of equity under a management incentive plan not to exceed five percent (5%) of the total outstanding equity of New Holdco, and (y) by the Exit Term Facility Closing Fee); and
      - 2. its pro rata share of one hundred percent (100%) of the Subordinated Notes; and
    - B. the Term Loan Agent shall receive payment in full in Cash of all outstanding professional fees and expenses payable to or incurred by the Term Loan Agent under and pursuant to the Term Loan Facility Documents.
  - (4) *Voting:* Class 4 is Impaired. Holders of Allowed Class 4 Claims are entitled to vote to accept or reject the Plan.

(e) **Class 5 – Heat Treat Line Secured Claims**

- (1) *Classification:* Class 5 consists of SBI Secured Claims and SBI Lender Secured Claims against Boomerang, and Class 5 shall be deemed a separate sub-Class with respect to each holder of an Allowed Class 5 Claim.
- (2) *Treatment:* Upon the Effective Date, each holder of an Allowed Class 5 Claim shall receive, at the Reorganized Debtors' election, one of the following treatments under the Plan:
  - A. **Class 5 Note Option:** The holders of the Class 5 Notes shall be subject to the following payment waterfall using the Debtors' maximum aggregate monthly payment obligations based on the Class 5 Note Base Calculation (*i.e.*, \$136,663.00 per month):
    1. First, a Class 5 Note shall be issued to the SBI Lender in the principal amount of the Allowed SBI Lender Secured Claim with monthly payments to be made equal to, but not exceeding, the SBI Lender Financing Agreement Payment Schedule (*i.e.*, \$108,740.00 per month) from the Effective Date through June 1, 2019 in accordance with the SBI Lender Financing Agreement Payment Schedule.
    2. Second, a Class 5 Note shall be issued to SBI in the principal amount of the Allowed SBI Secured Claim with monthly payments to be made equal to, but not exceeding, the difference between (i) the monthly payment amount paid in any month under the Class 5 Note issued to SBI Lender and (ii) the monthly payment amount under the Class 5 Note Base Calculation.

For the avoidance of doubt, issuance of the Class 5 Note to the holder(s) of SBI Lender Secured Claims shall also be deemed to satisfy SBI Secured Claims in the principal amount of such SBI Lender Note(s).

**OR**

- B. **Class 5 1111(b) Election Note Option:** The holders of the Class 5 1111(b) Election Notes shall be subject to the following payment waterfall using the Debtors' maximum aggregate monthly payment obligations based on the Class 5 1111(b) Election Note Base Calculation (*i.e.*, \$90,000.00 per month):
  1. First, a Class 5 1111(b) Election Note shall be issued to the SBI Lender in the principal amount of the Allowed SBI Lender Secured Claim with monthly payments to be made up to, but not exceeding, the Class 5 1111(b) Election Note Base Calculation amount (*i.e.*, \$90,000.00 per month) from the Effective Date through the date that the SBI Lender shall have received payments with a present value equal to the Allowed SBI Lender Secured Claim based on a 4.75% interest rate.

2. Second, a Class 5 1111(b) Election Note shall be issued to SBI with monthly payments to be made equal to, but not exceeding, the difference between (i) the monthly payment amount paid in any month under the Class 5 1111(b) Election Note issued to SBI Lender and (ii) the monthly payment amount under the Class 5 1111(b) Election Note Base Calculation; *provided that*, monthly payments may not commence until after the satisfaction of the SBI Lender Class 5 1111(b) Election Note.

For the avoidance of doubt, issuance of the Class 5 1111(b) Election Note to the holder(s) of SBI Lender Secured Claims shall also be deemed to satisfy SBI Secured Claims in the principal amount of such Class 5 1111(b) Election Note(s).

**OR**

- C. Abandonment of the SBI Heat Treat Line Collateral. The Reorganized Debtors shall abandon the SBI Heat Treat Line Collateral.

**OR**

- D. Such other treatment as the Debtors or Reorganized Debtors, as applicable, agree with the holder of an Allowed Class 5 Claim.

- (3) *Voting*: Class 5 is Impaired. Allowed Class 5 Claims are entitled to vote to accept or reject the Plan.

**(f) Class 6 — General Unsecured Claims**

- (1) *Classification*: Class 6 consists of any General Unsecured Claims against any Debtor.
- (2) *Treatment*: Each holder of an Allowed General Unsecured Claim shall receive its pro rata share of the GUC Consideration.
- (3) *Voting*: Class 6 is Impaired. Allowed Class 6 Claims are entitled to vote to accept or reject the Plan.

**(g) Class 7 — Intercompany Claims**

- (1) *Classification*: Class 7 consists of any Intercompany Claims.
- (2) *Treatment*: Each holder of an Allowed Class 7 Claim shall have its Allowed Class 7 Claim:
  - A. reinstated such that it is rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code; or
  - B. cancelled and discharged, as mutually agreed by such holder and the Debtors or the Reorganized Debtors, as applicable.

- (3) *Voting:* Class 7 is Unimpaired. Holders of Allowed Class 7 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 7 Claims are not entitled to vote to accept or reject the Plan.

(h) **Class 8 — Intercompany Interests**

- (1) *Classification:* Class 8 consists of any Intercompany Interests.
- (2) *Treatment:* Each holder of an Allowed Class 8 Interest shall have its Allowed Class 8 Interest left unaltered and rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.
- (3) *Voting:* Class 8 is Unimpaired. Holders of Allowed Class 8 Interests are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Class 8 Interests are not entitled to vote to accept or reject the Plan.

(i) **Class 9 — Boomerang Preferred Units**

- (1) *Classification:* Class 9 consists of any Interests arising under or related to the Boomerang Preferred Units.
- (2) *Treatment:* Class 9 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and holders of Class 9 Interests will not receive any distribution on account of such Class 9 Interests.
- (3) *Voting:* Class 9 is Impaired. Holders of Interests in Class 9 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

(j) **Class 10 — Boomerang Common Units**

- (1) *Classification:* Class 10 consists of any Interests arising under or related to the Boomerang Common Units.
- (2) *Treatment:* Class 10 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and holders of Class 10 Interests will not receive any distribution on account of such Class 10 Interests.
- (3) *Voting:* Class 10 is Impaired. Holders of Interests in Class 10 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

(k) **Class 11 — Boomerang Other Equity Securities**

- (1) *Classification:* Class 11 consists of any Interests arising under or related to the Boomerang Other Equity Securities.

- (2) *Treatment:* Class 11 Interests will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and holders of Class 11 Interests will not receive any distribution on account of such Class 11 Interests.
- (3) *Voting:* Class 11 is Impaired. Holders of Interests in Class 11 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject the Plan.

(l) **Class 12 — Section 510(b) Claims**

- (1) *Classification:* Class 12 consists of any Section 510(b) Claims against any Debtor.
- (2) *Allowance:* Notwithstanding anything to the contrary herein, a Class 12 Claim, if any such Claim exists, may only become Allowed by Final Order of the Bankruptcy Court. The Debtors are not aware of any valid Class 12 Claim and believe that no such Class 12 Claim exists.
- (3) *Treatment:* Allowed Class 12 Claims, if any, shall be discharged, canceled, released, and extinguished as of the Effective Date, and shall be of no further force or effect, and holders of Allowed Section 510(b) Claims shall not receive any distribution on account of such Allowed Section 510(b) Claims.
- (4) *Voting:* Class 12 is Impaired. Holders (if any) of Allowed Class 12 Claims are conclusively deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Holders (if any) of Allowed Class 12 Claims are not entitled to vote to accept or reject the Plan.

**3.3. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

**3.4. Elimination of Vacant Classes**

Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date 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 pursuant to section 1129(a)(8) of the Bankruptcy Code.

**3.5. Voting Classes; Presumed Acceptance by Non-Voting Classes**

If a Class contains Claims or Interests eligible to vote and no holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Debtors shall request the Bankruptcy Court to deem the Plan accepted by the holders of such Claims or Interests in such Class.



**3.6. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code**

The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors, with the consent of the Required Lenders, reserve the right to modify the Plan in accordance with ARTICLE X hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

**ARTICLE IV**

**PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

**4.1. General Settlement of Claims and Interests**

Unless otherwise set forth in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims and Interests.

**4.2. New Holdco Common Stock and New Opco Common Units**

All existing Equity Securities in Boomerang shall be cancelled as of the Effective Date, and no distribution under the Plan shall be made on account of such Equity Securities. On the Effective Date, (a) New Holdco shall issue New Holdco Common Stock to holders of Class 4 Claims entitled to receive New Holdco Common Stock pursuant to the Plan, and (b) New Opco shall issue one hundred percent (100%) of the New Opco Common Units to New Holdco. The issuance of New Holdco Common Stock and the New Opco Common Units, including, to the extent set forth herein, any options for the purchase thereof and equity awards associated therewith, are authorized without the need for any further corporate action and without any further action by the Debtors, New Holdco or New Opco, as applicable. The New Holdco Governance Documents shall authorize the issuance and distribution on the Effective Date of New Holdco Common Stock to the Distribution Agent for the benefit of holders of Allowed Claims in Class 4 as provided herein. The New Opco Governance Documents shall authorize the issuance and distribution on the Effective Date of New Opco Common Units to New Holdco. All New Holdco Common Stock and New Opco Common Units issued under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. The holders of New Holdco Common Stock and New Opco Common Units shall execute and become parties to the New Holdco Shareholders Agreement and the New Opco LLC Agreement, respectively (in their capacity as shareholders of New Holdco and unit holders of New Opco, respectively) as a condition to receiving their distributions under the Plan. All participants in the management incentive plan shall execute a joinder to the new Holdco Shareholders Agreement. The New Holdco Shareholders Agreement and the New Opco LLC Agreement shall be adopted on the Effective Date and shall be deemed to be valid, binding, and enforceable in accordance with their respective terms, and each holder of New Holdco Common Stock and New Opco Common Units (as applicable) shall be bound thereby.

**4.3. Exit ABL Facility**

The Reorganized Debtors may choose to enter into the Exit ABL Facility on the Effective Date, subject to the consent of the Majority Term Loan Lenders. In such event, on the Effective Date, the Reorganized Debtors shall execute and deliver the Exit ABL Facility Loan Documents, which shall

become effective and enforceable in accordance with their terms and the Plan. Confirmation of the Plan shall provide for and be deemed to approve of the Exit ABL Facility and the Exit ABL Facility Documents, and all transactions contemplated thereby, including, without limitation, any supplemental or additional syndication of the Exit ABL Facility, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein, and authorization of the Reorganized Debtors to enter into and execute the Exit ABL Facility Documents and such other documents as may be required to effectuate the treatment afforded by the Exit ABL Facility. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit ABL Facility Documents (a) shall be deemed to be approved, (b) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit ABL Facility Documents, (c) shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted to be senior to the Liens in favor of the Exit ABL Facility Agent under the Exit ABL Facility Documents, and (d) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the persons and entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties. On and after the Effective Date, the relative Lien, payment, and enforcement priorities of (i) the Exit ABL Facility and the Exit Term Facility shall be governed by the terms of the Exit Intercreditor Agreement, and (ii) the Exit ABL Facility, the Exit Term Facility and the Subordinated Notes Facility shall be governed by the terms of the Subordinated Notes Intercreditor Agreement.

#### **4.4. Exit Term Facility**

On the Effective Date, the Reorganized Debtors shall execute and deliver the Exit Term Facility Loan Documents, which shall become effective and enforceable in accordance with their terms and the Plan. Confirmation of the Plan shall provide for and be deemed to approve of the Exit Term Facility and the Exit Term Facility Documents, and all transactions contemplated thereby, including, without limitation, any supplemental or additional syndication of the Exit Term Facility, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein, and authorization of the Reorganized Debtors to enter into and execute the Exit Term Facility Documents and such other documents as may be required to effectuate the treatment afforded by the Exit Term Facility. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Term Facility Documents (a) shall be deemed to be approved, (b) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Term Facility Documents, (c) shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Term Facility Documents, and (d) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the persons and entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that

would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties. On and after the Effective Date, the relative Lien, payment, and enforcement priorities of (i) the Exit Term Facility and the Exit ABL Facility shall be governed by the terms of the Exit Intercreditor Agreement, and (ii) the Exit Term Facility, the Exit ABL Facility and the Subordinated Notes Facility shall be governed by the terms of the Subordinated Notes Intercreditor Agreement.

#### **4.5. Subordinated Notes**

On the Effective Date, the Reorganized Debtors shall execute and deliver the Subordinated Notes Facility Loan Documents, which shall become effective and enforceable in accordance with their terms and the Plan. Confirmation of the Plan shall provide for and be deemed to approve of the Subordinated Notes Facility and the Subordinated Notes Facility Documents, and all transactions contemplated thereby, including, without limitation, the issuance of the Subordinated Notes, any supplemental or additional syndication of the Subordinated Notes Facility, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein, and authorization of the Reorganized Debtors to enter into and execute the Subordinated Notes Facility Documents and such other documents as may be required to effectuate the treatment afforded by the Subordinated Notes Facility. On the Effective Date, all of the Liens and security interests to be granted in accordance with the Subordinated Notes Facility Documents (a) shall be deemed to be approved, (b) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Subordinated Notes Facility Documents, (c) shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Subordinated Notes Facility Documents, and (d) shall not be subject to recharacterization or equitable subordination for any purposes whatsoever and shall not constitute preferential transfers or fraudulent conveyances under the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtors and the persons and entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties. On and after the Effective Date, the relative Lien, payment, and enforcement priorities of the Subordinated Notes Facility, the Exit ABL Facility and the Exit Term Facility shall be governed by the terms of the Subordinated Notes Intercreditor Agreement.

#### **4.6. Exemption from Registration Requirements**

The offering, issuance, and distribution of any Securities, including New Holdco Common Stock and the New Opco Common Units, pursuant to the Plan will be exempt from the registration requirements of section 5 of the Securities Act pursuant to section 1145 of the Bankruptcy Code or any other available exemption from registration under the Securities Act, as applicable. Pursuant to section 1145 of the Bankruptcy Code, New Holdco Common Stock and New Opco Common Units issued under the Plan will be freely transferable under the Securities Act by the recipients thereof, subject to: (a) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an "underwriter" in section 2(a)(11) of the Securities Act and compliance with applicable federal, state or foreign securities laws, if

any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such Securities or instruments; (b) the restrictions, if any, on the transferability of such Securities and instruments in the New Holdco Shareholders Agreement; and (c) any other applicable regulatory approval.

#### **4.7. Subordination**

Except as set forth herein, the allowance, classification, and treatment of all Claims and Interests under the Plan shall conform to and be consistent with the respective contractual, legal, and equitable subordination rights of such Claims and Interests, and the Plan shall recognize and implement any such rights. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Reorganized Debtors reserve the right to re-classify any Allowed Claim or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

#### **4.8. Vesting of Assets in the Reorganized Debtors**

Except as otherwise provided herein, or in any agreement, instrument, or other document incorporated in the Plan (including, without limitation, the Exit ABL Facility Documents, the Exit Term Facility Documents and the Subordinated Notes Facility Documents, as applicable), on the Effective Date, all property in each Debtor's Estate (including, for the avoidance of doubt, the SBI Heat Treat Line Collateral unless abandoned prior to the Effective Date pursuant to Section 3.2(e)(2)(C) of the Plan), all Causes of Action, and any property acquired by any of the Debtors under the Plan shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided herein, each Reorganized Debtor may operate its business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

For the avoidance of doubt, no funds in the GUC Consideration Escrow Account (or any Disputed Claims Reserve funded from the GUC Consideration) shall be property of the Estates or the Reorganized Debtors, or subject to any Lien, upon the occurrence of the Effective Date, and such funds shall be distributed to the holders of Allowed General Unsecured Claims in accordance with the provisions of the Plan.

Additionally, for the avoidance of doubt, no funds in the Professional Fee Escrow Account shall be property of the Estates or the Reorganized Debtors, or subject to any Lien, upon the occurrence of the Effective Date, and such funds shall be distributed to the holders of Professional Claims in accordance with the provisions of the Plan.

#### **4.9. Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the Effective Date, except to the extent otherwise provided herein, all notes, instruments, Certificates, and other documents evidencing Claims or Interests shall be cancelled and the obligations of the Debtors or the Reorganized Debtors; *provided, however*, that notwithstanding Confirmation or the occurrence of the Effective Date, any credit document or agreement that governs the rights of the holder of a Claim or Interest shall continue in effect (a) solely for purposes of allowing holders of Allowed Claims to receive distributions under the Plan, (b) solely for purposes of allowing and preserving the rights of the Term Loan Agent and any Servicer, as applicable, to make distributions on account of Allowed Claims as provided herein, and (c) with respect to the rights of such holders and obligations that expressly survive the termination thereof. In addition, on the Effective Date, the ABL Facility Sponsor

Guaranty shall be cancelled and the obligations of the ABL Facility Guarantor thereunder or in any way related thereto shall be released.

#### **4.10. Corporate Action**

Each of the matters provided for by the Plan involving the corporate structure of New Holdco, the Debtors or corporate or related actions to be taken by or required of the Reorganized Debtors, whether taken prior to or as of the Effective Date, shall be deemed authorized and approved in all respects without the need for any further corporate action and without any further action by New Holdco, the Debtors or the Reorganized Debtors, as applicable. Such actions may include: (a) the adoption and filing of the New Holdco Certificate of Incorporation and the New Opco Certificate of Formation; (b) the adoption of the New Holdco Bylaws and the New Holdco Shareholders Agreement; (c) the execution of the New Opco LLC Agreement; (d) the selection of the directors, managers, and officers for New Holdco and the Reorganized Debtors, including the appointment of the New Board; (e) the authorization, issuance, and distribution of the New Holdco Common Stock, the Subordinated Notes and the New Opco Common Units; (f) the adoption, assumption, or rejection, as applicable, of Executory Contracts or Unexpired Leases; and (g) the entry into the Exit Term Facility, the Exit ABL Facility and the Subordinated Notes Facility and the execution and delivery of the Exit Term Facility Documents, the Exit ABL Facility Documents and the Subordinated Notes Facility Documents, as and to the extent applicable.

#### **4.11. Charters and Organizational Documents**

The New Holdco Certificate of Incorporation and the New Holdco Bylaws shall be consistent with the provisions of the Plan and the Bankruptcy Code, and such documents and agreements shall be consistent in all respects with, and shall otherwise contain, the terms and conditions set forth on the exhibits hereto. The New Holdco Governance Documents shall, among other things: (a) authorize the issuance of the New Holdco Common Stock; and (b) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting Equity Securities. After the Effective Date, New Holdco may amend and restate its certificate of incorporation and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of such documents.

The Debtors' respective certificates of incorporation and bylaws (and other formation and constituent documents relating to limited liability companies) shall be amended as may be required to be consistent with the provisions of the Plan, the Exit Term Facility Documents, as applicable, the Exit ABL Facility Documents, as applicable, the Subordinated Notes Facility Documents, as applicable, and the Bankruptcy Code, and such documents and agreements shall be consistent in all respects with, and shall otherwise contain, the terms and conditions set forth on the exhibits hereto. The New Opco Governance Documents shall, among other things: (a) authorize the issuance of the New Opco Common Units and the Subordinated Notes; and (b) pursuant to and only to the extent required by section 1123(a)(6) of the Bankruptcy Code, include a provision prohibiting the issuance of non-voting Equity Securities. After the Effective Date, each Reorganized Debtor may amend and restate its certificate of incorporation and other formation and constituent documents as permitted by the laws of its respective jurisdiction of formation and the terms of such documents.

#### **4.12. Effectuating Documents; Further Transactions**

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the boards of directors and managers thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and

conditions of the Plan, the Exit Term Facility Documents, as applicable, the Exit ABL Facility Documents, as applicable, the Subordinated Notes Facility Documents, as applicable, and the Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

#### **4.13. Section 1146(a) Exemption**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan, including: (a) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in New Holdco, the Debtors or the Reorganized Debtors; (b) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; (d) the grant of collateral as security for any or all of the Exit Term Facility or the Exit ABL Facility, as applicable; or (e) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### **4.14. Directors and Officers**

The members of the New Board and the officers, directors, and/or managers of each of the Reorganized Debtors and New Holdco will be identified in the Plan Supplement and the members of the board of directors of any subsidiary of the Reorganized Debtors shall be satisfactory to the Majority Term Loan Lenders. The members of Boomerang's board of directors shall be deemed to have resigned as of the Effective Date. On the Effective Date, the New Board will consist of seven (7) members, (i) one (1) of whom will be New Holdco's chief executive officer (once appointed), (ii) four (4) of whom will be appointed initially by the Majority Holder, (iii) one (1) of whom will be appointed initially by the second largest holder (including any affiliated holder or holders under common control with respect to such holder) of New Holdco Common Stock on the Effective Date, and (iv) one (1) of whom will be appointed initially by the holders of a majority of the New Holdco Common Stock on the Effective Date other than the two largest holders (including, with respect to each such holder, any affiliated holder or holders under common control with respect to such holder) of the New Holdco Common Stock. On the Effective Date, the existing officers of the Debtors shall serve in their current capacities for the Reorganized Debtors. From and after the Effective Date, each director, officer, or manager of New Holdco and the Reorganized Debtors shall serve pursuant to the terms of their respective charters and bylaws or other formation and constituent documents, and applicable laws of the applicable jurisdiction of formation. In accordance with section 1129(a)(5) of the Bankruptcy Code, the identities and affiliations of the proposed members of the New Board and any Person proposed to serve as an officer of New Holdco shall be disclosed at or before the Confirmation Hearing.

In connection with the Transaction, the Debtors shall secure tail liability coverage for a period of six (6) years for the Debtors' directors and officers effective as of the Effective Date that is consistent with the existing directors' and officers' liability coverage.

#### **4.15. Incentive Plans and Employee and Retiree Benefits**

Except as otherwise provided herein, on and after the Effective Date, subject to any Final Order, and without limiting any authority provided to the New Board under the Debtors' respective certificates of incorporation, bylaws and other formation and constituent documents, the Reorganized Debtors shall: (a) amend, adopt, assume and/or honor in the ordinary course of business, any contracts, agreements, policies, programs, and plans, in accordance with their respective terms, for, among other things, compensation, including any incentive plans, health care benefits, disability benefits, deferred compensation benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance, and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity from and after the Petition Date; and (b) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising prior to the Petition Date and not otherwise paid pursuant to a Bankruptcy Court order. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

#### **4.16. Preservation of Rights of Action and Covenant Not to Sue**

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided herein.** Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

Subject to Section 8.2 of the Plan, the Reorganized Debtors reserve and shall retain all Causes of Action. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

The Reorganized Debtors covenant and agree not to bring, and upon the Effective Date shall waive and release, any Avoidance Action against any party except for the Eisenberg Parties and SBI Parties.

#### **4.17. Restructuring Transactions**

On the Effective Date, the Debtors, with the consent of the Required Lenders, or the Reorganized Debtors, as applicable, may enter into the following transactions and take any actions as may be necessary or appropriate to effect a corporate restructuring of their respective businesses or a corporate restructuring of the overall corporate structure of the Reorganized Debtors, as and to the extent provided therein. The Restructuring Transactions may include one or more intercompany mergers, consolidations, amalgamations, arrangements, continuances, restructurings, conversions, dissolutions, transfers, liquidations, or other corporate transactions as may be determined by the Debtors, with the consent of the Required Lenders, or the Reorganized Debtors, as applicable, to be necessary or appropriate. The actions to effect the Restructuring Transactions may include: (a) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (c) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable state law; and (d) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions.

#### **4.18. Certain Released Party Actions and Plan Settlement Implementation Provisions**

##### **(a) Sponsor Actions**

The consideration for inclusion of the Sponsor as a "Released Party" under the Plan includes, among other things, and as a condition to approval of inclusion of the Sponsor as a "Released Party," the following: (i) conditioned upon the occurrence of the Effective Date, on or prior to the Effective Date, the Sponsor shall pay \$500,000 to the Reorganized Debtors for the sole purpose of paying employee-related obligations (either existing obligations of the Debtors or future obligations of the Reorganized Debtors), as determined (x) by the Debtors' Chief Restructuring Officer or (y) if he ceases to serve as the Chief Restructuring Officer, by the Reorganized Debtors, (ii) upon the Effective Date, the Sponsor shall waive any General Unsecured Claims that it holds (as well as any right to receive any distributions from the GUC Consideration on account of such Claims), and (iii) the Sponsor has consented to its inclusion in the "Releasing Parties" under the Plan.

##### **(b) Officer Actions**

As partial consideration for his inclusion as a "Released Party" under the Plan and as a condition to approval of his inclusion as a "Released Party," (i) upon the Effective Date, Sudhakar Kanthamneni shall waive any General Unsecured Claims that he holds (as well as any right to receive any distributions from the GUC Consideration on account of such Claims), and (ii) Mr. Kanthamneni has consented to his inclusion in the "Releasing Parties" under the Plan.



(c) Creditors Committee's and its Members' Covenant

The Creditors Committee and its counsel and the members of the Creditors Committee and their counsel shall not seek any substantial contribution fee award or request any fee enhancement, success fee or any other similar amounts, and no such amounts shall be Allowed.

**ARTICLE V**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**5.1. Assumption of Executory Contracts and Unexpired Leases**

Except as otherwise provided herein, or in any contract, instrument, release, indenture or other agreement or document entered into in connection with the Plan, each of the Debtors' Executory Contracts and Unexpired Leases shall be deemed rejected as of the Effective Date, unless such Executory Contract or Unexpired Lease: (1) was assumed or rejected previously by the Debtors; (2) previously expired or terminated pursuant to its own terms; (3) is the subject of a motion to assume or reject filed on or before the Effective Date; or (4) is identified as an Executory Contract or Unexpired Lease to be assumed pursuant to the Plan Supplement before the Effective Date.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan, all pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, all assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall revert in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by such order. Notwithstanding anything to the contrary in the Plan, the Debtors or the Reorganized Debtors, as applicable, reserve the right to alter, amend, modify or supplement the list of Executory Contracts and Unexpired Leases identified in the Plan Supplement at any time before the Effective Date. Any alteration, amendment, modification or supplement to the list of Executory Contracts and Unexpired Leases identified for assumption in the Plan Supplement shall be agreed to by the Majority Term Loan Lenders. After the Effective Date, the Reorganized Debtors shall have the right to terminate, amend or modify any intercompany contracts, leases or other agreements without approval of the Bankruptcy Court.

**5.2. Claims Based on Rejection of Executory Contracts and Unexpired Leases**

All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed with the Bankruptcy Court no later than 30 days after entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claim were not timely filed as set forth in the immediately preceding sentence shall be automatically disallowed, forever barred from assertion and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order or approval of the Bankruptcy Court.** All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be deemed General Unsecured Claims and classified as Class 6 against the appropriate Debtor. The deadline to object to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, as the later of (a) 90 days following the date on which such Claim was filed and (b) such other period

of limitations as may be specifically fixed by an order of the Bankruptcy Court for objecting to such Claims.

### **5.3. Indemnification**

On and as of the Effective Date, the Indemnification Provisions will be assumed and irrevocable and will survive the effectiveness of the Plan, and the Reorganized Debtors' governance documents will provide for the indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses to the Debtors' and the Reorganized Debtors' current directors, officers, and employees at least to the same extent as the organizational documents of each of the respective Debtors on the Petition Date, against any claims or Causes of Action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted, and none of the Reorganized Debtors will amend and/or restate their respective governance documents before the Effective Date to terminate or adversely affect any of the Reorganized Debtors' obligations to provide such indemnification rights or such directors', officers', or employees' rights. For the avoidance of doubt, on and as of the Effective Date, the obligations of the Debtors set forth in the Management Agreement will be assumed and irrevocable and will survive the effectiveness of the Plan.

### **5.4. Cure of Defaults and Objections to Cure and Assumption**

The Debtors or the Reorganized Debtors, as applicable, shall pay Cures, if any, on the Effective Date or as soon as practicable thereafter. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, any objection to the assumption (or assumption and assignment) of an Executory Contract or Unexpired Lease under the Plan, including without limitation any objection to any Cure paid or proposed to be paid by the Debtors or the Reorganized Debtors, must be filed with the Bankruptcy Court on the date that is no more than 14 days from the filing and service of a notice designating such Executory Contract or Unexpired Lease for assumption (or assumption and assignment). Any objection to a proposed Cure that is not timely filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the Cure; *provided, however*, that nothing in the Plan shall prevent the Reorganized Debtors from paying any Cure despite the failure of the relevant counterparty to file such request for payment of such Cure. The Reorganized Debtors also may settle any Cure without any further notice to or action, order, or approval of the Bankruptcy Court. Any such timely filed objection will be scheduled to be heard by the Bankruptcy Court on the Confirmation Date or, at the discretion of the Debtors' or Reorganized Debtors', as applicable, at a subsequent omnibus hearing date. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption (or assumption and assignment) of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption (or assumption and assignment).

If there is a dispute regarding Cure, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of Cure shall occur as soon as practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors or the Reorganized Debtors, as applicable, and the counterparty to the Executory Contract or Unexpired Lease.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court.

**5.5. Contracts, Intercompany Contracts, and Leases Entered Into After the Petition Date**

Contracts, Intercompany Contracts, and leases entered into after the Petition Date by any Debtor and any Executory Contracts and Unexpired Leases assumed by any Debtor may be performed by the applicable Reorganized Debtor in the ordinary course of business.

**5.6. Reservation of Rights**

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors or any other party that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption, the Debtors or the Reorganized Debtors, as applicable, shall have forty-five (45) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

## **ARTICLE VI**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

**6.1. Distributions on Account of Claims Allowed as of the Effective Date**

**(a) Delivery of Distributions in General**

Except as otherwise provided herein, a Final Order, or as otherwise agreed to by the Debtors or the Reorganized Debtors, as the case may be, and the holder of the applicable Claim, on the first Distribution Date, the Distribution Agent shall make initial distributions under the Plan on account of Claims and Interests Allowed on or before the Effective Date, subject to the Reorganized Debtors' right to object to Claims and Interests, and subject to the establishment of appropriate reserves for Disputed Claims in any class receiving a distribution as of such Distribution Date; *provided, however*, that (1) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, and (2) Allowed Priority Tax Claims shall be paid in accordance with Section 2.4. To the extent that any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business. The timing of each Distribution Date shall be determined in the Reorganized Debtors' discretion subject to Section 7.5.

(b) **Disputed Claims Reserve**

On the Initial Distribution Date, and after making all Distributions required to be made on such date under the Plan, the Reorganized Debtors shall establish a separate Disputed Claims Reserve for Disputed Claims, which Disputed Claims Reserve shall be administered by the Reorganized Debtors. The Reorganized Debtors shall reserve in Cash or other property, for Distribution on account of each Disputed Claim, the pro rata amount that such Disputed Claim would be entitled to receive under the Plan if it were to become an Allowed Claim in its respective Class (or such lesser amount as may be determined by the Reorganized Debtors and the holder of such Disputed Claim or by the Bankruptcy Court in accordance with Article VII hereof). Any Disputed Claims Reserve(s) established for holders of Disputed General Unsecured Claims shall remain in the GUC Consideration Escrow Account and shall be treated as a "sub-class" within the GUC Consideration Escrow Account.

**6.2. Special Rules for Distributions to Holders of Disputed Claims**

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the relevant parties no partial payments and no partial distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order. Any dividends or other distributions arising from property distributed to holders of Allowed Claims, as applicable, in a Class and paid to such holders under the Plan shall also be paid, in the applicable amounts, to any holder of a Disputed Claim, as applicable, in such Class that becomes an Allowed Claim after the date or dates that such dividends or other distributions were earlier paid to holders of Allowed Claims in such Class.

**6.3. Delivery of Distributions**

(a) **Record Date for Distributions to Holders of Non-Publicly Traded Securities**

On the Effective Date, the Claims Register shall be closed and the Distribution Agent shall be authorized and entitled to recognize only those record holders, if any, listed on the Claims Register as of the Effective Date; *provided* that nothing set forth in this sentence shall be construed as extending the Bar Date applicable to any holder of a Claim. Notwithstanding the foregoing, if a Claim or Interest, other than one based on a publicly traded Certificate, is transferred and the Debtors have been notified in writing of such transfer less than ten (10) days before the Effective Date, the Distribution Agent shall make distributions to the transferee (rather than the transferor) only to the extent practical and in any event only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

(b) **Distribution Process**

The Distribution Agent shall make all distributions required under the Plan, except that distributions to holders of Allowed Claims or Interests governed by a separate agreement and administered by a Servicer shall be deposited with the appropriate Servicer, at which time such distributions shall be deemed complete, and the Servicer shall deliver such distributions in accordance with the Plan and the terms of the governing agreement. Except as otherwise provided herein, and notwithstanding any authority to the contrary, distributions to holders of Allowed Claims, including Claims that become Allowed after the Effective Date, shall be made to holders of record as of the Effective Date by the Distribution Agent or a Servicer, as appropriate: (i) to the address of such holder as set forth in the books and records of the applicable Debtor (or if the Debtors have been notified in writing, on or before the date that is ten (10) days before the Effective Date, of a change of address, to the changed address; the filing of a Proof of Claim shall satisfy such notice requirement); (ii) in accordance with

Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004, if no address exists in the Debtors books and records, no Proof of Claim has been filed and the Distribution Agent has not received a written notice of a change of address on or before the date that is ten (10) days before the Effective Date; or (iii) on any counsel that has appeared in the Chapter 11 Cases on the holder's behalf. Notwithstanding anything to the contrary in the Plan, including this Section 6.3, distributions under the Plan to holders of Term Loan Facility Claims shall be made to, or to Entities at the direction of, the Term Loan Agent in accordance with the terms of the Plan and the Term Loan Agreement. The Debtors, the Reorganized Debtors, and the Distribution Agent, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan. In addition, notwithstanding anything to contrary contained herein, including this Section 6.3, distributions under the Plan to holders of publicly traded securities shall be made in accordance with customary distribution procedures applicable to such securities.

**(c) Accrual of Dividends and Other Rights**

For purposes of determining the accrual of distributions or other rights after the Effective Date, the New Holdco Common Stock and New Opco Common Units shall be deemed distributed as of the Effective Date regardless of the date on which they are actually issued, dated, authenticated, or distributed; *provided, however*, none of New Holdco or the Reorganized Debtors shall pay any such distributions or distribute such other rights, if any, until after distributions of the New Holdco Common Stock or New Opco Common Units, as applicable, actually take place.

**(d) Compliance Matters**

In connection with the Plan, to the extent applicable, the Reorganized Debtors and the Distribution Agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors and the Distribution Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

**(e) Foreign Currency Exchange Rate**

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

**(f) Fractional, Undeliverable, Unclaimed, and De Minimis Distributions**

- (1) *Fractional Distributions.* Whenever any distribution of fractional shares of New Holdco Common Stock or New Opco Common Units would otherwise be required pursuant to the Plan, the actual distribution shall reflect a rounding of such fraction to the nearest share (up or down), with half shares or less being rounded down. Whenever any payment of Cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the actual payment shall reflect a

rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down.

- (2) *Undeliverable Distributions.* If any distribution to a holder of an Allowed Claim is returned to the Distribution Agent as undeliverable, no further distributions shall be made to such holder unless and until the Distribution Agent is notified in writing of such holder's then-current address or other necessary information for delivery, at which time all currently due missed distributions shall be made to such holder on the next Distribution Date. Undeliverable distributions shall remain in the possession of the Reorganized Debtors, until such time as a distribution becomes deliverable, or such distribution reverts to the Reorganized Debtors or to holders of Allowed General Unsecured Claims, or is cancelled pursuant to Section 6.3(f)(4), and shall not be supplemented with any interest, dividends, or other accruals of any kind.
- (3) *De Minimis Distributions.* The Reorganized Debtors shall not be required to make any distribution to a Holder of a Claim if the total amount to be distributed on account of its Allowed Claims is less than \$25.00 (the "Distribution Threshold"). Any amounts that would be distributed to the holder of an Allowed Claim that are, in the aggregate, less than the Distribution Threshold shall be retained in the Disputed Claims Reserve until such time as the aggregate distributions to be made on account of such Claim are equal to or exceed the Distribution Threshold. If, at the time that final distributions are made to holders of a class of Claims, the total distribution to which a holder is entitled does not exceed the Distribution Threshold, the funds on account of such claim shall revert to the Reorganized Debtors or to holders of Allowed General Unsecured Claims in accordance with Section 6.3(f)(4).
- (4) *Reversion/Redistribution.* Any distribution under the Plan that is an Unclaimed Distribution for a period of six months after distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert in the applicable Reorganized Debtor; *provided that*, to the extent such Unclaimed Distribution is on account of an Allowed General Unsecured Claim, such Unclaimed Distribution shall be distributed pro rata to all other holders of Allowed General Unsecured Claims entitled to a distribution in accordance with the Plan. To the extent that such Unclaimed Distribution is New Holdco Common Stock or New Opco Common Units, shall be deemed cancelled. Upon such revesting, the Claim of any holder or its successors with respect to such property shall be cancelled, discharged, and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws, or any provisions in any document governing the distribution that is an Unclaimed Distribution, to the contrary.

**(g) Surrender of Cancelled Instruments or Securities**

On the Effective Date, each holder of a Certificate shall be deemed to have surrendered such Certificate to the Distribution Agent or a Servicer (to the extent that the relevant Claim or Interest is governed by an agreement and administered by a Servicer). Notwithstanding the foregoing paragraph, this Section 6.3(g) shall not apply to any Claims and Interests reinstated pursuant to the terms of the Plan.

**6.4. Claims Paid or Payable by Third Parties****(a) Claims Paid by Third Parties**

A Claim shall be reduced in full, and such Claim shall be disallowed without an objection to such Claim having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or a Reorganized Debtor. To the extent that a holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such holder shall repay, return or deliver any distribution held by or transferred to the holder to the applicable Reorganized Debtor to the extent that the holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

**(b) Claims Payable by Insurance Carriers**

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be expunged to the extent of any agreed upon satisfaction on the Claims Register by the Solicitation Agent without a Claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

**(c) Applicability of Insurance Policies**

Except as otherwise provided herein, distributions to holders of Allowed Claims shall be in accordance with the provisions of an applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**6.5. Setoffs**

Except with respect to the Term Loan Facility Claims, ABL Facility Claims, DIP Facility Claims, or as otherwise expressly provided for herein, each Reorganized Debtor, pursuant to the Bankruptcy Code (including sections 553 and 558 of the Bankruptcy Code), applicable non-bankruptcy law, or as may be agreed to by the holder of a Claim, may set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), any Claims, rights, and Causes of Action of any nature that such Debtor or Reorganized Debtor, as applicable, may hold against the holder of such Allowed Claim, to the extent that such Claims, rights, or Causes of Action against such holder have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan or otherwise); *provided, however*, that neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action that such Reorganized Debtor may possess against such holder. In no event shall any holder of Claims be entitled to set off any Claim against any Claim, right, or Cause of Action of the Debtor or Reorganized Debtor, as applicable, unless such holder has (i) filed a motion with the Bankruptcy Court requesting the authority to perform such setoff on or before the Confirmation Date or (ii) asserted the

right to effectuate such set off in a Proof of Claim that has been filed before the Bar Date applicable to such holder.

#### **6.6. Allocation Between Principal and Accrued Interest**

Except as otherwise provided herein, for U.S. federal income tax purposes, the aggregate consideration paid to holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to the interest, if any, on such Allowed Claim accrued through the Effective Date.

### **ARTICLE VII**

#### **PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS**

##### **7.1. Disputed Claims Process**

Except as otherwise provided herein, if a party files a Proof of Claim and the Debtors or the Reorganized Debtors do not determine, and without the need for notice to or action, order, or approval of the Bankruptcy Court, that the Claim subject to such Proof of Claim is Allowed, such Claim shall be Disputed unless Allowed or disallowed by a Final Order or as otherwise set forth in this ARTICLE VII. Except as otherwise provided herein, all Proofs of Claim filed after the Effective Date shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court *provided* that nothing set forth in this sentence shall be construed as extending the Bar Date applicable to any holder of a Claim.

##### **7.2. Prosecution and Resolution of Objections to Claims and Interests**

Except insofar as a Claim or Interest is Allowed under the Plan, the Debtors, the Reorganized Debtors, or any other party in interest shall be entitled to object to the Claim or Interest. Any objections to Claims and Interests shall be served and filed on or before the 90th day after the Effective Date or by such later date as ordered by the Bankruptcy Court. All Claims and Interests not objected to by the end of such 90-day period shall be deemed Allowed unless such period is extended upon approval of the Bankruptcy Court; *provided* that, notwithstanding the foregoing, Professional Claims shall be subject to Allowance only by order of the Bankruptcy Court; *provided further* that, the Reorganized Debtors may deem Claims and Interests Allowed by agreement with the holder of such Claim or Interest or by notice to the Bankruptcy Court prior to the expiration of the 90-day period.

For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses each Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Section 4.16, which, for the avoidance of doubt, exclude any Avoidance Actions against any party other than the Eisenberg Parties and SBI Parties. From and after the Effective Date, the Reorganized Debtors, shall be permitted to resolve, compromise, or settle the amount of any Claim asserted in these cases or objection to any such Claim (in each instance, excluding Professional Claims) without the need for further Bankruptcy Court order.

##### **7.3. No Interest**

Unless otherwise specifically provided for herein or by order of the Bankruptcy Court, no postpetition interest, penalties, or other fees shall accrue or be paid on Claims, and no holder of a Claim shall be entitled to any interest, penalties, or other fees accruing on or after the Petition Date on any Claim



or right. Additionally, and without limiting the foregoing, no interest, penalties, or other fees shall accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

#### **7.4. Disallowance of Claims and Interests**

All Claims and Interests of any Entity that is the subject of an Avoidance Action that is preserved under this Plan, which, for the avoidance of doubt, are limited to Avoidance Actions against the Eisenberg Parties and SBI Parties, and brought after the Effective Date shall be disallowed if: (a) the Entity, on the one hand, and the Debtors or the Reorganized Debtors, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (b) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

#### **7.5. Ombudsman**

As set forth herein and in the Plan Supplement, the Ombudsman shall have the right and duty to, among other things, (a) monitor the prosecution and resolution of Disputed General Unsecured Claims, (b) resolve any disputes concerning Distributions to holders of Allowed General Unsecured Claims including the timing of any Initial Distribution Date or subsequent Distribution Date solely with respect to General Unsecured Claims, (c) consent to any alternative treatment provided to holders of Class 6 Claims, and (d) pursue remedies of other protections to ensure the provisions of ARTICLES VI and VII and the treatment afforded to holders of Allowed General Unsecured Claims are adhered to, as may be appropriate. In the event a consensual resolution of any issues raised by the Ombudsman cannot be reached, the Ombudsman may seek a determination from the Bankruptcy Court of any such dispute, including as to the filing of motions on behalf of and representing holders of such General Unsecured Claims in court. The fees and expenses of the Ombudsman to be paid by the Reorganized Debtors shall not exceed \$50,000.

### **ARTICLE VIII**

#### **EFFECT OF CONFIRMATION OF THE PLAN**

##### **8.1. Discharge of Claims and Termination of Interests**

Except as otherwise provided for herein and effective as of the Effective Date: (a) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their assets, property, or Estates; (b) the Plan shall bind all holders of Claims and Interests, notwithstanding whether any such holders failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (d) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

## 8.2. Releases by the Debtors

Notwithstanding anything contained in the Plan to the contrary, on the Confirmation Date and effective as of the Effective Date, for the good and valuable consideration provided by each of the Released Parties, the adequacy of which is hereby confirmed, including: (1) the settlement, release, and compromise of debt, Causes of Action, Claims, and Interests, (2) the services of the Debtors' present and former officers, directors, managers, and advisors in facilitating the implementation of the restructuring contemplated herein, and (3) the good faith negotiation of, and participation in, the restructuring contemplated herein, each of the Debtors, the Reorganized Debtors, and the Estates conclusively, absolutely, unconditionally, irrevocably, and forever discharge and release and shall be deemed to have provided a full discharge and release to each Released Party (and each such Released Party so released shall be deemed fully released and discharged by the Debtors, the Reorganized Debtors, and the Estates) and their respective property from any and all Claims, obligations, debts, rights, suits, damages, Causes of Action, Avoidance Actions (other than Avoidance Actions against the Eisenberg Parties and SBI Parties), remedies, and liabilities whatsoever, including any derivative Claims asserted or which could be asserted on behalf of the Debtors and/or the Reorganized Debtors, whether known or unknown, foreseen or unforeseen, existing or arising, in law, equity, or otherwise, that the Debtors, the Reorganized Debtors, the Estates, or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Reorganized Debtors, the Transaction, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, negligence, gross negligence, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Management Agreement, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents; *provided, however*, that the foregoing "Debtor Release" shall not operate to waive or release any Claims, obligations, debts, rights, suits, damages remedies, Causes of Action, and liabilities in respect of any Released Party solely to the extent arising under the Plan Support Agreement, the Plan, or any agreements entered into pursuant to the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan, *and further*, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims released by the Debtor Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release.

## 8.3. Releases by Holders of Claims and Interests

Notwithstanding anything contained in the Plan to the contrary (except as set forth in Section 8.8 below), on the Confirmation Date and effective as of immediately following the occurrence of the Effective Date, the Releasing Parties (regardless of whether a Releasing Party is a

Released Party) conclusively, absolutely, unconditionally, irrevocably, and forever discharge and release (and each Entity so discharged and released shall be deemed discharged and released by the Releasing Parties) the Released Parties and their respective property from any and all Claims, Interests, obligations, debts, rights, suits, damages, Causes of Action, Avoidance Actions (other than Avoidance Actions against the Eisenberg Parties and SBI Parties), remedies, and liabilities whatsoever, including any derivative Claims asserted or which could be asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, existing or arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Reorganized Debtors, the Transaction, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, any payments, distributions, or dividends any Debtor or Affiliate paid to or received from any Released Party, fraudulent or preferential transfer or conveyance, tort, contract, breach of fiduciary duty, violation of state or federal laws, including securities laws, negligence, gross negligence, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents; *provided, however*, that the foregoing "Third-Party Release" shall not operate to waive or release any Claims, obligations, debts, rights, suits, damages, remedies, Causes of Action, and liabilities in respect of any Released Party, solely to the extent (1) arising under any agreements entered into pursuant to the Plan, (2) with respect to Claims by Professionals related to Professionals' final fee applications or accrued Professional compensation claims in the Chapter 11 Cases, or (3) arising under (i) any Indemnification Provision or (ii) any indemnification provision contained in the Management Agreement.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained herein, *and, further*, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims released by the Third-Party Release; (3) in the best interests of the Debtors and all holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any claim or Cause of Action released pursuant to the Third-Party Release.

#### 8.4. Exculpation

Notwithstanding anything contained herein to the contrary, the Exculpated Parties shall neither have, nor incur any liability to any Entity for any postpetition act taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, or implementing the Plan, or consummating the Plan, the Plan Support Agreement, the Disclosure Statement, the Plan Supplement, the New Holdco Governance Documents, the New Opco Governance Documents, the Exit Term Facility Documents, the Exit ABL Facility Documents, the Subordinated Notes Facility Documents, the Transaction, the issuance, distribution, and/or sale of any shares of New Holdco Common Stock, the New Opco Common Units, or any other security offered, issued, or distributed in connection with the Plan, the Chapter 11 Cases, or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors; *provided, however*, that

each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her, or its duties pursuant to, or in connection with, the Plan or any other related document, instrument, or agreement; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Entity solely to the extent resulting from any such act or omission that is determined in a final order to have constituted gross negligence or willful misconduct; *provided, further*, that the foregoing "Exculpation" shall have no effect on the liability of any Entity for acts or omissions occurring after the Confirmation Date.

#### **8.5. Injunction**

Except as otherwise provided herein or for obligations issued pursuant hereto, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to Section 8.2 or Section 8.3, discharged pursuant to Section 8.1, or are subject to exculpation pursuant to Section 8.4 are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff (except where timely preserved under Section 6.5) or subrogation of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released, exculpated, or settled pursuant to the Plan.

#### **8.6. Protection Against Discriminatory Treatment**

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor, or any Entity with which a Reorganized Debtor has been or is associated, solely because such Reorganized Debtor was a Debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

#### **8.7. Release of Liens**

Except (a) with respect to the Liens securing (i) the DIP Term Facility to the extent set forth in the Exit Term Facility Documents, (ii) the ABL Facility and the DIP ABL Facility to the extent set forth in the Exit ABL Facility Documents, and (iii) the Other Secured Claims (depending on the treatment of such Claims), or (b) as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and the holders of such mortgages, deeds of trust, Liens, pledges, or other security interests shall execute such documents as may be reasonably requested by the Debtors or the Reorganized Debtors, as applicable, to reflect or effectuate such releases, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtor and its successors and assigns.

**8.8. Reimbursement or Contribution**

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (a) such Claim has been adjudicated as noncontingent, or (b) the relevant holder of a Claim has filed a noncontingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

**8.9. Compromise and Settlement**

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests and controversies relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim, or any distribution made on account of such Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates and holders of Claims and Interests, and is fair, equitable and reasonable. In accordance with and subject to the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against them and Causes of Action against other Entities.

**ARTICLE IX****CONDITIONS PRECEDENT TO THE EFFECTIVE DATE****9.1. Conditions Precedent to the Effective Date.**

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Section 9.2:

- (a) the Confirmation Order shall be a Final Order and shall not have been stayed, modified, or vacated on appeal;
- (b) all respective conditions precedent to consummation of the Exit ABL Facility Loan Agreement shall have been waived or satisfied in accordance with the terms thereof;
- (c) all respective conditions precedent to consummation of the Exit Term Facility Credit Agreement shall have been waived or satisfied in accordance with the terms thereof;
- (d) all respective conditions precedent to consummation of the Subordinated Notes Agreement shall have been waived or satisfied in accordance with the terms thereof;
- (e) the Professional Fee Escrow Account shall have been established and funded with the Professional Fee Escrow Amount;
- (f) payment in full in Cash of all reasonable and documented fees and expenses of the Term Loan Agent and certain Term Loan Lenders incurred by the following advisors to the Term Loan Agent and certain Term Loan Lenders under the Term Loan Facility Documents: (i) King & Spalding LLP; (ii) Skadden, Arps, Slate, Meagher & Flom LLP;

(iii) FTI Consulting, Inc. as set forth in that certain letter of engagement dated as of March 27, 2015, by and between King & Spalding LLP and FTI Consulting, Inc.; and  
(iv) Chipman Brown Cicero & Cole, LLP;

- (g) payment in full in Cash of all amounts of the ABL Facility Claim that are allowable under section 506(b) of the Bankruptcy Code, including the reasonable and documented fees and expenses of the ABL Facility Agent and the ABL Facility Lenders incurred by the following advisors to the ABL Facility Agent and the ABL Facility Lenders under the ABL Facility Documents: (i) Goldberg Kohn Ltd.; (ii) Huron Consulting Group Inc.; and (iii) Womble Carlyle Sandridge & Rice, LLP;
- (h) with respect to all documents and agreements necessary to implement the Plan: (1) all conditions precedent to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements; (2) such documents and agreements shall have been tendered for delivery to the required parties and been approved by any required parties and, to the extent required, filed with and approved by any applicable Governmental Units in accordance with applicable laws; and (3) such documents and agreements shall have been effected or executed;
- (i) the Sponsor entities shall have made the contribution set forth in Section 4.18(a) of the Plan; and
- (j) the GUC Consideration Escrow Account shall have been established and funded with the GUC Consideration.

The Debtors shall file a notice with the Bankruptcy Court indicating that the Effective Date has occurred within three (3) business days after such occurrence.

## **9.2. Waiver of Conditions Precedent**

The Debtors, with the prior written consent of the Required Lenders, may waive any of the conditions to the Effective Date set forth in Section 9.1 (other than Sections 9.1(e) and (j)), the waiver of which shall also require the consent of the Creditors Committee) at any time without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm or consummate the Plan.

## **9.3. Effect of Non-Occurrence of Conditions to Consummation**

If prior to Consummation, the Confirmation Order is vacated pursuant to a Final Order, then except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action; (b) prejudice in any manner the rights of any Debtor or any other Entity; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity.

## **ARTICLE X**

### **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

#### **10.1. Modification of Plan**

Effective as of the date hereof: (a) the Debtors, with the consent of the Required Lenders, reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order consistent with the terms set forth herein; and (b) after the entry of the Confirmation Order, the Debtors, with the consent of the Required Lenders, or the Reorganized Debtors, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, to remedy any defect or omission, or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan consistent with the terms set forth herein.

#### **10.2. Effect of Confirmation on Modifications**

Entry of the Confirmation Order shall constitute approval of all modifications to the Plan occurring after the solicitation thereof pursuant to section 1127(a) of the Bankruptcy Code and a finding that such modifications to the Plan do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

#### **10.3. Revocation or Withdrawal of Plan**

The Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (a) the Plan will be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto will be null and void in all respects; and (c) nothing contained in the Plan shall (1) constitute a waiver or release of any Claims, Interests, or Causes of Action, (2) prejudice in any manner the rights of any Debtor or any other Entity, or (3) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Entity.

## **ARTICLE XI**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Claim or Interest and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, rejection, or assumption and assignment of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

5. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, indentures, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

7. enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

8. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

9. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

10. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim or an Interest for amounts not timely repaid pursuant to Section 6.4(a); (b) with respect to the releases, injunctions, and other provisions contained in ARTICLE VIII, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;

11. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

12. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

13. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;



14. enter an order or Final Decree concluding or closing the Chapter 11 Cases;
15. enforce all orders previously entered by the Bankruptcy Court; and
16. hear any other matter not inconsistent with the Bankruptcy Code.

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

#### **12.1. Additional Documents**

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Reorganized Debtors, as applicable, and all holders of Claims and Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### **12.2. Payment of Statutory Fees**

All fees payable pursuant to 28 U.S.C. § 1930(a) shall be paid for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first. All fees payable pursuant to 28 U.S.C. § 1930(a) that are due on or before the Effective Date will be paid on the Effective Date. All fees payable pursuant to 28 U.S.C. § 1930(a) post-Effective Date will be paid when due.

#### **12.3. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

#### **12.4. Successors and Assigns**

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

#### **12.5. Service of Documents**

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Reorganized Debtors shall be served on:

**Reorganized Debtors**

Boomerang Tube, LLC  
14567 N. Outer Forty Road, 5<sup>th</sup> Floor  
Chesterfield, Missouri 63017  
Attn: General Counsel or Chief Financial Officer

**Counsel to Debtors**

**Young Conaway Stargatt & Taylor, LLP**  
1000 North King Street  
Wilmington, Delaware 19801  
Attn.: Robert S. Brady  
Sean M. Beach  
Ryan M. Bartley

**Special Counsel to Debtors**

**Debevoise & Plimpton LLP**  
919 Third Avenue  
New York, New York 10022  
Attn.: My Chi To  
Nick S. Kaluk, III

**United States Trustee**

**Office of the United States Trustee  
for the District of Delaware**  
844 King Street, Suite 2207  
Wilmington, Delaware 19810  
Attn.: Benjamin Hackman

**12.6. Term of Injunctions or Stays**

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases (pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court) and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

**12.7. Entire Agreement**

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

**12.8. Plan Supplement Exhibits**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Solicitation Agent's website at [www.donlinrecano.com/bt](http://www.donlinrecano.com/bt) or the Bankruptcy Court's website at [www.deb.uscourts.gov](http://www.deb.uscourts.gov). Unless otherwise ordered by the Bankruptcy Court, to the extent that any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

**12.9. Non-Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or

provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' and the Required Lenders' consent, consistent with the terms set forth herein; and (c) nonseverable and mutually dependent.

#### **12.10. Dissolution of Creditors Committee**

On the Effective Date, the Creditors Committee shall dissolve and members thereof shall be released from all rights and duties from or related to the Chapter 11 Cases, except the Creditors Committee will remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Claims ("Post-Effective Date Fee Prosecution"). The Debtors and Reorganized Debtor shall have no obligation to pay any fees or expenses incurred after the Effective Date by the Creditors Committee or the Committee Members, other than fees and expenses incurred by Professionals for the Creditors Committee incurred in connection with Post-Effective Date Fee Prosecution; *provided, however*, that payment of such fees and expenses shall be limited in its entirety to the Creditors Committee's portion of the Professional Fee Payment Amount.

Dated: December 29, 2015

**BOOMERANG TUBE, LLC,**  
on behalf of itself and all other Debtors

/s/ Kevin Nystrom  
Kevin Nystrom  
Interim Chief Executive Officer, President, and  
Chief Restructuring Officer  
14567 North Outer Forty Road, Suite 500  
Chesterfield, Missouri 63017

**EXHIBIT B**

**Notice of Confirmation and Effective Date**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

BOOMERANG TUBE, LLC, a Delaware limited liability  
company, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 15-11247 (MFW)

Jointly Administered

Docket Nos. 766, \_\_

**NOTICE OF (A) ENTRY OF ORDER CONFIRMING DEBTORS' SECOND  
AMENDED JOINT CHAPTER 11 PLAN; (B) OCCURRENCE OF  
EFFECTIVE DATE THEREUNDER; AND (C) RELATED DEADLINES**

TO: (I) THE U.S. TRUSTEE; (II) ALL PARTIES THAT, AS OF THE FILING OF THIS NOTICE, HAVE REQUESTED NOTICE IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002; AND (III) ALL KNOWN CREDITORS AND INTEREST HOLDERS

**PLEASE TAKE NOTICE** that on January [ ], 2016 (the "**Confirmation Date**"), the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") entered its *Findings of Fact, Conclusions of Law, and Order Under Section 1129 of the Bankruptcy Code and Bankruptcy Rule 3020 Confirming Debtors' Second Amended Joint Chapter 11 Plan* [Docket No. \_\_] (the "**Confirmation Order**"). Unless otherwise defined in this Notice, capitalized terms used herein shall have the meanings ascribed to them in the *Debtors' Second Amended Joint Chapter 11 Plan*, dated December 29, 2015 (as confirmed and with all exhibits thereto and as may be amended, modified, or supplemented from time to time, the "**Plan**," a copy of which is attached to the Confirmation Order as Exhibit A).

**PLEASE TAKE FURTHER NOTICE** that pursuant to section 1141(a) of the Bankruptcy Code, the provisions of the Plan and the Confirmation Order shall bind (i) the Debtors and their estates, (ii) the Reorganized Debtors, (iii) all holders of Claims against and Interests in the Debtors that arose before or were filed as of the Effective Date, whether or not impaired under the Plan and whether or not, if impaired, such holders accepted the Plan or received or retained any property under the Plan, and (iv) each person acquiring property under the Plan.

**PLEASE TAKE FURTHER NOTICE** that the Effective Date of the Plan was [ ], 2016.

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Boomerang Tube, LLC (9415); BTCSP, LLC (7632); and BT Financing, Inc. (6671). The location of the Debtors' corporate headquarters is 14567 North Outer Forty, Suite 500, Chesterfield, Missouri 63017.

**PLEASE TAKE FURTHER NOTICE** that any party in interest wishing to obtain a copy of the Confirmation Order may obtain such copy: (i) at <http://donlinrecano.com/bt/> or (ii) by contacting Michelle Smith, Paralegal, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801; (302) 571-6600; [msmith@ycst.com](mailto:msmith@ycst.com). Copies of the Confirmation Order may also be reviewed during regular business hours at the Bankruptcy Court, 824 North Market Street, Wilmington, Delaware 19801, or may be obtained at the Bankruptcy Court's website at [www.deb.uscourts.gov](http://www.deb.uscourts.gov) by following the directions for accessing the ECF system on such site.

### **Administrative Bar Date**

**PLEASE TAKE FURTHER NOTICE** that the holder of an Administrative Expense Claim must file with the Bankruptcy Court and serve on the Reorganized Debtors and their counsel, the Claims Agent, and the U.S. Trustee proof of such Administrative Expense Claim **no later than [ ]**, 2016 (the "**Administrative Bar Date**"). Notwithstanding the foregoing, holders of the following claims are not required to assert such claims by the Administrative Bar Date: (i) DIP Facility Claims; (ii) Professional Claims, which are subject to the Professional Claim Bar Date (defined below); (iii) Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code; (iv) Claims entitled to priority under section 503(b)(9) of the Bankruptcy Code (which claims, for the avoidance of doubt, shall remain subject to the Bar Date previously established by the Court for such claims); (v) Administrative Claims that have been Allowed on or before the Effective Date; (vi) Administrative Claims of a governmental unit (as defined in section 101(27) of the Bankruptcy Code) that are not required to be filed pursuant to section 503(b)(1)(D) of the Bankruptcy Code; (vii) Administrative Claims based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claims, including, without limitation fees and expenses incurred on or after the Petition Date by ordinary course professionals retained by the Debtors pursuant to an order of the Bankruptcy Court, provided, however, that any requests for payment and allowance of an Administrative Claim for severance obligations and post-employment benefits or obligations are subject to, and must be filed by, the Administrative Bar Date.

**PLEASE TAKE FURTHER NOTICE** that such proof of Administrative Claim must include at a minimum: (i) the name of the applicable Debtor that is purported to be liable for the Administrative Claim and if the Administrative Claim is asserted against more than one Debtor, the exact amount asserted to be owed by each such Debtor; (ii) the name of the holder of the Administrative Claim; (iii) the amount of the Administrative Claim; (iv) the basis of the Administrative Claim; and (v) supporting documentation for the Administrative Claim.

**PLEASE TAKE FURTHER NOTICE** that failure to file and serve such proof of Administrative Claim timely and properly shall result in the Administrative Claim being forever barred and discharged without the need for further action, order or approval of or notice to the Bankruptcy Court.

### **Professional Claim Bar Date**

**PLEASE TAKE FURTHER NOTICE** that any Professional seeking allowance by the Bankruptcy Court of a Professional Claim shall file its respective final application for allowance

of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date **no later than** [\_\_\_\_], 2016 (the "**Professional Claim Bar Date**"). Objections to such Professional Claims, if any, must be filed and served within twenty-one (21) calendar days of the filing of the final fee application, but in no event later than [\_\_\_\_], 2016, unless a later date is established by the Bankruptcy Court.

**Rejection Damages Bar Date**

**PLEASE TAKE FURTHER NOTICE** that in the event that the rejection of an Executory Contract or Unexpired Lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not evidenced by a timely filed proof of claim, shall be forever barred and shall not be enforceable against the Debtors or the Reorganized Debtors, or their respective properties or interests in property as agents, successors or assigns, unless a **proof of claim is filed with the Bankruptcy Court and served upon the Reorganized Debtors and their counsel on or before the date that is thirty (30) days after the effective date of such rejection** (which may be the Effective Date or such other date established pursuant to an order of the Bankruptcy Court).

**PLEASE TAKE FURTHER NOTICE** that any Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claim were not timely filed as set forth in the immediately preceding sentence shall be automatically disallowed, forever barred from assertion and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order or approval of the Bankruptcy Court. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be deemed General Unsecured Claims and classified as Class 6 against the appropriate Debtor.

Dated: Wilmington, Delaware  
[\_\_\_\_], 2016

**YOUNG CONAWAY STARGATT & TAYLOR, LLP**

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Robert S. Brady (No. 2847)  
Sean M. Beach (No. 4070)  
Margaret Whiteman Greecher (No. 4652)  
Ryan M. Bartley (No. 4985)  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 571-6600  
Facsimile: (302) 571-1253

*Counsel for the Reorganized Debtors*