

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	
)	Chapter 11
)	
ASPC Corp., f/k/a AcuSport Corporation,)	Case No. 18-52736
)	
Debtor.)	Hon. John E. Hoffman, Jr.
)	

**SECOND AMENDED DISCLOSURE STATEMENT WITH
RESPECT TO THE AGREED FIRST AMENDED PLAN OF LIQUIDATION
OF DEBTOR AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: December 4, 2018

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I. INTRODUCTION AND NARRATIVE DESCRIPTION OF THE AGREED PLAN

ASPC Corp., f/k/a AcuSport Corporation (“Debtor”) submits this disclosure statement (the “Disclosure Statement”) pursuant to section 1125 of the Bankruptcy Code, for use in the solicitation of votes on the Agreed Plan of Liquidation of Debtor and Official Committee of Unsecured Creditors (the “Plan”). Debtor and the Official Committee of Unsecured Creditors (the “Committee”) are jointly proposing the Plan, which was filed with the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division (the “Bankruptcy Court”). A copy of the Plan is attached as Appendix A to this Disclosure Statement.

This Disclosure Statement sets forth certain information regarding Debtor’s prepetition operating and financial history, the need to seek chapter 11 protection, significant events that have occurred since this case, styled *In re ASPC Corp., f/k/a AcuSport Corporation*, Case No. 18-52736 (the “Case”), was commenced under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on May 1, 2018 (the “Petition Date”), and the anticipated process for liquidation and distribution of Debtor’s remaining assets to creditors using a liquidating trust (the “Creditor Trust”). This Disclosure Statement also describes terms and provisions of the Plan, certain effects of confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that Holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

Under the Plan, certain Cash generated during the Case and the liquidation of remaining assets will be distributed to Creditors in accordance with the priority scheme of the Bankruptcy Code by a creditor trustee (the “Creditor Trustee”). **DEBTOR AND THE COMMITTEE SUPPORT AND RECOMMEND ACCEPTANCE OF THE PLAN, AND URGE CREDITORS ENTITLED TO VOTE ON THE PLAN TO VOTE TO ACCEPT IT.**

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

Additional information regarding Debtor’s Case, including copies of the documents filed in the Case and referenced herein, can be accessed free of charge at the following website maintained by Debtor’s claims and noticing agent: www.donlinrecano.com/AcuSport.

A. General Structure of the Plan

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

Pursuant to the Plan, Debtor’s assets, consisting of Debtor’s Cash, Causes of Action, and miscellaneous other assets (collectively, the “Creditor Trust Assets”), will be distributed to the Creditor Trust and managed by the Creditor Trustee. The Creditor Trustee will take actions to liquidate and administer the remaining non-Cash Assets, including, among other things, investigating and, if determined to be appropriate, pursuing Causes of Action. The Creditor Trustee will make distributions to creditors pursuant to the terms of the Plan and prior orders of the

Bankruptcy Court. Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims, and Allowed Priority Claims will be paid in full. Holders of Allowed General Unsecured Claims will receive a Pro Rata portion of remaining Cash in accordance with the Creditor Trust Agreement and the Plan, but distributions will not be made on account of Equity Security interests, and those interests will be canceled and extinguished.

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

1. Overview of Treatment

As contemplated by section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified under the Plan. Administrative Claims and Priority Tax Claims will be paid in full as soon as practicable following the Effective Date of the Plan or when such Claims become Allowed Claims. The range of estimated Administrative Claims is \$30,000 to \$60,000 (exclusive of professional fee administrative claims) and Priority Tax Claims are currently estimated to be zero (subject to that certain claim filed by the Ohio Department of Taxation described in Section IV.B.11.f. hereof).

Based on current levels of Cash and Debtor's financial projections, Debtor anticipates having approximately \$2.4 million of Cash as of the Effective Date (which is anticipated to be at or near February 15, 2019). This amount of Cash is more than sufficient to satisfy all of Debtor's Allowed Administrative Claims and Allowed Priority Tax Claims, in addition to Allowed Class 1 Secured Claims and Allowed Class 2 Priority Claims. Furthermore, Debtor believes that this amount of Cash will also be sufficient to: (a) pay the Creditor Trustee's Expenses; (b) create a reserve for Disputed Claims in case they become Allowed Claims; and (c) make an initial distribution to Holders of Allowed Class 3 General Unsecured Claims.

The table below summarizes the classification and treatment of the prepetition Claims and Interests under the Plan. For certain classes of Claims and Interests, estimated percentage recoveries are also set forth below. Estimated percentage recoveries have been calculated based upon a number of assumptions, including the dollar amount of Claims in a particular Class. The Creditor Trustee, upon the establishment of the Creditor Trust pursuant to the Plan, the Creditor Trust Agreement and the Confirmation Order, shall have the right to dispute the validity, priority or amount of any Claim that has not already been Allowed by the Bankruptcy Court or otherwise by agreement. Accordingly, no representation can be, or is being, made with respect to the accuracy of the amounts of the estimated Claims pool in each Class or the estimated recoveries that will actually be realized by the Holders of Allowed Claims in each Class.

Debtor has not completed its investigation regarding the Claims in the Case and the filing of objections to Claims. This investigation is ongoing and will likely be completed by the Creditor Trustee after the Confirmation Date. As a result, Holders of Claims and other parties-in-interest are hereby advised that an objection to a Disputed Claim may be filed at any time. The Creditor Trustee shall have the right to object to amounts that have been scheduled by Debtor, or that are reflected in Debtor's books and records, and which are found to be objectionable in any respect.

2. Classification and Treatment of Claims Against and Interests in Debtor

Description and Amount of Claims or Interests	Summary of Treatment
<p>Class 1 Secured Claims</p> <p>Class 1 consists of all Claims, other than Administrative Claims or Priority Tax Claims, that are secured by a lien on property in which Debtor’s Estate has an interest, to the extent of the value of the Claim Holder’s interest in the Estate’s interest in such property, as determined pursuant to section 506(a) of the Bankruptcy Code.</p> <p>Estimated Claims Pool: \$0.00²</p> <p>Expected Recovery: 100%</p>	<p>Class 1 is Unimpaired by the Plan.</p> <p>Each Holder of an Allowed Class 1 Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.</p> <p>As soon as practicable following the Effective Date or the date on which a Secured Claim becomes an Allowed Secured Claim, each Holder of an Allowed Secured Claim shall receive (i) Cash in an amount equal to the Allowed Secured Claim, including, to the extent applicable, postpetition interest under section 506(b) of the Bankruptcy Code, (ii) the collateral securing such Allowed Secured Claim, or (iii) such other treatment as may be agreed to between the Holder and the Debtor.</p>
<p>Class 2 Priority Claims</p> <p>Class 2 consists of all Claims, other than Administrative Claims or Priority Tax Claims, that are entitled to priority in payment pursuant to sections 507(a) and (b) of the Bankruptcy Code.</p> <p>Estimated Claims Pool: \$0.00³</p> <p>Expected Recovery: 100%</p>	<p>Class 2 is Unimpaired by the Plan.</p> <p>Each Holder of an Allowed Class 2 Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.</p> <p>No later than the later of: (i) forty-five (45) days from the Effective Date; or (ii) the date such Priority Claim becomes an Allowed Priority Claim or is otherwise payable, each Holder of an Allowed Priority Claim shall</p>

² Debtor does not believe that there will be any allowed Secured Claims after the claims objection process and the elimination of duplicate claims, late filed claims, superseded claims, disputed claims, and other claims deemed not allowable, and disputes any Proofs of Claim (excluding the fully-satisfied claims of the Prepetition Lenders) asserting a Secured Claim.

³ Debtor believes there should not be any allowed Priority Claims after the claims objection process and the elimination of duplicate claims, late filed claims, superseded claims, disputed claims, and other claims deemed not allowable, based on Debtor’s current books and records, and Debtor disputes any Proofs of Claim asserting a Priority Claim. However, certain Proofs of Claim have been filed that assert priority claims. As set forth in more detail in Section IV(B)(11)(f) below, those claims include Claim Number 284 filed by the Ohio Department of Taxation, which asserts a priority amount of \$311,824.09. Debtor has not reviewed in detail the facts underlying claims asserting priority status, including Claim 284, as of the time of the filing of this Disclosure Statement. Allowance of any Priority Claim in a material amount could affect the distributions described herein. Debtor, the Committee and the Creditor Trustee reserve all rights to object to any Priority Claim, including Claim 284, on all available grounds.

Description and Amount of Claims or Interests	Summary of Treatment
	receive (i) Cash in an amount equal to the unpaid portion of the Allowed Priority Claim, or (i) such other treatment as may be agreed to between the Holder and the Debtor.
<p>Class 3 General Unsecured Claims</p> <p>Class 3 consists of all Unsecured Claims that are not Administrative Claims, Priority Tax Claims, or Priority Claims.</p> <p>Estimated Claims Pool: \$52,300,000 to \$63,000,000⁴</p> <p>Expected Recovery: 3.0%-6.0%</p>	<p>Class 3 is Impaired by the Plan.</p> <p>Each Holder of an Allowed Class 3 Claim is entitled to vote to accept or reject the Plan.</p> <p>Holders of Allowed Class 3 Claims shall be paid Pro Rata in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estate shall be deposited in the Creditor Trust no later than the Effective Date. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds from time to time on dates determined by the Creditor Trustee, following consultation with the Advisory Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) satisfy all Administrative Claims in full; (ii) satisfy all Secured Claims in full; (iii) satisfy all Priority Tax Claims and Priority Claims in full; (iv) pay the Trustee's Expenses in full; and (v) make a Pro Rata distribution on account of Disputed Claims that are Class 3 General Unsecured Claims.</p>
<p>Class 4 Interests of Equity Security Holders</p> <p>Class 4 consists of all Equity Security Interests in Debtor.</p> <p>Expected Recovery: 0%</p>	<p>Class 4 is Impaired by the Plan.</p> <p>Each Holder of a Class 4 Interest is deemed to have rejected the Plan pursuant to section 1126 (g) of the Bankruptcy Code.</p> <p>Holders of Class 4 Interests shall not receive a distribution under the Plan, and their Equity Securities shall be canceled and extinguished</p>

⁴ This amount reflects Debtor's best estimate of the total amount of General Unsecured Claims that will remain after the claims objection process to eliminate duplicate claims, late filed claims, superseded claims, and other claims deemed not allowable. The Debtor, the Committee and the Creditor Trustee reserve all rights to object to any General Unsecured Claim on all available grounds.

Description and Amount of Claims or Interests	Summary of Treatment
	as of the Effective Date.

II. DISCLAIMER

On or before December 7, 2018, after notice and a hearing, the Bankruptcy Court entered an order approving this Disclosure Statement (the “Disclosure Statement Order”) as containing adequate information of a kind and in sufficient detail to enable a hypothetical, reasonable investor typical of Debtor’s Creditors and Interest Holders to make an informed judgment whether to accept or reject the Plan. THE BANKRUPTCY COURT’S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION AS TO THE FAIRNESS OR MERITS OF THE PLAN. DEBTOR PREPARED THIS DISCLOSURE STATEMENT IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE, RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND RULE 3018-2 OF THE LOCAL RULES FOR THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF OHIO.

The Disclosure Statement Order sets forth deadlines for voting to accept or reject the Plan and procedures to be followed to object to confirmation of the Plan. A Ballot for the acceptance or rejection of the Plan is enclosed with each Disclosure Statement submitted to a Holder of a Claim that is entitled to vote to accept or reject the Plan. The Ballot includes certain instructions for voting and the record date for voting purposes. **THE BANKRUPTCY COURT HAS SCHEDULED A HEARING ON JANUARY 24, 2019, AT 2:00 P.M. (PREVAILING EASTERN TIME) TO CONSIDER WHETHER TO CONFIRM THE PLAN.**

This Disclosure Statement describes certain aspects of the Plan, Debtor’s operations, pending litigation, the proposed formation of a creditor trust and other related matters. FOR A COMPLETE UNDERSTANDING OF THE PLAN, YOU SHOULD READ THIS DISCLOSURE STATEMENT, THE PLAN, THE CREDITOR TRUST AGREEMENT, AND THE EXHIBITS, APPENDICES, AND SCHEDULES THERETO IN THEIR ENTIRETY. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN, THE CREDITOR TRUST AGREEMENT AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL, WITH THE TERMS OF THE CREDITOR TRUST AGREEMENT CONTROLLING DISPUTES, IF ANY, BETWEEN THE CREDITOR TRUST AGREEMENT AND THIS DISCLOSURE STATEMENT.

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

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

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

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

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

III. BRIEF HISTORY AND STRUCTURE OF DEBTOR

A. Historical Overview

Debtor had been in the business of distributing outdoor shooting sports products for more than thirty-five (35) years. Indeed, as of the Petition Date, Debtor was recognized nationwide as one of the leading distributors in the firearm and shooting sports industry and employed more than two hundred (200) people. Debtor was headquartered in Bellefontaine, Ohio with regional sales offices in Pennsylvania, Georgia, Minnesota, Montana, California and Texas.

B. Debtor's Organizational, Capital, and Debt Structure

As of the Petition Date, Debtor was privately owned by three (3) shareholders: (i) William L. Fraim, Chairman and Chief Executive Officer; (ii) James A. Broering, President and Chief Operating Officer; and (iii) Key National Trust Company of Delaware, as Trustee of the 2012 Fraim Family Trust.

In June 2015, Debtor entered into a Credit Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition Credit Agreement”) with Wells Fargo Bank, N.A., a national banking association, as administrative agent for and member of the prepetition secured lender group (“Prepetition Lenders”). Pursuant to the terms of the Prepetition Credit Agreement, Prepetition Lenders provided a secured term loan, revolving loan, and other financial accommodations to Debtor. The initial term loan amount was \$6,345,000.00, and the initial revolving loan commitment was in the amount of \$110,000,000.00. As of the Petition Date, Debtor owed the Prepetition Lenders approximately \$17.5 million under the Prepetition Credit Agreement.

C. Events Leading to Chapter 11

Prior to Donald Trump’s election as the President of the United States, the civilian small arms and ammunition market of the firearms industry was doing well. Consumers were concerned about the possibility of stricter gun control laws, which led to increased sales. Many firearms manufacturers, retailers, and distributors, including Debtor, understood that consumers anticipated Hillary Clinton would win the 2016 presidential election. The common belief shared by businesses in the firearms industry was that demand would increase if Clinton was elected as President because consumers expected the new administration to seek to implement gun-control legislation. As a result, Debtor, along with other firearms businesses, prepared for a spike in demand by, among other things, purchasing substantial amounts of inventory.

Hillary Clinton did not win the election, and in turn, there was no spike in demand for firearms. Instead, demand significantly decreased, reducing gross revenues. The decrease in gross revenues, combined with the cost of the additional inventory purchased by Debtor, negatively impacted Debtor’s bottom line.

The Debtor experienced an approximately 30% decrease in revenue in fiscal year 2017 compared to fiscal year 2016. The reduction to Debtor’s sales and bottom line came when it had expended its resources in preparation for what it (and the rest of the industry) projected to be an unusually profitable period. As a result, Debtor failed to comply with certain financial covenants as required by the Prepetition Credit Agreement. Specifically, Debtor failed to meet the “Fixed Charge Coverage Ratio” covenant for the twelve-month period ending April 30, 2017 (and for each measurement period thereafter). Subsequent to April 30, 2017, Debtor defaulted on certain additional obligations under the Prepetition Credit Agreement.

On August 11, 2017, Debtor and Prepetition Lenders entered into a formal forbearance agreement (as amended, the “Forbearance Agreement”), pursuant to which Prepetition Lenders agreed to provide additional funding and forbear from exercising rights and remedies relating to events of default that occurred and were ongoing under the Prepetition Credit Agreement. Thereafter, the Forbearance Agreement was amended multiple times, with the last one, Amendment No. 13 to Credit Agreement and Amendment No. 6 to Forbearance Agreement, executed as of April 16, 2018.

As required by the Forbearance Agreement, Debtor retained Huron Consulting Services LLC (“Huron”) as its financial advisor and Huron Transaction Advisory LLC (“HTA”) as its investment banker. HTA was retained for the purposes of preparing, marketing, and leading the consummation of one or more potential strategic alternatives, including a refinancing process and, if

not successful, a sale process. The Forbearance Agreement required that the Debtor achieve specific milestones within the timetable set forth in the Forbearance Agreement.

Initially, Debtor sought to refinance its secured debt obligations held by Prepetition Lenders. Debtor, through HTA, launched its refinancing efforts on or about September 5, 2017. HTA contacted 84 traditional and non-traditional lending institutions, 28 of which executed a nondisclosure agreement, received a confidential information memorandum and were provided access to a virtual data site. Debtor received several indications of interest which led to management presentations and access to additional information about Debtor. Debtor received one letter of intent, which was executed but subsequently terminated.

Debtor then engaged in a process to sell its business, as required under the Forbearance Agreement. On or about January 16, 2018, Debtor (through HTA) commenced its sale process. Over the course of four (4) months, Debtor received several verbal and written indications of interest from both financial and strategic investors. This extensive sale and marketing process resulted in offers from certain parties to purchase specific assets of Debtor. These offers included an offer submitted by Ellett Brothers, LLC (“Ellett”) to purchase certain of Debtor’s assets, free and clear of all liens, claims, and encumbrances.

On April 11, 2018, Debtor executed a non-exclusive letter of intent proposal with an affiliate of Ellett. Thereafter, the parties negotiated a definitive asset purchase agreement concerning a transaction. On April 30, 2018, Debtor and Ellett executed an asset purchase agreement (the “Stalking Horse APA”), which contemplated that, among other things, Ellett would acquire Debtor’s inventory, real estate, equipment, technology, and certain other intangible assets existing as of the closing for a purchase price of \$7,750,000 plus the value of Debtor’s inventory as reported on a borrowing base certificate prepared in accordance with the Prepetition Credit Agreement as of the closing. The Stalking Horse APA required that consummation of a transaction take place in the Case pursuant to an order entered by the Bankruptcy Court administering the Case.

Also on April 30, 2018, Debtor closed on the sale of certain assets to J.W. Shultz, LLC (“JWS”) pursuant to that certain Asset Purchase Agreement dated April 27, 2018. Pursuant to that agreement, Debtor sold certain businesses and related assets formerly conducted by Debtor’s Retail Technology Group relating to the provision of point of sale software and services for certain of Debtor’s retail customers, as well as maintenance and support for Debtor’s point of sale software. As consideration for the acquisition, JWS hired approximately 17 of the Debtor’s employees and assumed certain of its liabilities and obligations. There was no cash consideration.

In order to effectuate the Ellett transaction and to otherwise solicit higher and better offers for its assets, Debtor filed the Case.

IV. THE ACTIVITIES IN THE CHAPTER 11 CASE

A. The Chapter 11 Case

On the Petition Date, Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. At that time, all actions and proceedings against Debtor and all acts to obtain property from Debtor were stayed pursuant to section 362 of the Bankruptcy Code. Debtor continued to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

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

B. Chapter 11 Relief

1. First Day and Similar Relief

On the Petition Date, Debtor filed “first day” motions with the Bankruptcy Court seeking certain relief to continue uninterrupted operations. Debtor requested entry of “first day” orders authorizing Debtor to: (i) use Prepetition Lenders’ cash collateral on an interim basis; (ii) continue payment of wages and ordinary course employee benefits (including prepetition amounts), (iii) provide adequate assurance of performance to Debtor’s utility providers and prohibiting Debtor’s utility providers from altering, refusing, or discontinuing utility service to Debtor; (iv) pay certain prepetition taxes; (v) maintain insurance coverage; and (vi) continue to use existing bank accounts, business forms, and cash management system. This relief was granted. *See* Docket Nos. 60-65.

2. Debtor’s Professional Advisors

Debtor has been advised by the following: Bryan Cave Leighton Paisner LLP, as Debtor’s chapter 11 counsel; Allen Stovall Neuman Fisher & Ashton LLP, as Debtor’s chapter 11 local counsel; Huron Transaction Advisory LLC, as Debtor’s investment banker; Huron Consulting Services LLC, as Debtor’s financial advisor; Donlin Recano & Company, Inc., as Debtor’s Notice, Claims and Solicitation Agent; and Scott L. Braum & Associates Ltd., as Debtor’s special counsel. Orders have been entered by the Bankruptcy Court authorizing Debtor’s retention of each of these firms. *See* Docket Nos. 84, 158, 159, 160, 175, 297. HTA’s engagement was terminated, effective as of July 2, 2018, pursuant to correspondence dated July 16, 2018. In addition, pursuant to Court order dated September 12, 2018, Huron’s engagement was modified to permit Lee Sweigart to be appointed as Chief Restructuring Officer of Debtor. *See* Docket No. 332.

3. Appointment of the Committee

The Office of the United States Trustee initially appointed a seven-member Committee on May 10, 2018. Since that time, a member of the Committee, Remington Arms Company, LLC (“Remington”) employed Debtor’s former chief financial officer, John Flanagan. As a result, on July 25, 2018, the Office of the United States Trustee filed an Amended Notice of Appointment of Unsecured Creditors Committee, Docket No. 277, which reflects Remington’s resignation from the Committee. As of the filing of this Disclosure Statement, the Committee includes the following six (6) members:

- Daniel Defense, Inc.;
- Encore Live LLC;
- Glock Inc.;
- Hornady Manufacturing Company;
- PMC Ammunition, Inc.; and

- Vista Outdoor.

On July 5, 2018, the Bankruptcy Court entered orders approving the retention of: (i) Goldstein & McClintock LLLP as counsel to the Committee (Docket No. 241); (ii) Frost Brown Todd LLC as local counsel to the Committee (Docket No. 243); and BDO USA, LLP as financial advisor to the Committee (Docket No. 242).

4. Postpetition Operations

Debtor continued to operate its business during the Case in the ordinary course until the Sale of its primary operating assets to Ellett, which closed on June 29, 2018. Following such Sale, Debtor has continued to wind down its operations, administering its remaining assets for the benefit of creditors and Debtor's estate.

5. Cash Collateral

As described above, Debtor obtained interim authority to use Prepetition Lenders' cash collateral shortly after the Petition Date (Docket No. 65). Although Debtor's cash collateral budget indicated that the use of Prepetition Lenders' cash collateral would be sufficient and, therefore, Debtor would not need to incur postpetition debt, Debtor obtained interim authority to incur up to \$1,000,000 in postpetition debt through a revolving loan with Prepetition Lenders, to the extent such loan might become necessary. Debtor's request for final approval of the use of Prepetition Lenders' cash collateral was approved on May 21, 2018 in the Final Order Authorizing Debtor to (a) Use Cash Collateral; and (b) Grant Adequate Protection and Other Relief to Wells Fargo Bank, N.A., as Agent, and to Debtor's Lenders (the "Final Cash Collateral Order") (Docket No. 129). Debtor ultimately withdrew its request for postpetition financing and instead relied on its cash collateral agreement with Prepetition Lenders. In conjunction with the sale of Debtor's assets (described below in Section IV.C.6), Debtor has paid Prepetition Lenders in full and Debtor is no longer subject to the terms of the Final Cash Collateral Order.

6. Filing of Schedules and Statement of Financial Affairs

On May 29, 2018, Debtor filed its Schedules of Assets and Liabilities [Docket No. 147 and Statement of Financial Affairs [Docket No. 146] and on June 13, 2018, it filed its Amended Schedules of Assets and Liabilities [Docket No. 189] and Amended Statement of Financial Affairs [Docket No. 190].

7. Bar Dates

The Bankruptcy Court established certain bar dates for filing proofs of Claim. Generally, proofs of Claim were required to be filed no later than July 27, 2018, except that proofs of Claim of (i) any governmental units are required to be filed no later than October 29, 2018 and (ii) counterparties to rejected executory contracts are required to be filed on the later of July 27, 2018 or the 30th day after entry of an order rejecting such contract. *See* Docket No. 191.

8. Sale of Certain of Debtor's Assets

Debtor entered the Case with a plan to sell substantially all of its assets. On the Petition Date, Debtor filed a Motion for an Order (i) Establishing Bidding Procedures for the Sale of Certain of Debtor's Assets; (ii) Approving Break-Up Fee; (iii) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (iv) Approving Form and Manner of the Sale, Cure, and Other Notices; and (v) Establishing Auction and Hearing Dates (the "Bidding Procedures Motion") (Docket No. 19). The Committee filed its objection to the Bidding Procedures Motion on May 14, 2018. *See* Docket No. 97. On May 16, 2018, the Bankruptcy Court entered an order granting certain of the relief sought in the Bidding Procedures Motion, as modified following negotiations with the Committee, including (a) setting a deadline for submitting bids on or before June 12, 2018 at 4:00 p.m. (Eastern Time) and (b) approving the form of the original asset purchase agreement (the "Bidding Procedures Order") (Docket No. 109).

On May 24, 2018, Debtor filed its Motion for an Order: (i) Approving and Authorizing Sale of Certain of Debtor's Assets Pursuant to Successful Bidder's Asset Purchase Agreement, Free and Clear of all Liens, Claims, Encumbrances and Other Interests; (ii) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (iii) Granting Related Relief (the "Sale Motion") (Docket No. 140). Debtor's Sale Motion requested approval of the sale of certain assets to Ellett for \$7,750,000 plus an amount equal to the value of Debtor's inventory as calculated under the terms of the asset purchase agreement.

Certain creditors objected to the Sale Motion and/or Debtor's Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts (the "Cure Notice") (Docket No. 132) filed in conjunction with the Sale Motion. On June 12, 2018, each of Oracle America, Inc., Smith & Wesson Corp., ColFin 2017-10 Industrial Owner, LLC, and CenturyLink Communications, LLC filed separate objections to, among other things, the proposed assumption and assignment of their contracts. *See* Docket Nos. 182, 184, 186, and 188. Debtor was able to resolve each of these objections (except for Smith & Wesson, as described below).

Although Debtor extensively marketed its assets, it received no other qualified bids by the bidding deadline. As a result, Debtor cancelled the auction. Although the Bidding Procedures Order contemplated a sale hearing to be held on June 14, 2018 if no other qualified bids were received, certain issues arose with respect to the original asset purchase agreement between Ellett and Debtor. To resolve those issues, Debtor and Ellett entered into an amended asset purchase agreement to, among other things, reduce the purchase price and incorporate a Transition Services Agreement into the transaction. On June 19, 2018, Debtor filed its Notice of Filing of Amendment to Asset Purchase Agreement with Ellett Brothers, LLC and Position Statement Regarding Lack of Materiality of the Amendment and Why No Further Notice is Required (the "Amended APA Notice") (Docket No. 207).

On June 20, 2018, the Committee filed an objection to the Amended APA Notice (Docket No. 210) which was resolved pursuant to a Stipulation and Agreed Order entered on June 28, 2018 (Docket No. 229). Thereafter, on June 28, 2018, the Bankruptcy Court entered the Order (i) Approving and Authorizing Sale of Certain of Debtor's Assets Pursuant to Successful Bidder's Asset Purchase Agreement, Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (ii) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (iii) Granting Related Relief (the "Sale Order") (Docket No. 230), which approved the sale of certain of Debtor's assets to Ellett for \$7,350,000 plus an amount equal to the value of Debtor's inventory (subject to certain additional payments to be made in accordance with the terms of the Transition Services Agreement). On June 29, 2018, Debtor and Ellett closed the sale in accordance with the provisions of the Sale Order (the "Closing Date"). As of the filing of this Disclosure Statement, Debtor is in the process of winding down its affairs and administering its remaining assets.

9. KEIP and KERP

On May 3, 2018, Debtor filed its Motion for an Order Authorizing Debtor's (I) Key Employee Incentive Plan; and (II) Key Employee Retention Plan (Docket No. 45) (the "KEIP/KERP Motion"). In the KEIP/KERP Motion, Debtor sought approval of a Key Employee Incentive Plan ("KEIP") covering two (2) insider employees – John Flanagan, Debtor's Chief Financial Officer, and Mary Grim, Debtor's Vice President of Supply Management & Operations. The proposed KEIP provided for incentive payments of up to \$90,000 per participant, depending on the amount of sale proceeds net of operating expenses ("Distributable Value") generated by Debtor. Debtor also sought approval of a Key Employee Retention Plan ("KERP") covering forty (40) non-insider employees, which would provide for incentive payments of between \$3,800 to \$32,000 per participant (for a total of up to \$444,191), plus up to \$20,000 in discretionary amounts, for participants remaining in the employ of Debtor through the closing of a qualifying sale.

On May 14, 2018, the Committee and the U.S. Trustee filed objections to the KEIP/KERP Motion (Docket Nos. 97 and 99). On May 16, 2018, the Committee's objections to the KERP were resolved through the entry of the Order Authorizing Debtor's Key Employee Retention Plan and Setting Further Hearing on Debtor's Key Employee Incentive Plan (Docket No. 108), pursuant to which Debtor's authority to make KEIP payments was reduced by \$125,000. On May 21, 2018, the Committee's objection to the KEIP was resolved through the entry of the Order Authorizing Debtor's Key Employee Incentive Plan (Docket No. 127), pursuant to which the Debtor agreed to the following modifications to the KEIP: (1) increasing the Distributable Value thresholds triggering participants' entitlement to incentive payments; and (2) confirming that no incentive payments may be made until Distributable Value is sufficient to result in a distribution to holders of general unsecured claims as of the closing date of the sale.

On August 1, 2018, Debtor filed its Notice of Debtor's Intention to Distribute Key Employee Incentive Plan Payments on August 3, 2018 (Docket No. 286). Pursuant to the notice, Debtor provided notice of its intention to make \$50,000 incentive payments to each KEIP participant based on the outcome of the sale and other liquidations of Debtor's assets. The notice states that the Committee was previously notified of the proposed payments and did not object.

10. Exclusivity

Pursuant to section 1121 of the Bankruptcy Code, as of the filing of this Disclosure Statement, Debtor has the exclusive right to file a chapter 11 plan in the Case. On September 11, 2018, the Bankruptcy Court entered an order extending Debtor's exclusive right to (i) file a chapter 11 plan to and including Friday, November 30, 2018, and (ii) solicit acceptance of such plan to and including Thursday, January 31, 2019. *See* Docket No. 328.

11. Litigation Matters

a. Smith & Wesson Corp. Distributor Agreement Dispute

Prior to the Petition Date, Debtor and Smith & Wesson Corp. were parties to a distributor agreement dated May 1, 2017 and amended on September 29, 2017 (the "S&W Distributor Agreement"). On July 5, 2018, Ellett filed a Notice of Designation (Docket No. 240) designating the S&W Distributor Agreement as an assigned contract, and on July 16, 2018, both Debtor and the Committee filed objections to Ellett's designation (Docket No. 259). On August 29, 2018, the Court entered its Initial Order Setting Briefing and Discovery Schedule in Connection With Notice of Designation of Contract Filed by Ellett Brothers, LLC (Docket No. 315), which sets forth deadlines and procedures for discovery, briefing, and an evidentiary hearing in connection with the Notice of Designation (the "S&W Designation Proceeding"). On November 14, 2018, Debtor filed its *Brief in Opposition to Notice of Designation of Contract Filed by Ellet Brothers, LLC* (Docket No. 384), and Smith & Wesson Corp., Ellett Brothers, LLC, and the Committee filed their respective briefs (Docket Nos. 385, 388, and 389). On November 28, 2018 all parties to the S&W Designation Proceeding appeared for an evidentiary hearing. As of the date hereof, the Bankruptcy Court has (i) taken this matter under advisement and (ii) not entered or filed any decision or other order with respect to the S&W Designation Proceeding.

b. Smith & Wesson Corp. Adversary Proceeding

On July 16, 2018, Debtor commenced an adversary proceeding against Smith & Wesson Corp., Adversary No. 18-02067, by filing a complaint in the Bankruptcy Court (the "Complaint"). In the Complaint, Debtor asserts an avoidance action based on section 547 of the Bankruptcy Code and seeks to recover at least \$4,219,460.08 pursuant to section 550 of the Bankruptcy Code. Smith & Wesson Corp. asserts that it has complete and absolute defenses to all counts asserted in the Complaint and that it intends to vigorously defend the same. Debtor, based on its analysis and information provided to it by Smith & Wesson Corp., disputes Smith & Wesson Corp.'s assessment of its defenses, and intends to vigorously prosecute its claims. Pursuant to the Bankruptcy Court's *Initial Order Setting Briefing and Discovery Schedule in Connection with Notice of Designation of Contract Filed by Ellett Brothers, LLC* (Docket No. 315), the adversary proceeding is currently stayed and being held in abeyance pending the Bankruptcy Court's determination regarding the the S&W Designation Proceeding. Smith & Wesson is not required to file an answer or other responsive pleading in this adversary proceeding until twenty-one (21) days after the Bankruptcy Court issues an order resolving such dispute.

c. U.S. Trustee Fees Dispute

On August 2, 2018, Debtor made its first quarterly payment to the United States Trustee in the amount of \$221,484.43 based on disbursements reported in Debtor's May and June monthly

operating reports. However, prior to making this payment, the United States Trustee provided an invoice and written correspondence to Debtor asserting its position that the correct amount is \$250,000.00. The United States Trustee made a second demand for payment by delinquency notice dated August 8, 2018. The fee dispute, which has been resolved, involved whether certain cash receipts by the Prepetition Lenders under the Final Cash Collateral Order constituted disbursements. As of November 20, 2018, the United States Trustee's account reconciliation for Debtor resulted in a balance of \$1,508.82. Debtor does not dispute this amount.

d. Settlement of Claims against Trop Gun Shop, Ltd. and David Dunn

Prior to the Petition Date, Debtor and Trop Gun Shop, Ltd. ("Trop") entered into a Retailer Application and Sales Agreement (the "Trop Agreement") dated September 20, 2016. In connection with the Trop Agreement, Debtor asserted a claim against Trop and David Dunn, Trop's President, in the amount of \$3,274,955.83 (the "Trop Balance"). Through and under its trade credit insurance policy, Debtor submitted a claim for the Trop Balance. Debtor's insurance provider, Coface North America Insurance Company ("Coface"), and its agent determined that settlement in the amount of \$320,000.00 from the Trop obligors (subject to a collection commission under the policy of approximately \$41,706.00) was Debtor's best option for maximum recovery. Debtor estimates that it will recover an additional amount of approximately \$325,000.00 from Coface under its trade credit insurance policy once the claim is fully processed and determined. Debtor determined that the settlement was in the best interest of Debtor's estate. Accordingly, Debtor filed its *Motion for an Order Approving the Settlement and Compromise of Certain Claims against Trop Gun Shop, Ltd. and David Dunn* (Docket No. 337) on September 14, 2018. On November 10, 2018, the Bankruptcy Court entered its order approving that motion and the settlement (Docket No. 379). All payments required to be made under the Trop Agreement have been made or received by Debtor.

e. eComSystems, Inc.

On July 24, 2018, eComSystems, Inc. ("eCom") filed a motion seeking allowance and immediate payment of its alleged administrative expense claim in the amount of \$79,166.66 pursuant to section 503(b) of the Bankruptcy Code. *See* Docket No. 276. Debtor disputed eCom's entitlement to an administrative expense claim, and the parties engaged in settlement discussions, resulting in multiple stipulations to extend Debtor's deadline to respond to the administrative expense request. This dispute was resolved by agreement of the parties, as reflected in the *Agreed Order Resolving Administrative Claim Filed by eComSystems, Inc.* (Docket No. 343), and eCom was granted an administrative claim in the amount of \$30,000.

f. Ohio Department of Taxation Claim

On October 24, 2018, the Ohio Department of Taxation filed proof of claim No. 284 asserting an unsecured claim in the total amount of \$354,386.74 arising from alleged unpaid use taxes during the period from July 1, 2013 to September 30, 2016 (the "Ohio Tax Claim"). The Ohio Tax Claim includes a component alleged to be entitled to priority in accordance with section 507(a)(8) of the Bankruptcy Code amounting to \$311,824.09. Following an audit conducted in late 2016 and early 2017, the Ohio Department of Taxation issued an assessment for the amounts reflected in the Ohio Tax Claim on May 16, 2017, which assessment was appealed by Debtor on July 16, 2017. The appeal disputed the validity of the assessment and remained pending on the Petition Date. In addition to Debtor's pending dispute regarding the validity of the Ohio Tax Claim,

Debtor has not yet evaluated the extent to which the Ohio Tax Claim may be entitled to priority under section 507(a)(8) of the Bankruptcy Code. Nevertheless (and in an abundance of caution), Debtor has included the Ohio Tax Claim in its Liquidation Analysis, but reserves all rights with respect to such Claim (including any objections as to the validity, amount, and priority of such Claim).

V. DEBTOR'S CURRENT OPERATIONS AND MANAGEMENT

A. Overview of Current Business Operations and Corporate Structure

The Plan contemplates the liquidation of Debtor as it has previously sold substantially all of its assets. Upon Confirmation of the Plan and transfer of the Creditor Trust Assets to the Creditor Trust, Debtor will have no remaining assets.

B. Capital Structure of Debtor

Debtor has no remaining secured debt obligations to its Prepetition Lenders as of the filing of this Plan pursuant to the Final Cash Collateral Order, and in light of Debtor's satisfaction in full of all amounts due the Prepetition Lenders under the Prepetition Credit Agreement. *See* Docket Nos. 129 and 230.

C. Board of Directors and Executive Officers of Debtor

The following is a list of Debtor's current directors and executive officers:

Name	Title
Bill Fraim	Chairman and Chief Executive Officer
Jim Broering	President and Chief Operating Officer
Lee Sweigart	Chief Restructuring Officer

Pursuant to the Court's order entered on September 12, 2018, Mr. Sweigart has been designated as Chief Restructuring Officer. *See* Docket No. 332.

VI. VOTING INSTRUCTIONS AND PROCEDURES AND CONFIRMATION HEARING

A. Notice to Holders of Claims

Debtor will transmit this Disclosure Statement to Holders of Claims entitled to vote on the Plan. Pursuant to section 1126(f) of the Bankruptcy Code, Holders of Claims in Class 1 and Class 2, who are unimpaired under the Plan, are conclusively deemed to have accepted the Plan and are not entitled to vote on the Plan. Pursuant to section 1126(g) of the Bankruptcy Code, Holders of Interests in Class 4, who will receive no Distribution under the Plan on account of their Interests, are conclusively deemed to have rejected the Plan and are not entitled to vote on the Plan, and acceptance therefore will not be solicited. Holders of Claims in Class 3 will be the only Holders entitled to vote on the Plan. The purpose of this Disclosure Statement is to provide adequate

information to enable such Holders to make a reasonably informed decision with respect to the Plan prior to exercising their right to vote to accept or reject the Plan.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND ITS APPENDICES CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR TO REJECT THE PLAN. This Disclosure Statement contains important information about the Plan and considerations pertinent to acceptance or rejection of the Plan.

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

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS ESTIMATES AND ASSUMPTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. This Disclosure Statement does not reflect any events that may occur subsequent to the date hereof and that may have a material impact on the information contained in this Disclosure Statement. Debtor does not intend to update the estimated recoveries on Allowed Claims set forth in this Disclosure Statement; thus, they will not reflect the impact of any subsequent events not already accounted for in the assumptions underlying the estimates, nor do they reflect expected reserves or enhancements resulting from Disputed Claims. Further, Debtor does not anticipate that any amendments or supplements to this Disclosure Statement will be distributed to reflect such occurrences. Accordingly, the delivery of this Disclosure Statement will not under any circumstance imply that the information herein is correct or complete as of any time subsequent to the date hereof.

B. Solicitation Package

In soliciting votes for the Plan pursuant to this Disclosure Statement from the Holders of Claims entitled to vote, Debtor and the Committee will also send a copy of the Plan; a Ballot to be used by such Holders in voting to accept or to reject the Plan; and a letter from the chairperson of the Committee urging creditors to vote to accept the Plan.

C. Voting Procedures and Ballots and Voting Deadline

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the enclosed Ballot. Please complete and sign your original Ballot and return it in the envelope provided to the following:

**DONLIN, RECANO & COMPANY, INC.
P.O. BOX 192016, BLYTHEBOURNE STATION
BROOKLYN, NY 11219**

THE VOTING DEADLINE IS JANUARY 9, 2019, AT 5:00 P.M. (PREVAILING EASTERN STANDARD TIME).

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

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

Bryan Cave Leighton Paisner LLP
161 N. Clark Street, Suite 4300
Chicago, Illinois 60601
Attn.: Jason J. DeJonker
Telephone: 312-602-5000
Facsimile: 312-698-7405
Email: jason.dejonker@bclplaw.com

D. Confirmation Hearing and Deadline for Objections to Confirmation

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

The Court has scheduled a Confirmation Hearing on **January 24, 2019 at 2:00 p.m. EST** in the United States Bankruptcy Court, Courtroom A, Fifth Floor, 170 N. High Street, Columbus, Ohio 43215, and, if necessary, will continue on January 25, 2019.. Notice of the Confirmation Hearing will be provided to Holders of Claims and Interests or their representatives (the “Confirmation Notice”) as set forth in the Disclosure Statement Order. Objections to Confirmation must be filed with the Bankruptcy Court **January 9, 2019** and are governed by Bankruptcy Rules 3020(b) and 9014 and Local Rules for the United States Bankruptcy Court for the Southern District of Ohio. AN OBJECTION TO CONFIRMATION THAT IS NOT TIMELY SERVED AND FILED MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

AS SET FORTH IN ARTICLE X.E OF THIS DISCLOSURE STATEMENT, DEBTOR AND THE COMMITTEE BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERY POSSIBLE FOR HOLDERS OF CLAIMS AGAINST DEBTOR AND THUS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.

VII. SUMMARY OF THE AGREED PLAN OF LIQUIDATION

The primary objective of the Plan is to maximize recoveries by creditors by liquidating Debtor’s remaining assets in the most efficient way and distributing the proceeds of that liquidation to creditors.

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

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

A. Overview of Chapter 11

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

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of Debtor as of the filing date. The Bankruptcy Code provides that Debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

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

B. Overview of the Agreed Plan of Liquidation

Debtor and the Committee believe that the Plan provides the best and most prompt possible recovery to Holders of Claims against Debtor. The Plan is divided into thirteen (13) Articles. It is important that Holders of Claims review the Plan in its entirety.

1. Defined Terms and Rules of Interpretation

Article I of the Plan defines various terms used in the Plan, and Article I also provides rules for interpretation of the Plan and computation of time.

2. Unclassified Claims

Article II of the Plan provides for certain claims that are unclassified under the Plan. Administrative Claims and Priority Tax Claims are not classified under the Plan.

3. Classification of Claims and Interests

Article III of the Plan classifies Claims against and Interests in Debtor. There are two unimpaired Classes of Claims that are deemed to have accepted the Plan: Class 1, Allowed Secured Claims, and Class 2, Allowed Priority Claims (other than unsecured Priority Tax Claims). There is one Impaired Class of Claims in which the Holders of Claims in that Class are entitled to vote on

the Plan. That Class is Class 3, General Unsecured Claims. Finally, there is one Class that is deemed to have rejected the Plan, Class 4, consisting of the Interests of Equity Security Holders.

4. Acceptance or Rejection of the Plan

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

5. Treatment of Claims and Interests

Article V of the Plan describes the treatment of Claims and Interests under the Plan. In general, Holders of Allowed Other Administrative Claims, Allowed Professional Fee Claims, and Allowed Priority Claims will be paid in full as soon as practicable following the Effective Date or the date such Claims are Allowed. Holders of Allowed Priority Claims, including Allowed Priority Tax Claims, will receive distributions from the Creditor Trust within forty-five (45) days of the Effective Date or as otherwise provided by the Creditor Trust Agreement. Holders of Allowed Secured Claims will receive Cash in an amount equal to such Allowed Secured Claims, including, to the extent applicable, postpetition interest, or the collateral securing such Allowed Secured Claims, upon the later of the Effective Date and the date such claims are Allowed. Holders of General Unsecured Claims will receive a Pro Rata share of remaining Creditor Trust Assets after payment of the Trustee's Expenses and the Claims described above. Holders of Class 4 Interests will have their equity interests cancelled and shall not receive a distribution under the Plan.

6. Treatment of Executory Contracts and Unexpired Leases

Article VI of the Plan describes the treatment of Executory Contracts (which term includes unexpired leases). Except as otherwise set forth in the Plan, all Executory Contracts that have not been previously been rejected, or assumed and assigned, will be deemed automatically rejected under the Plan as of the Effective Date. Counterparties to Executory Contracts not previously rejected must file proofs of claim arising from the rejection of such Executory Contracts pursuant to the Plan by no later than thirty (30) days after the Effective Date unless otherwise provided by a Bankruptcy Court order.

Article VI of the Plan further provides that, notwithstanding anything to the contrary in the Plan or Confirmation Order, and unless expressly rejected in the Confirmation Order or other Bankruptcy Court order, any insurance policies of the Debtor in which the Debtor is or was an insured party (including any policies covering directors' or officers' conduct), or any related insurance agreement issued prior to the Petition Date, shall continue in effect after the Effective Date pursuant to the respective terms and conditions and shall be treated as if assumed. All rights of the Debtor under any insurance policies shall automatically become vested in the Creditor Trust without necessity for further approvals or orders. To the extent that any insurance policies or related insurance agreements are deemed executory contracts, then, unless such policies have been rejected pursuant to a separate order of the Bankruptcy Court (or through the Confirmation Order), notwithstanding anything to the contrary in the Plan, the Plan shall constitute a motion to assume, assume and assign, permit "ride through," or ratify such insurance policies or insurance agreements. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute both approval of such assumption pursuant to section 365 of the Bankruptcy Code and a finding by the Bankruptcy Court that such assumption is in the best interests of the Estate. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed upon by the parties prior to

the Effective Date, no payments shall be required to cure any defaults of the Debtor existing as of the Confirmation Date with respect to any insurance policy or insurance agreement assumed, or assumed and assigned, pursuant to Article VI of the Plan. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering or delaying coverage on any basis regarding or related to this Case, the Plan, or any provision within the Plan, including the treatment or means of liquidation set out within the Plan for any insured Claims or Causes of Action. Without limiting the generality of the foregoing, all directors' and officers' liability insurance policies in effect as of the Confirmation Date shall be deemed assumed and shall not be rejected.

Notwithstanding the foregoing, and for purposes of clarity, the insurance policies to be assumed and to be maintained after the Effective Date do not include any insurance policies or agreements pursuant to which Debtor provides employee benefits, such as health, dental, short- and long-term disability insurance, to its current or former employees. Debtor expects its employee benefits plans and all related insurance policies to terminate prior to the Effective Date, but to the extent any employee benefit plans and/or related insurance policies remain in effect as of the Confirmation Date, they shall be terminated on the Effective Date. Specifically, the term "insurance policies" as used in Article VI of the Plan does not include any agreement or insurance policy between Debtor and Life Insurance Company of North America or Cigna Behavioral Health, Inc., all of which Debtor intends to terminate prior to the Effective Date.

With respect to the foregoing, Debtor shall provide written notice to all counterparties to Executory Contracts (including any issuers of insurance policies or insurance agreements) providing them with notice of the Effective Date and all bar dates by which any proofs of Claim related to any rejected Executory Contracts must be filed.

7. Objections to Claims and Provisions Governing Distributions

Article VII of the Plan discusses procedures for resolving Disputed Claims. After the Effective Date, the Creditor Trustee will have the authority to file, settle, compromise, withdraw, or litigate to judgment objections to Claims. Notwithstanding anything contained in Plan to the contrary, the Creditor Trustee shall have the authority to object to the amount of any Claim indicated on the Schedules if the Creditor Trustee determines in good faith that the Claim is fully or partially invalid, overstated, or has previously been paid or satisfied. Furthermore, the Creditor Trustee shall have the ability to request that the Bankruptcy Court estimate any contingent or Disputed Claim, regardless of whether Debtor, Committee, or the Creditor Trustee previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. In the event that the Bankruptcy Court estimates any contingent or Disputed Claim, the amount so estimated shall constitute the maximum allowable amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Creditor Trustee may pursue supplementary proceedings to object to the allowance of such Claim.

Article VII of the Plan discusses provisions governing distributions under the Plan. The Creditor Trustee will make distributions as provided in the Plan for each of the Classes of Claims, as described above. The Creditor Trustee may withhold distributions to the subject of a potential or filed Avoidance Action until such time as the Avoidance Action has been fully and finally resolved.

Article VII of the Plan also describes, among other things: (a) methods of delivery of distributions; (b) the treatment of undeliverable distributions; (c) the selection of distribution dates;

(d) the treatment of *de minimis* distributions; (e) provisions governing Disputed Claims Reserves; (f) provisions regarding setoffs; and (g) provisions governing settlement of Claims.

Notwithstanding anything in the Plan to the contrary, prior to making Distributions hereunder, the Creditor Trustee shall require all Holders to furnish to him: (a) its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service on a Form W-9 and (b) a certification that the Holder is not a person or entity with whom it is illegal for a U.S. person to do business under Office of Foreign Assets Control (“OFAC”) sanctions regulations and/or the list of Specially Designated Nationals and Blocked Persons (collectively, the “Pre-Distribution Certifications”). Pre-Distribution Certification forms will be mailed to the Distribution Address for each Holder prior to Distributions being made, and Holders shall have forty-five (45) days from the date of mailing to return the executed Pre-Distribution Certifications. Any Holder that fails to return the executed Pre-Distribution Certifications within such forty-five (45) day period shall be deemed to have forfeited its right to receive Distributions and shall be forever barred and enjoined from asserting any right to Distributions made prior to the Creditor Trustee receiving its executed Pre-Distribution Certifications (such a Holder, if a Holder of an Allowed Class 3 General Unsecured Claim, would only be entitled to a Pro Rata share of remaining future Distributions, if any). Any Distributions that are forfeited pursuant to this provision will be returned to the Creditor Trustee and become property of the Creditor Trust

Holders of Claims should review Article VII in its entirety.

8. Means for Implementation of the Plan

Article VIII of the Plan describes the means for implementation of the Plan. That Article includes discussion of: (a) the wind down of Debtor; and (b) the establishment and key terms of the Creditor Trust, including the preservation of Causes of Action and their transfer to the Creditor Trust.

a. Establishment of the Creditor Trust

On the Effective Date, the Creditor Trust, a common law grantor trust, shall be established in accordance with the Plan, the Confirmation Order and the Creditor Trust Agreement.

b. Vesting of Assets On the Effective Date, all assets of the Debtor and its Estate (including the Creditor Trust Assets) shall be transferred to and vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan. The assets include, without limitation, all Cash in the possession of the Debtor, all Causes of Action, all existing and uncollected accounts receivable, all pending litigation claims, regardless of venue, in which the Debtor is a plaintiff, all other remaining personal property of the Debtor, all rights of the Debtor under the Plan, the Confirmation Order and all other orders entered by the Bankruptcy Court in the Case on or prior to the Confirmation Date, and all books and records related to the Estate that are in the Debtor’s possession, custody and control as of the Confirmation Date. For the avoidance of doubt, all property held for distribution pursuant to the Plan shall be held by the Creditor Trust solely in trust for the Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Secured Claims, Allowed Class 2 Priority Claims, and Allowed Class 3 General Unsecured Claims and shall not be deemed property of the Debtor. Nothing in the Plan, however, shall preclude payment of: (i) statutory fees under 28 U.S.C. § 1930 to the extent unpaid on the Confirmation Date; and (ii) the Trustee’s Expenses in accordance with this Plan and the Creditor

Trust Agreement from any other assets held by the Creditor Trust. The Debtor is hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of its property to the Creditor Trust, subject to oversight from the Creditor Trustee, as applicable.

c. The Creditor Trust

The Creditor Trust shall be established as of the Effective Date for the benefit of all creditors of the Estate holding Allowed Claims and shall be governed by the Creditor Trust Agreement. Laurence V. Goddard shall be designated as Creditor Trustee. The Creditor Trustee will owe a fiduciary duty, consistent with the duties of trustees under Ohio law, to beneficiaries of the Creditor Trust. The Creditor Trustee, with advice and consultation from the Advisory Committee, shall administer the Creditor Trust Assets pursuant to the Plan and the Creditor Trust Agreement from and after the Confirmation Date. As more fully set forth in the Creditor Trust Agreement, the Creditor Trustee shall be responsible for, inter alia, liquidating the Creditor Trust Assets, analyzing and reconciling Claims (including filing and pursuing objections to the extent required), pursuing the Causes of Action, making distributions of the Net Proceeds to the Beneficiaries of the Creditor Trust, maintaining and administering reserves for Disputed Claims and Claims of Creditors that may be the subject of Avoidance Actions, paying Trustee's Expenses, preparing and filing post-Effective Date operating reports, filing post-Effective Date tax returns and all other activities typically related to trust administration. For the avoidance of doubt, the Debtor shall be responsible for preparing and filing all of its pre-Effective Date tax returns, with the costs of any such returns to be paid by the Creditor Trust, to the extent not paid or pre-paid prior to the Effective Date.

On the Effective Date, the Debtor shall transfer to the Creditor Trust, and the Creditor Trustee shall hold and retain, all Creditor Trust Assets, which shall constitute substantially all remaining assets of Debtor as of the Effective Date, including Cash, accounts and other tangible or intangible personal property, accounts receivable, the Debtor's right, title and interest in and to all Causes of Action, and all books and records related to the Debtor or its Estate. The Creditor Trustee shall succeed to all rights of the Debtor to commence and pursue any and all Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Debtor's Case) discovered in such investigation to the extent the Creditor Trustee deems appropriate. Potential Causes of Action may, but need not be, pursued by the Debtor prior to the Effective Date and by the Creditor Trustee.

The Plan and the Creditor Trust Agreement shall also provide for the appointment of an Advisory Committee, which shall consist of three (3) former members of the Committee. The powers and duties of the Advisory Committee will be set forth in the Creditor Trust Agreement, but will generally include consulting with and advising the Creditor Trustee on administration of the Creditor Trust Assets, the timing and amount of interim and final distributions, the retention of Professionals, and the prosecution and settlement of Causes of Action.

The Creditor Trustee, with advice and consultation from the Advisory Committee, shall administer the Creditor Trust Assets pursuant to the Plan and the Creditor Trust Agreement from and after the Confirmation Date. As more fully set forth in the Creditor Trust Agreement, the Creditor Trustee shall be responsible for, inter alia, liquidating the Creditor Trust Assets, analyzing and reconciling Claims (including filing and pursuing objections to the extent required), pursuing

the Causes of Action, making distributions of the Net Proceeds to the Beneficiaries of the Creditor Trust, maintaining and administering reserves for Disputed Claims and Claims of Creditors that may be the subject of Avoidance Actions, paying Trustee's Expenses, preparing and filing post-Effective Date operating reports, filing post-Effective Date tax returns and all other activities typically related to trust administration. For the avoidance of doubt, the Debtor shall be responsible for preparing and filing all of its pre-Effective Date tax returns.

The Creditor Trustee shall possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under or related to the Case. In addition to the foregoing, for all matters arising in, arising under or related to the Case, the Creditor Trustee shall: (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, Debtor (including, without limitation, bank statements and cancelled checks); (iii) be entitled to notice and opportunity for hearing; (iv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (v) have exclusive standing (including derivative standing to pursue Causes of Action on behalf of the Debtor) to commence Causes of Action, and to continue litigating, as successor-in-interest to the Debtor, any other Causes of Action that were pending as of the Effective Date, regardless of venue; (vi) be entitled to request the Bankruptcy Court to enter a final decree closing the Case; and (vii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in the Case.

The Creditor Trustee shall also be permitted, without the need to obtain Bankruptcy Court approval, to retain, employ and compensate Professionals, including law firms, accounting firms, experts, advisors, consultants or investigators, as he deems necessary. The Professionals retained by the Creditor Trustee are not required to be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in this Case, and the Creditor Trustee shall be permitted to retain any such Professional in light of the efficiencies implicit in continuity.

The Creditor Trustee shall prepare and provide to the Advisory Committee and file with the Bankruptcy Court a report within thirty (30) days after the conclusion of every calendar quarter setting forth: (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Creditor Trust Assets. As used in in the foregoing, "calendar quarter" shall mean a three-month period of time, and the first calendar quarter shall commence on the first day of the first calendar quarter immediately following the occurrence of the Effective Date.

d. Preservation, Prosecution and Resolution of Causes of Action

On the Effective Date, Debtor shall transfer to the Creditor Trust, and the Creditor Trustee shall hold and retain, all rights of Debtor to commence and pursue any and all Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Debtor's Case) discovered in such investigation to the extent the Creditor Trustee deems appropriate. Potential Causes of Action may, but need not be, pursued by the Debtor prior to the Effective Date and by the Creditor Trustee after the Effective Date.

All Causes of Action, defenses, and counterclaims not expressly and specifically released in connection with the Plan, the Confirmation Order, or in any settlement agreement approved during the Case, or as otherwise provided in the Confirmation Order or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, shall be transferred to and vest with the Creditor Trust, whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such Causes of Action, defenses and counterclaims have been listed or referred to in the Plan, the Schedules, or any other document filed with the Bankruptcy Court, and prior to the Effective Date, Debtor shall not waive, relinquish, or abandon (nor shall it be estopped or otherwise precluded from asserting) any right, Claim, Cause of Action, defense, or counterclaim that constitutes property of the Estate: (a) whether or not such right, Claim, Cause of Action, defense, or counterclaim has been listed or referred to in the Plan or the Schedules, or any other document filed with the Bankruptcy Court, (b) whether or not such right, Claim, Cause of Action, defense, or counterclaim is currently known to Debtor, and (c) whether or not a defendant in any litigation relating to such right, Claim, cause of action, defense or counterclaim filed a Proof of Claim in the Case, filed a notice of appearance or any other pleading or notice in the Case, voted for or against the Plan, or received or retained any consideration under the Plan. Without in any manner limiting the generality of the foregoing, notwithstanding any otherwise applicable principle of law or equity, without limitation, any principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a Cause of Action, defense, or counterclaim, or potential Cause of Action, defense, or counterclaim, in the Plan, the Schedules, or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Creditor Trustee's right to commence, prosecute, defend against, settle, and realize upon any Causes of Action, defenses, or counterclaims that the Debtor had immediately prior to the Effective Date, or that the Creditor Trust has as of the Effective Date. The Creditor Trustee may, but is not required to, commence, prosecute, defend against, settle, abandon, and realize upon any rights, Claims, Causes of Action, defenses, and counterclaims in his sole discretion, upon consultation with the Advisory Committee, in accordance with what is in the best interests, and for the benefit, of the beneficiaries of the Creditor Trust.

The preservation for the Creditor Trust of any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 is necessary and relevant to the liquidation and administration of the Creditor Trust Assets. Accordingly, any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 held by the Debtor prior to the Effective Date shall vest with the Creditor Trust and shall continue until dissolution of the Creditor Trust.

Unless any Causes of Action against a Person 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 Creditor Trust: (i) shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtor or the Debtor's Estate, whether arising before or after the Petition Date, including, but not limited to, any Causes of Action specifically enumerated in Appendix C to the Disclosure Statement, and the Creditor Trust's right to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date; and (ii) expressly reserves 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 of the Plan or the occurrence of the Effective Date. The Creditor Trust may pursue

Causes of Action, as appropriate, in accordance with the best interests of the Creditor Trust. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against such Entity as any indication that the Creditor Trust will not pursue any and all available Causes of Action against such Person. The Creditor Trust expressly reserves all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan or in a Bankruptcy Court order. For the avoidance of doubt, the Plan does not release any Causes of Action that the Plan Proponents or the Creditor Trust have or may have now or in the future against any Person.

Except as otherwise provided in the Plan or in a Final Order, the Creditor Trust reserves and shall retain Causes of Action notwithstanding the assumption or rejection of any Executory Contract during the Case or pursuant to the Plan to the fullest extent permitted by law. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtor may hold against any Person that is not released under the Plan or a separate settlement approved by Final Order shall vest in the Creditor Trust, which shall retain and may exclusively enforce any and all such Causes of Action. The Creditor Trust has the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any 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.

e. Limitations on Insider Causes of Action

The Creditor Trustee shall commence any Insider Causes of Action, whether through an adversary proceeding filed with the Bankruptcy Court or a complaint filed in another court having competent jurisdiction, by no later than the Insider Cause of Action Termination Date; provided, however, that the Creditor Trust may seek an extension of the Insider Cause of Action Termination Date for cause by filing a motion with the Bankruptcy Court prior to the Insider Cause of Action Termination Date then in effect. “Cause” shall include, but not be limited to, a failure by any former or current Insider of Debtor to cooperate in good faith with the Committee’s or the Creditor Trustee’s investigation of Insider Causes of Action. In the event that the Committee or the Creditor Trustee does not commence an Insider Cause of Action on or before the applicable Insider Cause of Action Termination Date against a particular Insider, such Insider shall be deemed to have been released and discharged from any Insider Causes of Action in their entirety.

f. Restructuring Transactions

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

9. Confirmation and Consummation of the Plan

Article IX describes the conditions to Confirmation of the Plan and the conditions to the Effective Date of the Plan. Holders of Claims should review Article IX of the Plan in its entirety.

10. Effect of Plan Confirmation

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

- **Binding Effect.** From and after the Confirmation Date, but subject to the occurrence of the Effective Date, the Plan will bind and inure to the benefit of Debtor, all present and former Holders of Claims and Equity Interests, and their respective assigns. The provisions of the Plan, the Confirmation Order, and any associated findings of fact or conclusions of law shall bind the Debtor, any entity acquiring property under the Plan, and any Creditor of the Debtor, whether or not the Claim of such creditor is Impaired under the Plan and whether or not such creditor has accepted the Plan.
- **Limitation of Rights of Holders of Claims.** Pursuant to section 1141 of the Bankruptcy Code, Confirmation will not discharge Claims against Debtor; *provided that* each Holder of an Allowed Claim receiving Distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth therein.
- **Injunction.** Except as otherwise expressly provided in the Plan, all Persons that receive Distributions under the Plan or the Sale Order and that have held, hold, or may hold Claims against or Equity Interests in Debtor are permanently enjoined, from and after the Effective Date, from taking any of the following actions against any of Debtor, its Estate, the Creditor Trust, the Creditor Trustee, or any of their respective property on account of any Claims or causes of action arising from events prior to the Effective Date: (i) commencing or continuing in any manner any action or other proceeding of any kind; (ii) enforcing, attaching, collecting or recovering by any manner or in any place or means any judgment, award, decree or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind; (iv) asserting any defense or right of setoff, subrogation, or recoupment of any kind against any obligation, debt or liability due to Debtor; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan. By accepting Distributions pursuant to the Plan or the Sale Order, each Holder of an Allowed Claim receiving Distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth therein. Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays provided for under the Plan and ordered in the Confirmation Order or pursuant to sections 105 or 362 of the Bankruptcy Code arising under or entered during the Case, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Case is closed.
- **Exculpation.** No Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, loss, or liability for any claim in connection with or arising out of the administration of the Case; the negotiation and pursuit of the transactions approved by the Sale Order, the Disclosure Statement, or this Plan, or the solicitation of votes for, or confirmation of, this Plan; the occurrence of the Effective Date; the administration of this Plan; the distribution of property under the Plan; any contract, instrument, release, or other agreement or document created or

entered into in connection with the Plan or the Case; or the transactions in furtherance of any of the foregoing; provided, however, that no Exculpated Party shall be released and exculpated for willful misconduct or gross negligence (but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to this Plan). The Exculpated Parties have acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of this Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or such distributions made pursuant to this Plan. Nothing in this exculpation shall be construed as a release of any Causes of Action against the Debtor's former or current Insiders for events occurring prior to the Petition Date, except as set forth in Section 8.3.3 of the Plan.

- **Injunction Related to Exculpation.** The Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities enjoined, exculpated, or otherwise limited or prohibited pursuant to this Plan, including the claims, obligations, suits, judgments, damages, demands, debts, rights, and Causes of Action against the Debtor, the Committee, or their attorneys or other advisors that are described in Section 10.5 of the Plan.
- **Modification, Revocation or Withdrawal of the Plan.** Article XI of the Plan provides for the potential modification, revocation, withdrawal, or non-consummation of the Plan.

11. Miscellaneous Provisions

Article XII of the Plan contains various other provisions, including, among other things payment of fees, events of default, and governing law.

12. Retention of Jurisdiction

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

VIII. RISK FACTORS TO BE CONSIDERED

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

A. Failure to Satisfy Vote Requirement

If the Plan does not receive the requisite votes in accordance with the requirements of the Bankruptcy Code, Debtor and/or the Committee may be forced to pursue other alternatives in the

Case that will result in lower creditor recoveries than estimated under the Plan, including but not limited to, a conversion of the Case to a case under chapter 7 of the Bankruptcy Code.

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

The Bankruptcy Court, which sits as a court of equity, may exercise substantial discretion. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, that the value of distributions to dissenting creditors and equity holders not be less than the value of distributions such creditors and equity holders would receive if Debtor were liquidated under chapter 7 of the Bankruptcy Code. Although Debtor and the Committee believe that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. The Plan Proponents, however, reserve the right to amend the Plan in such a manner to as to cure any defects in the satisfaction of the requirements of section 1129 of the Bankruptcy Code.

C. Non-Consensual Confirmation

The Bankruptcy Court may confirm the Plan over the dissent of any Impaired Class if all of the requirements for consensual confirmation under subsection 1129(a) of the Bankruptcy Code, other than subsection 1129(a)(8), and for nonconsensual confirmation under subsection 1129(b) of the Bankruptcy Code, have been satisfied. Because Class 4, consisting of Interests of Equity Security Holders, is impaired and deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, Debtor and the Committee shall request that the Bankruptcy Court confirm the Plan notwithstanding the deemed rejection of Class 4 in accordance with section 1129(b)(2)(C) of the Bankruptcy Code.

Notwithstanding subsection 1129(b) of the Bankruptcy Code, the Bankruptcy Court may not confirm the Plan unless at least one Impaired Class has voted to accept the Plan, without regard to any acceptance of the Plan by any Insider. Class 3, consisting of all Unsecured Claims that are not Administrative Claims, Priority Tax Claims, or Priority Claims, is the only Impaired Class entitled to vote to accept or reject the Plan. Accordingly, if Class 3 does not vote to accept the Plan, the Bankruptcy Court cannot confirm the Plan.

D. Risk of Non-Occurrence of the Effective Date

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

E. Classification and Treatment of Claims and Equity Interests

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

F. Claim Objections and Reconciliations

The potential recovery to Class 3, Allowed General Unsecured Claims, depends on, among other things, the outcome of the Claims reconciliation and objection process, conducted pre-confirmation (to the extent applicable) by Debtor and the Committee and post-confirmation by the Creditor Trustee. Therefore, the distribution to Holders of Class 3 Allowed General Unsecured Claims may increase or decrease depending on the resolution of outstanding Claims. There is a risk that a creditor's Claim, as filed, could be technically classified as Allowed when the Plan is confirmed, but could subsequently become a Disputed Claim even though such creditor voted in favor of the Plan. The Debtor, the Committee and the Creditor Trustee reserve all rights to object to filed and scheduled Claims in accordance with the provisions of the Plan, the Bankruptcy Code and the Bankruptcy Rules.

G. Recoveries from Causes of Action

All Causes of Action that have otherwise not been resolved or expressly released under the Plan will be transferred to the Creditor Trust as of the Effective Date of the Plan. The Committee expects the Creditor Trustee will conduct a thorough investigation of the Causes of Action and will make a determination whether commencing litigation with respect to any Causes of Action not yet pending will yield a material economic benefit to Holders of Allowed General Unsecured Claims. It is impossible at this time to determine whether the Creditor Trustee will commence litigation to pursue Causes of Action and to predict the recoveries, if any, from such litigation.

H. Other Unliquidated Assets

Depending on the timing of the Effective Date, it is possible that the Creditor Trust will receive other unliquidated Assets, such as proceeds from the sale of miscellaneous assets or recoveries of accounts receivable. It is impossible at this time to determine the value of these unliquidated Assets, which will affect the ultimate recovery to Holders of Allowed General Unsecured Claims.

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

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. Neither Debtor nor any other party in interest have requested a ruling from the Internal Revenue Service (the "IRS") or an opinion of counsel concerning same. This Disclosure Statement does not discuss all aspects of federal income taxation that may be relevant to a particular holder of a Claim or Interest in light such holder's individual investment circumstances or to holders subject to special treatment under the federal income tax laws. Please see the Creditor Trust Agreement which will be filed with the Court for a discussion of certain federal income tax considerations, including possible consequences with respect to holders of Allowed Claims that are Beneficiaries of the Creditor Trust.

ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT ITS OWN TAX ADVISOR AS TO THE CONSEQUENCES OF THE PLAN TO IT UNDER FEDERAL AND APPLICABLE STATE, LOCAL AND FOREIGN TAX LAWS. NOTHING CONTAINED HEREIN SHOULD BE CONSIDERED A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED ON A HOLDER'S INDIVIDUAL CIRCUMSTANCE.

X. STATUTORY REQUIREMENTS FOR CONFIRMATION, FEASIBILITY AND ACCEPTANCE OF THE PLAN, BEST INTERESTS TEST, AND CRAMDOWN

A. Statutory Requirements For Confirmation of the Plan

At the Confirmation Hearing, the Bankruptcy Court shall determine whether the requirements of Bankruptcy Code section 1129 have been satisfied. Debtor and the Committee believe that the Plan satisfies or will satisfy the applicable requirements, as follows:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- Plan Proponents, as the proponents of the Plan, will have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Case, or in connection with the Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) subject to the approval of the Bankruptcy Court is reasonable if it is to be fixed after the Confirmation of the Plan.
- Either each Holder of an Impaired Claim or Equity Interest will have accepted the Plan, or will receive or retain under the Plan on account of that Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that the Holder would receive or retain if Debtor was liquidated on that date under Chapter 7 of the Bankruptcy Code.
- Each Class of Claims or Interests that is entitled to vote on the Plan will have either accepted the Plan or is not Impaired under the Plan, or the Plan can be confirmed without the approval of each voting Class pursuant to Bankruptcy Code section 1129(b).
- At least one Class of Impaired Claims will accept the Plan, determined without including any acceptance of the Plan by any Insider holding a Claim of that Class.
- The Plan provides for the payment in full of administrative expense and certain priority claims in accordance with section 1129(a)(9) of the Bankruptcy Code.
- Confirmation of the Plan is not likely to be followed by further liquidation or financial reorganization of Debtor or any successors thereto under the Plan except to the extent such a liquidation is proposed in the Plan.
- All fees of the type described in 28 U.S.C. § 1930, including the fees of the United States Trustee if applicable, will be paid as of the Effective Date.

Plan Proponents believe that: (a) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (b) they have complied or will have complied with all of the requirements of chapter 11; and (c) the Plan has been proposed in good faith.

B. Feasibility of the Plan

Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court determine that confirmation of a Plan is not likely to be followed by liquidation or the need for further financial reorganization of Debtor. The Plan already contemplates a liquidation, so the goals of the Plan are feasible and the risk of further financial reorganization is not relevant.

C. Acceptance of the Plan

As a condition to confirmation, section 1129(a)(8) of the Bankruptcy Code requires that each Class of Impaired Claims vote to accept the Plan, except under certain circumstances. Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two thirds (2/3) in dollar amount and more than one half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the Plan. Thus, for example, Class 3 votes to accept the Plan only if two thirds (2/3) in amount and a majority in number actually voting in such Class cast their Ballots in favor of acceptance. Holders of Claims who fail to vote are not counted as either accepting or rejecting a plan.

D. Best Interests Test

Section 1129(a)(7) provides that before the Plan may be confirmed, the Bankruptcy Court must find (with certain exceptions) that the Plan provides, with respect to each Class, that each Holder of a Claim or Interest in such Class either: (a) has accepted the Plan; or (b) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such person would receive or retain if Debtor liquidated under chapter 7 of the Bankruptcy Code.

In chapter 7 liquidation cases, unsecured creditors and interest holders of a debtor are paid from available assets generally in the following order, with no junior Class receiving any payments until all amounts due to senior Classes have been paid fully or any such payment is provided for:

- Secured creditors (to the extent of the value of their collateral);
- Priority creditors;
- Unsecured creditors;
- Debt expressly subordinated by its terms or by order of the Bankruptcy Court; and
- Equity interest holders.

As described in more detail in the Liquidation Analysis set forth below, Plan Proponents believe that the value of any distributions in a chapter 7 case would be less than the value of distributions under the Plan because, among other reasons, distributions in a chapter 7 case may not occur for a longer period of time, thereby reducing the present value of such distributions. In this regard, it is possible that distribution of the proceeds of a liquidation could be delayed for a period in order for a chapter 7 trustee and its professionals to become knowledgeable about the chapter 11 case and the Claims against Debtor. In addition, proceeds received from the remaining assets in a

chapter 7 liquidation are likely to be significantly discounted due to the unfamiliarity of a chapter 7 trustee with such assets, and the fees and expenses of a chapter 7 trustee would likely exceed those of the Professionals retained by Debtor's estate and the Creditor Trust (thereby further reducing Cash available for distribution). Consequently, holders of Class 3 Claims will receive more under the Plan than they would receive in a liquidation.

E. Chapter 7 Liquidation Analysis

In order to estimate the results to creditors in a chapter 7 liquidation, Debtor prepared a liquidation analysis that provides an estimate of the proceeds that may be generated as a result of a hypothetical chapter 7 liquidation for Debtor (the "Liquidation Analysis"). While Debtor believes that the assumptions underlying the Liquidation Analysis are reasonable, it is possible that certain of those assumptions would not be realized in an actual liquidation. The Liquidation Analysis is set forth as Appendix B to this Disclosure Statement.

Notwithstanding the foregoing, Debtor and the Committee believe that any liquidation analysis with respect to Debtor is inherently speculative. The Liquidation Analysis necessarily contains estimates of the net proceeds that would be received through a chapter 7 trustee's liquidation of the remaining assets, as well as the amount of Claims that will ultimately become Allowed Claims. These estimates should not be relied on for any other purpose, including, without limitation, any determination of the value of any distribution to be made on account of Allowed Claims under the Plan.

F. Application of the Best Interests of Creditors Test to the Liquidation Analysis

In this case, Debtor has sold most of its assets, with the remaining assets to be liquidated and distributed pursuant to the Plan. A liquidation under chapter 7 would accomplish the same result but with the additional cost of chapter 7 trustee fees and the cost of administering and proceeding with a chapter 7 case. Additionally, Debtor and the Committee believe that the Estate has a better chance to collect certain post-Petition Date receivables due to the structured process under the Plan as opposed to the "fire sale" nature of a chapter 7 case. The recovery available in a chapter 7 liquidation to creditors in each Impaired Class in this Case would be substantially less because of the additional administrative costs associated with a chapter 7 trustee and professionals not familiar with Debtor's bankruptcy case. Accordingly, the "best interests" test of section 1129(a)(7) of the Bankruptcy Code is satisfied because the members of each Impaired Class will receive greater or equal value under the Plan than they would in a chapter 7 liquidation.

Specifically, the Plan projects a recovery to Holders of Allowed Class 3 General Unsecured Claims in a range of 3-6%, while the chapter 7 Liquidation Analysis projects a recovery of 2.3-4.8%. Recovery under the Plan is therefore better than it would be in a chapter 7 liquidation.

Accordingly, Debtor and the Committee believe that the "best interests" test of section 1129 of the Bankruptcy Code is satisfied because the members of each Impaired Class will receive greater or equal value under the Plan than they would in a liquidation. Although Debtor and the Committee believe that the Plan meets the "best interests test" of section 1129(a)(7) of the Bankruptcy Code, there can be no assurance that the Bankruptcy Court will determine that the Plan meets this test.

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

In view of the deemed rejection by Holders of Class 4 Interests, Debtor and the Committee will seek confirmation of the Plan pursuant to the “cramdown” provisions of section 1129 of the Bankruptcy Code. Specifically, section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed even if the plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted it. The Bankruptcy Court may confirm the Plan at the request of a Plan Proponent if the Plan “does not discriminate unfairly” and is “fair and equitable” as to each impaired class that has not accepted the Plan. A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated equally with respect to other classes of equal rank.

Debtor and the Committee believe the Plan does not discriminate unfairly with respect to Holders of Class 4 Interests. Holders of Interests in Class 4 are not receiving any distribution under the Plan, and are not entitled to payment under the absolute priority rule until all Class 1, Class 2, and Class 3 creditors have been paid in full.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides: (i) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or (ii) that the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property at all.

Debtor and the Committee believe that the Plan will meet the “fair and equitable” requirements of section 1129(b) of the Bankruptcy Code with respect to Holders of Class 4 Interests. No Claim or Interest Holder junior to Holders of Class 4 Interests is receiving any recovery pursuant to their Claim or Interest, thereby satisfying section 1129(b) with respect to Class 4.

The Plan reserves the right of Debtor and the Committee to seek confirmation of the Plan through cramdown with respect to any other Class that is determined to be impaired or any creditor that has not accepted or is deemed not to have accepted the Plan pursuant to section 1126 of the Bankruptcy Code, including, to the extent necessary, Disputed Claims not entitled to vote under the Plan. However, notwithstanding subsection 1129(b) of the Bankruptcy Code, the Bankruptcy Court may not confirm the Plan unless at least one Impaired Class has voted to accept the Plan, without regard to any acceptance of the Plan by any Insider. Class 3, consisting of all Unsecured Claims that are not Administrative Claims, Priority Tax Claims, or Priority Claims, is the only Impaired Class entitled to vote to accept or reject the Plan. Accordingly, if Class 3 does not vote to accept the Plan, the Bankruptcy Court cannot confirm the Plan.

XI. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

Debtor and the Committee believe that the Plan affords Holders of Claims the potential for the greatest recovery and, therefore, is in the best interests of such Holders.

If, however, the requisite acceptances are not received, or the Plan is not confirmed and consummated, the theoretical alternatives include: (i) formulation of an alternative plan of liquidation; or (ii) liquidation of Debtor under chapter 7 of the Bankruptcy Code.

If the Plan is not confirmed, Debtor or any other party in interest could attempt to formulate a different plan. Such a plan might involve an orderly liquidation of Debtor's assets. With respect to an alternative plan, Plan Proponents have explored various alternatives in connection with the formulation and development of the Plan. Plan Proponents believe that the Plan, as described herein, enables creditors to realize the most value under the circumstances. Furthermore, any distributions to the Holders of Claims under a different chapter 11 plan of liquidation would likely be substantially delayed.

If no plan is confirmed, Debtor may be forced to liquidate under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to liquidate Debtor's assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the respective Holders of Claims against or Interests in Debtor. As noted above and in the Liquidation Analysis, however, Debtor and the Committee believe that in a liquidation under chapter 7, before creditors receive any distribution, additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants and other professionals to assist such trustees would cause a substantial diminution in the value of Debtor's Estate. The assets available for distribution to creditors would be reduced by such additional expenses.

Accordingly, Debtor and the Committee believe that any alternative liquidation under chapter 7 or 11 is a much less attractive alternative to creditors than the Plan because of the greater return Debtor and the Committee believe is provided to creditors under the Plan.

XII. MISCELLANEOUS PROVISIONS

A. Attachments; Entire Agreement

All attachments to the Disclosure Statement are incorporated herein by reference and are intended to be an integral part of this document as though fully set forth in the Disclosure Statement.

B. Plan Amendments

The Plan Proponents reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, in their discretion, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. Upon entry of the Confirmation Order, the Plan Proponents may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or 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. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such Holder and the votes of each Class for or against the Plan shall be counted and used in connection with the modified plan of reorganization.

C. Governing Law

Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under this Disclosure Statement and the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Ohio, without giving effect to any conflicts of law principles.

D. No Admissions

Notwithstanding anything here and to the contrary, nothing contained in this Disclosure Statement shall be deemed as an admission by any Person with respect to any matter set forth herein.

[THIS SPACE INTENTIONALLY LEFT BLANK.]

XIII. CONCLUSION AND RECOMMENDATION

Debtor and the Committee believe that confirmation and implementation of the Plan is preferable to any other alternative and recommend that creditors vote in favor of the Plan.

December 4, 2018

Respectfully Submitted,

**ASPC CORP., F/K/A ACUSPORT
CORPORATION**

By: /s/ Lee Sweigart
 Its Chief Restructuring Officer

APPENDIX A – PLAN OF LIQUIDATION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)
) Chapter 11
)
ASPC Corp., f/k/a AcuSport Corporation,) Case No. 18-52736
)
) Debtor.) Hon. John E. Hoffman, Jr.
)
_____)

**AGREED FIRST AMENDED PLAN OF LIQUIDATION OF
DEBTOR AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Dated: December 4, 2018

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**AGREED PLAN OF LIQUIDATION OF DEBTOR AND
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

ASPC Corp., f/k/a AcuSport Corporation, as debtor and debtor-in-possession (the “*Debtor*”) and the Official Committee of Unsecured Creditors (the “*Committee*”), hereby submit this Agreed First Amended Plan of Liquidation of Debtor (the “*Plan*”) pursuant to section 1123 of the Bankruptcy Code:

ARTICLE I

Definitions

The following terms, when used in the Plan shall, unless the context otherwise requires, have the following meanings, respectively:

1.1 “**Administrative Claim**” shall mean a Claim of a Creditor of the kind specified in section 503(b) of the Bankruptcy Code that is entitled to priority under section 507(a)(2) of the Bankruptcy Code, and shall include: (i) any actual and necessary costs and expenses incurred by the Debtor after the Petition Date with respect to preserving the Estate and operating the Debtor’s business; (ii) any Professional Fee Claims approved by the Bankruptcy Court pursuant to section 330 of the Bankruptcy Code; and (iii) all UST Fees.

1.2 “**Administrative Claims Bar Date**” shall have the meaning set forth in Section 5.1.2 of the Plan.

1.3 “**Advisory Committee**” shall mean the committee created pursuant to the Creditor Trust Agreement, which shall provide advice and consultation to the Creditor Trustee in the manner set forth in the Creditor Trust Agreement.

1.4 “**Agent**” shall mean Wells Fargo Bank, N.A., in its capacity as administrative agent for the Pre-Petition Lenders under the Pre-Petition Loan Documents.

1.5 “**Allowed Claim**” or “**Allowed . . . Claim**” shall mean a Claim, proof of which is filed by the General Bar Date or the Governmental Bar Date, as applicable, pursuant to the procedures established pursuant to the Bar Date Order, or that has been, or is hereafter, scheduled by the Debtor as liquidated in amount and not disputed or contingent, and to which no objection to allowance thereof has been raised by the Debtor, Creditor Trustee or filed within any applicable period fixed by the Bankruptcy Court, or as to which a Final Order allowing such Claim has been entered.

1.6 “**Avoidance Action**” shall mean causes of action against Persons arising under sections 502, 510, 541, 542, 544, 545, 547 through 551 and 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer laws, whether or not litigation is commenced before or after the Confirmation Date to prosecute such Avoidance Actions.

1.7 “**Ballot**” shall mean the form distributed to each Holder of an impaired Claim on which is to be indicated acceptance or rejection of the Plan.

1.8 “**Bankruptcy Code**” shall mean title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

1.9 “**Bankruptcy Court**” shall mean the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division, located in Columbus, Ohio, or any court having jurisdiction over this Case or a proceeding arising in, or arising under or related to this Case.

1.10 “**Bankruptcy Rules**” shall mean the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, as now in effect.

1.11 “**Bar Date Order**” shall mean that certain Order Establishing Bar Date and Approving Form and Manner of Notice Thereof (Docket No. 191).

1.12 “**Beneficiaries**” shall mean the beneficiaries of the Creditor Trust; specifically, Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Secured Claims, Allowed Class 2 Priority Claims, and Allowed Class 3 General Unsecured Claims that are entitled to receive a Distribution from the Creditor Trust under the terms of the Plan and the Creditor Trust Agreement.

1.13 “**Case**” shall mean the case commenced under chapter 11 of the Bankruptcy Code by the Debtor on the Petition Date, styled *In re ASPC Corp., f/k/a AcuSport Corporation*, Case No. 18-52736, currently pending before the Bankruptcy Court.

1.14 “**Cash**” shall mean legal tender of the United States of America and equivalents thereof.

1.15 “**Cash Collateral Order**” shall mean that certain Final Order Authorizing Debtor to: (A) Use Cash Collateral; and (B) Grant Adequate Protection and Other Relief to Wells Fargo Bank, N.A., as Agent, and to Debtor’s Lenders (Docket No. 129).

1.16 “**Causes of Action**” shall mean any claim, cause of action, chose in action, action, suit, demand, and any other debt, obligation, right, damage, remedy, controversy, agreement, promise, lien, variance, trespass, power, privilege, license, franchise, judgment, third-party claim, subrogation claim, guaranty claim, contribution claim, reimbursement claim, indemnity claim, counterclaim, right of setoff or recoupment, crossclaim, claim objection, defense to claim, and liability whatsoever of any kind or character relating to any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising, in law, equity, or otherwise. Cause of Action also includes: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity belonging to the Estate; (b) any claim pursuant to sections 362, 502, and 510 of the Bankruptcy Code and any analogous provisions of applicable state law belonging to the Estate; (c) any claim, right or cause of action related to any and all Avoidance Actions; (d) any claim or defense including, but not limited to fraud, mistake, duress, and usury and any other defenses belonging to the Estate pursuant to section 558 of the Bankruptcy Code; and (e) any claim, right, or cause of action against any Insiders, officers, directors, recipient of a fraudulent

transfer, and/or related entities. For the avoidance of doubt, Causes of Action shall include Fiduciary Duty Causes of Action and Other Potential Insider Actions.

1.17 “**Claim**” shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

1.18 “**Class**” shall mean a class of Holders of Claims as described in the Plan.

1.19 “**Committee**” shall mean the Official Committee of Unsecured Creditors appointed in this Case on May 10, 2018, pursuant to section 1102 of the Bankruptcy Code, as amended by the *Amended Notice of Appointment of Unsecured Creditors Committee* filed on July 25, 2018 [Dkt. No. 277].

1.20 “**Confirmation Date**” shall mean the date of entry of the Confirmation Order.

1.21 “**Confirmation Hearing**” shall mean the date on which the Bankruptcy Court holds a hearing pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan in accordance with section 1129 of the Bankruptcy Code, as the same may be adjourned from time to time.

1.22 “**Confirmation Order**” shall mean the order confirming this Plan.

1.23 “**Creditor**” shall have the meaning set forth in section 101(10) of the Bankruptcy Code .

1.24 “**Creditor Trust**” shall mean a common law grantor trust to be established pursuant to the Plan, the Creditor Trust Agreement and the Confirmation Order for the sole and exclusive benefit of the Beneficiaries. The Creditor Trust shall liquidate and distribute the Creditor Trust Assets, in accordance with the Creditor Trust Agreement.

1.25 “**Creditor Trust Agreement**” shall mean the agreement to be executed by no later than the Effective Date among the Debtor, the Committee and the Creditor Trustee, which shall govern the obligations of the Creditor Trustee with respect to oversight of the distribution of the Net Proceeds of the Creditor Trust Assets, as further set forth in the Creditor Trust Agreement and the Plan.

1.26 “**Creditor Trust Assets**” shall mean those assets to be transferred to and vested in the Creditor Trust pursuant to this Plan and the Confirmation Order, plus all proceeds, earnings and replacements arising from or relating to these assets and all assets acquired by the Creditor Trust at any time. The Creditor Trust Assets shall include (but not be limited to): (i) all Cash held by the Debtor (less any Cash paid or to be paid on account of unpaid Allowed Professional Fee Claims); (ii) the Debtor’s remaining property, including accounts or any other tangible or intangible personal property and any and all proceeds thereof; (iii) the Debtor’s outstanding accounts receivable; (iv) the Debtor’s right, title and interest in and to all Causes of Action and any proceeds therefrom; and (v) all books and records related to the Debtor or its Estate. The Creditor Trust Assets shall not include any carve-outs from collateral of the Lenders, including without limitation amounts held by Professionals as carve-outs from the Lenders’ collateral to be used to compensate Professionals for their fees and expenses.

1.27 “**Creditor Trustee**” shall mean Laurence V. Goddard, or any successor designated by the Advisory Committee, subject to approval by the Bankruptcy Court, to serve as custodian for the Creditor Trust and to oversee the liquidation and distribution of the Creditor Trust Assets held therein for the benefit of the Beneficiaries, pursuant to the Plan, the Confirmation Order and the Creditor Trust Agreement.

1.28 “**De Minimis Distribution**” shall mean any Distribution in an amount less than fifty dollars (\$50.00).

1.29 “**Debtor**” shall mean ASPC Corp., f/k/a AcuSport Corporation, an Ohio corporation.

1.30 “**Disclosure Statement**” shall mean the Second Amended Disclosure Statement filed by the Debtor and the Committee and approved by the Bankruptcy Court.

1.31 “**Disputed Claim**” or “**Disputed . . . Claim**” shall mean:

(a) a Claim that has not been listed by the Debtor in its Schedules or has been listed in the Schedules at zero, or has been listed in the Schedules as contingent, unliquidated or disputed and for which no proof of Claim has been timely filed with the Bankruptcy Court;

(b) if a proof of Claim or request for payment of an Administrative Claim has been filed: (i) a Claim for which no corresponding Claim is listed on the Debtor’s books and records or in its Schedules or (ii) a Claim for which corresponding Claim is listed in the Debtor’s books and records, but the nature or amount of the Claim as asserted in the filed proof of Claim varies from the nature and amount of such Claim as it is listed on in the Debtor’s books and record or its Schedules;

(c) a Claim for which the Debtor has received a written notice advising it that the Holder of such Claim disagrees with the Debtor’s books and records or its Schedules with respect to the Allowed amount of such Holder’s Claim; or

(d) (j) a Claim otherwise subject to a formal objection filed in the Case, a request for estimation filed in the Case, or otherwise disputed (in writing delivered to the Holder of such Claim) by the Debtor or any party-in-interest, in accordance with applicable law; and (ii) which such written objection has not been withdrawn, resolved or overruled by a Final Order of the Bankruptcy Court.

For the avoidance of doubt, the Debtor, the Committee and the Creditor Trustee reserve the right to object to any Claim not otherwise Allowed by Final Order of the Court in accordance with the Plan, the Creditor Trust Agreement, the Bankruptcy Code and the Bankruptcy Rules.

1.32 “**Distribution**” shall mean the Cash or other value distributed to holders of Allowed Claims or Beneficiaries, as applicable, pursuant to the Plan and/or the Creditor Trust Agreement.

1.33 “**Effective Date**” shall mean a date selected by the Plan Proponents, which shall be a Business Day after the Confirmation Date on which all conditions specified in Section 9.3 herein have been satisfied (or waived in accordance therewith); provided, however, that if a stay of the Confirmation Order is in effect on such day, then the Effective Date shall be the first day thereafter on which, if the Confirmation Order has not been vacated, no stay of the Confirmation Order is in effect.

1.34 “**Equity Security**” shall have the meaning provided by section 101(16) of the Bankruptcy Code.

1.35 “**Equity Security Holder**” shall have the meaning provided by section 101(17) of the Bankruptcy Code.

1.36 “**Estate**” shall mean the estate of the Debtor created in this Case pursuant to section 541 of the Bankruptcy Code.

1.37 “**Exculpated Party**” shall mean, collectively, and in each case in its capacity as such: (a) the Debtor and its Estate; (b) the Committee and its individual members; (c) the Debtor’s and the Committee’s Professionals; (d) with respect to each of the foregoing entities in clauses (a) through (c), each such entity’s current and former affiliates, direct and indirect subsidiaries, and direct and indirect equity holders and/or partners; and (e) with respect to each of the foregoing entities in clauses (a) through (e), each of their respective current and former directors, officers, equity holders, employees, partners, managers, independent contractors, agents, representatives, principals, professionals, consultants, financial advisors, attorneys, accountants, trustees, investment bankers, and other professional advisors (with respect to clause (e), each solely in their capacity as such).

1.38 “**Executory Contract**” shall mean an executory contract or unexpired lease, the assumption, rejection and assignment of which are governed by, *inter alia*, section 365 of the Bankruptcy Code.

1.39 “**Fiduciary Duty Cause of Action**” shall mean any claims and Causes of Action against any current or former Insider of the Debtor based on a breach of such Insider’s fiduciary duties, as defined under applicable law, to the Debtor, its Estate, stakeholders or creditors.

1.40 “**Final Order**” shall mean an order or judgment as to which the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for review or rehearing is pending.

1.41 “**General Bar Date**” shall mean July 27, 2018, the bar date by which a proof of Claim must be filed, except for: (a) claims of governmental units; (b) claims resulting from a subsequent amendment to the Schedules; and (c) claims based on the Debtor’s rejection of an Executory Contract, as established by the Bar Date Order.

1.42 “**General Unsecured Claim**” shall mean any Unsecured Claim, arising prior to the Petition Date, that is not a Professional Fee Claim, Other Administrative Expense Claim, Unsecured Priority Tax Claim, Class 1 (Secured Claims), Class 2 Claim (Priority Claims) or Class 4 Interest (Equity Security Interests).

1.43 “**Governmental Bar Date**” shall mean October 29, 2018, the bar date by which a proof of Claim of a governmental unit must be filed, as established by the Bar Date Order.

1.44 “**Holder**” shall mean any Person owning or holding a Claim or Equity Interest.

1.45 “**Impaired**” shall mean any Class, or any Claim or Interest in a Class, that is impaired within the meaning of section 1124 of the Bankruptcy Code, and shall include, without limitation, Class 3 General Unsecured Claims and Class 4 Equity Security Interests.

1.46 “**Insider**” shall have the meaning provided by section 101(31) of the Bankruptcy Code.

1.47 “**Insider Cause of Action Termination Date**” shall be the date that is one-hundred eighty (180) days from the Effective Date, as may be extended in accordance with Section 8.8.4 of this Plan.

1.48 “**Insider Causes of Action**” shall mean all Causes of Action against a current or former Insider of the Debtor, including, without limitation, Avoidance Actions, Fiduciary Duty Causes of Action, and Other Potential Insider Actions.

1.49 “**Interest**” shall mean the legal, equitable, contractual and other rights of the Holders of any Equity Security in the Debtor, including the rights of any entity to purchase or demand the issuance of any Equity Securities, including: (i) conversion, exchange, voting, participation and dividend rights; (ii) liquidation preferences; (iii) stock options, warrants and put rights; and (iv) share-appreciation rights.

1.50 “**Lenders**” shall mean the Agent and the Pre-Petition Lenders.

1.51 “**Lien**” shall have the meaning provided by section 101(37) of the Bankruptcy Code.

1.52 “**Net Proceeds**” shall mean the Cash proceeds received by the Creditor Trustee from time to time from the liquidation or other disposition of the Creditor Trust Assets, net of the reasonable or necessary costs of such sale or other disposition, including reasonable fees and expenses of the Creditor Trustee’s legal counsel and other Professionals incurred in connection therewith.

1.53 “**Other Administrative Expense Claim**” shall mean an Administrative Claim that is not a Professional Fee Claim.

1.54 “**Other Potential Insider Actions**” shall mean any claims and Causes of Action, excluding Avoidance Actions and Fiduciary Duty Causes of Action, held by the Debtor, the Estate, the Committee or the Creditor Trustee against any current or former Insider of the Debtor.

1.55 “**Person**” means a “person” as defined in Bankruptcy Code section 101(41) and shall include, *inter alia*, any individual, corporation, general partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, joint

venture, government or political subdivision, official committee appointed by the United States Trustee, unofficial committee of creditors or equity holders, or other entity (as defined in section 101(15) of the Bankruptcy Code).

1.56 “**Petition Date**” shall mean the date of the filing of the Debtor’s Case, or May 1, 2018.

1.57 “**Plan**” shall mean this Agreed First Amended Plan of Liquidation of Debtor and the Official Committee of Unsecured Creditors as set forth herein or as it may be modified or amended.

1.58 “**Plan Proponents**” shall mean the Debtor and the Committee.

1.59 “**Pre-Petition Lenders**” shall mean Wells Fargo Bank, N.A., Huntington National Bank, N.A., Regions Bank, N.A., and Citizens Bank, N.A.

1.60 “**Pre-Petition Loan Documents**” shall mean all loan and security agreements, and any related agreements, governing the lending relationship between the Lenders and the Debtor, including, but not limited to, that certain Credit Agreement dated June 4, 2015 by and among the Debtor and the Lenders (as amended, modified or supplemented from time to time).

1.61 “**Priority Claim**” shall mean a Claim, other than an Administrative Claim or Priority Tax Claim, that is entitled to priority in payment under section 507(a) of the Bankruptcy Code. With respect to the Claims of employees or former employees, such Claims shall constitute Priority Claims only to the extent permissible under sections 507(a)(4) and (a)(5) of the Bankruptcy Code or prior order of the Bankruptcy Court.

1.62 “**Priority Tax Claims**” shall mean a Claim of a governmental unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

1.63 “**Professional Fee Claims**” shall mean Claims of Professional Persons for compensation for services rendered in this Case prior to the Confirmation Date pursuant to sections 327, 328, 330, 331, 363, 503 or 1103 of the Bankruptcy Code.

1.64 “**Professional Fee Carve Out Funds**” shall mean such Cash held by the Debtor to compensate Professionals for the Debtor and the Committee, as described more fully in the Cash Collateral Order, for such Professionals’ Allowed Professional Fee Claims.

1.65 “**Professional**” or “**Professional Persons**” shall mean persons, including attorneys, accountants, investment bankers, financial advisors and other professional advisors retained by the Debtor, the Committee or the Creditor Trustee, or to be compensated pursuant to sections 327, 328, 330, 331, 363, 503 or 1103 of the Bankruptcy Code.

1.66 “**Pro Rata**” shall mean proportionately so that the ratio of the amount of the distribution made on account of a particular Allowed Claim to the distribution made on account of all Allowed Claims of the Class in which the particular Allowed Claim is included is the same as the ratio of the amount a particular Allowed Claim to the total amount of the Allowed Claims of the Class of which a particular Allowed Claim is included.

1.67 “**Released Party**” shall mean, collectively, and in each case in its capacity as such: (a) the Debtor and its Estate; (b) the Committee and its individual members; (c) the Debtor’s and the Committee’s Professionals; (d) the Creditor Trust, the Creditor Trustee, and the Creditor Trustee’s Professionals.

1.68 “**Releases**” shall mean the releases described in Article 10.5 the Plan.

1.69 “**Sale Order**” shall mean that certain Order (I) Approving and Authorizing Sale of Certain of Debtor’s Assets Pursuant to Successful Bidder’s Asset Purchase Agreement, Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (III) Granting Related Relief (Docket No. 230) entered by the Bankruptcy Court on June 28, 2018.

1.70 “**Schedules**” shall mean the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor in accordance with section 521 of the Bankruptcy Code and the Official Bankruptcy Forms of the Bankruptcy Rules as such schedules and statements have been or may be supplemented or amended.

1.71 “**Secured Claim**” shall mean: (a) any Claim that is secured by a Lien on property in which the Estate has an interest, which Liens are valid, perfected and enforceable under applicable law or by reason of a Final Order, or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; and (b) any Claim which is Allowed under the Plan as a Secured Claim..

1.72 “**Secured Creditor**” shall mean the Holder of a Secured Claim.

1.73 “**Trustee’s Expenses**” shall mean the reasonable fees, costs and expenses incurred by the Creditor Trustee and any Professionals retained by him or her in connection with the performance of his or her duties and responsibilities under the Plan and Creditor Trust Agreement, as well as any other reasonable and necessary costs of administration of the Creditor Trust, including UST Fees incurred during the post-Confirmation Date period and the reasonable fees, costs and expenses of Debtor and its Professionals for work performed at the direction of the Creditor Trustee in furtherance of the Plan or to support the efforts of the Creditor Trustee, all of which may be paid from the Creditor Trust Assets.

1.74 “**Unsecured Claim**” shall mean a Claim of a Creditor not secured by a Lien on property of the Estate or which is otherwise not a Secured Claim (including any Claim that is not subject to a right of setoff against Debtor or its Estate under section 553 of the Bankruptcy Code).

1.75 “**U.S. Trustee**” shall mean the United States Trustee.

1.76 “**UST Fees**” shall mean all fees and charges properly assessed against the Estate pursuant to 28 U.S.C. § 1930.

1.77 **Rules of Interpretation and Computation of Time.** For purposes of this Plan, unless otherwise provided herein: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (ii) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (iii) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to this Plan; (iv) any reference to any entity as a Holder of a Claim or Interest includes the entity's successors and assigns; (v) all references in this Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to this Plan; (vi) the words "herein," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (vii) 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 this Plan; (viii) the rules of construction set forth in section 102 of the Bankruptcy Code will apply; and (ix) in computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) will apply.

ARTICLE II

Unclassified Claims

Section 1123(a)(1) of the Bankruptcy Code provides that Administrative Claims and Priority Tax Claims are not to be classified under the Plan.

2.1 **Allowed Administrative Claims** include the following:

2.1.1 **Allowed Administrative Claims of any Professional Person** shall include Allowed Professional Fee Claims.

2.1.2 **Allowed Other Administrative Expense Claims** shall include Allowed Other Administrative Claims.

2.2 **Priority Tax Claims** shall include Allowed unsecured Priority Tax Claims.

ARTICLE III

Designation of Classified Claims and Interests

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Claims and Interests are classified as follows:

3.1 **Class 1 Claims** shall consist of all Allowed Secured Claims.

3.2 **Class 2 Claims** shall consist of all Allowed Priority Claims (other than unsecured Priority Tax Claims).

3.3 **Class 3 Claims** shall consist of the Allowed General Unsecured Claims.

3.4 **Class 4 Interests** shall consist of the Interests of Equity Security Holders.

ARTICLE IV

Impairment of Classes

4.1 **Impaired Classes of Claims Entitled To Vote.** Except as otherwise provided in order(s) of the Bankruptcy Court pertaining to solicitation of votes on this Plan, Class 3 is Impaired and Holders of Allowed Claims in that Class shall be entitled to vote to accept or reject this Plan.

4.2 **Classes Deemed To Accept the Plan.** Class 1 and 2 Claims are unimpaired by this Plan and Holders of such Allowed Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. The votes of Creditors holding these Claims will therefore not be solicited.

4.3 **Classes Deemed To Reject the Plan.** Holders of Interests in Class 4 will not receive or retain any distribution under the Plan on account of their Interests. Pursuant to section 1126(g) of the Bankruptcy Code, Class 4 is Impaired and is conclusively presumed to have rejected this Plan, and the votes of Equity Security Holders holding Class 4 Interests therefore will not be solicited.

4.4 **Cram Down.** The Debtor and the Committee will request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code with respect to Class 4, which is deemed to have rejected the Plan.

4.5 **Elimination of Vacant Classes.** Any Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily Allowed by the Court for voting purposes as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

ARTICLE V

Treatment of Claims and Interests

5.1 **Allowed Professional Fee Claims and Allowed Other Administrative Expense Claims.**

5.1.1 Each Allowed Other Administrative Claim and each Allowed Professional Fee Claim (to the extent not paid from Professional Fee Carve Out Funds, or otherwise payable from the Lenders' collateral pursuant to the Cash Collateral Order) shall be paid by the Debtor (prior to the Effective Date) or the Creditor Trustee (on and after the Effective Date) (i) in full, in Cash, in such amounts as such Administrative Claim is Allowed by the Bankruptcy Court as soon as practicable after the Effective Date or the date upon which such Administrative Claim is Allowed or (ii) upon such other terms as may be agreed upon between the Holder of such Administrative Claim and the Debtor or the Creditor Trustee (as applicable). Any application for the payment of any Other Administrative Claims and any Professional Fee Claim shall be filed

with the Bankruptcy Court no later than the Administrative Claims Bar Date. All fees payable pursuant to section 1930 of Title 28 of the United States Code shall be paid on the Effective Date. The Creditor Trust and Creditor Trustee shall be liable for the payment of all quarterly fees due pursuant to section 1930 of Title 28 after the Effective Date. The Creditor Trust and Creditor Trustee shall provide the United States Trustee with post-confirmation quarterly reports that shall include all of their respective disbursements for that quarter.

5.1.2 Administrative Claims Bar Date. All Persons requesting payment of Other Administrative Expense Claims shall file a notice of such Other Administrative Expense Claim, along with all documentation supporting such claim, no later than thirty (30) days after the Effective Date. Professional Persons requesting allowance and payment of Professional Fee Claims shall be entitled to file a final application for allowance of such claims until not later than thirty (30) days after the Effective Date. Objections to such applications for payment (whether by Professional Persons requesting payment of Professional Fee Claims or Persons requesting payment of Other Administrative Expense Claims), if any, must be written, filed with the Bankruptcy Court and served on the applicable parties within twenty-one (21) days after such application is filed. Failure by the Holder of an Other Administrative Claim to timely file a request for allowance of an Other Administrative Claim shall result in such Other Administrative Claim being disallowed and expunged in its entirety, with the affected Creditor having been deemed to waive its right to a distribution from the Estate and the Creditor Trust. Failure by a Professional to timely file a request for allowance of a Professional Fee Claim shall result in such Professional Fee Claim being disallowed and expunged in its entirety, with the affected Professional having been deemed to waive its right to a distribution from the Estate and the Creditor Trust.

5.2 Priority Tax Claims.

5.2.1 Allowed Priority Tax Claims shall be paid in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estate shall be deposited in the Creditor Trust no later than the Effective Date, or as otherwise provided in the Confirmation Order. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds in accordance with this Plan, the Confirmation Order and the Creditor Trust Agreement.

5.2.2 Distributions of the Net Proceeds from the Creditor Trust shall be made by the Creditor Trustee in accordance with the Creditor Trust Agreement (and in accordance with sections 507(a)(8) and 1129(a)(9)(C) of the Bankruptcy Code), either: (i) in full, in Cash, within forty-five (45) days of the Effective Date; or (ii) over time in accordance with section 1129(a)(9)(C)(ii) of the Bankruptcy Code, in the Creditor Trustee's discretion.

5.3 Class 1 Claims.

(a) Classification: Class 1 consists of all Allowed Secured Claims against the Debtor .

(b) Treatment: As soon as practicable after the Effective Date or the date on which a Secured Claim becomes an Allowed Secured Claim, each Holder of an Allowed Secured

Claim shall receive (i) Cash in an amount equal to the Allowed Secured Claim, including, to the extent applicable, postpetition interest under section 506(b) of the Bankruptcy Code, (ii) the collateral securing such Allowed Secured Claim, or (iii) such other treatment as may be agreed to between the Holder and the Debtor.

(c) Voting: Class 1 is unimpaired and is deemed to accept the Plan. Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan.

5.4 **Class 2 Claims.**

(a) Classification: Class 2 consists of all Allowed unsecured Priority Claims (except for Priority Tax Claims) asserted against the Debtor.

(b) Treatment: No later than the later of: (i) forty-five (45) days from the Effective Date; or (ii) the date such Priority Claim becomes an Allowed Priority Claim or is otherwise payable, each Holder of an Allowed Priority Claim shall receive (i) Cash in an amount equal to the unpaid portion of the Allowed Priority Claim, or (i) such other treatment as may be agreed to between the Holder and the Debtor.

(c) Voting: Class 2 is unimpaired and is deemed to accept the Plan. Holders of Class 2 Claims are not entitled to vote to accept or reject the Plan.

5.5 **Class 3 Claims.**

(a) Classification: Class 3 consists of all Allowed General Unsecured Claims against the Debtor.

(b) Treatment: Allowed Class 3 Claims shall be paid Pro Rata in accordance with the Creditor Trust Agreement and this Plan. In accordance with the Creditor Trust Agreement, all property of the Estate shall be deposited in the Creditor Trust no later than the Effective Date. The Creditor Trustee shall liquidate the Creditor Trust Assets, as applicable, and distribute the Net Proceeds from time to time on dates determined by the Creditor Trustee, following consultation with the Advisory Committee, within a reasonable time after the creation of appropriate reserves as determined by the Creditor Trustee in an amount that would be sufficient to: (i) satisfy all Administrative Claims in full; (ii) satisfy all Secured Claims in full; (iii) satisfy all Priority Tax Claims and Priority Claims in full; (iv) make a Pro Rata distribution on account of Disputed Claims that are Class 3 Allowed General Unsecured Claims; and (v) pay the Trustee's Expenses in full.

(c) Voting: Class 3 is impaired. Holders of Class 3 Claims are entitled to vote to accept or reject the Plan.

5.6 **Class 4 Interests.**

(a) Classification: Class 4 consists of all Equity Securities held in the Debtor.

(b) Treatment: Holders of Class 4 Interests shall not receive a distribution under the Plan, and their Equity Securities shall be canceled and extinguished as of the Effective Date.

(c) Voting: Class 4 is impaired and deemed to reject the Plan. Holders of Class 4 Interests are not entitled to vote to accept or reject the Plan.

ARTICLE VI

Treatment of Executory Contracts

6.1 **Contracts Deemed Rejected.** Other than as explicitly set forth herein, each Executory Contract of the Debtor that has not expired by its own terms or been assumed prior to the Confirmation Date shall be deemed rejected pursuant to section 365 of the Bankruptcy Code on the Confirmation Date.

6.2 **Bar Date for Rejection Damages.** All proofs of claim with respect to Claims arising from the rejection of Executory Contracts pursuant to Section 6.1 of this Plan shall, unless the Bar Date Order or another order of the Bankruptcy Court provides for a different date, be filed with the Bankruptcy Court by no later than thirty (30) days after the Effective Date. The Claims of any Creditor arising from the rejection of Executory Contracts pursuant to Section 6.1 of this Plan that fails to timely file a proof of claim shall be released, discharged and forever barred from assertion against the Debtor, its Estate or its property or the Creditor Trust.

6.3 **Insurance Policies.** Notwithstanding anything to the contrary in this Plan or the Confirmation Order, unless any insurance policies have been expressly rejected pursuant to a separate order of the Bankruptcy Court (or through the Confirmation Order), any insurance policies of the Debtor in which the Debtor is or was an insured party (including any policies covering directors' or officers' conduct), or any related insurance agreement issued prior to the Petition Date, shall continue in effect after the Effective Date pursuant to the respective terms and conditions and shall be treated as if assumed. All rights of the Debtor under any insurance policies shall automatically become vested in the Creditor Trust without necessity for further approvals or orders. To the extent that any insurance policies or related insurance agreements are deemed executory contracts, then, unless such policies have been rejected pursuant to a separate order of the Bankruptcy Court (or through the Confirmation Order), notwithstanding anything to the contrary in this Plan, this Plan shall constitute a motion to assume, assume and assign, permit "ride through," or ratify such insurance policies or insurance agreements. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute both approval of such assumption pursuant to section 365 of the Bankruptcy Code and a finding by the Bankruptcy Court that such assumption is in the best interests of the Estate. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed upon by the parties prior to the Effective Date, no payments shall be required to cure any defaults of the Debtor existing as of the Confirmation Date with respect to any insurance policy or insurance agreement assumed, or assumed and assigned, pursuant to this Section 6.3. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering or delaying coverage on any basis regarding or related to this Case, this Plan, or any provision within this Plan, including the treatment or means of liquidation set

out within this Plan for any insured Claims or Causes of Action. Without limiting the generality of the foregoing, all directors' and officers' liability insurance policies in effect as of the Confirmation Date shall be deemed assumed and shall not be rejected.

ARTICLE VII

Objections to Claims; Provisions Governing Distributions

7.1 **Objections to Claims.** The Creditor Trustee shall have standing to file objections to Claims, even if such Claims were scheduled by the Debtor as undisputed, liquidated and non-contingent. If the Creditor Trustee has objected to a Claim, distributions to the affected Creditor will be withheld only with respect to the amount actually in dispute, and such objection shall not affect payments or distributions under the Plan on the undisputed portion of the Claim.

7.2 **Beneficiaries Subject to Avoidance Actions.** The Creditor Trustee may, as otherwise allowed pursuant to section 502(d) and (h) of the Bankruptcy Code in his or her discretion, withhold Distributions to Beneficiaries who are the subject of a potential or filed Avoidance Action until such time as the Avoidance Action has been fully and finally resolved.

7.3 **Estimation.** The Creditor Trustee may at any time request that the Bankruptcy Court estimate any contingent or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor, Committee, or the Creditor Trustee previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. Subject to the provisions of section 502(j) of the Bankruptcy Code, in the event that the Bankruptcy Court estimates any contingent or Disputed Claim, the amount so estimated shall constitute the maximum allowable amount of such Claim. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Creditor Trustee may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

7.4 **Means of Cash Payment.** Cash payments, made pursuant to the Plan and the Creditor Trust Agreement, shall be in U.S. dollars and, at the option and in the sole discretion of the Creditor Trustee, be made by (a) checks drawn on or (b) wire transfers from a domestic bank selected by the Creditor Trustee.

7.5 **Delivery of Distributions.** Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to Holders of Allowed Claims shall be made at the address of each such Holder as set forth on the Schedules, unless superseded by the address set forth on a timely filed proof of Claim or some other writing filed with the Bankruptcy Court and served upon the Creditor Trustee and/or the Debtor.

7.6 Tax Identification Numbers and OFAC Certifications. Notwithstanding anything in the Plan to the contrary, prior to making Distributions hereunder, the Creditor Trustee shall require all Holders to furnish to him: (a) its Employer or Taxpayer Identification Number as assigned by the Internal Revenue Service on a Form W-9 and (b) a certification that the Holder is not a person or entity with whom it is illegal for a U.S. person to do business under Office of Foreign Assets Control (“OFAC”) sanctions regulations and/or the list of Specially Designated Nationals and Blocked Persons (collectively, the “Pre-Distribution Certifications”). Pre-Distribution Certification forms will be mailed to the Distribution Address for each Holder prior to Distributions being made, and Holders shall have forty-five (45) days from the date of mailing to return the executed Pre-Distribution Certifications. Any Holder that fails to return the executed Pre-Distribution Certifications within such forty-five (45) day period shall be deemed to have forfeited its right to receive Distributions and shall be forever barred and enjoined from asserting any right to Distributions made prior to the Creditor Trustee receiving its executed Pre-Distribution Certifications (such a Holder, if a Holder of an Allowed Class 3 General Unsecured Claim, would only be entitled to a Pro Rata share of remaining future Distributions, if any). Any Distributions that are forfeited pursuant to this provision will be returned to the Creditor Trustee and become property of the Creditor Trust.

7.7 Undeliverable Distributions

7.7.1 Holding of Undeliverable Distributions. If any Distribution to any Holder of an Allowed Claim is returned to the Creditor Trustee as undeliverable, no further Distributions shall be made to such Holder unless and until the Creditor Trustee is notified by such Holder, in writing, of such Holder’s then-current address. Upon such an occurrence, the appropriate Distribution shall be made as soon as reasonably practicable after such Distribution has become deliverable. All Creditors ultimately receiving previously undeliverable Cash shall not be entitled to any interest or other accruals of any kind. Nothing contained in the Plan shall require the Debtor or the Creditor Trustee to attempt to locate any Holder of an Allowed Claim.

7.7.2 Failure to Claim Undeliverable Distributions. Any Holder of an Allowed Claim entitled to an undeliverable or unclaimed Distribution that does not provide notice of such Holder’s correct address to the Creditor Trustee within ninety (90) days after the date of the initial Distribution made by the Creditor Trustee to such Holder, shall be deemed to have forfeited its claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed Distribution against the Debtor, its Estate or the Creditor Trust. If, after ninety days, Distributions remain unclaimed, unclaimed Distributions will become forfeited Distributions and such amounts shall be made available for distribution to other Creditor Trust beneficiaries or for Trustee’s Expenses.

7.8 Withholding and Reporting Requirements. In connection with the Plan, the Creditor Trust Agreement and all Distributions thereunder, the Debtor and the Creditor Trustee, as applicable, shall comply with all tax withholding and reporting requirements imposed by any U.S. federal, state or local or non-U.S. taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Debtor and the Creditor Trustee, as applicable, shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. Notwithstanding any

other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution, and (b) the Creditor Trustee reserves the option, in his or her discretion, to not make a Distribution to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Creditor Trustee for the payment and satisfaction of such tax obligations or has, to the Creditor Trustee's satisfaction, established an exemption therefrom.

7.9 Time Bar to Cash Payments. Checks issued by the Creditor Trust on account of Allowed Claims shall be null and void if not negotiated within forty-five (45) days from and after the date of issuance thereof. Requests for reissuance of any check that has become null and void shall be made directly to the Creditor Trustee by the Holder of the Allowed Claim within sixty (60) days of the check becoming null and void. After such sixty (60) day period has elapsed, all Claims relating to such voided checks shall be discharged and forever barred. In the case of checks issued on account of Allowed Claims but not negotiated within forty-five (45) days of issuance and for which no request for reissuance is made before sixty (60) days after issuance, the amounts at issue shall be considered to be a forfeited Distribution.

7.10 Interest. Unless otherwise required by applicable bankruptcy law (or under this Plan), or specifically provided for herein, postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. In accordance with section 502(b)(2) of the Bankruptcy Code, the amount of all prepetition Unsecured Claims against the Debtor shall be calculated as of the Petition Date. Except as otherwise explicitly provided in the Plan, in section 506(b) of the Bankruptcy Code, or by Final Order, no Holder of a prepetition Claim shall be entitled to or receive interest or fees relating to such Claim.

7.11 De Minimis Distributions. The Creditor Trustee will not make any De Minimis Distributions, and reserves the right to reserve such De Minimis Distributions until such time as the Holder of such Claim is entitled to a Distribution of at least fifty dollars (\$50.00).

7.12 Set-Offs. Consistent with applicable law, the Creditor Trustee may, but shall not be required to, set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account thereof (before any distribution is made on account of such Claim), the claims, rights and Causes of Action of any nature that the Debtor or its Estate may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a set off nor the allowance of any claim hereunder shall constitute a waiver or release by the Debtor, its Estate, or the Creditor Trust of any such claims, rights, and Causes of Action that the Debtor, its Estate, or the Creditor Trustee may possess against such Holder.

7.13 Settlement of Claims and Controversies. Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise of all Claims or controversies relating to the contractual, legal and subordination rights that a Holder of a Claim may have against the Debtor with respect to any Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such

Claims or controversies, and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtor, its Estate, the Creditor Trust, and Holders of Claims and is fair, equitable and reasonable.

ARTICLE VIII

Means of Implementation of the Plan

8.1 **Creditor Trust.** The Creditor Trust shall be established as of the Effective Date for the benefit of all creditors of the Estate holding Allowed Claims and shall be governed by the Creditor Trust Agreement. Laurence V. Goddard shall be designated as Creditor Trustee. The Creditor Trustee will owe a fiduciary duty, consistent with the duties of trustees under Ohio law, to beneficiaries of the Creditor Trust.

8.2 **Vesting of Assets.** On the Effective Date, all assets of the Debtor and its Estate (including the Creditor Trust Assets) shall be transferred to and vest in the Creditor Trust and be deemed contributed thereto, subject to the terms of the Plan. The assets include, without limitation, all Cash in the possession of the Debtor, all Causes of Action, all existing and uncollected accounts receivable, all pending litigation claims, regardless of venue, in which the Debtor is a plaintiff, all other remaining personal property of the Debtor, all rights of the Debtor under the Plan, the Confirmation Order and all other orders entered by the Bankruptcy Court in the Case on or prior to the Confirmation Date, and all books and records related to the Estate that are in the Debtor's possession, custody and control as of the Confirmation Date. For the avoidance of doubt, all property held for distribution pursuant to the Plan shall be held by the Creditor Trust solely in trust for the Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Class 1 Secured Claims, Allowed Class 2 Priority Claims, and Allowed Class 3 General Unsecured Claims and shall not be deemed property of the Debtor. Nothing in the Plan, however, shall preclude payment of: (i) statutory fees under 28 U.S.C. § 1930 to the extent unpaid on the Confirmation Date; and (ii) the Trustee's Expenses in accordance with this Plan and the Creditor Trust Agreement from any other assets held by the Creditor Trust. The Debtor is hereby authorized and directed to take such steps as may be necessary or appropriate to confirm such transfer and contribution of its property to the Creditor Trust, subject to oversight from the Creditor Trustee, as applicable.

8.3 **Creditor Trust Asset Administration.** The Creditor Trustee, with advice and consultation from the Advisory Committee, shall administer the Creditor Trust Assets pursuant to the Plan and the Creditor Trust Agreement from and after the Effective Date. As more fully set forth in the Creditor Trust Agreement, the Creditor Trustee shall be responsible for, *inter alia*, liquidating the Creditor Trust Assets, analyzing and reconciling Claims (including filing and pursuing objections to the extent required), pursuing the Causes of Action, making distributions of the Net Proceeds to the Beneficiaries of the Creditor Trust, maintaining and administering reserves for Disputed Claims and Claims of Creditors that may be the subject of Avoidance Actions, paying Trustee's Expenses, preparing and filing post-Effective Date operating reports, filing post-Effective Date tax returns and all other activities typically related to trust administration. For the avoidance of doubt, the Debtor shall be responsible for preparing and filing all of its pre-Effective Date tax returns, with the costs of any such returns to be paid by the Creditor Trust, to the extent not paid or pre-paid prior to the Effective Date.

8.4 Case Administration. From and after the Effective Date and continuing through the date that a final decree closing the Case is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Creditor Trustee shall possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under or related to the Case. In addition to the foregoing, for all matters arising in, arising under or related to the Case, the Creditor Trustee shall: (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction; (ii) have the right to obtain records of, or related to, the Debtor (including, without limitation, bank statements and cancelled checks); (iii) be entitled to notice and opportunity for hearing; (iv) be entitled to participate in all matters brought before the Bankruptcy Court, including, but not limited to, adversary proceedings; (v) have exclusive standing (including derivative standing to pursue Causes of Action on behalf of the Debtor) to commence Causes of Action, and to continue litigating, as successor-in-interest to the Debtor, any other litigation Causes of Action that were pending as of the Effective Date, regardless of venue; (vi) be entitled to request the Bankruptcy Court to enter a final decree closing the Case; and (vii) be entitled to receive notice of all applications, motions and other papers and pleadings set before the Bankruptcy Court in this Case.

8.5 Advisory Committee. For purposes of implementation of the Plan, the Advisory Committee shall be created on the Confirmation Date and comprised of three (3) members, which shall be former members of the Committee, and the membership of which shall be subject to the approval of the Committee. The Advisory Committee shall exercise such rights and duties as are set forth in the Creditor Trust Agreement. Each member of the Advisory Committee shall serve until the earlier of: (i) his or her death or resignation; (ii) his or her removal pursuant to the Creditor Trust Agreement; and (iii) the termination of the Creditor Trust.

8.6 Creditor Trustee's Professionals. Upon the acceptance by the Creditor Trustee of his or her appointment in accordance with this Plan and the Creditor Trust Agreement, the Creditor Trustee may, without the need for Bankruptcy Court approval, retain such law firms, accounting firms, experts, advisors, consultants, investigators or other Professionals as it may deem necessary, with advice and consultation with the Advisory Committee, in accordance with the Creditor Trust Agreement, to aid in the performance of his or her responsibilities pursuant to the terms of the Plan, including, without limitation, the liquidation and distribution of assets of the Creditor Trust. The Professionals retained by the Creditor Trustee are not required to be "disinterested" as that term is defined in the Bankruptcy Code and may include, without limitation, counsel and financial advisors of any party in this Case, and the Creditor Trustee shall be permitted to retain any such Professional in light of the efficiencies implicit in continuity.

8.7 Quarterly Reports. The Creditor Trustee shall prepare and provide to the Advisory Committee and file with the Bankruptcy Court a report within thirty (30) days after the conclusion of every calendar quarter setting forth: (i) all distributions to Creditors during the calendar quarter; (ii) a summary of the Creditor Trust deposits and disbursements during the calendar quarter; and (iii) a summary of the Creditor Trust Assets. As used in this section, "calendar quarter" shall mean a three-month period of time, and the first calendar quarter shall commence on the first day of the first quarter immediately following the occurrence of the Effective Date.

8.8 **Transfer, Prosecution, Preservation, and Resolution of Causes of Action.**

8.8.1 **Transfer of Causes of Action.** On the Effective Date, the Debtor shall transfer to the Creditor Trust, and the Creditor Trustee shall hold and retain, all rights of the Debtor to commence and pursue any and all Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal including, without limitation, in an adversary proceeding filed in the Debtor's Case) discovered in such investigation to the extent the Creditor Trustee deems appropriate. Potential Causes of Action may, but need not be, pursued by the Debtor prior to the Effective Date and by the Creditor Trustee after the Effective Date. All Causes of Action, defenses, and counterclaims not expressly and specifically released in connection with the Plan, the Confirmation Order, or in any settlement agreement approved during the Case, or as otherwise provided in the Confirmation Order or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, shall be transferred to and vest with the Creditor Trust, whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such Causes of Action, defenses and counterclaims have been listed or referred to in the Plan, the Schedules, or any other document filed with the Bankruptcy Court, and prior to the Effective Date, the Debtor shall not waive, relinquish, or abandon (nor shall it be estopped or otherwise precluded from asserting) any right, Claim, Cause of Action, defense, or counterclaim that constitutes property of the Estate: (a) whether or not such right, Claim, Cause of Action, defense, or counterclaim has been listed or referred to in the Plan or the Schedules, or any other document filed with the Bankruptcy Court, (b) whether or not such right, Claim, Cause of Action, defense, or counterclaim is currently known to the Debtor, and (c) whether or not a defendant in any litigation relating to such right, Claim, cause of action, defense or counterclaim filed a proof of Claim in the Case, filed a notice of appearance or any other pleading or notice in the Case, voted for or against the Plan, or received or retained any consideration under the Plan. Without in any manner limiting the generality of the foregoing preservation of rights, notwithstanding any otherwise applicable principal of law or equity, without limitation, any principals of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a Cause of Action, defense, or counterclaim, or potential Cause of Action, defense, or counterclaim, in the Plan, the Schedules, or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Creditor Trustee's right to commence, prosecute, defend against, settle, and realize upon any Causes of Action, defenses, or counterclaims that the Debtor had immediately prior to the Effective Date, or that the Creditor Trust has as of the Effective Date. The Creditor Trustee may commence, prosecute, defend against, settle, and realize upon any rights, Claims, Causes of Action, defenses, and counterclaims in his sole discretion, upon consultation with the Advisory Committee, in accordance with what is in the best interests, and for the benefit, of the beneficiaries of the Creditor Trust.

8.8.2 **Preservation of Right to Conduct Investigations; Cooperation of Insiders.** The preservation for the Creditor Trust of any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 is necessary and relevant to the liquidation and administration of the Creditor Trust Assets. Accordingly, any and all rights to conduct investigations pursuant to Bankruptcy Rule 2004 held by the Debtor prior to the Effective Date shall vest with the Creditor Trust and shall continue until dissolution of the Creditor Trust.

8.8.3 Preservation of Causes of Action. Unless any Causes of Action against a Person 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 Creditor Trust: (i) shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtor or the Debtor's Estate, whether arising before or after the Petition Date, including, but not limited to, any Causes of Action specifically enumerated in Appendix C to the Disclosure Statement, and the Creditor Trust's right to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date; and (ii) expressly reserves 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 of the Plan or the occurrence of the Effective Date. The Creditor Trust may pursue Causes of Action, as appropriate, in accordance with the best interests of the Creditor Trust. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against such Entity as any indication that the Creditor Trust will not pursue any and all available Causes of Action against such Person. The Creditor Trust expressly reserves all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan or in a Bankruptcy Court order. For the avoidance of doubt, the Plan does not release any Causes of Action that the Plan Proponents or the Creditor Trust have or may have now or in the future against any Person.

Except as otherwise provided in the Plan or in a Final Order, the Creditor Trust reserves and shall retain Causes of Action notwithstanding the assumption or rejection of any Executory Contract during the Case or pursuant to the Plan to the fullest extent permitted by law. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtor may hold against any Person that is not released under the Plan or a separate settlement approved by Final Order shall vest in the Creditor Trust, which shall retain and may exclusively enforce any and all such Causes of Action. The Creditor Trust has the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any 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.

8.8.4 Limitations on Insider Causes of Action. **The Committee or the Creditor Trustee shall commence any Insider Causes of Action, whether through an adversary proceeding filed with the Bankruptcy Court or a complaint filed in another court having competent jurisdiction, by no later than the Insider Cause of Action Termination Date; provided, however, that the Creditor Trust may seek an extension of the Insider Cause of Action Termination Date for cause by filing a motion with the Bankruptcy Court prior to the Insider Cause of Action Termination Date then in effect. For purposes of this section 8.8.4, "cause" shall include, but not be limited to, a failure by any former or current Insider of the Debtor to cooperate in good faith with the Committee's or the Creditor Trustee's investigation of Insider Causes of Action. In the event that the Committee or the Creditor Trustee does not commence an Insider Cause of Action on or before the applicable Insider Cause of Action Termination Date against a particular**

Insider, such Insider shall be deemed to have been released and discharged from any Insider Causes of Action in their entirety.

8.9 Officers and Directors of the Debtor. Upon the Effective Date, all officers and directors of the Debtor shall be automatically deemed to have resigned from such positions, without further act, notice, deed or court order.

8.10 Dissolution of the Debtor. Upon the Effective Date, the Creditor Trustee shall be authorized and empowered, in his or her reasonable discretion, to file a certificate of dissolution or other documents, if any, memorializing the Debtor's dissolution with the office of the secretary of state of Ohio, or may allow the secretary of state to involuntarily dissolve the Debtor. In the event of a dissolution (whether voluntary or involuntary), the Creditor Trustee shall thereafter have and retain standing to assert claims or pursue matters on behalf of the Debtor to the extent necessary to preserve, protect and liquidate the Creditor Trust Assets or otherwise necessary to administer the Creditor Trust.

8.11 Termination of Committee. The Committee shall terminate automatically upon the acceptance by the Creditor Trustee of his or her appointment in accordance with this Plan and the Creditor Trust Agreement following the Confirmation Date. Upon termination of the Committee, the Committee shall be dissolved and its members shall be deemed released of their duties and responsibilities in connection with the Case or the Plan and its implementation, and the retention or employment of the Committee's counsel shall terminate, except for ministerial duties or any duties imposed pursuant to the Plan (including, without limitation, filing applications for allowance and payment of Professional Fee Claims).

8.12 Filing of Additional Documents. On or before the Confirmation Date of the Plan, the Plan Proponents shall 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, including, without limitation, the final Creditor Trust Agreement.

8.13 Notices. Any notice required or permitted to be provided under the Plan shall be in writing and served by either: (i) certified mail, return receipt requested, postage prepaid; (ii) hand delivery; or (iii) reputable overnight delivery service, freight prepaid, addressed to the following:

The Debtor:

ASPC Corp. f/k/a AcuSport Corporation
c/o Lee Sweigart
Huron Consulting Group
550 W. Van Buren St., Suite 1700
Chicago, Illinois 60607
Phone: (312) 880-3085
E-mail: lsweigart@huronconsultinggroup.com

With a copy to:

Jason J. DeJonker
Bryan Cave Leighton Paisner LLP
161 N. Clark St., Suite 4300
Chicago, Illinois 60601
Phone: (312) 602-5005
E-mail: Jason.dejonker@bcplaw.com

and

Cullen Kuhn
Bryan Cave Leighton Paisner LLP
211 N. Broadway, Suite 3600
St. Louis, Missouri 63102
Phone: (314) 259-2869
E-mail: ckkuhn@bcplaw.com

and

Thomas R. Allen
Erin L. Gapinski
Allen Stovall Neuman Fisher & Ashton LLP
17 South High Street, Suite 1220
Columbus, Ohio 43215
Phone: (614) 221-8500
E-mail: allen@aksnlaw.com
gapinski@aksnlaw.com

Counsel for the Debtor

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brianj@goldmclaw.com

Counsel for the Committee

The Creditor Trustee:

Laurence V. Goddard
BDO USA, LLP
32125 Solon Road
Cleveland, Ohio 44139
Phone: (440) 394-6151
E-mail: lgoddard@bdo.com

8.14 Cancellation of Notes, Instruments, and Debentures. On the Effective Date, except to the extent provided otherwise in the Plan, all notes, instruments, debentures, certificates, and other documents evidencing Claims against the Debtor shall be deemed canceled, terminated, and surrendered (regardless of whether such notes, instruments, debentures, certificates or other documents are in fact surrendered for cancellation to the appropriate indenture trustee or other such Person). On the Effective Date, any indentures to which the Debtor is a party shall be deemed canceled as permitted by section 1123(a)(5) of the Bankruptcy Code.

8.15 Insurance Preservation. Nothing in the Plan, including any Releases, shall diminish or impair the enforceability of any policies of insurance that may cover any claims against the Debtor or any other Person.

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

ARTICLE IX

Conditions Precedent to Confirmation and Effective Date

9.1 Acceptance or Rejection of the Plan

9.1.1 Acceptance by Impaired Classes. Class 3 will have accepted the Plan if the Holders of at least two-thirds in amount and more than one-half in number of the Allowed Claims in the Class actually voting have voted to accept the Plan, in each case not counting the vote of any Holder designated under section 1126(e) of the Bankruptcy Code.

9.1.2 Elimination of Classes. Any Class that does not contain any Allowed Claims or any Claims temporarily allowed for voting purposes under Bankruptcy Rule 3018, as of the date of the commencement of the Confirmation Hearing, will be deemed not included in the Plan for purposes of (i) voting to accept or reject the Plan and (ii) determining whether such Class has accepted or rejected the Plan under section 1129(a)(8) of the Bankruptcy Code.

9.1.3 Nonconsensual Confirmation. The Bankruptcy Court may confirm the Plan over the dissent of any Impaired Class if all of the requirements for consensual confirmation under subsection 1129(a), other than subsection 1129(a)(8), of the Bankruptcy Code and for

nonconsensual confirmation under subsection 1129(b) of the Bankruptcy Code have been satisfied. Since Class 4, the impaired Class of Equity Interests, is deemed to reject the Plan, the Debtor requests that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.

9.2 Conditions Precedent to Confirmation Date of the Plan. The occurrence of the Confirmation Date shall be subject to satisfaction of the following conditions precedent:

9.2.1 The entry of the Confirmation Order in form and substance satisfactory to the Plan Proponents; and

9.2.2 The Debtor being authorized to take all actions necessary or appropriate to enter into, implement, and consummate the Plan and other agreements or documents created in connection with the Plan.

9.3 Conditions Precedent to the Effective Date of the Plan. The occurrence of the Effective Date and the consummation of the Plan are subject to satisfaction of the following conditions precedent:

9.3.1 **Confirmation Order.** The Confirmation Order as entered by the Bankruptcy Court shall be a Final Order in full force and effect, in form and substance reasonably satisfactory to the Plan Proponents.

9.3.2 **Creditor Trust Agreement.** The Creditor Trust Agreement shall be acceptable to the Plan Proponents in form and substance, and shall have been executed by the Debtor, the Committee and the Creditor Trustee.

9.3.3 **UST Fees.** All UST Fees owed to the U.S. Trustee shall have been paid in their entirety.

9.4 The Confirmation Order. If the Confirmation Order is vacated for whatever reason, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in the Debtor; (ii) prejudice in any manner the rights of the Debtor; or (iii) constitute an admission, acknowledgment, offer or undertaking by the Debtor.

ARTICLE X

Effect of Plan Confirmation

10.1 Binding Effect. From and after the Confirmation Date, but subject to the occurrence of the Effective Date, this Plan shall be binding and inure to the benefit of the Debtor, all present and former holders of Claims and Equity Interests, and their respective assigns. The provisions of the Plan, the Confirmation Order, and any associated findings of fact or conclusions of law shall bind the Debtor, any entity acquiring property under the Plan, and any Creditor of the Debtor, whether or not the Claim of such creditor is Impaired under the Plan and whether or not such creditor has accepted the Plan.

10.2 **Discharge of Claims.** The Debtor will not receive a discharge under the Plan in accordance with section 1141 of the Bankruptcy Code.

10.3 **Injunction**

10.3.1 **Except as otherwise expressly provided in the Plan, all Persons that receive Distributions under the Plan or the Sale Order and that have held, hold, or may hold Claims against or Equity Interests in the Debtor are permanently enjoined, from and after the Effective Date, from taking any of the following actions against any of the Debtor, its Estate, the Creditor Trust, the Creditor Trustee, or any of their respective property on account of any Claims or causes of action arising from events prior to the Effective Date: (i) commencing or continuing in any manner any action or other proceeding of any kind; (ii) enforcing, attaching, collecting or recovering by any manner or in any place or means any judgment, award, decree or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind; (iv) asserting any defense or right of setoff, subrogation, or recoupment of any kind against any obligation, debt or liability due to the Debtor; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.**

10.3.2 **By accepting Distributions pursuant to the Plan or the Sale Order, each Holder of an Allowed Claim receiving Distributions pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth herein.**

10.3.3 **Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays provided for under this Plan and ordered in the Confirmation Order or pursuant to sections 105 or 362 of the Bankruptcy Code arising under or entered during the Case, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Case is closed.**

10.4 **Terms of Existing Injunctions or Stays.** Unless otherwise provided, all injunctions or stays provided for in the Case pursuant to sections 105, 362, or 525 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Case has been closed. The Confirmation Order will permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any Claims, Equity Interests, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan.

10.5 **Exculpation.** No Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, loss, or liability for any claim in connection with or arising out of the administration of the Case; the negotiation and pursuit of the transactions approved by the Sale Order, the Disclosure Statement, or this Plan, or the solicitation of votes for, or confirmation of, this Plan; the occurrence of the Effective Date; the administration of this Plan; the distribution of property under the Plan; any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or the Case; or the transactions in furtherance of any of the foregoing; provided, however, that no Exculpated Party shall be released and exculpated for willful

misconduct or gross negligence (but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to this Plan). Notwithstanding the foregoing, no Exculpated Party shall have liability for willful misconduct or gross negligence except as determined by a final order of a court of competent jurisdiction. The Exculpated Parties have acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of this Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or such distributions made pursuant to this Plan. Nothing in this Section 10.5 shall be construed as a release of any Causes of Action against the Debtor's former or current Insiders for events occurring prior to the Petition Date, except as set forth in Section 8.8.4 of this Plan.

10.6 Injunction Related to Exculpation. The Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities enjoined, exculpated, or otherwise limited or prohibited pursuant to this Plan, including the claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action against the Debtor or the Committee that are described in Section 10.5 of this Plan.

ARTICLE XI

Modification, Revocation or Withdrawal of the Plan

11.1 Modification of Plan. The Plan Proponents reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, in their discretion, to amend or modify the Plan at any time prior to the entry of the Confirmation Order. Upon entry of the Confirmation Order, the Plan Proponents may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or 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. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such Holder and the votes of each Class for or against the Plan shall be counted and used in connection with the modified plan of reorganization.

11.2 Revocation, Withdrawal, or Non-Consummation. The Plan Proponents reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of liquidation. If the Plan Proponents revoke or withdraw the Plan, or if the Confirmation Order confirming the Plan shall not be entered or become a Final Order, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (1) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor, (2) prejudice in any manner the rights of the Debtor or the Committee, (3) constitute an

admission of any sort by the Debtor or the Committee, or (4) constitute a release of any Causes of Action possessed or maintained by the Debtor.

ARTICLE XII

Miscellaneous Provisions

12.1 **Payment of Statutory Fees.** All fees payable pursuant to 28 U.S.C. § 1930, shall be paid by the Debtor to the extent required by applicable law.

12.2 **Section 1146 Exemption.** Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under this Plan, may not be taxed under any law imposing a stamp tax or similar tax.

12.3 **Business Day.** If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

12.4 **Severability.** The provisions of this Plan shall not be severable unless such severance is agreed to by the Plan Proponents and such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.

12.5 **Conflicts.** To the extent that any provision of the Disclosure Statement, the Creditor Trust Agreement, or any exhibits or schedules thereto, conflict with or are in any way inconsistent with the terms of the Plan, the Plan shall govern and control.

12.6 **Further Assurances.** The Debtor, the Committee, the Creditor Trustee, all Holders of Claims receiving Distributions under the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver agreements or documents and take other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

12.7 **Filing of Additional Documents.** On or before the Effective Date, the Plan Proponents 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.

12.8 **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 of such entity.

12.9 **Section Headings.** The section headings contained in this Plan are for reference purposes only and shall not affect in any way the meaning or interpretation of the Plan.

12.10 **Further Information.** Requests for further information regarding the Debtor's Case or the Plan may be directed to counsel to the Debtor or the Committee, at the contact information set forth in Section 8.13 above.

12.11 **Governing Law.** Except to the extent that the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under this Disclosure Statement and the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Ohio, without giving effect to any conflicts of law principles.

ARTICLE XIII

Jurisdiction

13.1 **Retention of Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, unless explicitly set forth herein to the contrary, the Bankruptcy Court shall retain and have exclusive jurisdiction after the Effective Date over any matter arising under the Bankruptcy Code, arising in or related to the Case, the Plan or the Creditor Trust, or that relates to the following, in each case to the greatest extent permitted by applicable law:

13.1.1 to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan;

13.1.2 to determine any and all motions, adversary proceedings, applications and contested or litigated matters that may be pending on the Effective Date or that, pursuant to the Plan, may be instituted by the Creditor Trustee after the Effective Date; provided, however, that the Creditor Trustee shall reserve the right to commence collection actions, actions to recover receivables, adversary proceedings against any Holder of a Claim, and other similar actions in all appropriate jurisdictions, and the jurisdiction of the Bankruptcy Court over such matters shall be nonexclusive;

13.1.3 to hear and determine any timely objections to Administrative Expense Claims, Priority Tax Claims, Priority Claims, General Unsecured Claims, or to Proofs of Claim and Equity Interests filed, both before and after the Confirmation Date, including any objections to the classification of any Claim or Equity Interest, and to allow, disallow, determine, liquidate, classify, estimate or establish the priority of or secured or unsecured status of any Claim, in whole or in part;

13.1.4 to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed or vacated;

13.1.5 to issue such orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

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

13.1.7 to hear and determine all applications for awards of compensation for services rendered and reimbursement of expenses filed by Professionals;

13.1.8 to hear and determine disputes arising in connection with or relating to the Plan or the interpretation, implementation, or enforcement of the Plan, or the extent of any Person's obligations incurred in connection with or released or exculpated under the Plan;

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

13.1.10 to determine any other matters that may arise in connection with or are related to the Plan, the Disclosure Statement, the Confirmation Order, the Creditor Trust Agreement, or any other contract, instrument, release or other agreement or document created in connection with the Plan or the Disclosure Statement to be executed in connection with the Plan;

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

13.1.12 to hear any other matter or for any purpose specified in the Confirmation Order that is not inconsistent with the Bankruptcy Code; and

13.1.13 to enter a Final Decree closing the Case.

Dated this 4th day of December 2018.

**ASPC CORP., F/K/A ACUSPORT
CORPORATION**

By: /s/ Lee Sweigart
Its Chief Restructuring Officer

**OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF ASPC
CORP., F/K/A ACUSPORT
CORPORATION**

By: /s/ James Hanus
Its Chair

APPENDIX B – LIQUIDATION ANALYSIS

ASCP Corp., f/k/a AcuSport Corporation
Liquidation Analysis

Liquidation Analysis		Chapter 11	Chapter 7	
Amounts in \$000s		Liquidation	Liquidation	
	Notes	Scenario	Scenario	Difference
Distributable Proceeds				
Actual cash as of 11/25/18	[1]	\$ 3,986	\$ 3,986	\$ -
Estimated receipts through 2/15/19	[1]	1,042	1,042	-
Estimated cash consumed through 2/15/19				
Operating expenses	[2]	(183)	(183)	-
Chapter 11 expenses	[2]	(2,450)	(2,450)	-
		(2,633)	(2,633)	-
Net estimated cash as of 2/15/19 conversion date		2,394	2,394	-
Estimated proceeds received after 2/15/19 conversion date				
Low recovery	[1]	1,013	861	152
High recovery	[1]	1,513	1,286	227
Estimated Distributable Proceeds Available for Chapter 7 Trustee				
Low recovery		3,408	3,256	152
High recovery		3,908	3,681	227
Distributions after Conversation Date, including admin claims				
Chapter 11 professional fees and other costs	[3]	(809)	(424)	(385)
KEIP	[3]	(40)	(40)	-
Chapter 7 trustee fees	[3]	-	(104)	104
Chapter 7 trustee - professional fees and other costs	[3]	-	(550)	550
Administrative claims	[3]	(100)	(100)	-
		(949)	(1,218)	269
Net Estimated Proceeds Available for Claims				
Low recovery		2,459	2,037	421
High recovery		2,959	2,462	496
Secured Claims				
	[4]	-	-	-
Priority Claims				
	[4]	300	300	-
Amount Available for Distribution to Unsecured Creditors				
Low recovery		\$ 2,159	\$ 1,737	\$ 421
High recovery		\$ 2,659	\$ 2,162	\$ 496
Recovery % by Claim Class				
Class 1: Secured Claims		100.0%	100.0%	0.0%
Class 2: Priority Claims		100.0%	100.0%	0.0%
Class 3: General Unsecured Claims				
Low recovery	[5]	3.0%	2.4%	0.6%
High recovery	[5]	6.0%	4.9%	1.1%
Class 4: Equity Interests		0.0%	0.0%	0.0%

ASPC Corp., f/k/a AcuSport Corporation
Liquidation Analysis

OVERVIEW AND PURPOSES

The “best interests of creditors” test is set forth in section 1129(a)(7) of the Bankruptcy Code, and the Bankruptcy Court may not confirm a plan of liquidation unless the plan provides each holder of a claim or interest who does not otherwise vote in favor of the plan with property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor was liquidated under chapter 7 of the Bankruptcy Code. See 11 U.S.C. § 1129(a)(7).¹ Accordingly, to demonstrate that the Plan satisfies the “best interests of creditors” test, Debtor has prepared a hypothetical liquidation analysis (this “**Liquidation Analysis**”) presenting recoveries available assuming a hypothetical liquidation pursuant to a conversion to chapter 7 of the Bankruptcy Code, which is assumed to be as of February 15, 2019 (the “**Conversion Date**”). Debtor has used the Conversion Date of February 15, 2019 for purposes of the Liquidation Analysis as it represents the date by which Debtor expects that its Plan will become effective (based on a Confirmation Hearing date of January 24, 2019). To the extent such confirmation is delayed and the Effective Date is extended, Debtor reserves all rights to modify this analysis.

The Liquidation Analysis presents information based on, among other things, Debtor’s books and records, the results of various asset sale transactions described in the Disclosure Statement, and good-faith estimates regarding asset recoveries and claims resulting from a hypothetical liquidation undertaken under chapter 7 of the Bankruptcy Code. The Liquidation Analysis has not been examined or reviewed by independent accountants in accordance with standards promulgated by the American Institute of Certified Public Accountants. Although Debtor considers the estimates and assumptions set forth herein to be reasonable under the circumstances, such estimates and assumptions are inherently subject to significant uncertainties and contingencies beyond Debtor’s control. As a result, there can be no assurance that the results set forth by the Liquidation Analysis would be realized if Debtor was actually liquidated, and actual results in such a case could vary materially from those presented herein, and distributions available to members of applicable classes of claims could differ materially from the balances set forth by this Liquidation Analysis in such instance.

THE LIQUIDATION ANALYSIS IS A HYPOTHETICAL EXERCISE THAT HAS BEEN PREPARED FOR THE SOLE PURPOSE OF PRESENTING A REASONABLE GOOD-FAITH ESTIMATE OF THE PROCEEDS THAT WOULD BE REALIZED IF DEBTOR WAS LIQUIDATED IN ACCORDANCE WITH CHAPTER 7 OF THE BANKRUPTCY CODE AS OF THE CONVERSION DATE. THE LIQUIDATION ANALYSIS IS NOT INTENDED TO AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED OR CLAIMS GENERATED IN AN ACTUAL LIQUIDATION.

¹ Capitalized terms used but not defined herein shall have the meanings set forth in (a) *Debtor’s Second Amended Disclosure Statement With Respect To The Agreed First Amended Plan of Liquidation Of Debtor And Official Committee Of Unsecured Creditors* (the “**Disclosure Statement**”), to which this Liquidation Analysis is attached as **Appendix B**, or (b) the *Agreed First Amended Plan Of Liquidation Of Debtor And Official Committee Of Unsecured Creditors* (the “**Plan**”), as applicable.

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SCOPE AND INTENT OF LIQUIDATION ANALYSIS

NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE, OR CONSTITUTES, A CONCESSION OR ADMISSION OF DEBTOR. THE ACTUAL AMOUNT OF ALLOWED CLAIMS IN THE CHAPTER 11 CASES COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS USED IN THE LIQUIDATION ANALYSIS.

The proofs of claim filed against Debtor have not been fully evaluated by Debtor or adjudicated by the Bankruptcy Court and, accordingly, the amount of the final allowed claims against Debtor's estate may differ from the claim amounts used in this Liquidation Analysis.

COMPONENTS OF WATERFALL LIQUIDATION MODEL

1. Gross Transaction Proceeds – As described in the Disclosure Statement, Debtor consummated various assets sales that, in all material respects, have monetized the business operations of Debtor. The primary remaining assets of the estate include the current cash balance (\$3.986 million as of 11/25/18), an accounts receivable portfolio (book value of \$4.785 million as of 11/25/18), longer-term notes receivable (book value of \$0.958 million as of 11/25/18), certain retainer / deposits balances (“other assets”) and various causes of action under chapter 5 of the Bankruptcy Code.

The estimated monetization value of the remaining assets under the chapter 11 scenario (i.e., assets monetized subsequent to 11/25/18) – estimated to range from \$2.055 to \$2.555 million – is based on a detailed review of the remaining assets with management.

The estimated monetization value of the remaining assets under a chapter 7 scenario incorporates a 15% discount to assets estimated to be monetized after the assumed Conversion Date of 2/15/19. This discount is attributable to the additional uncertainty that would be reasonably introduced from a chapter 7 conversion, including potentially augmenting the monetization strategy, elongating the process, certain delays in execution timing as the chapter 7 trustee and newly retained professionals get up to speed and potential unfavorable responses from accounts receivable counterparties.

This analysis does not capture potential proceeds from chapter 5 causes of action or the ongoing dispute with Smith & Wesson. However, to the extent this analysis did capture such analysis, we believe that the combination of Debtor and Creditor Trust professionals under a chapter 11 liquidation would be better positioned to prosecute such claims rather than a chapter 7 trustee due to their close familiarity with specific suppliers and related actions leading up to the filing.

2. Estimated cash consumed from through 2/15/19 – Operating budget to administer the case based on most recent estimates pursuant to correspondence with management, current professionals and status of accrued, unpaid professionals. Estimated operating expenses are offset by the anticipated monetization of certain deposits and miscellaneous assets which is captured in the analysis.

3. Distributions after Conversion Date –

Chapter 11 professional fees and other costs - Represents estimated accrued, unpaid professional fees as of the Conversion Date (e.g., holdbacks and delays in payments due to fee application process). The chapter 7 scenario incorporates a \$0.386 million reduction due to

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\$0.350 million budgeted to fund the Creditor Trust that will not be incurred and a \$35,000 reduction in quarterly fees owed to the United States Trustee Program for disbursements assumed to be made after the Conversion Date in the chapter 11 scenario.

KEIP – Pursuant to final KEIP Order, this amount represents the estimated award payments under the KEIP based on the final estimated Distributable Value as defined in the KEIP Order. Distributions under the KEIP are assumed to be made in both the chapter 7 and chapter 11 scenarios pursuant to the terms of the order.

Chapter 7 trustee fees – Estimated to be 3% of distributable proceeds based upon the statutory cap on the compensation of a chapter 7 trustee as set forth in Section 326 of the Bankruptcy Code.

Chapter 7 trustee - professional fees and other costs – Includes provision for professionals retained by the chapter 7 trustee, claims agent fees, and other costs of liquidating the estate. These fees could be higher if there is significant litigation over potential issues such as collection of transaction proceeds, claims disputes, or allocations of value or costs.

Administrative claims – Current estimate of accrued, unpaid post-petition expenses as of the Conversion Date. The Liquidation Analysis assumes that all significant operational costs required under the Transition Services Agreements and Debtor's related performance obligations under these agreements have been completed as of the Conversion Date. As a result, the analysis assumes Debtor is not in breach of any post-petition obligations (and related potential administrative claims) under the Transition Services Agreements, or otherwise, because of the hypothetical chapter 7 conversion. This Liquidation Analysis was prepared prior to the deadline for filing all claims against the estates of the Debtor and the actual allowed amount of administrative claims, if any, may differ from the claim amounts used in this Liquidation Analysis.

- 4. Secured and Priority claims** – Debtor believes there should not be any allowed secured claims or priority claims after the claims objection process and the elimination of duplicate claims, late filed claims, superseded claims, disputed claims, and other claims deemed not allowable, based on Debtor's current books and records, and Debtor disputes any proofs of claim asserting a secured claim or priority claim. However, certain proofs of claim have been filed that assert secured or priority claims. As set forth in more detail in the Disclosure Statement, filed claims asserting priority treatment include Claim Number 284 filed by the Ohio Department of Taxation, which asserts an unsecured claim in the total amount of \$354,386.74 arising from alleged unpaid use taxes during the period from July 1, 2013 to September 30, 2016 (the "Ohio Tax Claim"). The Ohio Tax Claim includes a component alleged to be entitled to priority under section 507(a)(8) of the Bankruptcy Code amounting to \$311,824.09. Debtor has not reviewed in detail the facts underlying claims asserting priority status, including Claim 284, as of the time of the filing of this Disclosure Statement. Nevertheless (and in an abundance of caution), Debtor has included a placeholder for the potential allowance of priority claims in its Liquidation Analysis. Debtor, the Committee and the Creditor Trustee reserve all rights to object to any claim asserting secured or priority status, including Claim 284, on all available grounds, including, without limitation, any objections as to the validity, amount, and/or priority of such claims.

5. **General Unsecured claims** – Analysis is based on preliminary review of claims filed to date and a comparison against scheduled claims liability. The prepetition claims bar date was July 27, 2018; however, this bar date does not apply to additional pre-petition contracts to be rejected. We believe the range used herein to estimate unsecured claims recovery reasonably captures potential risk of additional claims that may be filed in the case.

APPENDIX C – PRESERVED CAUSES OF ACTION

Appendix C

Preserved Causes of Action

This Appendix C remains subject to further revision. The Plan Proponents expressly reserve the right to alter, modify, amend, remove, augment or supplement the following list at any time prior to the Confirmation Date (as defined in the Plan (defined below)).

Article 8.8.3 of the *Agreed First Amended Plan of Liquidation of the Debtor and Official Committee of Unsecured Creditors* (the “Plan”)¹ provides as follows:

Preservation of Causes of Action. Unless any Causes of Action against a Person 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 Creditor Trust (i) shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtor or the Debtor’s Estate, whether arising before or after the Petition Date, including, but not limited to, any Causes of Action specifically enumerated in Appendix C to the Disclosure Statement, and the Creditor Trust’s right to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date and (ii) expressly reserves 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 of the Plan or the occurrence of the Effective Date. The Creditor Trust may pursue Causes of Action, as appropriate, in accordance with the best interests of the Creditor Trust. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against such Entity as any indication that the Creditor Trust will not pursue any and all available Causes of Action against such Person. The Creditor Trust expressly reserves all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan or in a Bankruptcy Court order. For the avoidance of doubt, the Plan does not release any Causes of Action that the Plan Proponents or the Creditor Trust have or may have now or in the future against any Person.

Except as otherwise provided in the Plan or in a Final Order, the Creditor Trust reserves and shall retain Causes of Action

¹ All capitalized terms undefined herein shall have the meanings ascribed to them in the Plan.

notwithstanding the rejection or assumption of any Executory Contract during the Case or pursuant to the Plan, to the fullest extent permitted by law. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that the Debtor may hold against any Person that is not released under the Plan or a separate settlement approved by Final Order shall vest in the Creditor Trust, which shall retain and may exclusively enforce any and all such Causes of Action. The Creditor Trust has the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any 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.

Notwithstanding and without limiting the generality of Article 8.8.3 of the Plan, the Debtor has identified below certain specific potential Causes of Action, including: (a) claims related to contracts and leases; (b) Insider Causes of Action; (c) Avoidance Actions; (d) claims related to accounts receivable and accounts payable (including setoffs); and (e) other pending litigation matters. These categories, however, shall not be deemed limiting and any specific Cause of Action listed in one category shall be viewed as if listed in all.

Failure to include any Person in this Appendix C shall not constitute a release of such Person and shall not indicate that Causes of Action against such Person have not been preserved. Moreover, failure to attribute any specific Cause of Action to a particular Person in this Appendix C shall not mean that such Cause of Action is not preserved against such Person. All possible Causes of Action, including Causes of Action not listed on this Appendix C, are retained against all Persons not expressly released pursuant to the Plan or a Final Order.

Claims Related to Contracts and Leases

Unless otherwise released by the Plan, the Debtor expressly preserves all Causes of Action based in whole or in part upon any and all contracts and leases to which the Debtor is a party or pursuant to which the Debtor has any rights whatsoever, regardless of whether such contract or lease is specifically identified herein. The Causes of Action preserved include, among others, Causes of Action against insurance companies, suppliers of goods and services, vendors, financial institutions or any other parties: (a) for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guaranties, indemnities, recoupment or setoff, or “free goods” or “free guns” owed Debtor under promotional programs or otherwise; (b) for breach of contract, breach of implied covenant of good faith and fair dealing, unjust enrichment, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) for failure to fully perform under contracts with Debtor; (d) for payments, back charges, deposits, holdbacks, reserves or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, service provider, lessor or other party; (e) counterclaims and defenses related to any contractual obligations; (f) any turnover actions arising under section

542 or 543 of the Bankruptcy Code; (g) for unfair competition, interference with contract or potential business advantage, infringement of intellectual property or any tort claims; and (h) for any claims against Debtor's insurance carriers, including for payments or other amounts owed by such insurance carrier pursuant to contracts of insurance or settlement agreements with insurers.

Each Person with whom Debtor was a party to an Executory Contract is listed on Schedule G of Debtor's *Schedules of Assets and Liabilities* filed on May 29 and June 13, 2018 (as amended, the "*Schedules*"), as well as Part 9 of Schedule A/B, and Causes of Action against such Persons are expressly preserved under the Plan. In addition, Debtor preserves all Causes of Action against Persons whom were parties to non-executory contracts and leases with Debtor, including manufacturers of firearms, ammunition and accessories that were party to a distributor or distribution agreement with Debtor. For the avoidance of doubt, all claims and Causes of Action against (i) Smith & Wesson Corp., whether under its Distributor Agreement or otherwise and (ii) Ellett Brothers, LLC in connection that certain asset purchase agreement dated April 30, 2018, as amended, by and between Debtor and Ellett Brothers, LLC, are expressly preserved in all respects.

Insider Causes of Action

Debtor may have claims and Causes of Action against current and former Insiders of Debtor. These Causes of Action may be for, *inter alia*, the following: (i) preferential transfers pursuant to section 547 of the Bankruptcy Code; (ii) fraudulent transfers under section 548 of the Bankruptcy Code and applicable non-bankruptcy law; (iii) other avoidance claims under chapter 5 of the Bankruptcy Code; (iv) breaches of fiduciary duties, including breaches of the duty of care and loyalty; (v) improper distributions under applicable non-bankruptcy law; (vi) common law fraud under applicable non-bankruptcy law; and (vii) equitable subordination pursuant to section 510 of the Bankruptcy Code. Among other things, Insiders of Debtor may be the subject of Causes of Action to avoid and recover any transfers received by them as set forth in Part 2 of Debtor's *Statement of Financial Affairs* filed on May 29 and June 13, 2018 (as amended, the "*SOFA*"), or to reduce, disallow, subordinate, or recharacterize any claims identified in Schedule D or E of Debtor's Schedules.²

Current and former Insiders of the Debtor that may be subject to one or more of the aforementioned Causes of Action include:

- Andrew M. Harris
- Christopher A. Cole
- David Ray
- James A. Broering
- John K. Flanagan
- Kaitlen A. Fraim
- Mary E. Grim
- Michael Perry
- Noel Shannan Stover

² The SOFA and Schedules are expressly incorporated herein by reference.

- Paul V. Higham
- Steven P. Reed
- Thomas E. Britt
- William L. Fraim

Avoidance Actions

Debtor may have claims and Causes of Action, arising under sections 502, 510, 541, 542, 544, 545, 547 through 551 and 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer laws, against creditors, vendors, suppliers and other Persons to avoid and recover transfers of cash or other property from Debtor in applicable periods prior to the Petition Date.

Each Person listed on Part 2 of the SOFA received transfers from Debtor in the 90-day period prior to the Petition Date, and is therefore a potential subject of an Avoidance Action that is expressly preserved under the Plan. In addition, each Person listed on Parts 4 and 13 of the SOFA may have received transfers avoidable under chapter 5 of the Bankruptcy Code or applicable non-bankruptcy law, and such claims are expressly preserved. Finally, any other Person (whether listed on the SOFA or Schedules or not) that received transfers of cash or property from Debtor in the four-year period prior to the Petition Date may have received transfers avoidable under chapter 5 of the Bankruptcy Code or applicable non-bankruptcy law, and such claims are expressly preserved. Finally, for the avoidance of doubt, Debtor's pending adversary proceeding against Smith & Wesson Corp. (Adv. No. 18-02067) is expressly preserved in all respects.

Claims Related to Accounts Receivable and Accounts Payable

Unless otherwise released by the Plan, Debtor expressly preserves all Causes of Action against or related to all Persons that owe or that may in the future owe money to Debtor or the Creditor Trust regardless of whether such Person is explicitly identified in this Appendix C or in the SOFA or Schedules. Furthermore, Debtor expressly preserves all Causes of Action against or related to all Persons that assert or may assert that Debtor or the Creditor Trust owes money to them.

Notwithstanding the generality of the foregoing, Debtor expressly preserves Causes of Action against the following Persons, except to the extent such Causes of Action have been resolved by the Plan or a Final Order:

- All Parties holding deposits or prepayments refundable to Debtor, as set forth in Part 2 of Schedule A/B
- All accounts receivable referenced in, or constituting a part of, Debtor's disclosures in Part 3 of Schedule A/B
- All notes receivable set forth in Part 11, Item 71, of Schedule A/B
- All causes of action against third parties set forth in Part 11, Item 74, of Schedule A/B
- All other miscellaneous receivables and other rights to payment set forth in Part 11, Item 77, of Schedule A/B

In addition, Debtor expressly preserves all claims and Causes of Action for “free goods” or “free guns” owed to it by any supplier under pre-Petition Date promotional program.

Other Pending Litigation Matters

Debtor is party to certain pending and prospective litigation matters (both as plaintiff and defendant) for, among other things, collection of accounts receivable and breach of contract, workers’ compensation, and personal injury. These litigation matters are disclosed by Debtor in Part 3 of the SOFA and Part 11, Item 74, of Schedule A/B. Debtor expressly preserves all claims, defenses, cross-claims and counterclaims related to these pending and prospective litigation matters.