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**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SANTA ANA DIVISION**

In re:

FREEDOM COMMUNICATIONS, INC., a  
Delaware corporation, et al.,<sup>1</sup>

Debtors and  
Debtors-in-Possession.

Case No.: 8:15-bk-15311-MW

Chapter 11

(Jointly Administered with Case Nos.  
8:15-bk-15312-MW; 8:15-bk-15313-MW;  
8:15-bk-15315-MW; 8:15-bk-15316-MW;  
8:15-bk-15317-MW; 8:15-bk-15318-MW;  
8:15-bk-15319-MW; 8:15-bk-15320-MW;  
8:15-bk-15321-MW; 8:15-bk-15322-MW;  
8:15-bk-15323-MW; 8:15-bk-15324-MW;  
8:15-bk-15325-MW; 8:15-bk-15326-MW;  
8:15-bk-15327-MW; 8:15-bk-15328-MW;  
8:15-bk-15329-MW; 8:15-bk-15330-MW;  
8:15-bk-15332-MW; 8:15-bk-15337-MW;  
8:15-bk-15339-MW; 8:15-bk-15340-MW;  
8:15-bk-15342-MW; 8:15-bk-15343-MW)

<sup>1</sup> The last four digits of the Debtors' federal tax identification numbers are as follows: Freedom Communications, Inc. (0750); Freedom Communications Holdings, Inc. (2814); Freedom Services, Inc. (3125); 2100 Freedom, Inc. (7300); OCR Community Publications, Inc. (9752); Daily Press, LLC (3610); Freedom California Mary Publishing, Inc. (4121); Freedom California Ville Publishing Company LP (7735); Freedom Colorado Information, Inc. (7806); Freedom Interactive Newspapers, Inc. (9343); Freedom Interactive Newspapers of Texas, Inc. (8187); Freedom Newspaper Acquisitions, Inc. (4322); Freedom Newspapers (7766); Freedom Newspapers, Inc. (3240); Freedom Newspapers of Southwestern Arizona, Inc. (5797); OCR Information Marketing, Inc. (7983); Odessa American (7714); Orange County Register Communications, Inc. (7980); Victor Valley Publishing Company (6082); Victorville Publishing Company (7617); Freedom SPV II, LLC (8253); Freedom SPV VI, LLC (8434); Freedom SPV I, LLC (3293); Freedom SPV IV, LLC (8500); and Freedom SPV V, LLC (9036). The Debtors' mailing address is 625 N. Grand Avenue, Santa Ana, California 92701.

**SECOND AMENDED DISCLOSURE  
STATEMENT FOR SECOND AMENDED  
JOINT CHAPTER 11 PLAN OF  
LIQUIDATION PROPOSED BY  
DEBTORS AND OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS, AS  
MODIFIED**

Affects:

☒ All Debtors

☐ Freedom Communications, Inc., a Delaware corporation, ONLY

☐ Freedom Communications Holdings, Inc., a Delaware corporation, ONLY

☐ Freedom Services, Inc., a Delaware corporation, ONLY

☐ 2100 Freedom, Inc., a Delaware corporation, ONLY

☐ OCR Community Publications, Inc., a California corporation, ONLY

☐ Daily Press, LLC, a California limited liability company, ONLY

☐ Freedom California Mary Publishing, Inc., a California corporation, ONLY

☐ Freedom California Ville Publishing Company LP, a California limited partnership, ONLY

☐ Freedom Colorado Information, Inc., a Delaware corporation, ONLY

☐ Freedom Interactive Newspapers, Inc., a California corporation, ONLY

☐ Freedom Interactive Newspapers of Texas, Inc., a Delaware corporation, ONLY

☐ Freedom Newspaper Acquisitions, Inc., a Delaware corporation, ONLY

☐ Freedom Newspapers, a Texas general partnership, ONLY

☐ Freedom Newspapers, Inc., a Delaware corporation, ONLY

☐ Freedom Newspapers of Southwestern Arizona, Inc., a California corporation, ONLY

☐ OCR Information Marketing, Inc., a California corporation, ONLY

**Disclosure Statement Approval Hearing:**

Date: April 28, 2021

Time: 2:00 p.m.

Place: Courtroom 6C  
411 West Fourth Street  
Santa Ana, CA 92701

Judge: Honorable Mark S. Wallace

- ☐ Odessa American, a Texas general partnership, ONLY
- ☐ Orange County Register Communications, Inc., a California corporation, ONLY
- ☐ Victor Valley Publishing Company, a California corporation, ONLY
- ☐ Victorville Publishing Company, a California limited partnership, ONLY
- ☐ Freedom SPV II, LLC, a Delaware limited liability company, ONLY
- ☐ Freedom SPV VI, LLC, a Delaware limited liability company, ONLY
- ☐ Freedom SPV I, LLC, a Delaware limited liability company, ONLY
- ☐ Freedom SPV IV, LLC, a Delaware limited liability company, ONLY
- ☐ Freedom SPV V, LLC, a Delaware limited liability company, ONLY

**THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES  
AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.**

**DISCLAIMER**

**THIS DISCLOSURE STATEMENT PROVIDES INFORMATION REGARDING THE JOINT CHAPTER 11 PLAN OF LIQUIDATION PROPOSED BY THE DEBTORS AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS THAT THE DEBTORS AND THE COMMITTEE ARE SEEKING TO HAVE CONFIRMED BY THE BANKRUPTCY COURT. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES TO, AND CONFIRMATION OF, THE PLAN AND MAY NOT BE RELIED ON FOR ANY OTHER PURPOSE. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.**

**THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN DOCUMENTS RELATING TO THE PLAN, AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE PLAN PROPONENTS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF, OR ARE INCONSISTENT WITH, SUCH DOCUMENTS.**

**ALTHOUGH THE PLAN PROPONENTS HAVE MADE EVERY EFFORT TO BE ACCURATE, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN THE SUBJECT OF AN AUDIT OR OTHER REVIEW BY AN ACCOUNTING FIRM. IN THE EVENT OF ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN, THIS DISCLOSURE STATEMENT, THE EXHIBITS ANNEXED TO THIS DISCLOSURE STATEMENT, OR THE FINANCIAL INFORMATION INCORPORATED HEREIN OR THEREIN BY REFERENCE, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLAIMS SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN.**

**THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN. ALTHOUGH THE PLAN PROPONENTS HAVE MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY THE RECOVERY UNDER THE PLAN, THIS DISCLOSURE STATEMENT IS QUALIFIED TO THE EXTENT CERTAIN EVENTS DO OCCUR.**

1 THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH  
2 SECTION 1125 OF THE BANKRUPTCY CODE AND NOT NECESSARILY IN  
3 ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-  
4 BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED  
5 OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC")  
6 OR ANY FEDERAL, STATE, LOCAL, OR FOREIGN REGULATORY AGENCY, NOR HAS  
7 THE SEC OR ANY OTHER SUCH AGENCY PASSED UPON THE ACCURACY OR  
8 ADEQUACY OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT.  
9 PERSONS OR ENTITIES HOLDING OR TRADING IN, OR OTHERWISE PURCHASING,  
10 SELLING, OR TRANSFERRING, CLAIMS AGAINST THE DEBTORS SHOULD  
11 EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE  
12 PURPOSE FOR WHICH THEY WERE PREPARED.  
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**EXHIBITS**

EXHIBIT A Second Amended Joint Plan of Liquidation

EXHIBIT B Organizational Chart

**THE PLAN PROPONENTS HEREBY ADOPT AND INCORPORATE EACH  
EXHIBIT ATTACHED TO THIS DISCLOSURE STATEMENT  
BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN**

## I. INTRODUCTION

Pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), the above-captioned debtors and debtors-in-possession (the “Debtors” or the “Company”) and the Official Committee of Unsecured Creditors (the “Committee”) hereby jointly submit this Second Amended Disclosure Statement (the “Disclosure Statement”) for the *Second Amended Joint Chapter 11 Plan of Liquidation Proposed by Debtors and Official Committee of Unsecured Creditors* (as may be amended or modified, the “Plan”). The definitions contained in the Bankruptcy Code are incorporated herein by this reference. The definitions set forth in Article II of the Plan will also apply to capitalized terms used herein that are not otherwise defined. A copy of the Plan is attached hereto as Exhibit A.<sup>2</sup>

The purpose of this Disclosure Statement is to enable creditors whose Claims are Impaired under the Plan and who are entitled to vote to make an informed decision in exercising their right to accept or reject the Plan. This Disclosure Statement sets forth certain information regarding the Debtors’ prepetition operating and financial history, their reasons for seeking protection under chapter 11 of the Bankruptcy Code, and the anticipated wind-down and liquidation of the Liquidating Debtors by a Plan Administrator. This Disclosure Statement also describes certain 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.

## II. PLAN OVERVIEW

### A. General Structure of the Plan

The Debtors and the Committee are co-proponents of the Plan, which provides for the distribution of the remaining assets of the Debtors’ estates, consisting primarily of net cash proceeds from certain settlements and the proceeds flowing from a resolution of a dispute with the California Department of Taxation and Fee Administration (“CDTFA”) regarding potential tax refunds in the approximate amount of \$5 million. Specifically, the Plan provides for the liquidation, collection, disposition and distribution of the remaining assets of the Debtors’ Estates and winding-up the Debtors’ affairs and the Chapter 11 Cases. Substantially all of the Debtors’ assets were sold to a third party buyer and the remaining material causes of action of the Debtors were addressed and resolved under certain settlements including with the Pension Benefit Guaranty Corporation. The Plan proposes to fairly and efficiently allocate the Debtors’ remaining Distributable Assets in a manner that is supported by the principal constituencies in the Chapter 11 Cases and will allow such cases to be promptly resolved.

The Plan will be implemented through the substantive consolidation of the Debtors’ Estates for the purposes of voting and Distributions under the Plan, the re-vesting of the Estates’ assets in Liquidating Debtor Freedom Communications, Inc., and the appointment of a Plan Administrator to liquidate or otherwise dispose of the Estates’ remaining assets, if and to the extent such assets were not previously monetized or otherwise transferred by the Debtors prior to the Effective Date. All

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<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings provided to such terms in the Plan. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between the summary herein and the Plan, the Plan shall govern.

1 Intercompany Claims will be waived and eliminated. The Plan Administrator will act for the  
2 Liquidating Debtors in the same fiduciary capacity as applicable to a board of directors of a Delaware  
3 corporation implementing such liquidation and wind-down as contemplated under the Plan, subject to  
4 the provisions hereof, and shall, among other powers, wind up the affairs of the Liquidating Debtors;  
5 use, manage, sell, abandon and/or otherwise dispose of the remaining property of the Estates;  
6 prosecute objections to Claims and any litigation on behalf of the Liquidating Debtors; cause  
7 distributions to be made to Creditors pursuant to the Plan; and take such other actions required under  
8 or consistent with the Plan. The initial Plan Administrator will be the current Chief Restructuring  
9 Officer, Brad Smith.

10 Under the Plan, the Holders of Allowed Administrative Expenses, Allowed Priority Tax  
11 Claims, and Allowed Priority Non-Tax Claims will be paid in full on the Effective Date, unless  
12 otherwise agreed with the Holders of such Claims. The Holders of Allowed Miscellaneous Secured  
13 Claims will either: (a) be paid in cash up to the value of their collateral, or (b) have their obligations  
14 assumed or otherwise addressed as provided for in the Plan, including pursuant to agreements with  
15 such Holders. As discussed in the Disclosure Statement, the Secured Claims of the Debtors'  
16 prepetition secured lenders, the debtor-in-possession financing lenders, and the PBGC were paid in  
17 full or otherwise addressed and resolved prior to the filing of the Plan.

18 Holders of Allowed General Unsecured Claims will receive any remaining Net Distributable  
19 Estate Assets after the payment of (or reserves for) Allowed Administrative Expenses, Allowed  
20 Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Miscellaneous Secured Claims, and  
21 Plan Expenses; provided that in the event that the aggregate Cash recovery for Holders of Allowed  
22 General Unsecured Claims (other than the PBGC) exceeds \$1,000,000, then any excess Cash proceeds  
23 will be shared ratably by the Holders of Allowed General Unsecured Claims and the Holder of the  
24 PBGC Unsecured Claims. The PBGC (or other Holder of the PBGC Unsecured Claims) will receive  
25 the treatment provided for the PBGC Unsecured Claims set forth in the PBGC Settlement, including,  
26 as noted, the PBGC sharing ratably with Holders of Allowed Class 3 General Unsecured Claims any  
27 excess Cash proceeds over \$1,000,000 in the aggregate.

28 All Interests in the Debtors will be canceled, and any associated management rights held by  
Holders of Interests will be void and of no force and effect as of the Effective Date. Holders of  
Interests will not receive any Distribution or other property pursuant to the Plan.

**THE PLAN PROPONENTS BELIEVE THAT THE PLAN IS FAIR AND EQUITABLE,  
WILL MAXIMIZE THE VALUE TO THESE ESTATES, AND IS IN THE BEST INTERESTS  
OF THE DEBTORS AND THEIR CONSTITUENTS.**

**FOR THESE REASONS, THE PLAN PROPONENTS URGE HOLDERS OF CLAIMS  
WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE  
TO ACCEPT THE PLAN.**

#### **B. Summary of Treatment of Claims and Interests Under the Plan**

The Plan provides for the classification and treatment of Claims and Interests. The Plan  
designates 4 Classes of Claims and 1 Class of Interests. These Classes and Plan treatments take into  
account the differing nature and priority under the Bankruptcy Code of the various Claims and  
Interests.

The table below summarizes the classification and treatment of the Claims and Interests under the Plan. The Plan substantively consolidates the Debtors for voting and distribution purposes.

**THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND THEREFORE ARE SUBJECT TO CHANGE. FOR A COMPLETE DESCRIPTION OF THE DEBTORS' CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS, REFERENCE SHOULD BE MADE TO THE ENTIRE PLAN.**

Class	Claim or Interest	Entitlement to Vote	Projected Recovery	Estimated Claims Amount	Proposed Treatment
1	Priority Non-Tax Claims	Unimpaired; Not Entitled to Vote (Presumed to Accept)	100%	Approximately \$1,000,000.00	Class 1 consists of Priority Non-Tax Claims. At the election of the Liquidating Debtors, each Holder of a Priority Non-Tax Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Priority Non-Tax Claim, on or as soon as practicable after the later of (i) the Effective Date, or (ii) thirty (30) calendar days following the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, (a) a Cash payment from the Liquidating Debtors equal to the Allowed amount of such Claim, or (b) such other treatment as otherwise agreed by the Holder of such Claim and the Debtors or the Liquidating Debtors.
2	Miscellaneous Secured Claims	Unimpaired; Not Entitled to Vote (Presumed to Accept)	100%	Approximately \$200,000.00	Class 2 consists of any Miscellaneous Secured Claims. Although all Miscellaneous Secured Claims have been placed in one Class for the purposes of nomenclature, each Miscellaneous Secured Claim, to the extent secured by a Lien on any property or interest in property of any of the Debtors different from that securing any other Miscellaneous Secured Claim, shall be treated as being in a separate sub-Class for purposes of voting and receiving distributions under the Plan. Except to the extent that a Holder of an Allowed Miscellaneous Secured Claim has been paid by the Debtors, in whole or in part, prior to the Effective Date, on the later of (i) the Effective Date and (ii) thirty (30) calendar days following the date on which such Miscellaneous Secured Claim becomes an Allowed Miscellaneous Secured Claim, at the option of the Liquidating Debtors, in full and final satisfaction of such Miscellaneous Secured Claim, (i) each Allowed Miscellaneous Secured Claim shall be reinstated and Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed Miscellaneous Secured Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Miscellaneous Secured Claim, (x) payment in full in Cash of the unpaid portion of such Allowed Miscellaneous Secured Claim, (y) the collateral securing such Allowed Miscellaneous Secured Claim, or (z) such other treatment as may be agreed to by the Holder of such Claim and the Debtors or the Liquidating Debtors.

3	General Unsecured Claims	Impaired; Entitled to Vote	Approx. 0.0% - 5.0%	Approximately \$40,000,000 (excludes any PBGC Unsecured Claims)	Class 3 consists of all General Unsecured Claims. Except to the extent that a Holder of an Allowed Class 3 General Unsecured Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement and release of the each Allowed Class 3 General Unsecured Claim, each Holder of an Allowed Class 3 General Unsecured Claim shall receive a Cash payment equal to its Pro Rata share of the Net Distributable Estate Assets on one or more dates as soon as reasonably practicable after (i) all General Unsecured Claims have been Allowed, Disallowed or otherwise resolved and (ii) the payment of (or reserves for) all Allowed Administrative Expenses, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Miscellaneous Secured Claims and Plan Expenses (unless the holder of the applicable claim agrees to other less favorable treatment); <i>provided, however</i> , in the event that an aggregate of at least \$1,000,000 in Cash in Net Distributable Assets is or will be distributed, as Distributions under the Plan, to the Holders of Allowed Class 3 General Unsecured Claims on account of such Claims, any and all Net Distributable Assets in excess of such \$1,000,000 Cash threshold shall be distributed by the Liquidating Debtors to the Holders of Allowed Class 3 Claims and the PBGC (or other Holder of the Class 4 Claims), on account of their Class 3 and Class 4 Claims, respectively, on a Pro Rata basis as soon as reasonably practicable on the Class 3 Distribution Date(s); <i>provided further</i> that in the discretion of the Plan Administrator, Allowed Class 3 General Unsecured Claims may receive Distributions before the reconciliation of all Disputed Class 3 General Unsecured Claims provided that (x) reserves are maintained for any Class 3 General Unsecured Claim that is Disputed at the time of such Distribution and (y) the Plan Administrator shall make a corrective Distribution following the resolution of any Disputed Claim within thirty (30) days of such resolution.
4	PBGC Unsecured Claims	Impaired; Entitled to Vote	<1%	TBD (approx. \$145,000,000)	Class 4 consists of PBGC Unsecured Claims. The Holder of the PBGC Unsecured Claims shall receive the treatment provided for the PBGC on account of the PBGC Unsecured Claims set forth in the PBGC Settlement. Specifically, pursuant to the PBGC Settlement, the PBGC has agreed to waive any right to receive Distributions under the Plan, on account of the PBGC Unsecured Claims, unless and until the Pro Rata Class 3 / Class 4 Distribution Trigger Event occurs or is otherwise satisfied; upon the occurrence of the Pro Rata Class 3 / Class 4 Distribution Trigger Event, the PBGC shall be entitled to share on a Pro Rata basis with the Holders of Allowed Class 3 Claims any Excess Net Distributable Assets.
5	Interests	Impaired; Not Entitled to Vote (Deemed to Reject)	0%	n/a	Class 5 consists of all Interests. Holders of Interests shall receive no distributions under the Plan, and on the Effective Date, all Interests shall be deemed void and of no force and effect.

**THE PLAN PROPONENTS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF CLAIMS AGAINST THE DEBTORS AND THUS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

## **C. Plan Voting Instructions and Procedures**

### **1. Voting Rights**

Under the Bankruptcy Code, acceptance of the Plan by a Class of Claims is determined by calculating the number and the amount of Allowed Claims voting to accept, based on the actual total Allowed Claims voting on the Plan. Acceptance by a Class of Claims requires more than one-half of the number of total voting Allowed Claims in the Class to vote in favor of the Plan and at least two-thirds in dollar amount of the total Allowed Claims in the Class to vote in favor of the Plan.

Under the Bankruptcy Code, only Classes of Claims or Interests that are “Impaired” and that are not deemed as a matter of law to have rejected a plan under Section 1126 of the Bankruptcy Code are entitled to vote to accept or reject the Plan. Any Class that is “Unimpaired” is not entitled to vote to accept or reject the Plan and is conclusively presumed to have accepted the Plan. As set forth in Section 1124 of the Bankruptcy Code, a Class is “Impaired” if the legal, equitable, or contractual rights attaching to the Claims or Interests of that Class are modified or altered. Any Class of Claims or Interests that does not receive or retain any property under the Plan on account of such Claims or Interests is deemed to have rejected the Plan.

Pursuant to the Plan, Classes 3 and 4 (General Unsecured Claims and the PBGC, respectively) are Impaired under the Plan and entitled to vote to accept or reject the Plan. Only the Holder of a Claim as of May 12, 2021 (the “Voting Record Date”), may vote to accept or reject the Plan.

Pursuant to the Plan, Claims in Classes 1 and 2 are Unimpaired by the Plan, and such Holders are conclusively presumed to have accepted the Plan and are therefore not entitled to vote on the Plan.

Pursuant to the Plan, Interests in Class 5 will not receive or retain any property under the Plan on account of such Interests, as applicable, and are, therefore, deemed to reject the Plan and are not entitled to vote on the Plan.

## **2. Solicitation Materials**

The Debtors have engaged Donlin, Recano & Company, Inc. (the “Voting Agent”) to serve as the voting agent to process and tabulate Ballots for each Class entitled to vote on the Plan and to generally oversee the voting process. The following materials shall constitute the solicitation package (the “Solicitation Package”):

- This Disclosure Statement, including the Plan and all other Exhibits annexed thereto;
- The Bankruptcy Court order approving this Disclosure Statement (the “Disclosure Statement Order”);
- The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan (the “Confirmation Hearing Notice”);
- One or more Ballots, as applicable, to be used in voting to accept or to reject the Plan, and applicable voting instructions (the “Voting Instructions”);
- A pre-addressed return envelope; and
- Such other materials as the Bankruptcy Court may direct or approve.

The Plan Proponents, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Solicitation Package is also available at the Debtors’ restructuring website at <https://www.donlinrecano.com/Clients/fc/Index>.

Prior to the Confirmation Hearing, the Plan Proponents may file a Plan Supplement that includes, among other things, (i) the qualifications and proposed compensation of and other disclosures

1 regarding the Plan Administrator; and (ii) any executory contracts and unexpired leases designated  
2 for assumption by the Debtors. As the Plan Supplement is updated or otherwise modified, such  
3 modified or updated documents will be made available on the Debtors' restructuring website at  
<https://www.donlinrecano.com/Clients/fc/Index>.

4 If you are the Holder of a Claim and believe that you are entitled to vote on the Plan, but you  
5 did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning  
6 voting procedures, you should contact the Voting Agent by writing to Donlin, Recano & Company,  
7 Inc. Re: Freedom Communications, Inc., et al. Attn: Voting Department; PO Box 199043  
8 Blythebourne Station; Brooklyn, NY 11219; Email: [DRCVote@DonlinRecano.com]. If the reason  
9 that you did not receive a Ballot is because your Claim is subject to a pending claim objection and you  
10 wish to vote on the Plan, you must file a motion pursuant to Bankruptcy Rule 3018 with the  
11 Bankruptcy Court for the temporary allowance of your Claim for voting purposes so that it is heard  
12 by the Bankruptcy Court on or before July 7, 2021, or you will not be entitled to vote to accept or  
13 reject the Plan.

14 **THE DEBTORS AND THE LIQUIDATING DEBTORS, AS APPLICABLE, RESERVE**  
15 **THE RIGHT THROUGH THE CLAIM OBJECTION PROCESS TO OBJECT TO ANY**  
16 **CLAIM.**

### 17 **3. Voting Instructions and Procedures**

18 All votes to accept or reject the Plan must be cast by using the Ballots enclosed with the  
19 Solicitation Packages. No votes other than ones using such Ballots will be counted, except to the  
20 extent the Bankruptcy Court orders otherwise. May 12, 2021 is the Voting Record Date for the  
21 determination of the Holders of Claims who are entitled to (i) receive a Solicitation Package and (ii)  
22 vote to accept or reject the Plan. The Voting Record Date and all of the Plan Proponents' solicitation  
23 and voting procedures shall apply to all of the Debtors' Creditors and other parties in interest.

24 If you are a Holder of a Claim in a Class that is entitled to vote, after carefully reviewing the  
25 Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked  
26 to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the  
27 accompanying Ballot.

28 **The deadline to vote on the Plan is June 9, 2021 at 5:00 p.m. (prevailing Pacific Time)**  
**(the "Voting Deadline").**

In order for your vote to be counted, your Ballot must be properly completed, in accordance  
with the Voting Instructions on the Ballot, and received no later than the Voting Deadline at the  
following address, if by First-Class Mail:

**Freedom Communications, Inc. Ballot Processing**  
**c/o Donlin, Recano & Company, Inc.**  
**Attn: Voting Department**  
**P.O. Box 199043 Blythebourne Station**  
**Brooklyn, NY 11219**

Ballots sent by hand delivery or overnight mail should be sent to the following address:



**Freedom Communications, Inc. Ballot Processing**  
**c/o Donlin, Recano & Company, Inc.**  
**Attn: Voting Department**  
**6201 15<sup>th</sup> Avenue**  
**Brooklyn, NY 11219**

Holders of Claims in Class 3 (General Unsecured Claims) and Class 4 (PBGC Unsecured Claims) as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning them in the envelope provided to the Voting Agent so as to be actually received by the Voting Agent by the Voting Deadline. Each Holder of a Claim must vote its entire Claim within a particular Class either to accept or reject the Plan and may not split such votes. If multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to reflect that voter's intent and will supersede and revoke any Ballot previously received. The Ballots will clearly indicate the appropriate return address. It is important to follow the specific instructions provided on each Ballot.

Unless otherwise provided in the Voting Instructions accompanying the Ballots, the following Ballots will not be counted in determining whether the Plan has been accepted or rejected:

- Any Ballot that fails to clearly indicate an acceptance or rejection, or that indicates both an acceptance and a rejection of the Plan;
- Any Ballot received after the Voting Deadline, except if the Debtors have granted an extension of the Voting Deadline with respect to such Ballot or by order of the Bankruptcy Court;
- Any Ballot containing a vote that the Bankruptcy Court determines was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code;
- Any Ballot that is illegible or contains insufficient information to permit the identification of the Claim Holder;
- Any Ballot cast by a Person or Entity that does not hold a Claim in the voting Class with respect to which the Ballot is cast; and
- Any Ballot without an original signature.

Any party who has previously submitted to the Voting Agent prior to the Voting Deadline a properly completed Ballot may revoke such Ballot and change its vote by submitting to the Voting Agent prior to the Voting Deadline a subsequent properly completed Ballot for acceptance or rejection of the Plan. If more than one timely, properly completed Ballot is received, only the last timely received Ballot will be counted for purposes of determining whether the requisite acceptances have been received. Any party who has delivered a properly completed Ballot for the acceptance or rejection of the Plan that wishes to withdraw such acceptance or rejection rather than changing its vote may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. To be valid, a notice of withdrawal must (i) contain the description of the Claims to which it relates and the aggregate principal amount represented by such Claims, (ii) contain the original signature of the withdrawing party, (iii) contain a certification

1 that the withdrawing party owns the Claims and possesses the right to withdraw the vote sought to be  
2 withdrawn, and (iv) be actually received by the Voting Agent prior to the Voting Deadline.

3 **ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS**  
4 **IMPORTANT THAT THE HOLDER OF A CLAIM IN THE CLASSES ENTITLED TO VOTE**  
5 **FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.**

6 In addition, for all Holders of Class 3 Claims (General Unsecured Claims) and Class 4 (PBGC  
7 Unsecured Claims), the Ballot contains an option to “opt-out” of certain releases provided under the  
8 Plan. The Plan provides that each Holder of a Claim that votes to accept, or is deemed to accept, the  
9 Plan is considered a “Releasing Creditor” under the Plan and is bound by certain releases provided in  
10 Article IX thereof, and as set forth below, other than any Holder of a Class 3 Claim or a Class 4 Claim  
11 that affirmatively elects on its Ballot to opt out of being a Releasing Creditor. Each Class 3 and Class  
12 4 Ballot will contain the text of the proposed release and instructions to each Holder of a Class 3 or a  
13 Class 4 Claim regarding the option to opt-out of the release.

14 If you have any questions about (i) the procedure for voting your Claim, (ii) the Solicitation  
15 Package that you have received, or (iii) the amount of your Claim, or if you wish to obtain, at your  
16 own expense (unless otherwise specifically required by Bankruptcy Rule 3017(d)), an additional copy  
17 of the Plan, this Disclosure Statement, or any appendices or Exhibits to such documents, please contact  
18 the Voting Agent by writing to Donlin, Recano & Company, Inc. Re: Freedom Communications, Inc.,  
19 et al., Attn: Voting Department; PO Box 199043, Blythebourne Station; Brooklyn, NY 11219. Copies  
20 of the Plan, Disclosure Statement, Plan Supplement and other documents filed in these Chapter 11  
21 Cases may be obtained free of charge on the Voting Agent’s website at  
22 <https://www.donlinrecano.com/Clients/fc/Index>. Documents filed in these Chapter 11 Cases may also  
23 be examined between the hours of 9:00 a.m. and 4:00 p.m., prevailing Pacific Time, Monday through  
24 Friday (excluding federal holidays), at the Office of the Clerk of the Bankruptcy Court, 411 West  
25 Fourth St., Santa Ana, California.

26 The Voting Agent will process and tabulate Ballots for the Classes entitled to vote to accept or  
27 reject the Plan and will file a voting report (the “Voting Report”) in accordance with the Disclosure  
28 Statement Order. The Voting Report will, among other things, describe every Ballot that does not  
conform to the Voting Instructions or that contains any form of irregularity, including, but not limited  
to, those Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures,  
lacking necessary information, or damaged.

21 **THE PLAN PROPONENTS URGE HOLDERS OF CLAIMS WHO ARE ENTITLED**  
22 **TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE**  
23 **PLAN BY THE VOTING DEADLINE.**

#### 24 **4. Confirmation Hearing and Deadline for Objections to Confirmation**

25 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a  
26 hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party  
in interest may object to Confirmation of the Plan.

27 The Bankruptcy Court has scheduled the Confirmation Hearing to commence on July 7, 2021  
28 at 2:00 p.m. (prevailing Pacific Time), before the Honorable Mark S. Wallace, United States  
Bankruptcy Judge, in the United States Bankruptcy Court for the Central District of California, 411

West Fourth St., Courtroom 6C, Santa Ana, California 92701. The Confirmation Hearing Notice, which sets forth the time and date of the Confirmation Hearing, has been included along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made in the agenda for the Confirmation Hearing or at the Confirmation Hearing or any adjournment thereof.

Objections to Confirmation of the Plan must be filed and served on the Plan Proponents and certain other entities, all in accordance with the Confirmation Hearing Notice, so that they are actually received by no later than June 9, 2021 at 5:00 p.m. (prevailing Pacific Time). Unless objections to Confirmation of the Plan are timely served and filed in compliance with the Disclosure Statement Order, which is attached to this Disclosure Statement, they may not be considered by the Bankruptcy Court.

### **III. GENERAL INFORMATION ABOUT THE DEBTORS AND THE CASES**

#### **A. Business Overview and Background**

Prior to the Petition Date, the Debtors, headquartered in Santa Ana, California, were collectively a privately owned information and entertainment company consisting of print publications and interactive businesses. The Debtors' portfolio included daily and weekly newspapers, magazines, and other specialty publications. *The Orange County Register* (the "OC Register") was the Debtors' flagship newspaper. In addition, the Debtors operated an interactive business, which offered website complements, as well as digital and mobile products, to their print publications. The Debtors also had two real property holdings, which were held in SPV II (the Santa Ana Property (defined below) and SPV VI (the Riverside Property (defined below)).

Founded in 1935 by R.C. Hoiles, the Debtors' enterprise was operated as a family-owned business until 2004, when private equity firms, The Blackstone Group and Providence Equity Partners, Inc. and certain affiliates, acquired an approximate 40% share in the company for approximately \$460 million (which share thereafter increased to approximately 48%), with the remaining shares being held by the Hoiles family. On September 1, 2009, the company filed chapter 11 bankruptcy cases in the United States Bankruptcy Court for the District of Delaware, and exited bankruptcy in April 2010.

Thereafter, in 2012, the company sold its entire broadcast television division to a third party, leaving the company essentially free of debt. Commencing in 2012, the company began selling the majority of its newspaper portfolio. In July 2012, Freedom Communications Holdings, Inc. ("FCHI") completed a merger with 2100 Trust, LLC ("2100 Trust"), an entity established by investor Aaron Kushner, and 2100 Freedom Inc. At the effective time of the merger, 2100 Freedom Inc. was merged into FCHI, with FCHI surviving the merger. All outstanding shares of FCHI were cancelled and the outstanding shares of 2100 Freedom Inc. became the new outstanding shares of FCHI, with FCHI becoming a wholly-owned subsidiary of 2101 Trust. After the merger, 2100 Trust changed its name to 2100 Freedom, Inc. This transaction marked the final transaction by the company following its emergence from bankruptcy in 2010 and subsequent divestitures of all of its remaining business units. Following the merger, the Debtors continued to operate under the umbrella name "Freedom Communications." As of the close of the transaction in July 2012, the Debtors' businesses consisted of its flagship newspaper, the OC Register, and a community newspaper portfolio.

With a new focus on the OC Register and related newspaper portfolio, commencing in the last quarter of 2012, the Debtors began a period of expansion and redirection, including increasing

1 newsroom and sales staffing, increasing customer realization and retention programs, acquiring  
2 magazine publications and launching new daily publications and expanding coverage to new sectors,  
3 including business, arts, academia, politics, fashion, philanthropy, faith, family, home, transportation  
4 and food. Since 2012, the Debtors took the OC Register from being the 20th largest newspaper in the  
5 United States to being the 8th largest as measured by circulation, and sought to strategically sell and  
6 acquire certain assets to allow the Debtors to focus their efforts on strengthening their core business  
7 and managing cost efficiency.

8 Starting at the end of 2012 and continuing through 2014, the Debtors began to sell certain of  
9 their smaller community newspapers. The Debtors also sold real property holdings in Colorado and  
10 Irvine and Victorville, California. As part of its targeted growth strategy, in November 2013, the  
11 Debtors acquired substantially all of the assets of the Press Enterprise newspaper group, including *The*  
12 *Press-Enterprise* and *La Prensa* (which later became *Unidos*, a Spanish language newspaper).

### 13 **B. Circumstances Leading to Chapter 11 Filing**

14 The Debtors' bankruptcy filing was attributable to various factors including falling advertising  
15 revenue, competition from internet-based advertising, and volatility in newsprint prices. In an effort  
16 to mitigate declining revenue, prepetition, the Debtors had made cost reductions by consolidating  
17 operational functions, introducing new business models and outsourcing distribution, printing and  
18 customer care operations. However, despite the Debtors' best efforts to increase revenues and  
19 decrease expenses, the Debtors were unable fully achieve their financial goals to such a degree that  
20 would enable them to continue to operate under their current capital structure. Accordingly, the  
21 Debtors made the decision to sell all of their assets and operations for the benefit of all parties through  
22 the chapter 11 process. On November 1 and 2, 2015, the Debtors filed chapter 11 petitions for relief  
23 in the United States Bankruptcy Court, Central District of California (Santa Ana Division).

### 24 **C. Prepetition Secured Debt**

25 As of the Petition Date, the Debtors had approximately \$51.2 million of allegedly secured debt  
26 asserted by certain entities, including the Prepetition Loan Parties (defined and discussed below) in  
27 the amount of approximately \$19.46 million, and the PBGC in the amount of approximately \$15.46  
28 million. As of the Petition Date, substantially all of the Debtors' assets were pledged to secure their  
obligations to creditors.

Specifically, certain Debtors, as borrowers or guarantors, were parties to a 2013 Credit  
Guaranty Agreement (as amended, together with related agreements and documents, the "Prepetition  
Credit Documents") with Silver Point, as administrative agent and collateral agent, and certain lenders  
(collectively, the "Prepetition Loan Parties"). As of the Petition Dates, the Prepetition Loan Parties  
asserted secured claims against the Debtors in the principal sum of not less than \$12 million, plus  
accrued interest, charges, fees, expenses, and a "make-whole amount" of more than \$5.2 million. The  
Debtors, the Committee and the Prepetition Loan Parties resolved all disputes relating to the  
Prepetition Loan Parties' secured claims, which were paid in full by the Debtors after the closing of  
the Sale (discussed below).

### 29 **D. PBGC Claims**

1 The PBGC, on behalf of The Retirement Plan of Freedom Communications, Inc. (the “Pension  
2 Plan”), filed with the California Secretary of State notices of federal lien under I.R.C. sec. 412(n)  
3 and/or sec. 430(k), to secure obligations owed by the Debtors to the PBGC based on missed Pension  
4 Plan contributions (including interest thereon) totaling more than \$15.4 million. In addition, the PBGC  
now holds an approximately \$145 million general unsecured Class 4 claim arising out of the  
underfunding of the Pension Plan.

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

##### 6 **A. First Day Orders**

7 On November 5, 2015, upon the Debtors’ motions, the Bankruptcy Court granted certain “first  
8 day” relief to the Debtors pursuant to which the Debtors were authorized to continue to operate their  
9 businesses notwithstanding the pendency of the Chapter 11 Cases, including orders authorizing the  
10 Debtors to pay and honor certain prepetition employee related obligations, maintaining their existing  
11 cash management systems, and granting certain other standard administrative relief. [Docket Nos. 41-  
47].

##### 12 **B. Cash Collateral / DIP Financing**

13 Recognizing the need to access cash, the Debtors and their advisors engaged in discussions  
14 with the Debtors’ primary secured creditor asserting an interest in the Debtors’ cash collateral – Silver  
15 Point, as prepetition agent of the Prepetition Loan Parties – regarding the terms of the Debtors’  
16 consensual continued use of cash collateral. In addition, the Debtors engaged in discussions with  
17 Silver Point (as well as other potential financing sources) regarding the terms of debtor-in-possession  
18 (DIP) financing to allow the Debtors to operate pending the contemplated sale of their businesses. As  
19 a result of such negotiations, the Debtors sought and obtained from the Court interim and final orders  
20 [Docket Nos. 47 & 239] authorizing (as applicable) postpetition financing consisting of a senior  
21 secured term loan credit facility in the aggregate principal amount not to exceed \$4.5 million, plus the  
22 amount necessary to consummate a refinancing of the Prepetition Loan Parties’ secured claims. The  
23 Court’s orders granted, in part, first priority liens, in addition to superpriority claims, in favor of Silver  
24 Point, the DIP agent, for the benefit of the DIP lenders on all prepetition and postpetition property of  
25 the Debtors’ Estates and all proceeds thereof, excluding a lien on avoidance actions and avoidance  
claim proceeds. As a result of negotiations among the Committee, the Debtors, the DIP lenders and  
prepetition secured creditors, the originally proposed DIP facility was modified in a number of respects  
(as reflected in the final order), including an increase in the amount of new money available under the  
DIP facility from \$3 million to \$4.5 million to allow for the cases to be able to operate through the  
contemplated end of the sale process in March 2016 without going cash negative, and the elimination  
of any proposed liens for Silverpoint or the PBGC on the Estates’ avoidance actions. During the  
pendency of the Chapter 11 Cases, prior to the filing of the Plan, the DIP lenders’ claims were paid or  
otherwise satisfied in full by the Debtors, including payment with cash proceeds from the Sale (defined  
and discussed below).

##### 26 **C. Payment of Prepetition Commission Obligations**

27 The Debtors sought on an emergency basis an order authorizing the payment of prepetition  
28 commission obligations for five employees exceeding the statutory cap of (then) \$12,475 for each  
employee under Bankruptcy Code section 507(a)(4). In their motion, the Debtors explained that they

1 had recently lost an important sales representative to a competitor, and that they needed to ensure that  
2 the affected employees felt confident that their compensation would not be impacted by the bankruptcy  
3 filings. Subsequent to the filing of the motion, the Debtors withdrew their request to pay one employee  
4 his commission based on issues raised by the U.S. Trustee. The Court entered orders [Docket Nos.  
219 & 277] authorizing the payment of prepetition commission obligations to the other four  
employees, which exceeded the statutory cap amounts by approximately \$120,000 in the aggregate.

#### 5 **D. Debtors' Customer, Subscriber and Advertiser Programs**

6 In a "first day" motion [Docket No. 14], the Debtors requested and subsequently received  
7 authority (subject to certain modifications) to honor their prepetition obligations under their customer  
8 related programs and practices (designed to develop and sustain the Debtors' positive reputations in  
the marketplace) to customers, subscribers, and advertisers in the ordinary course of business as  
follows [Docket Nos. 42 & 240]:

10 <b>Program/Obligation</b>	<b>Authorized (estimated prepetition amounts unless otherwise noted)</b>
11 Refunds	\$565,683
12 Delivery Providers	\$790,000 (maximum cap; subject to Committee consent)
13 Prepaid Subscriptions	\$5,521,000
14 Prepaid Advertising	\$1,933,000
15 Postage Obligations	\$11,500
16 Advertising Infrastructure & Brokered Ads	\$1,247,000 (maximum cap; subject to Committee consent)
17 Community Partners Commissions	\$236,000
18 Credit Card Fees	\$65,000
19 Customer Service Providers	\$112,000
20 QChief Customer Service Provider	\$3,000
21 Outside Contractors	\$49,000
22 Staffing Companies	\$500,000 (maximum cap; subject to Committee consent)
<b>Totals</b>	<b>\$11,033,183.00</b>

#### 23 **E. The Sale of Substantially All of the Debtors' Assets**

24 Following a review of strategic alternatives for their businesses, the Debtors, in consultation  
25 with their advisors, determined that maximizing the value of their estates would be best accomplished  
26 through an orderly sale, free and clear of liabilities, of substantially all of their assets, comprised  
mainly of the Debtors' print publications, interactive businesses, real property holdings, accounts  
receivable, and contracts and leases. Upon the Debtors' motion filed in January 2016, the Court  
approved certain bidding, auction and sale procedures pursuant to an order entered on February 5,  
2016 [Docket No. 371].

27 Prior to and following the entry of the bidding procedures order, the Debtors – with the active  
28 involvement of their advisors (including GlassRatner, Mosier & Co., Inc. and FTI Consulting) and the

ongoing input of the Committee and the PBGC – continued to market the Debtors’ assets to potential buyers. Among other efforts, FTI reached out to over 250 parties that FTI and the Debtors believed would be interested in purchasing either the business assets and/or the real estate holdings of the Debtors, and negotiating nondisclosure agreements with 35 interested parties. Subsequently, two days prior to the bid deadline, in March 2016, the Debtors reached a stalking horse agreement with MediaNews Group, Inc. d/b/a Digital First Media (“DFM”), providing for a purchase price of \$45.5 million, less an estimated \$2.2 million for net adjustments for purchased cash, escrow for cure costs, and contingent consideration based on collected accounts receivable. Two qualified overbids were received, including one by Orange County Media, LLC, (“OCM”) a subsidiary of Tribune Publishing Co. (“Tribune”), and an auction was held on March 16, 2016. At the conclusion of the auction, which included five rounds of bidding, OCM was selected by the Debtors as the successful bidder, and DFM was selected as the backup bidder. It became known prior to the auction that the Department of Justice (the “DOJ”) was considering seeking to enjoin the Tribune’s ability to consummate the sale transaction, but the Debtors believed that they had negotiated with the Tribune to mitigate the risk associated with the Tribune being enjoined from consummating the sale. However, when attempting to work through the revisions to the Tribune’s purchase agreement immediately following the auction, it became clear that the Tribune was unwilling to provide to the Debtors the protections that the Debtors and consultation parties believe they had received during the auction process.

On March 17, 2016, the parties learned that the DOJ had commenced an action against the Tribune seeking to enjoin the Tribune from consummating the sale (the “DOJ Action”). Given the risks associated the DOJ’s efforts to enjoin the Tribune, and the Tribune’s desire to push that risk entirely onto the Debtors, the Debtors, following consultation with the Committee and other consultation parties, determined that the Tribune’s bid was no longer the highest and best bid. Consequently, the Debtors selected DFM as the successful bidder. As set forth in the DFM purchase agreement, as amended, the “Base Purchase Price” for substantially all of the Debtors’ assets was \$49,800,000 in cash. The Court entered an order on March 30, 2016 [Docket No. 562] approving the sale of substantially all of the Debtors’ assets to DFM (the “Sale”). The Sale subsequently closed, with the net cash proceeds remitted to the Debtors.

#### **F. The Silver Point Settlement**

The Debtors, the Committee and Silver Point Finance, as the DIP agent for the DIP Lenders and as the prepetition agent for the Prepetition Loan Parties, entered into a settlement in March 2016, pursuant to which the claims and defenses asserted by the Committee with respect to the DIP Lenders’ claims and the Prepetition Loan Parties’ claims were resolved. Under the settlement, among other provisions, (i) the Estates would receive \$1.5 million in cash proceeds obtained from the Sale of substantially all of the Debtors’ assets that would otherwise be recoverable by the DIP Lenders; (ii) the DIP Lenders’ secured claims would be reduced by \$2.5 million; and (iii) the Committee would stipulate to be bound by the stipulations and admissions contained in the DIP Order and stipulate that the Committee’s challenge period expired and all potential challenges to the DIP Lenders’ and Prepetition Loan Parties’ respective claims and liens (including the Committee’s assertions that the “make-whole amounts” were unenforceable under state law) were released. This settlement was approved by the Court pursuant to an order entered on March 23, 2016 [Docket No. 539]. After the closing of the Sale, the DIP Claims and the Prepetition Loan Parties’ claims were paid in full or otherwise satisfied by the Debtors.

#### **G. The Committee Action**

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**(1) Commencement and Prosecution of the Committee Action**

On August 31, 2016, the Debtors and the Committee entered into a stipulation [Docket No. 858] (the “Standing Stipulation”) whereby the Debtors granted the Committee “exclusive leave, standing, and authority to commence, prosecute, and settle any Insider Estate Causes of Action with full rights and privileges and in the stead of the Debtors, with any and all recoveries to be for the benefit of” the Estates. The Bankruptcy Court approved the Standing Stipulation on September 6, 2016 [Docket No. 861].

Pursuant to the Standing Stipulation, in January 2017, the Committee commenced in the Bankruptcy Court Adversary Proceeding 8:17-ap-01012 (the “Committee Action”) against Aaron Kushner (the Debtors’ former CEO), Eric Spitz (the Debtors’ former President), Larry Chinn (principal of Financial Institution Consulting Corp. (“FICC”)), and certain other defendants. As set forth in the Committee’s complaint, the Committee asserted on behalf of the Debtors (among other things) a breach of fiduciary duty claim against Kushner and Spitz, and an aiding and abetting breach of fiduciary duty claim against Chinn, FICC and certain other defendants. The Committee alleged that Kushner and Spitz’s investment decisions on behalf of the Pension Plan directly impacted the adverse funding status of the Pension Plan, and thus determined (among other things) the Debtors’ contribution obligations to the Pension Plan and, ultimately, the Debtors’ liability to PBGC and other creditors. Effective as of March 31, 2016, the Pension Plan was terminated by agreement and PBGC became the statutory trustee of the Pension Plan. More specifically, the Committee alleged that Kushner and Spitz negligently invested the Pension Plan’s assets in a life insurance program designed and promoted by Chinn, FICC and other defendants. Prior to the related settlements discussed below, the Committee Action materially progressed, including the parties participating in a mediation, document productions having been undertaken, and numerous depositions having been conducted. As explained below, the applicable parties reached settlements with defendants Kushner, Spitz and Chinn and the PBGC, thereby providing the Estates ultimately with millions of dollars in cash (to pay Administrative Expenses and fund a Chapter 11 plan) and resolving the Estates’ and Committee’s claims in the Committee Action other than their claims against defendant Richard Covelli and his related entities, which were assigned to the PBGC pursuant to the PBGC Settlement.

**(2) The Chinn Settlement**

The Committee, on behalf of the Debtors, Larry Chin (a defendant in the Committee Action), Financial Institution Consulting Corp. (“FICC”) (Mr. Chinn’s related entity), the PBGC, and certain other parties entered into a settlement in June 2018, pursuant to which the parties resolved the claims asserted by the Committee and the PBGC against Chinn and FICC in the Committee Action. A total settlement payment of \$400,000 would be paid to the Committee and PBGC, funded by AAIC (Chinn’s insurance company) under a “burning” policy (a policy that is depleted dollar for dollar for costs of defense). Absent the settlement, continued litigation would further deplete the coverage available under the AAIC policy as well as increase the expense to the Debtors’ estates. Under the settlement, Chinn and FICC also agreed to cooperate with the Committee and PBGC in the prosecution of their respective claims against the remaining defendants by, among other things, producing relevant documents and voluntarily sitting for interviews. The Bankruptcy Court approved this settlement pursuant to an order entered on August 1, 2018 [Docket No. 1517].

**(3) The Kushner/Spitz Settlement**



1 The Committee, Aaron Kushner and Eric Spitz (defendants in the Committee Action), and the  
2 PBGC entered into a settlement in August 2019, pursuant to which the parties resolved the breach of  
3 fiduciary duty and other claims asserted by the Committee against Kushner and Spitz in the Committee  
4 Action, and ERISA claims related to investments made by the Pension Plan asserted by the PBGC  
against Kushner and Spitz.

5 The settlement provided for a \$7,835,000 settlement payment to the Committee and PBGC  
6 (the “Kushner/Spitz Settlement Payment”), funded by the settling defendants’ professional liability  
7 insurers with the remaining amount of coverage available under two “burning” policies (policies that  
8 have been or would be (absent settlement) depleted dollar-for-dollar for costs of defense). The  
9 Committee and PBGC determined, based on financial disclosures provided by Kushner and Spitz, that  
10 the amount of insurance coverage available for a settlement with the settling defendants, without  
11 further litigation, exceeds any amount that either the Committee or PBGC could collect from the  
12 settling defendants after trial. The settlement payment would be deposited in Committee counsel’s  
13 trust account, pending a separate allocation agreement to be entered into between the Committee and  
PBGC. The parties’ settlement would preserve the most likely source of any recovery against Kushner  
and Spitz (the remaining amount of insurance coverage), while at the same time allowing the Debtors’  
estates to avoid any additional expense, delay or uncertainty related to further litigation with Kushner  
and Spitz and/or efforts to collect on any judgments entered in favor of the Committee after trial. The  
Bankruptcy Court approved the settlement pursuant to an order entered on September 25, 2019  
[Docket No. 1584].

#### 14 (4) The PBGC Settlement

15 The Committee and the PBGC entered into a settlement (the “PBGC Settlement”) in November  
16 2019 relating to, among other matters, the division of the Kushner/Spitz Settlement Payment and other  
17 recoveries between the Estates and the PBGC. The PBGC Settlement is a “best of both worlds”  
18 solution for the Debtors and the Estates and their creditors, including the PBGC and the Debtors’ other  
19 unsecured creditors. The PBGC Settlement would be funded with the \$8,235,000 of proceeds received  
20 or to be received in connection with the settlement agreements executed to date in the Committee  
21 Action and other judicial proceedings by the PBGC (including the Kushner/Spitz Settlement  
Payment), with one-third (\$2,745,000) to be paid to the PBGC, one-third (\$2,745,000) to be paid to  
the Estates as consideration for the legal services provided by Committee counsel in connection with  
the Committee Action, and the remaining one-third (\$2,745,000) to be paid to the Estates. Thus, the  
PBGC Settlement resulted in a total payment of \$5,490,000 to the Estates.

22 As part of the PBGC Settlement, the Committee assigned the claims asserted in the Committee  
23 Action against defendant Richard Covelli and his related entities to the PBGC, which will now has  
24 exclusive authority to prosecute and/or settle said claims, and any funds recovered by the PBGC on  
25 account of said claims belong exclusively to the PBGC. The Estates will avoid incurring further  
26 litigation expense in connection with the Committee Action (the Committee has entered into  
27 settlement agreements with all other defendants in the Committee Action), and the PBGC, which has  
28 the resources available to pursue the litigation against Covelli to a final judgment (if necessary), will  
be able to continue to seek redress for the harm suffered by the Debtors and their Pension Plan as a  
result of Covelli’s alleged misconduct. Further, the PBGC agreed to waive any right to receive further  
distributions from the Debtors unless and until (i) all administrative and priority claims are paid in  
full, and (ii) a distribution of \$1,000,000 is made to the Debtors’ other general unsecured creditors. In

1 the event that both of those conditions are satisfied, the PBGC would then be entitled to share ratably  
2 in any additional distributions (i.e., distributions over and above the \$1,000,000 distribution referenced  
3 above) made to general unsecured creditors. Because the PBGC is the largest unsecured creditor of  
4 the Debtors, with in excess of \$174,000,000 of unpaid claims filed in the Chapter 11 Cases, this aspect  
5 of the PBGC Settlement dramatically increases the likelihood that the Debtors' other unsecured  
creditors will receive distributions from the Estates. Moreover, on February 6, 2020, Covelli filed a  
chapter 7 case before the United States Bankruptcy Court for the Western District of North Carolina.  
The PBGC's action against Covelli has been stayed pending the outcome of Covelli's chapter 7 case.

6 As explained by the Committee in its motion for approval of this settlement, the PBGC  
7 Settlement provides for a total payment of \$5,490,000 to the Estates, of which \$2,745,000 will be  
8 compensation to the Estates for the three years of hard-fought litigation and resulting expense incurred  
9 by Committee counsel in connection with its investigation and prosecution of the Committee Action.  
10 The aggregate \$5,490,000 payment will facilitate the Debtors in continuing to administer the Chapter  
11 11 Cases and confirming a Chapter 11 plan for the benefit of the Estates and their creditors. The  
Bankruptcy Court entered an order approving the PBGC Settlement pursuant to an order entered on  
January 13, 2020 [Docket No. 1609].

## 11 **H. Claim Bar Dates**

12 The Debtors filed a motion and obtained an order [Docket No. 355] setting the following case  
13 bar dates:

14 General Bar Date for proofs of claim: April 1, 2016.

15 Governmental Bar Date: The later of the (i) general bar date or (ii) April 29, 2016 for claim  
16 against Debtors who file petitions on November 1, 2015 and April 30, 2016 for claims who filed  
petitions on November 2, 2016.

17 Rejection Bar Date: The later of (i) the general bar date or (ii) 30 days after the date of entry  
18 of an order authorizing the rejection of such contract or lease or any automatic rejection of such  
contract or lease.

19 Avoidance Bar Date: The later of the (i) the general bar date or (ii) 30 days after the entry of  
20 a judgment avoiding the transfer.

21 Supplemental Bar Date: In the event the Debtors amend their schedules, the supplemental bar  
22 date is the later of the (i) general bar date or (ii) 30 days after the Debtors provide notice to the holder  
of the amendment.

## 23 **I. Incentive and Severance Programs**

24 The Debtors filed a motion seeking approval of an employee incentive program for key  
25 members of the Debtors' management (the "KEIP") based on obtaining certain value thresholds in  
26 connection with the sale of substantially all of the Debtors' assets, and an employee severance program  
(the "ESP") providing for payment of severance pay to associate employees and key executives  
(including one insider executive) of the Debtors in the event of a termination of employment post-  
January 1, 2016.

27 Specifically, under the KEIP, the key seven executives received payouts from a bonus pool  
28 between \$500,000 and \$1,500,000 (maximum) only upon the conclusion of a qualifying sale resulting

1 in an aggregate value to the Debtors' estates of at least \$42 million (the "KEIP Payment Event")  
2 (which condition was satisfied upon the Sale described above). Under the ESP, the associate  
3 employees were provided with two weeks of severance in the case of a termination of employment  
4 post-January, 2016. Based upon the current salary amounts, the payments for individual associate  
5 employees ranged from \$400 to \$6,632 (based upon on two weeks of pay). For the seven key  
6 executives eligible for the ESP, the maximum payout was approximately \$51,000 (based on two weeks  
7 of pay), with a mean payout of approximately \$7,300. The Court approved the KEIP and the ESP  
8 pursuant to an order entered on March 2, 2016 [Docket No. 441].

6 **J. Extension of Exclusivity Periods for Filing a Chapter Plan and for Soliciting**  
7 **Acceptances to the Plan**

8 The Debtors, and later with the Committee, filed multiple motions and received orders  
9 extending the Debtors' exclusivity deadlines for filing a plan and for soliciting acceptances thereof to,  
10 most recently, August 26, 2017 and October 25, 2017, respectively. The Debtors' plan filing and  
11 solicitation exclusivity have now expired. No other plans, as alternatives to the Debtors' and  
12 Committee's proposed Plan, have been filed.

11 **K. Retention of Debtors' Professionals**

12 The Debtors employed (i) initially Lobel Weiland Golden Friedman LLP ("LWGF") as  
13 bankruptcy counsel [Docket No. 238] and subsequently Shulman Hodges & Bastian LLP ("SHB")<sup>3</sup> as  
14 bankruptcy counsel effective as of March 1, 2018 [Docket No. 1499]<sup>4</sup>; (ii) GlassRatner Advisory &  
15 Capital Group LLC ("GlassRatner") as financial advisors, with Brad Smith, Senior Managing Director  
16 of GlassRatner, serving as the Debtors' Chief Restructuring Officer as of April 1, 2016 [Docket Nos.  
17 262 & 618]; (iii) Rutan & Tucker, LLP as special corporate counsel [Docket No. 254]; (iv) Mosier &  
18 Co., Inc. as the Debtors' independent sale representative in all aspects related to the Sale proceedings  
(to ensure a fair and unbiased process) [Docket No. 276]; (v) FTI Consulting, Inc. as investment  
bankers [Docket No. 321]; (vi) Squar Milner as accountants [Docket No. 364]; and (vii) Law Offices  
of A. Lavar Taylor, LLP as Special Tax Counsel [Docket No. 1679] .

19 **L. Appointment of Committee and Retention of Committee Professionals**

20 On November 10, 2015, the U.S. Trustee appointed the Committee. The initial members of  
21 the Committee were the Associated Press, Pension Benefit Guaranty Corporation, Electronic Business  
22 Solutions, Newscycle Solutions, Inland Empire Paper Co., Ponderay Newsprint Co., and ACI  
23 California, LLC [Docket No. 77]. Electronic Business Solutions and ACI California, LLC both  
24 subsequently resigned from the Committee.

25 The Committee retained (i) Pachulski Stang Ziehl & Jones LLP ("PSZ&J") as bankruptcy  
26 counsel and (ii) Alvarez & Marsal North America ("Alvarez") as financial advisors. On December  
27 23, 2015 and December 30, 2015, respectively, the Bankruptcy Court entered orders authorizing the  
28 Committee to retain PSZ&J and Alvarez [Docket Nos. 261 & 279]. The Committee also employed

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27 <sup>3</sup> SHB is now called Shulman Bastian Friedman & Bui LLP.

28 <sup>4</sup> As of the Petition Date, Alan Friedman was with the LWGF firm. Subsequently, during the Chapter 11 Cases, Mr.  
Friedman left LWGF and joined the SHB firm, and continues to represent and advise the Debtors.

1 Elucidor, LLC as its expert consultant primarily in connection with the Kushner, et al. Action  
2 (discussed below) pursuant to an order entered on June 1, 2018 [Docket No. 1508].

3 **M. Schedules, Statements of Financial Affairs**

4 In December 2015, each of the Debtors filed its schedules of assets and liabilities and  
5 statements of financial affairs with the Bankruptcy Court, with certain amendments filed by certain of  
6 the Debtors in January 2016 and August 2016. The Debtors reserve all rights to make further  
7 amendments to the schedules of assets and liabilities and statements of financial affairs. Copies of the  
8 Debtors' Schedules are available at [www.donlinrecano.com/Clients/fc/Static/SOALS](http://www.donlinrecano.com/Clients/fc/Static/SOALS).

9 **N. Prosecution of Avoidance Actions**

10 The Committee commenced and prosecuted over 50 separate avoidance actions in the  
11 Bankruptcy Court, which ultimately resulted in approximately \$385,000 in recoveries (face amount).

12 **V. SUMMARY OF THE JOINT CHAPTER 11 PLAN**

13 This section provides a summary of the structure and means for implementation of the Plan  
14 and the classification and treatment of Claims and Interests under the Plan and is qualified in its  
15 entirety by reference to the Plan (as well as the Exhibits thereto and definitions therein).

16 The statements contained in this Disclosure Statement do not purport to be precise or complete  
17 statements of all the terms and provisions of the Plan or documents referred to therein, and reference  
18 is made to the Plan and to such documents for the full and complete statement of such terms and  
19 provisions.

20 The Plan itself and the documents referred to therein control the actual treatment of Claims  
21 against and Interests in the Debtors under the Plan and will, upon the occurrence of the Effective Date,  
22 be binding upon all Holders of Claims against and Interests in the Debtors, the Debtors' Estates, the  
23 Liquidating Debtors, all parties receiving property under the Plan, and other parties in interest. In the  
24 event of any conflict, inconsistency, or discrepancy between this Disclosure Statement and the Plan,  
25 the Plan Supplement, or any other operative document, the terms of the Plan, Plan Supplement, and/or  
26 such other operative document, as applicable, shall govern and control; provided that, in any event,  
27 the terms of the Plan shall govern and control over all other related documents.

28 **A. Purpose and Effect of the Plan**

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization.  
Under chapter 11, a debtor is authorized to reorganize its business for the benefit of its constituents.  
Chapter 11 also allows a debtor to formulate and consummate a plan of liquidation. A plan of  
liquidation sets forth the means for satisfying claims against and interests in a debtor. Confirmation  
of a plan of liquidation by a bankruptcy court makes the plan binding upon the debtor and any creditor  
of or interest holder in the debtor, whether or not such creditor or interest holder (i) is impaired under  
or has accepted the plan or (ii) receives or retains any property under the plan.

The Plan provides for the distribution of the Debtors' assets to various Creditors as  
contemplated under the Plan and for the wind-up the Debtors' corporate affairs. More specifically,

1 the Plan provides that a Plan Administrator will administer and liquidate all remaining property of the  
2 Debtors, including Retained Rights of Action.

3 Under the Plan, with the exception of certain Claims against the Debtors that are not required  
4 to be classified, Claims against, and Interests in, the Debtors are divided into certain Classes according  
5 to their relative seniority and other criteria. If the Plan is confirmed by the Bankruptcy Court and  
6 consummated, the unclassified Claims and the Claims and Interests of the various Classes will be  
7 treated in accordance with the applicable provisions in the Plan and the Plan Administrator will make  
8 Distributions if and as provided in the Plan. A general description of the unclassified Claims and the  
9 Classes of Claims and Interests created under the Plan, the treatment of those Claims and Interests  
10 under the Plan, and the property to be distributed under the Plan are described below.

#### 11 **B. Limited Substantive Consolidation**

12 Solely for purposes of voting and distribution in connection with the Plan, pursuant to Section  
13 5.2 of the Plan, the Claims and assets of the Debtors and their Estates shall be “substantively  
14 consolidated” into the Estate of the Debtor FCI. This means that solely for such purposes, the  
15 separateness of the Debtors and the Estates will be ignored and all of the Debtors and all of the Estates  
16 will be treated as if they were one Debtor and one Estate.

17 More specifically, on and after the Effective Date, and except as otherwise set forth in the Plan,  
18 (i) all assets and liabilities of the Liquidating Debtors shall be treated as though they were pooled into  
19 the Liquidating Debtor FCI, (ii) each Claim filed or to be filed against any Debtor, as to which two or  
20 more Debtors are co-liable as a legal or contractual matter, shall be deemed filed as a single Claim  
21 against, and a single obligation of, the Debtors, (iii) all Claims held by a Debtor against any other  
22 Debtor shall be cancelled or extinguished, (iv) no distributions shall be made under the Plan on account  
23 of any Claim held by a Debtor against any other Debtor, (v) all guarantees of any Debtors of the  
24 obligations of any other Debtor shall be eliminated so that any Claim against any Debtor and any  
25 Claim based upon a guarantee thereof executed by any other Debtor shall be treated as one Claim  
26 against the substantively-consolidated Debtors, and (vi) any joint or several liability of any of the  
27 Debtors shall be one obligation of the substantively-consolidated Debtors and any Claims based upon  
28 such joint or several liability shall be treated as one Claim against the substantively-consolidated  
Debtors.

The Plan is predicated on the treatment of General Unsecured Claims without regard to the  
specific Debtor as to which the Holders of such Claims assert their Claims. The form of substantive  
consolidation proposed under the Plan ultimately should benefit all Creditors. Absent the substantive  
consolidation proposed under the Plan, the process of disentangling the Estates of the Debtors may be  
time consuming, costly, and may fundamentally not be feasible or practicable. For instance, allocating  
the relative value of each Debtor’s assets that were sold in connection with the Sale would be  
challenging. There is no clear apportionment of the value of the sold assets of each of the Debtors and  
the associated liabilities that were assumed. Apportioning the value of the Debtors’ assets and  
associated liabilities with respect to these and other assets would be a difficult task and could lead to  
prolonged, costly disputes or litigation.

Further, as permitted by section 1123(a)(5)(C) of the Bankruptcy Code, one basis for  
substantive consolidation in these Chapter 11 Cases is the vote of the Class of Creditors entitled to  
vote in favor of such treatment. The Plan does not propose substantive consolidation to deprive a  
specific Creditor or group of Creditors of their rights while providing a windfall to other Creditors.

1 Rather, given the limited amount that may be available for distribution to Holders of General  
2 Unsecured Claims under the best case scenario, and the expense involved in allocating the remaining  
3 assets and liabilities of the Debtors among the Estates, any recovery by Creditors will be maximized  
4 by consolidating the assets and liabilities of each of the Debtors.

5 Accordingly, the Plan Proponents believe that substantive consolidation of the Debtors, for  
6 purposes of voting and distribution in connection with the Plan, is in the best interest of the Debtors'  
7 Estates and parties in interest.

### 8 **C. Estimated Recoveries**

9 The Plan Proponents estimate that Holders of Allowed General Unsecured Claims in these  
10 Chapter 11 Cases should recover approximately 0.0% to 5% of the total amount of their Allowed  
11 General Unsecured Claims.

12 The Plan Proponents have calculated the estimate of projected recoveries for Holders of  
13 General Unsecured Claims taking into account: (a) the total estimated amount of General Unsecured  
14 Claims (approximately \$40 million), (b) the estimated costs of winding down the estate and amounts  
15 required to satisfy administrative, priority, and secured claims, and (c) the total estimated amount of  
16 Cash available for distributions to Holders of General Unsecured Claims. This estimate assumes that  
17 (i) future recoveries with respect to the Retained Rights of Action are as described herein, (ii) the total  
18 amount of Allowed Claims is not significantly different from the current estimated amount of Claims  
19 based on the Schedules and the proofs of claims Filed against the Debtors, and (iii) that administrative,  
20 priority, and secured claims are resolved in a manner consistent with the Plan Proponents' current  
21 estimates.

## 22 **VI. CERTAIN PLAN PROVISIONS**

### 23 **A. Classification and Treatment of Classified Claims and Interests**

#### 24 **1. Summary.**

25 The categories of Claims and Interests listed below classify Claims and Interests for all  
26 purposes, including voting, confirmation and distribution pursuant to the Plan and pursuant to sections  
27 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest (or a portion thereof) is classified  
28 in a particular Class only to the extent that the Claim or Interest (or a portion thereof) qualifies within  
the description of that Class. A Claim or Interest (or a portion thereof) is also classified in a particular  
Class only to the extent that such Claim or Interest (or a portion thereof) is an Allowed Claim or  
Allowed Interest in that Class and has not been paid, released or otherwise satisfied prior to the  
Effective Date. Any postpetition payment by or on behalf of the Estates in respect of a Claim shall  
reduce the Allowed amount thereof.

#### 29 **2. Classification and Treatment of Claims and Interests.**

##### 30 **Class 1 – Priority Non-Tax Claims.**

31 (a) Classification: Class 1 consists of all Priority Non-Tax Claims. The Debtors estimate  
32 that the aggregate amount of unpaid Priority Non-Tax Claims as of the Effective Date will be  
33 approximately \$1,000,000.00.

1 (b) Treatment: At the election of the Liquidating Debtors, each Holder of a Priority Non-  
2 Tax Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Priority  
3 Non-Tax Claim, on or as soon as practicable after the later of (i) the Effective Date, or (ii) thirty (30)  
4 calendar days following the date on which such Priority Non-Tax Claim becomes an Allowed Priority  
5 Non-Tax Claim, (a) a Cash payment from the Liquidating Debtors equal to the Allowed amount of  
6 such Claim, or (b) such other treatment as otherwise agreed by the Holder of such Claim and the  
7 Debtors or the Liquidating Debtors.

8 (c) Impairment/Voting: Class 1 Priority Non-Tax Claims are Unimpaired by the Plan, and  
9 Holders of such Class 1 Priority Non-Tax Claims are therefore conclusively presumed to have  
10 accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, Holders of Class  
11 1 Priority Non-Tax Claims are not entitled to vote to accept or reject the Plan.

## 12 **Class 2 – Miscellaneous Secured Claims.**

13 (a) Classification: Class 2 consists of any Miscellaneous Secured Claims. Although all  
14 Miscellaneous Secured Claims have been placed in one Class for the purposes of nomenclature, each  
15 Miscellaneous Secured Claim, to the extent secured by a Lien on any property or interest in property  
16 of any of the Debtors different from that securing any other Miscellaneous Secured Claim, shall be  
17 treated as being in a separate sub-Class for purposes of voting and receiving distributions under the  
18 Plan. The Debtors estimate that the aggregate amount of unpaid Miscellaneous Secured Claims as of  
19 the Effective Date will be approximately \$200,000.

20 (b) Treatment: Except to the extent that a Holder of an Allowed Miscellaneous Secured  
21 Claim has been paid by the Debtors, in whole or in part, prior to the Effective Date, on the later of  
22 (i) the Effective Date and (ii) thirty (30) calendar days following the date on which such Miscellaneous  
23 Secured Claim becomes an Allowed Miscellaneous Secured Claim, at the option of the Liquidating  
24 Debtors, in full and final satisfaction of such Miscellaneous Secured Claim, (i) each Allowed  
25 Miscellaneous Secured Claim shall be reinstated and Unimpaired in accordance with section 1124 of  
26 the Bankruptcy Code, or (ii) each Holder of an Allowed Miscellaneous Secured Claim shall receive,  
27 in full satisfaction, settlement, and release of, and in exchange for, such Miscellaneous Secured Claim,  
28 (x) payment in full in Cash of the unpaid portion of such Allowed Miscellaneous Secured Claim, (y)  
the collateral securing such Allowed Miscellaneous Secured Claim, or (z) such other treatment as may  
be agreed to by the Holder of such Claim and the Debtors or the Liquidating Debtors.

(c) Impairment/Voting: Class 2 Miscellaneous Secured Claims are Unimpaired by the  
Plan, and Holders of such Class 2 Miscellaneous Secured Claims are therefore conclusively presumed  
to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, Holders  
of Class 2 Miscellaneous Secured Claims are not entitled to vote to accept or reject the Plan.

## 24 **Class 3 – General Unsecured Claims.**

25 (a) Classification: Class 3 consists of all General Unsecured Claims, which does not  
26 include the PBGC Unsecured Claims. The Debtors estimate that, ultimately, Allowed Class 3 General  
27 Unsecured Claims will total approximately \$40 million.

28 (b) Treatment: Except to the extent that a Holder of an Allowed Class 3 General Unsecured  
Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement and  
release of the each Allowed Class 3 General Unsecured Claim, each Holder of an Allowed Class 3

1 General Unsecured Claim shall receive a Cash payment equal to its Pro Rata share of the Net  
2 Distributable Estate Assets on one or more dates (the “Class 3 Distribution Date(s)”) as soon as  
3 reasonably practicable after (i) all General Unsecured Claims have been Allowed, Disallowed or  
4 otherwise resolved and (ii) the payment of (or reserves for) all Allowed Administrative Expenses,  
5 Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Miscellaneous Secured  
6 Claims and Plan Expenses (unless the holder of the applicable claim agrees to other less favorable  
7 treatment); *provided, however*, in the event that an aggregate of at least \$1,000,000 in Cash in Net  
8 Distributable Assets is or will be distributed, as Distributions under the Plan, to the Holders of Allowed  
9 Class 3 General Unsecured Claims on account of such Claims (the “Pro Rata Class 3 / Class 4  
10 Distribution Trigger Event”), any and all Net Distributable Assets in excess of such \$1,000,000 Cash  
11 threshold (the “Excess Net Distributable Assets”) shall be distributed by the Liquidating Debtors to  
12 the Holders of Allowed Class 3 Claims and the PBGC (or other Holder of the Class 4 Claims), on  
13 account of their Class 3 and Class 4 Claims, respectively, on a Pro Rata basis as soon as reasonably  
14 practicable on the Class 3 Distribution Date(s); *provided further* that in the discretion of the Plan  
15 Administrator, Allowed Class 3 General Unsecured Claims may receive Distributions before the  
16 reconciliation of all Disputed Class 3 General Unsecured Claims provided that (x) reserves are  
17 maintained for any Class 3 General Unsecured Claim that is Disputed at the time of such Distribution  
18 and (y) the Plan Administrator shall make a corrective Distribution following the resolution of any  
19 Disputed Claim within thirty (30) days of such resolution.

20 (c) Impairment/Voting: Class 3 Prepetition Lender Claims are Impaired. Holders of Class  
21 3 Prepetition Lender Claims are therefore entitled to vote to accept or reject the Plan.

#### 22 **Class 4 – PBGC Unsecured Claims.**

23 (a) Classification: Class 4 consists of all PBGC Unsecured Claims.

24 (b) Treatment: The Holder of the PBGC Unsecured Claims shall receive the treatment  
25 provided for the PBGC on account of the PBGC Unsecured Claims set forth in the PBGC Settlement.  
26 Specifically, pursuant to the PBGC Settlement, the PBGC has agreed to waive any right to receive  
27 Distributions under the Plan, on account of the PBGC Unsecured Claims, unless and until the Pro Rata  
28 Class 3 / Class 4 Distribution Trigger Event occurs or is otherwise satisfied; upon the occurrence of  
the Pro Rata Class 3 / Class 4 Distribution Trigger Event, the PBGC shall be entitled to share on a Pro  
Rata basis with the Holders of Allowed Class 3 Claims any Excess Net Distributable Assets. Nothing  
in the Plan is intended to or will modify the PBGC Settlement, and in the event of any discrepancy  
between the treatment noted above and the treatment provided for the PBGC under the PBGC  
Settlement, the terms of the PBGC Settlement govern.

(c) Impairment/Voting: Class 4 PBGC Unsecured Claims are Impaired under the Plan.  
The Holder of such Class 4 Claims are entitled to vote to accept or reject the Plan.

#### 24 **Class 5 – Interests in the Debtors.**

25 (a) Classification: Class 5 consists of all Interests.

26 (b) Treatment: Holders of Interests shall receive no distributions under the Plan, and on the  
27 Effective Date, all Interests shall be deemed void and of no force and effect.



1 (c) Impairment/Voting: Class 5 Interests are Impaired, and Holders of such Class 5  
2 Interests are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.  
3 Therefore, Holders of Class 5 Interests are not entitled to vote to accept or reject the Plan.

4 **B. Acceptance of Rejection of the Plan**

5 **1. Classes Permitted and Not Permitted to Vote.**

6 Classes 1 and 2 are Unimpaired. Holders of Claims in these Classes are conclusively presumed  
7 pursuant to section 1126(f) of the Bankruptcy Code to have accepted the Plan and therefore shall not  
8 be entitled to vote to accept or reject the Plan. Classes 3, 4 and 5 are Impaired. Holders of Claims in  
9 Classes 3 and 4 are permitted to vote to accept or reject the Plan. Holders of Interests in Class 5 are  
10 deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Plan Proponents  
11 reserve all rights with respect to all Claims and Interests classified by the Plan. An Impaired Class of  
12 Claims that votes shall have accepted the Plan if (a) the Holders of at least two-thirds in amount of the  
13 Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders of  
14 more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept  
15 the Plan. Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation  
16 by acceptance of the Plan by an Impaired Class of Claims.

17 **2. Effect of Non-Voting.**

18 If no Holder of a Claim eligible to vote in a particular Class timely votes to accept or reject the  
19 Plan, the Plan Proponents may seek to have the Plan deemed **accepted** by the Holders of such Claims  
20 in such Class for purposes of section 1129 of the Bankruptcy Code.

21 **3. Nonconsensual Confirmation.**

22 In the event any Class of Claims votes to reject the Plan and given the deemed rejection of the  
23 Plan by the Holders of Interests in Class 5, the Plan Proponents request that the Bankruptcy Court  
24 confirm the Plan notwithstanding such rejection pursuant to section 1129(b) of the Bankruptcy Code  
25 on the basis that the Plan is fair and equitable and does not discriminate unfairly as to the Holders of  
26 any Class of Claims or Interests.

27 **4. Postpetition Interest.**

28 Nothing in the Plan or the Disclosure Statement shall be deemed to entitle the Holder of a  
Claim to receive postpetition interest on account of such Claim, except to the extent that the Holder  
of a Claim has the benefit of a Lien on assets the value of which exceeds the amount of such Claim or  
the Plan expressly provides for postpetition interest on account of such Claim.

**5. Elimination of Vacant Classes.**

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed  
Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court in an amount greater than  
zero as of the date of the Confirmation Hearing shall be considered vacant and deemed eliminated  
from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining  
acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy  
Code.

1                                   **6.       Special Provisions Regarding Insured Claims.**

2           With respect to any Insured Claim, any party with rights against or under the applicable  
3 insurance policy may pursue such rights. Nothing in the Plan shall constitute a waiver of any causes  
4 of action the Debtors or the Liquidating Debtors may hold against any Person, including the Debtors'  
5 insurance carriers; and nothing in the Plan is intended to, shall, or shall be deemed to preclude any  
6 Holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery  
7 from any insurer of the Debtors in addition to (but not in duplication of) any Distribution such Holder  
8 may receive under the Plan; *provided, however*, that the Debtors and the Liquidating Debtors do not  
9 waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates  
10 to which they are entitled.

11           The Plan shall not modify the scope of, or alter in any other way, the rights and obligations of  
12 the Debtors' insurers under their policies, and the Debtors' insurers shall retain any and all rights,  
13 claims and defenses to liability and/or coverage that such insurers may have, including the right to  
14 contest and/or litigate with any party the existence, primacy and/or scope of liability and/or available  
15 coverage under any alleged applicable policy. The Plan shall not operate as a waiver of any other  
16 Claims the Debtors' insurers have asserted or may assert in any proof of claim, including, without  
17 limitation, any rights or defenses arising out of, or in the nature of, setoff or recoupment, or the  
18 Debtors' rights and defenses to such proofs of claim.

19                                   **C.       Means for Implementation of the Plan**

20                                   **1.       Settlement of Intercompany Claims.**

21           Upon the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy  
22 Rule 9019, each Debtor and their successors and assigns hereby waive and release each other and all  
23 of their respective successors from any and all Intercompany Claims and Rights of Action among and  
24 between any or all of the Debtors, which waiver and release shall be effective as a bar to all actions,  
25 causes of action, suits, Claims, Liens, or demands of any kind with respect to any Intercompany Claim  
26 or Right of Action among or between any or all of the Debtors.

27                                   **2.       Partial Substantive Consolidation.**

28           In furtherance of the settlements contained in the Plan, the entry of the Confirmation Order  
shall constitute approval by the Bankruptcy Court, pursuant to sections 105(a) and 1123(a)(5)(C) of  
the Bankruptcy Code, as of the Effective Date, of the substantive consolidation of the Debtors and  
their respective Estates into the Estate of Debtor FCI, solely for purposes of voting and distributions  
under the Plan. Pursuant to the Confirmation Order, on and after the Effective Date, (i) all  
Distributable Assets to be used for distributions to Creditors of any of the Debtors will be treated as  
though they were merged into Liquidating Debtor FCI; and (ii) any obligation of any Debtor and all  
guarantees thereof executed by, or joint liability of, any of the Debtors will be treated as one obligation  
of Liquidating Debtor FCI for distribution purposes pursuant to the Plan.

Notwithstanding the foregoing, the substantive consolidation of the Debtors for voting and  
distribution purposes shall not affect or impair (i) any rights, Claims, remedies or defenses of (or  
between) the separate Debtors as of the Petition Date, including with respect to any Retained Rights  
of Action; (ii) the legal and organizational structure of the Debtors; (iii) any Liens that are maintained,

1 recognized, or preserved under the Plan; and (iv) claims under or with respect to any insurance policy  
2 of any Debtor (or any right to the proceeds of any such policy or policies).

3 The Disclosure Statement and the Plan shall be deemed to be a motion by the Plan Proponents  
4 for substantive consolidation. Any objection by an affected Creditor to such consolidation shall be  
5 treated as an objection to Confirmation and shall be determined by the Bankruptcy Court in the context  
6 of considering Confirmation of the Plan.

7 If the Bankruptcy Court determines that substantive consolidation of any given Debtor(s) is  
8 not appropriate, then the Plan Proponents may request that the Bankruptcy Court otherwise confirm  
9 the Plan and approve the treatment of and distributions to the different Classes under the Plan on an  
10 adjusted, Debtor-by-Debtor basis. Furthermore, the Plan Proponents reserve their rights to seek  
11 Confirmation of the Plan without implementing substantive consolidation of any given Debtor, and,  
12 in the Plan Proponents' discretion, to request that the Bankruptcy Court approve the treatment of and  
13 distributions to any given Class under the Plan on an adjusted, Debtor-by-Debtor basis.

14 Notwithstanding the substantive consolidation called for herein and in the Plan, each and every  
15 Debtor shall remain responsible for the payment of U.S. Trustee fees pursuant to 28 U.S.C. § 1930  
16 until its particular case is closed; provided, however, the Debtors or some of them may apply to close  
17 the cases of those Debtors following Confirmation.

### 18 **3. Continued Corporate Existence and Vesting of Assets.**

19 On and after the Effective Date, subject to the requirements of the Plan, the Liquidating  
20 Debtors will continue to exist as separate corporations or limited liability companies (as applicable)  
21 and shall retain all of the powers of corporations or limited liability companies (as applicable) under  
22 applicable non-bankruptcy law, and without prejudice to any right to amend their respective operating  
23 agreement, dissolve, merge or convert into another form of business entity, or to alter or terminate  
24 their existence. The existing stock, membership and/or other equity interests (as applicable) of the  
25 Debtors shall be deemed to be held through the Plan Administrator. Further, the Debtors' bylaws,  
26 operating agreements, and/or other corporate governance documents (as applicable) shall be deemed  
27 to include a provision prohibiting the issuance of nonvoting equity securities and such other provisions  
28 as may be required pursuant to section 1123(a)(6) of the Bankruptcy Code.

Except as otherwise provided in the Plan, on and after the Effective Date, all Distributable  
Assets and property of the Debtors and their Estates, including any interests in subsidiaries and  
affiliates and any Retained Rights of Action of the Debtors, will vest in Liquidating Debtor FCI free  
and clear of all Claims, Liens, charges, other encumbrances and Interests. Neither the occurrence of  
the Effective Date, nor the effectiveness of the Plan, nor any provision of applicable non-bankruptcy  
law shall cause a dissolution of the Debtors, which shall be continued as corporations or limited  
liability companies (as applicable) following the Effective Date subject to the terms of the Plan.

On and after the Effective Date, subject to the requirements of the Plan, the Liquidating  
Debtors shall be permitted to conduct their business (to the extent permitted by the Plan), reconcile  
Claims, use and dispose of assets, prosecute litigation, make required tax filings, and otherwise take  
any and all actions as may be appropriate to implement the Plan without supervision by the Bankruptcy  
Court and free of any restrictions under the Bankruptcy Code or the Bankruptcy Rules. The  
Liquidating Debtors shall be authorized, without limitation, to use and dispose of the Distributable  
Assets of the Debtors and their Estates, to investigate and pursue any Retained Rights of Action as the

1 representative of the Debtors' Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, to  
2 acquire and dispose of other property, and to otherwise administer their affairs.

#### 3 **4. Corporate Action; Winding Up of Affairs.**

4 On the Effective Date, the matters under the Plan involving or requiring, as applicable,  
5 corporate or limited liability company action of the members, managers, directors, or officers of the  
6 Debtors, including but not limited to actions requiring a vote or other approval of, as applicable, the  
7 board of managers or board of directors or any of the members or officers of the Debtors or the  
8 execution of any documentation incident to or in furtherance of the Plan, shall be deemed to have been  
9 authorized by the Confirmation Order and to have occurred and be in effect from and after the  
10 Effective Date, without any further action by the Bankruptcy Court or the members, managers,  
11 directors, or officers of the Debtors.

12 Without limiting the generality of the foregoing, on the Effective Date and automatically and  
13 without further action, (i) any existing director, manager and officer of the Debtors will be deemed to  
14 have resigned on the Effective Date without any further corporate action, (ii) the Plan Administrator  
15 shall be deemed the sole manager, director, officer and representative of the Liquidating Debtors to  
16 exercise the rights, power and authority of the Liquidating Debtors under applicable provisions of the  
17 Plan and bankruptcy and non-bankruptcy law, and (iii) all matters provided under the Plan shall be  
18 deemed to be authorized and approved without further approval from the Bankruptcy Court. The  
19 Confirmation Order shall modify the Debtors' operating agreements, bylaws and any other corporate  
20 governance documents such that the provisions of the Plan can be effectuated. The Plan shall be  
21 administered by the Plan Administrator, and all actions taken thereunder in the name of the Liquidating  
22 Debtors shall be taken through the Plan Administrator. All corporate governance activities of the  
23 Liquidating Debtors shall be exercised by the Plan Administrator in his or her discretion, subject to  
24 the terms of the Plan.

25 Following the Confirmation Date, the Liquidating Debtors shall not engage in any business  
26 activities or take any actions, except those necessary or appropriate to (i) effectuate the Plan and  
27 (ii) dispose of their assets and wind up the affairs of the Debtors and their Estates as soon as reasonably  
28 practicable. On and after the Effective Date, the Plan Administrator may, in the name of the  
Liquidating Debtors, take such actions without supervision or approval by the Bankruptcy Court and  
free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions  
expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Plan  
Administrator may, without application to or approval of the Bankruptcy Court, pay, from the proceeds  
of Distributable Assets, the charges that he or she incurs after the Effective Date for professional fees  
and expenses that, but for the occurrence of the Effective Date, would constitute Allowed  
Administrative Expenses.

From and after the Effective Date, (i) the Debtors, for all purposes, shall be deemed to have  
withdrawn their business operations from any state or territory in which they were previously  
conducting or are registered or licensed to conduct their business operations, and the Debtors shall not  
be required to file any document, pay any sum or take any other action, in order to effectuate such  
withdrawal, and (ii) the Debtors shall not be liable in any manner to any taxing authority for franchise,  
business, license or similar taxes accruing on or after the Effective Date.

Pursuant to section 1146(c) of the Bankruptcy Code, any transfers effected pursuant to the Plan  
shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar

1 tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax or other similar tax or  
2 governmental assessment.

### 3 **5. Plan Administrator.**

4 On the Effective Date, the Plan Administrator shall begin acting for the Liquidating Debtors  
5 in the same fiduciary capacity as applicable to a board of directors of a Delaware corporation  
6 implementing such liquidation and wind-down as contemplated under the Plan, subject to the  
7 provisions hereof. The Plan Administrator shall serve in such capacity through the earlier of the date  
8 that all of the Debtors are dissolved in accordance with the Plan and the date such Plan Administrator  
9 resigns, is terminated or otherwise unable to serve; *provided, however*, that any successor Plan  
10 Administrator appointed pursuant to the Plan shall serve in such capacity after the effective date of  
11 such person's appointment as Plan Administrator.

12 The qualifications and proposed compensation of and other disclosures regarding the Plan  
13 Administrator shall be set forth as part of the Plan Supplement; such compensation may be paid from  
14 the Liquidating Debtors' Cash on hand, without further notice or order of the Bankruptcy Court.  
15 Further, the Plan Administrator shall be entitled to reimbursement, from the Liquidating Debtors' Cash  
16 on hand, for his or her actual, reasonable, and necessary expenses incurred in connection with the  
17 performance of his or her duties, without the need for further notice or Bankruptcy Court approval.  
18 All distributions to be made to Creditors under the Plan shall be made by the Plan Administrator (or  
19 his or her designated agent). The Plan Administrator shall deposit and hold all Cash in trust for the  
20 benefit of Creditors (including Professional Persons) receiving distributions under the Plan. The duties  
21 and powers of the Plan Administrator shall include, without limitation, the following (without need of  
22 further Court approval):

23 (i) To exercise all power and authority that may be exercised, to commence all  
24 proceedings (including the power to continue any actions and proceedings that may  
25 have been commenced by the Debtors prior to the Effective Date) that may be  
26 commenced, and to take all actions that may be taken by any officer, director, or  
27 manager of the Liquidating Debtors with like effect as if authorized, exercised, and  
28 taken by unanimous action of such officers, directors, and managers, including  
consummating the Plan and all transfers thereunder on behalf of the Liquidating  
Debtors;

(ii) To wind up the affairs of the Liquidating Debtors and any or all of their  
subsidiaries and affiliates and their Estates to the extent appropriate as expeditiously  
as reasonably possible;

(iii) To maintain all accounts, make distributions, and take other actions required  
under or consistent with the Plan, including the maintenance of appropriate reserves,  
in the name of the Liquidating Debtors;

(iv) To use, manage, sell, abandon, convert to Cash and/or otherwise dispose of the  
Distributable Assets for the purpose of liquidating or otherwise disposing of all  
remaining property of the Estates, making distributions and fully consummating the  
Plan;

- (v) To take all steps necessary or appropriate to terminate the corporate existence of the Debtors consistent with the Plan;
- (vi) To prosecute objections to Claims and Interests, and to compromise or settle any Claims or Interests (Disputed or otherwise);
- (vii) To prosecute any and all Retained Rights of Action and compromise or settle any Retained Rights of Action; provided, however, the Plan Administrator will not, on behalf of the Debtors and Liquidating Debtors, prosecute or otherwise pursue any Avoidance Claims after the Effective Date;
- (viii) To prepare and file tax returns to the extent required by law;
- (ix) To employ and compensate any and all such professionals and agents as the Plan Administrator, in his or her sole discretion, deems appropriate to perform his or her duties under the Plan without further order of the Bankruptcy Court; and
- (x) To take all other actions not inconsistent with the provisions of the Plan that the Plan Administrator deems reasonably necessary or desirable in connection with the administration of the Plan, including, without limitation, filing all motions, pleadings, reports, and other documents in connection with the administration and closing of the Chapter 11 Cases.

The Plan Administrator may be removed by the Bankruptcy Court upon application for good cause shown. In the event of the resignation, removal, death, or incapacity of the Plan Administrator, the Bankruptcy Court shall, upon motion or *sua sponte*, appoint another Person to become Plan Administrator, with notice thereof provided to the Post-Effective Date Service List. Any successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of his or her predecessor.

## **6. Source of Funding.**

The source of all distributions and payments under the Plan will be the Distributable Assets and the proceeds thereof, including, without limitation, the Debtors' Cash on hand and proceeds from any sale or other disposition of the Debtors' assets and prosecution of Retained Rights of Action.

The Debtors estimate that, as of the Effective Date, the Debtors' Cash on hand will be approximately \$6,500,000.00. This estimated amount of Cash is based on the assumption that the Debtors will ultimately receive approximately \$5,000,000 in connection with the Refund Claim (defined below).

## **7. Retained Rights of Action.**

In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Retained Rights of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Liquidating Debtors' rights to commence, prosecute, or settle such Retained Rights of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Plan Administrator may pursue such Retained Rights of Action, as appropriate, in accordance with the best interests of the Liquidating Debtors; provided, however, the Plan

1 Administrator will not, on behalf of the Debtors and Liquidating Debtors, prosecute or otherwise  
2 pursue any Avoidance Claims after the Effective Date. **No Person may rely on the absence of a**  
3 **specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Retained**  
4 **Right of Action against it as any indication that the Debtors or Liquidating Debtors, as**  
5 **applicable, will not pursue any and all available Retained Rights of Action against it. The**  
6 **Debtors or Liquidating Debtors, as applicable, expressly reserve all rights to prosecute any and**  
7 **all Retained Rights of Action against any Person, except as otherwise expressly provided in the**  
8 **Plan.** Unless any Right of Action is expressly waived, relinquished, exculpated, released,  
compromised, or settled in the Plan or a Bankruptcy Court order, the Debtors and the Liquidating  
Debtors expressly reserve all Rights 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 Retained Rights of Action  
upon, after, or as a consequence of Confirmation or Consummation of the Plan.

9 Among the Debtors' "Retained Rights of Action" is the Debtors' entitlement to a substantial  
10 tax refund (the "Refund Claim") from the CDTFA<sup>5</sup>. The Debtors' sales and use tax returns for the  
11 periods November 1, 2012 through March 31, 2016 were audited by the CDTFA. Freedom  
12 Communications, Inc. and Freedom Communications Holdings, Inc. previously submitted claims for  
13 refunds totaling in excess of \$7.4 million combined to the CDTFA for these same periods of time. In  
14 February 2020, the CDTFA auditor issued letters setting forth their preliminary audit conclusions.  
15 These preliminary conclusions provided for the allowance of refunds totaling approximately  
16 \$692,003.50 for Freedom Communications, Inc. for pre-petition tax periods while asserting a post-  
petition administrative expense claim of \$660,494.36. These preliminary conclusions also provided  
for the allowance of refunds totaling approximately \$27,777.70 for Freedom Communications  
Holdings, Inc. for pre-petition tax periods while asserting a post-petition administrative expense claim  
of \$311,341.28. The Debtors did not agree with these preliminary conclusions.

17 The Debtors attended a meeting with the CDTFA's Principal Auditor on June 23, 2020  
18 regarding the preliminary conclusions. There were several unresolved issues with the CDTFA audit  
19 at that time. The most significant issues included: (1) the allocation of home delivery subscription  
20 revenue between digital sales, which are not taxable, and print sales, which are taxable; (2) the portion  
21 of the home subscription price which is allocated to "delivery services"; (3) single copy newspapers  
22 sold to distributors for resale being treated as taxable transactions; (4) certain commercial print revenue  
23 transactions being treated as taxable; and (5) allocating too much of the purchase price of the assets  
24 sold in 2016 to the sale of tangible personal property, as opposed to the sale of intangible assets (which  
25 are not taxable). Following this meeting, the Debtors submitted their contentions to the CDTFA's  
26 Principal Auditor. In or about October, 2020, the CDTFA issued its final audit reports. In November,  
27 2020, the Debtors commenced the administrative appeal process with respect to the final audit reports.

28 In February, 2021, the Debtors filed that certain "Motion of Debtors and Debtors in Possession  
Under Bankruptcy Code Section 502(c) to Estimate Claim of the California Department of Taxation  
Fee Administration ("CDTFA") and to Determine that CDTFA Owes Debtors Refunds in Excess of  
the Claims of the CDTFA, etc." [Docket No. 1725] (the "Estimation Motion"). By the Estimation  
Motion, the Debtors sought an order of the Bankruptcy Court, that among other things, estimated the

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<sup>5</sup> Formerly the California Board of Equalization.

1 Debtors' Refund Claim in the aggregate approximate amount of \$5 million, and further estimating the  
2 CDTFA's prepetition claims at \$0 and the aggregate post-petition claims at approximately \$55,000.

3 The CDTFA filed its opposition [Docket No. 1732] to the Estimation Motion (the "Estimation  
4 Opposition") pursuant to which it raised technical issues regarding the Bankruptcy Court's ability to  
5 grant the relief requested by the Debtors. In addition, the CDTFA contested the Debtors' positions  
6 regarding the amount of the CDTFA's asserted claims and the amount of the Refund Claim on the  
7 merits<sup>6</sup>.

8 The primary purpose of the Estimation Motion was to establish the feasibility of the Debtors'  
9 Plan. Based upon primarily technical arguments asserted by the CDTFA in the Estimation Opposition,  
10 the Bankruptcy Court denied the Estimation Motion with prejudice. However, the Bankruptcy Court  
11 further stated that while it was not prejudging or actually deciding the merits of the Refund Claim,  
12 based on the information presented in connection with the Estimation Motion, "the Court finds that,  
13 solely for purposes of determining the feasibility of a plan of reorganization, it is more likely than not  
14 that the Debtors will recover refunds from the CDTFA in amounts sufficient to fund a Chapter 11  
15 Plan" [Docket No. 1749]. The CDTFA disagrees with the Bankruptcy Court's views in this regard.  
16 The Debtors intend to commence in the immediate future an adversary proceeding pursuant to  
17 Bankruptcy Code Section 505 in order to obtain a determination of the amount of the Refund Claim.  
18 The Debtors will also be filing formal claims objections with respect to the claims being asserted by  
19 the CDTFA.

20 While the Debtors will incur additional administrative expenses pursuing the Refund Claim,  
21 the Refund Claim is the only significant remaining source of funds to pay claims under the Plan.  
22 Given the potential magnitude of the Refund Claim, the Plan Proponents believe the incurrence of  
23 additional administrative expenses is warranted.

24 In accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Rights of Action  
25 shall vest in the Liquidating Debtors. The Liquidating Debtors shall have standing as the  
26 representative of the Debtors' Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to  
27 pursue, or decline to pursue, the Retained Rights of Action and objections to Claims, as appropriate,  
28 in the business judgment of the Plan Administrator. The Liquidating Debtors, acting through the Plan  
Administrator, may settle, release, sell, assign, otherwise transfer, or compromise Retained Rights of  
Action and/or objections to Claims without need for notice or order of the Bankruptcy Court.

## 21 **8. Interests in Non-Debtors Affiliates and Subsidiaries.**

22 As of the Effective Date, except as expressly provided in the Plan or by separate order of the  
23 Bankruptcy Court, the Liquidating Debtors shall retain any stock or interests that they may hold in  
24 their non-Debtor affiliates or subsidiaries and retain any rights to which such stock or interests may  
be entitled under applicable law with respect to such shares or other interests. After the Effective

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25 <sup>6</sup> The CDTFA took similar positions, albeit in a more summary fashion, in connection with its  
26 opposition to the Debtors' First Amended Disclosure Statement (the "Disclosure Statement  
27 Opposition") [Docket No. 1705], and in summary, contended, among other things, that the Debtors'  
28 Plan was not feasible. The Disclosure Statement Opposition was filed prior to the resolution of the  
Estimation Motion. The Bankruptcy Court's ruling in connection with the Estimation Motion,  
discussed, *infra*, along with other changes set forth in the Disclosure Statement, have resolved the  
Disclosure Statement Opposition.



1 Date, the Liquidating Debtors may sell, transfer, assign or otherwise dispose of such shares or interests  
2 as permitted by applicable law.

### 3 **9. Payment of Plan Expenses.**

4 The Liquidating Debtors may pay all reasonable Plan Expenses without further notice to  
5 Creditors or Holders of Interests or approval of the Bankruptcy Court.

### 6 **10. Dissolution of Debtors; Final Decree.**

7 Once the Plan Administrator determines that the Final Resolution Date has occurred as to any  
8 of the Liquidating Debtors, such Liquidating Debtors shall be dissolved for all purposes by the Plan  
9 Administrator without the necessity for any other or further actions to be taken by or on behalf of any  
10 Liquidating Debtors or payments to be made in connection therewith; *provided, however*, that, without  
11 the need of any further approval, the Plan Administrator in his or her discretion may execute and file  
12 documents and take all other actions as he or she deems appropriate relating to the dissolution of the  
13 Liquidating Debtors under the laws of Delaware and/or any other applicable states, and in such event,  
14 all applicable regulatory or governmental agencies shall take all steps necessary to allow and effect  
15 the prompt dissolution of the Liquidating Debtors as provided in the Plan, without the payment of any  
16 fee, tax, or charge and without need for the filing of certificates. At any time following the Effective  
17 Date, the Plan Administrator, on behalf of the Liquidating Debtors, shall be authorized to move for  
18 the entry of a final decree closing any or all of the Chapter 11 Cases pursuant to section 350 of the  
19 Bankruptcy Code.

### 20 **11. Records.**

21 The Liquidating Debtors and Plan Administrator shall maintain reasonably good and sufficient  
22 books and records of accounting relating to the Distributable Assets, the Liquidating Debtors' Cash,  
23 the management thereof, all transactions undertaken by such parties, all expenses incurred by or on  
24 behalf of the Liquidating Debtors and Plan Administrator, and all distributions contemplated or  
25 effectuated under the Plan. Upon the entry of a final decree closing the Chapter 11 Cases, unless  
26 otherwise ordered by the Bankruptcy Court, the Liquidating Debtors and Plan Administrator may  
27 destroy or otherwise dispose of all records maintained by the Liquidating Debtors and/or Plan  
28 Administrator. Notwithstanding anything to the contrary, the Plan Administrator may, upon notice to  
the Post-Effective Date Service List and without Bankruptcy Court approval, destroy any documents  
that he or she believes are no longer required to effectuate the terms and conditions of the Plan.

## 22 **D. Treatment of Executory Contracts and Unexpired Leases**

### 23 **1. Rejection of Executory Contracts and Unexpired Leases.**

24 Except for any executory contracts or unexpired leases: (i) that previously were assumed,  
25 assumed and assigned, or rejected by an order of the Bankruptcy Court, pursuant to section 365 of the  
26 Bankruptcy Code; (ii) that are listed for assumption by the Debtors as of the Effective Date in a Plan  
27 Supplement to be filed and served on affected non-Debtor counterparties; (iii) as to which a motion  
28 for approval of the assumption or rejection of such contract or lease has been Filed and served prior  
to the Effective Date; (iv) that constitute contracts of insurance in favor of, or that benefit, the Debtors  
or the Estates; or (v) that were previously sold, conveyed or otherwise assigned pursuant to Final  
Order, each executory contract and unexpired lease entered into by the Debtors prior to the Petition

1 Date that has not previously expired or terminated pursuant to its own terms shall be deemed rejected  
2 pursuant to section 365 of the Bankruptcy Code as of the Effective Date. Without limiting the  
3 foregoing, the indemnification obligations in favor of the Debtors' current directors, officers,  
4 managers, and representatives, to the extent not previously rejected, shall be assumed as of the  
5 Effective Date, and all other pre-Effective Date indemnification obligations of the Debtors shall be  
6 deemed rejected as of the Effective Date to the extent that such obligations are contained in executory  
contracts within the meaning of section 365 of the Bankruptcy Code, but only to the extent not  
inconsistent with any existing insurance obligations. The Confirmation Order shall constitute an order  
of the Bankruptcy Court approving such assumptions or rejections, pursuant to section 365 of the  
Bankruptcy Code, as of the Effective Date.

## 7 **2. Bar Date for Rejection Claims.**

8 If the rejection of an executory contract or unexpired lease pursuant to the Plan or otherwise  
9 gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever  
10 barred and shall not be enforceable against the Debtors or their Estates unless a proof of Claim is Filed  
11 and served on the Plan Administrator and its counsel within thirty (30) calendar days after the earlier  
12 of (a) the Effective Date and (b) service of a notice that the executory contract or unexpired lease has  
been rejected. All such Claims for which proofs of Claim are required to be Filed, if Allowed, will  
be, and will be treated as, General Unsecured Claims, subject to the provisions of the Plan.

## 13 **E. Distributions and Related Matters**

### 14 **1. Dates of Distribution.**

15 Whenever any payment or distribution to be made under the Plan shall be due on a day other  
16 than a Business Day, such payment or distribution shall instead be made, without interest, by the  
Liquidating Debtors (or their agent) on the immediately following Business Day.

### 17 **2. Cash Distributions.**

18 Distributions of Cash may be made either by check drawn on a domestic bank or wire or ACH  
19 transfer from a domestic bank, at the option of the Liquidating Debtors, except that Cash payments  
20 made to foreign Creditors may be made in such funds and by such means as are necessary or customary  
in a particular foreign jurisdiction.

### 21 **3. Rounding of Payments.**

22 Whenever payment of a fraction of a cent would otherwise be called for, the actual payment  
23 shall reflect a rounding down of such fraction to the nearest whole cent. To the extent Cash remains  
24 undistributed as a result of the rounding of such fraction to the nearest whole cent, such Cash shall be  
treated as "Unclaimed Property" under the Plan.

### 25 **4. Disputed Claims.**

26 Notwithstanding all references in the Plan to Claims that are Allowed, solely for the purpose  
27 of calculating (but not distributing) the amount or number of distributions to be made on account of  
28 Allowed Class 3 General Unsecured Claims under the Plan, such calculations may be made, in the  
Plan Administrator's sole discretion, as if each Disputed Claim were an Allowed Claim, except that if  
the Bankruptcy Court estimates the likely portion of a Disputed Claim to be Allowed or authorized or

otherwise determines the amount or number which would constitute a sufficient reserve for a Disputed Claim (which estimates and determinations may be requested by the Liquidating Debtors), such amount or number as determined by the Bankruptcy Court may be used for calculations as to such Disputed Claim instead.

#### **5. Undeliverable and Unclaimed Distributions.**

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Plan Administrator has determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided, however*, that such distributions shall be deemed Unclaimed Property at the expiration of ninety (90) calendar days from the date of such attempted distribution. After such date, all Unclaimed Property shall revert to the Liquidating Debtors automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned or unclaimed property laws to the contrary), and the Claim of any Holder to such property or Interest in property shall be forever barred. The Plan Administrator may implement reasonable attempts to reach any recipient of an undeliverable distribution prior to reverting such property to the Liquidating Debtors.

#### **6. Minimum Distributions.**

Notwithstanding any other provision of the Plan, in the Plan Administrator's sole discretion, the Plan Administrator will not be required to make distributions of Cash less than \$25 in value, and each such Claim to which this limitation applies shall be deemed fully and finally satisfied and not entitled to any further payment or consideration pursuant to Article IX and its Holder is forever barred pursuant to Article IX from asserting that Claim or Claims against the Debtors, the Liquidating Debtors, their Estates, or their property.

#### **7. Compliance With Tax Requirements.**

(a) The Liquidating Debtors shall comply with all withholding and reporting requirements imposed by federal, state, or local taxing authorities in connection with making distributions pursuant to the Plan.

(b) In connection with each distribution with respect to which the filing of an information return (such as an IRS Form 1099 or 1042) or withholding is required, the Liquidating Debtors shall file such information return with the IRS and provide any required statements in connection therewith to the recipients of such distribution, or effect any such withholding and deposit all moneys so withheld to the extent required by law. With respect to any Person from whom a tax identification number, certified tax identification number or other tax information required by law to avoid withholding has not been received, the Liquidating Debtors may, in their sole option, withhold the amount required and distribute the balance to such Person or decline to make such distribution until the information is received.

#### **8. Record Date in Respect to Distributions.**

Except as set forth below, the record date and time for the purpose of determining which Persons are entitled to receive any and all distributions on account of any Allowed Claims or Interests, irrespective of the date of or number of distributions, shall be the Record Date.

1           **F.       Litigation, Objections to Claims, and Determination of Taxes**

2                   **1.       Litigation.**

3           Except as may be expressly provided otherwise in the Plan, the Liquidating Debtors, through  
4 the Plan Administrator, shall be responsible for pursuing Retained Rights of Action, any objection to  
5 the allowance of any Claim, and the determination of tax issues and liabilities.

6                   **2.       Objections to Claims; Objection Deadline.**

7           As of the Effective Date, the Liquidating Debtors shall have exclusive authority to file  
8 objections, settle, compromise, withdraw or litigate to judgment objections to Claims. Any objection  
9 to a Claim or Interest shall be filed with the Bankruptcy Court and served on the Person holding such  
10 Claim or Interest within one hundred eighty (180) calendar days after the Effective Date (as may be  
11 extended pursuant to this section, the “Objection Deadline”), provided that the Liquidating Debtors  
12 may seek one or more extensions thereof subject to Bankruptcy Court approval and with notice only  
13 to parties that have requested such notice pursuant to Bankruptcy Rule 2002.

14                   **3.       Tax Determinations.**

15           In addition to any other remedies or procedures available a) to dispute claims for taxes of any  
16 kind of the Debtors, whether pre-petition tax claims and/or administrative expense tax claims, b) to  
17 determine the amount of any tax that may be owed by any of the Debtors, whether pre-petition taxes  
18 or administrative expense taxes, or c) to seek recovery of refunds of taxes by any of the Debtors,  
19 whether the refunds sought are pre-petition refunds or are post-petition refunds, the Liquidating  
20 Debtors, at any time, may utilize (and receive the benefits of) section 505 of the Bankruptcy Code in  
21 order to:

- 22                   (1) determine the amount of any tax liability of any of the Debtors or the Liquidating Debtors  
23 relating to an act or event occurring prior to the Effective Date;  
24                   (2) object to any claim for taxes against any of the Debtors or the Liquidating Debtors relating  
25 to an act or event occurring prior to the Effective Date; or  
26                   (3) determine the amount of any refund of taxes asserted by any of the Debtors or the  
27 Liquidating Debtors arising prior to the Effective Date.

28           The Liquidating Debtors shall be entitled to invoke all relevant provisions of Section 505 with  
respect to any and all tax issues relating to the Liquidating Debtors and/or the Debtors.

**4.       Temporary or Permanent Resolution of Disputed Claims.**

                  The Liquidating Debtors may request that the Bankruptcy Court estimate any contingent or  
unliquidated Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, irrespective of  
whether any Person has previously objected to such Disputed Claim. The Bankruptcy Court will retain  
jurisdiction and power to estimate any contingent or unliquidated Disputed Claim at any time. If the  
Bankruptcy Court estimates any contingent or unliquidated Disputed Claim, that estimated amount  
will constitute either the Allowed amount of such Disputed Claim or a maximum limitation on such  
Disputed Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a  
maximum limitation on such Disputed Claim, then the Liquidating Debtors may elect to pursue any  
supplemental proceedings to object to any ultimate payment on account of such Disputed Claim. In  
addition, the Liquidating Debtors may resolve or adjudicate any Disputed Claim in the manner in  
which the amount of such Claim or Interest and the rights of the Holder of such Claim or Interest

would have been resolved or adjudicated if the Chapter 11 Cases had not been commenced. All of the aforementioned objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

## **5. Setoffs.**

The Liquidating Debtors may, but shall not be required to, setoff against any Claim, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim may be setoff against claims of any nature whatsoever that the Debtors or the Estates may have against the Holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Liquidating Debtors of any such claim that the Liquidating Debtors may have against such Holder, unless otherwise agreed to in writing by such Holder and the Liquidating Debtors.

## **G. Injunctions, Exculpation, Releases and Related Provisions**

### **1. Injunctions.**

#### **(a) Generally.**

Unless otherwise provided in the Plan or the Confirmation Order, all injunctions and stays provided for in the Chapter 11 Cases pursuant to sections 105 and 362 of the Bankruptcy Code or otherwise in effect on the Confirmation Date, shall remain in full force and effect until the Effective Date. From and after the Effective Date, all Persons are permanently enjoined from, and restrained against, commencing or continuing in any court any suit, action or other proceeding, or otherwise asserting any claim or interest, seeking to hold (i) the Liquidating Debtors or their Estates, or (ii) the property of the Debtors or their Estates, liable for any Claim, obligation, right, interest, debt or liability that has been released pursuant to the Plan.

#### **(b) Non-Discharge of Debtors; Injunction.**

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

### **2. Exculpation.**

**As of and subject to the occurrence of the Effective Date, for good and valuable consideration, including the consideration provided under the Plan, the Exculpated Parties shall neither have nor incur any liability to any Person for any act taken or omitted to be taken, on or after the Petition Date, in connection with, or related to, the formulation, preparation, dissemination, implementation, administration, Confirmation or Consummation of the Plan or any contract, instrument, waiver, release or other agreement or document created or entered**

1 into, in connection with the Plan, or any other act taken or omitted to be taken in connection  
2 with the Chapter 11 Cases or the Debtors up to and including the Effective Date; *provided,*  
3 *however,* that the foregoing provisions of this subsection shall have no effect on the liability of  
4 any Person that results from any such act or omission that is determined in a Final Order to  
5 have constituted willful misconduct or actual fraud. For the avoidance of doubt, the scope of  
6 the exculpation provided under Section 9.2 of the Plan does not include any of the current or  
7 former members of the Debtors or any of the former directors, officers, managers and  
8 representatives of the Debtors who did not serve in such capacities during the Chapter 11 Cases  
9 or a portion thereof. Notwithstanding anything in the Plan to the contrary, no Person serving  
10 as Plan Administrator shall have or incur any personal liability as the manager, member or  
11 officer of the Debtors or Liquidating Debtors for any act taken or omission made in connection  
12 with the wind-up or dissolution of the Liquidating Debtors or any nondebtor subsidiary or  
13 affiliate; *provided, however,* that the foregoing shall have no effect on the liability of the Plan  
14 Administrator that results from any such act or omission that is determined in a Final Order to  
15 have constituted willful misconduct or actual fraud.

### 16 3. Debtor Release.

17 As of and subject to the occurrence of the Effective Date, for good and valuable  
18 consideration, the Debtors, for themselves and the Estates, hereby irrevocably, unconditionally  
19 and generally release the Released Parties from any and all claims, obligations, rights, suits,  
20 damages, causes of action, and liabilities, whether known or unknown, foreseen or unforeseen,  
21 liquidated or unliquidated, fixed or contingent, matured or unmatured, in law or equity or  
22 otherwise, which the Debtors or their Estates ever had, now have or hereafter can, shall or may  
23 have against any of the Released Parties from the beginning of time to the Effective Date that in  
24 any way relate to the Debtors, their direct or indirect non-Debtor subsidiaries, the Estates, or  
25 the Chapter 11 Cases; *provided, however,* that the foregoing provisions of Section 9.3 of the Plan  
26 shall have no effect on the liability of any Person that results from any such act or omission that  
27 is determined in a Final Order to have constituted willful misconduct or actual fraud. For the  
28 avoidance of doubt, the scope of the release provided under Section 9.3 of the Plan does not  
include any of the current or former members of the Debtors or any of the former directors,  
officers, managers and representatives of the Debtors who did not serve in such capacities during  
the Chapter 11 Cases or a portion thereof.

### 4. Consenting Creditor Release.

As of and subject to the occurrence of the Effective Date and except for the treatment  
provided in the Plan, for good and valuable consideration the Releasing Creditor, for itself and  
its respective present or former officers, directors, managers, shareholders, trustees, partners  
and partnerships, members, agents, employees, representatives, attorneys, accountants,  
professionals, and successors or assigns, in each case solely in their capacity as such, shall be  
deemed to have completely, conclusively, unconditionally and irrevocably released the Released  
Debtor/Committee Parties from any and all claims, obligations, rights, suits, damages, causes of  
action, and liabilities, whether known or unknown, foreseen or unforeseen, liquidated or  
unliquidated, fixed or contingent, matured or unmatured, in law or equity or otherwise, which  
the Releasing Creditor, the Debtors or their Estates ever had, now have or hereafter can, shall  
or may have against any of the Released Debtor/Committee Parties from the beginning of time  
to the Effective Date that in any way relate to the Debtors, their direct or indirect non-Debtor  
subsidiaries, the Estates, or the Chapter 11 Cases, *provided, however,* that the foregoing release

1 does not affect or impair any obligations under any intercreditor agreements or any other  
2 agreements or arrangements between and among non-Debtor parties. For the avoidance of  
3 doubt, the Released Debtor/Committee Parties do not include any of the current or former non-  
4 Debtor members of the Debtors or any former directors, officers, managers and representatives  
of the Debtors who did not serve in such capacities during the Chapter 11 Cases or a portion  
thereof.

## 5 **VII. RISK FACTORS**

### 6 **A. The Plan Proponents May Not Be Able to Obtain Confirmation of the Plan**

7 With regard to any proposed chapter 11 plan, the Plan Proponents may not receive the requisite  
8 acceptances to confirm a plan. In the event that votes from Claims in Classes entitled to vote are  
9 received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Plan  
10 Proponents intend to seek Confirmation of the Plan by the Bankruptcy Court. If the requisite  
11 acceptances are not received, the Plan Proponents may nevertheless seek Confirmation of the Plan  
12 notwithstanding the dissent of certain Classes of Claims. The Bankruptcy Court may confirm the Plan  
13 pursuant to the “cramdown” provisions of the Bankruptcy Code, which allow the Bankruptcy Court  
to confirm a plan that has been rejected by an Impaired Class of Claims if it determines that the plan  
satisfies section 1129(b) of the Bankruptcy Code. To confirm a plan over the objection of a dissenting  
Class, the Bankruptcy Court also must find that at least one Impaired Class has accepted the plan, with  
such acceptance being determined without including the acceptance of any “insider” in such Class.

14 Even if the requisite acceptances of a proposed plan are received, the Bankruptcy Court might  
15 not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements  
for confirmation under section 1129 of the Bankruptcy Code have not been met.

16 If the Plan is not confirmed by the Bankruptcy Court, it is unclear whether the Plan Proponents  
17 would be able to successfully develop, prosecute, confirm and consummate an alternative plan that is  
18 acceptable to the Bankruptcy Court and the Debtors’ creditors, and what, if any, distributions Holders  
of Claims ultimately would receive with respect to their Claims.

### 19 **B. Claims May Exceed the Plan Proponents’ Estimates**

20 There is a risk under the Plan that Claims will materially exceed the Plan Proponents’  
21 estimates, in which case distributions to Creditors would be significantly reduced or eliminated.  
22 Among other things, payments will only be made to Class 3 General Unsecured Creditors from Net  
23 Distributable Estate Assets—in other words, after payment in full, or reserves for, all Plan Expenses  
24 and all administrative, priority, and secured Claims. The process of reconciling all such Claims has  
25 not yet been completed and outstanding disputes remain that will need to be litigated or otherwise  
resolved. If and to the extent Plan Expenses and Allowed Administrative, Priority, and Secured Claims  
exceed the Plan Proponents’ estimates, amounts available for General Unsecured Creditors may be  
significantly reduced or eliminated.

### 26 **C. The Conditions Precedent to the Effective Date of the Plan May Not Occur**

27 As more fully set forth in the Plan, the Effective Date is subject to several conditions  
28 precedent. If such conditions precedent are not met or waived, the Effective Date will not occur.  
Importantly, in the event the amount of the Refund Claim, coupled with the remaining Cash on

1 hand does not exceed the aggregate of the amount of the Plan Expenses. Allowed Secured  
2 Claims, Allowed Administrative Expenses Claims, Allowed Priority Tax Claims and Allowed  
3 Non-Tax Priority Claims, and absent an agreement with the holder(s) of any of the foregoing  
4 Claims to receive less than payment in full on account of their Allowed Claim(s), the Effective  
Date will not occur and the Cases will in all likelihood convert to cases under Chapter 7 of the  
Bankruptcy Code.

5 Specifically, the Debtors estimate that in a worst case scenario in which they fail to  
6 recover at least \$3.0 million in connection with the Refund Claim, there will be insufficient cash  
7 on hand to permit the Effective Date to occur. In such a circumstance, the Plan Proponents  
would likely seek to convert the Cases to cases under chapter 7 of the Bankruptcy Code.

8 In the event the Debtors recover at least \$3.0 million in connection with the Refund  
9 Claim, through a combination of agreements with the holders of Administrative Claims and/or  
10 the amount of available Cash, it is likely that the Effective Date will occur. In the event the  
Debtors recover at least \$4.5 million in connection with the Refund Claim, then it is likely that  
Class 3 General Unsecured Creditors will receive a distribution.

## 11 **VIII. CONFIRMATION OF THE PLAN**

### 12 **A. The Confirmation Hearing**

13 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a  
14 hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party  
in interest may object to Confirmation of the Plan.

15 The Bankruptcy Court has scheduled the Confirmation Hearing to commence on July 7, 2021  
16 at 2:00 p.m. (prevailing Pacific Time), before the Honorable Mark S. Wallace, United States  
17 Bankruptcy Judge, in the United States Bankruptcy Court for the Central District of California, Santa  
Ana Division. The Confirmation Hearing may be adjourned from time to time without further notice  
18 except for an announcement of the adjourned date made in the agenda for the Confirmation Hearing  
or at the Confirmation Hearing or any adjournment thereof.

19 Objections to Confirmation of the Plan must be filed and served so that they are actually  
20 received by no later than June 9, 2021 at 5:00 p.m. (prevailing Pacific Time). **Unless objections to  
21 Confirmation of the Plan are timely served and filed in compliance with the Disclosure  
Statement Order, they may not be considered by the Bankruptcy Court.**

### 22 **B. Requirements for Confirmation of the Plan**

23 Among the requirements for the Confirmation of the Plan is that the Plan (i) is accepted by all  
24 Impaired Classes of Claims, or, if rejected by an Impaired Class of Claims, that the Plan “does not  
discriminate unfairly” and is “fair and equitable” as to such Impaired Class of Claims; (ii) is feasible;  
25 and (iii) is in the “best interests” of Holders of Claims.

26 At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies  
27 the requirements of section 1129 of the Bankruptcy Code. The Plan Proponents believe that: (i) the  
Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11 of the Bankruptcy  
28 Code; (ii) the Plan Proponents have complied or will have complied with all of the necessary  
requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith.



Specifically, in addition to other applicable requirements, the Plan Proponents believe that the Plan satisfies or will satisfy the following applicable Confirmation requirements of section 1129 of the Bankruptcy Code:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Plan proponents 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 Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Either each Holder of a Claim in an Impaired Class of Claims has accepted the Plan, or will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on the Effective Date of the Plan under chapter 7 of the Bankruptcy Code.
- Each Class of Claims that is entitled to vote on the Plan will have accepted the Plan, or the Plan can be confirmed without the approval of a Class that did not accept the Plan pursuant to section 1129(b) of the Bankruptcy Code.
- Except to the extent a different treatment is agreed to, the Plan provides that all Allowed Administrative Expenses, Allowed Priority Tax Claims and Allowed Priority Non-Tax Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable. See the discussion below regarding the feasibility of the Plan.
- At least one Class of Impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.
- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors or any successors thereto.
- All accrued and unpaid fees of the type described in 28 U.S.C. § 1930, including the fees of the U.S. Trustee, will be paid as of the Effective Date.

### **C. Best Interests of Creditors**

Often called the “best interests of creditors” test, section 1129(a)(7) of the Bankruptcy Code requires that a Bankruptcy Court find, as a condition to confirmation of a chapter 11 plan, that the plan provides, with respect to each impaired class, that each holder of a claim or an interest in such class either (i) has accepted the plan or (ii) will receive or retain under the plan property of a value that is not less than the amount that such holder would receive or retain if the debtor liquidated under chapter 7 on the Effective Date. To make these findings, the Bankruptcy Court must: (a) estimate the cash liquidation proceeds that a chapter 7 trustee would generate if each of the Debtors’ Chapter 11 Cases were converted to a chapter 7 case on the Effective Date and the assets of the Debtors’ Estates were

liquidated; (b) determine the liquidation distribution that each non-accepting Holder of a Claim or an Interest would receive from such liquidation proceeds under the priority scheme dictated in chapter 7; and (c) compare the Holder's liquidation distribution to the distribution under the Plan that the Holder would receive if the Plan were confirmed and consummated.

Here, the costs of liquidation under chapter 7 of the Bankruptcy Code would include the statutory fees payable to a chapter 7 trustee, and the fees that would be payable to additional attorneys and other professionals that such a trustee may engage (who would need time to understand case issues), which amounts would have to be paid before anything is paid to Holders of Allowed General Unsecured Claims.

Conversion to chapter 7 of the Bankruptcy Code would also mean the establishment of a new claims bar date, which could result in new General Unsecured Claims being asserted against the Estates, thereby diluting the recoveries of other Holders of Allowed General Unsecured Claims.

The following liquidation analysis chart demonstrates that the Holders of Claims will receive equal or greater value as of the Effective Date under the Plan than such Holders would receive in a chapter 7 liquidation:

\$000s	Claim Amount	Liqu. Value	Recovery %	
			Ch. 7 Liqu.%	Ch. 11 Plan %
Cash on Hand (estimated as of Effective Date)		600		600
Deposits <sup>7</sup>		913		913
Allowed CDTFA Tax Refund <sup>8</sup>		638		5,000
<b>Gross Proceeds Available for Distribution</b>		<b>2,151</b>		<b>6,513</b>
Less Secured Claims	200	200		200
Less Chapter 7 Administrative Expenses				
Ch. 7 Trustee Fees	138	138	100%	N/A
Ch 7 Professional Fees	100	100	100%	N/A
<b>Proceeds Available for Ch. 11 Administrative Expenses</b>		<b>1,713</b>		<b>6,313</b>

<sup>7</sup> The gross amount of the deposits are estimated to total \$2,153,870.19. The liquidation value excludes deposits which the Debtors believe are not collectible and reflects a thirty percent (30%) reduction of the Debtors' estimated remaining amount.

<sup>8</sup> Per the Final Audit for purposes of a Chapter 7 and per the Estimation Motion for purposes of the Chapter 11 Plan

Less Chapter 11 Administrative Expenses				
Ch. 11 Professional Fees	3,500	1061	30.3%	100%
Non-Professional Post-Petition Administrative Expense Claims (Ch. 7 scenario)	2,153	652	30.3%	N/A
Non-Professional Post-Petition Administrative Expense Claims (Ch. 11 scenario)	753	N/A	N/A	100%
Chapter 11 Plan Expenses	300	N/A	N/A	100%
<b>Proceeds Available for Unsecured Claims</b>		<b>0</b>		<b>1,760</b>
Less Unsecured Claims				
Estimated Priority Unsecured Claims	1,000	1,000	0.00%	100%
Estimated General Unsecured Claims <sup>9</sup>	40,000	40,000	0.00%	0.5% - 5%

For these reasons, among others, the Plan Proponents believe that Holders of Claims will receive equal or greater value as of the Effective Date under the Plan than such Holders would receive in a chapter 7 liquidation.

#### **D. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtors, or any successor to the Debtors (unless such liquidation or reorganization is proposed in the plan). As previously discussed, the Bankruptcy Court has made a determination that it is more probable than not that the Debtors will obtain refunds in the approximate amounts set forth in the Estimation Motion and that CDTFA's claims will also be limited as set forth in the Estimation Motion. As set forth in the chart above, assuming at least \$4.5 million is recovered in connection with the Refund Claim, the Plan should be able to go effective without the necessity of seeking the agreement of any holder of an Allowed Claim to receive treatment other than payment in full.

The Debtors believe they will recover in excess of \$4.5 million in connection with the Refund Claims. If less than \$4.5 million is recovered, but no less than \$3.0 million, the Debtors believe they will be able to obtain the agreement (and already have the agreement in principle) from sufficient holders of Allowed Claims for alternative treatment under the Plan which would enable the Plan to go effective. However, it is unlikely that General Unsecured Claims in Class 3 will receive any distribution unless at least \$4.5 million is recovered in connection with the Refund Claim. However, there can be no assurance regarding the ultimate outcome of the Refund Claim. In the event that less than \$3.0 million is recovered in connection with the Refund Claim, then the most likely outcome for these cases is that the Plan Proponents will seek to convert the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

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<sup>9</sup> Excludes PBGC Claims.

1           **E.       Acceptance by Impaired Classes**

2           The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the  
3 following section, each class of claims or interests that is impaired under a plan accept the plan. A  
4 class that is not “impaired” under a plan is deemed to have accepted the plan and, therefore, solicitation  
of acceptances with respect to such class is not required.

5           A class is “impaired” unless a plan: (a) leaves unaltered the legal, equitable and contractual  
6 rights to which the claim or the interest entitles the holder of such claim or interest; or (b) cures any  
7 default, reinstates the original terms of such obligation, compensates the holder for certain damages  
or losses, as applicable, and does not otherwise alter the legal, equitable or contractual rights to which  
such claim or interest entitles the holder of such claim or interest.

8           Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired  
9 claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in  
10 number of allowed claims in that class, counting only those claims that actually voted to accept or  
reject the plan. Thus, a Class of Impaired Claims will have voted to accept the Plan only if two-thirds  
11 in amount and a majority in number actually voting cast their Ballots in favor of acceptance.

12           **F.       Confirmation Without Acceptance by All Impaired Classes**

13           Section 1129(b) of the Bankruptcy Code allows a Bankruptcy Court to confirm a plan even if  
14 all impaired classes have not accepted it, provided that the plan has been accepted by at least one  
impaired class of claims, determined without including the acceptance of the plan by any insider.  
15 Notwithstanding an impaired class’s rejection or deemed rejection of the plan, such plan will be  
confirmed, at the plan proponent’s request, in a procedure commonly known as “cramdown,” so long  
16 as the plan does not “discriminate unfairly” (as discussed below) and is “fair and equitable” (as  
discussed below) with respect to each class of claims or interests that is impaired under, and has not  
17 accepted, the plan.

18           To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan,  
the Plan Proponents shall request Confirmation of the Plan under section 1129(b) of the Bankruptcy  
19 Code. The Plan Proponents reserve the right to alter, amend, modify, revoke, or withdraw the Plan,  
the Plan Supplement, or any schedule or exhibit, including to amend or modify it to satisfy the  
20 requirements of section 1129(b) of the Bankruptcy Code, if necessary.

21           **1.       No Unfair Discrimination**

22           The “unfair discrimination” test applies to classes of claims or interests that reject or are  
23 deemed to have rejected a plan and that are of equal priority with another class of claims or interests  
that is receiving different treatment under such plan. The test does not require that the treatment of  
24 such classes of claims or interests be the same or equivalent, but that such treatment be “fair.” In  
general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of  
25 claims of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will take into  
account a number of factors in determining whether a plan discriminates unfairly, and, accordingly, a  
26 plan could treat two classes of unsecured creditors differently without unfairly discriminating against  
either class. The Plan Proponents submit that if the Plan Proponents “cramdown” the Plan pursuant  
27 to section 1129(b) of the Bankruptcy Code, the Plan is structured such that it does not “discriminate  
28

1 unfairly” against any rejecting Class. Nevertheless, there can be no assurance that the Bankruptcy  
2 Court will reach the same conclusion.

## 3                   **2. Fair and Equitable Test**

4           The “fair and equitable” test applies to classes that reject or are deemed to have rejected a plan  
5 and are of different priority and status vis-à-vis another class (*e.g.*, secured versus unsecured claims,  
6 or unsecured claims versus equity interests), and includes the general requirement that no class of  
7 claims receive more than 100% of the amount of the allowed claims in such class, including interest.  
8 As to the rejecting class, the test sets different standards depending upon the type of claims or interests  
in such rejecting class. The Plan Proponents submit that if the Plan Proponents “cramdown” the Plan  
pursuant to section 1129(b) of the Bankruptcy Code, the Plan is structured such that the applicable  
“fair and equitable” standards are met.

## 9                   **G. Alternatives to the Plan**

10           The Plan Proponents believe that the Plan is in the best interests of Holders of Claims. If,  
11 however, the requisite acceptances of the voting Classes of Claims are not received, or no Plan is  
12 confirmed and consummated, the theoretical alternatives to the Plan include: (a) formulation of an  
alternative plan or plans of liquidation, or (b) liquidation of the Debtors under chapter 7 of the  
Bankruptcy Code.

13           The Plan Proponents believe that the Plan enables Holders of Claims to realize the greatest  
14 possible recovery under the circumstances, and, as compared to any alternative plan of liquidation,  
15 has the greatest chance of being confirmed and consummated.

## 16                   **IX. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

17           The following discussion is a summary of certain U.S. federal income tax consequences of the  
18 Plan to Holders of Claims against the Debtors. This discussion is based on the Internal Revenue Code  
(the “Tax Code”), Treasury Regulations promulgated and proposed thereunder, judicial decisions and  
19 published administrative rules and pronouncements of the Internal Revenue Service (“IRS”), all as in  
effect on the date hereof. Due to the complexity of certain aspects of the Plan, the lack of applicable  
20 legal precedent, the possibility of changes in the law, the differences in the nature of the Claims  
(including Claims within the same Class), the Holder’s status and method of accounting (including  
21 Holders within the same Class) and the potential for disputes as to legal and factual matters with the  
IRS, the tax consequences described herein are subject to significant uncertainties. No legal opinions  
22 have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings  
have been or will be requested from the IRS with respect to the any of the issues discussed below.  
23 Further, legislative, judicial or administrative changes may occur, perhaps with retroactive effect,  
24 which could affect the accuracy of the statements and conclusions set forth below as well as the tax  
consequences to the Debtors and the Holders of Claims.

25  
26           This discussion does not purport to address all aspects of U.S. federal income taxation that may  
27 be relevant to the Debtors or the Holders of Claims in light of their personal circumstances, nor does  
the discussion deal with tax issues with respect to taxpayers subject to special treatment under the U.S.  
28 federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-  
through entities, brokers and dealers in securities, traders that mark-to-market their securities, mutual

1 funds, insurance companies, other financial institutions, real estate investment trusts, tax-exempt  
2 organizations, small business investment companies, regulated investment companies, foreign  
3 taxpayers, persons whose functional currency is not the U.S. dollar, persons subject to the alternative  
4 minimum tax, and persons holding Claims or Interests as part of a “straddle,” “hedge,” “constructive  
5 sale” or “conversion transaction” with other investments). This discussion does not address the tax  
6 consequences to Holders of Claims who did not acquire such Claims at the issue price on original  
7 issue. No aspect of foreign, state, local or estate and gift taxation is addressed.

8 The U.S. federal income tax consequences of the distributions contemplated by the Plan to the  
9 Holders of Claims that are U.S. Persons will depend upon a number of factors. For purposes of the  
10 following discussion, a “U.S. Person” is any person or entity (1) who is a citizen or resident of the  
11 United States, (2) that is a corporation or partnership created or organized in or under the laws of the  
12 United States or any state thereof, (3) that is an estate, the income of which is subject to U.S. federal  
13 income taxation regardless of its source or (4) that is a trust (a) the administration over which a United  
14 States person can exercise primary supervision and all of the substantial decisions of which one or  
15 more U.S. persons have the authority to control; or (b) that has in effect a valid election to continue to  
16 be treated as a U.S. Person for U.S. federal income tax purposes. In the case of a partnership, the tax  
17 treatment of its partners will depend on the status of the partner and the activities of the partnership.  
18 U.S. Persons who are partners in a partnership should consult their tax advisors. A “Non-U.S. Person”  
19 is any person or entity that is not a U.S. Person. For purposes of the following discussion and unless  
20 otherwise noted below, the term “Holder” will mean a Holder of a Claim that is a U.S. Person.

21 Except where otherwise indicated, this discussion assumes that the Claims are held as capital  
22 assets within the meaning of section 1221 of the Tax Code.

23 THE FOLLOWING SUMMARY IS NOT INTENDED TO CONSTITUTE ADVICE TO  
24 ANY PARTY, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE  
25 BASED UPON THE PERSONAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. EACH  
26 HOLDER OF A CLAIM, AS WELL AS EACH HOLDER OF AN INTEREST, IS URGED TO  
27 CONSULT WITH SUCH HOLDER’S TAX ADVISORS CONCERNING THE U.S. FEDERAL,  
28 STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE  
PLAN.

*IRS Circular 230 Notice. To ensure compliance with IRS Circular 230, Holders of Claims  
and Interests are hereby notified that: (a) any discussion of federal tax issues contained or referred  
to in this Disclosure Statement is not intended or written to be used, and cannot be used, by Holders  
of Claims and Interests for the purpose of avoiding penalties that may be imposed on them under  
the Tax Code; (b) such discussion is written in connection with the promotion or marketing by the  
Debtors of the transactions or matters addressed herein; and (c) Holders of Claims and Interests  
should seek advice based on their particular circumstances from an independent tax advisor.*

#### 24 **A. Federal Taxation Issues Related to Pass-Through Entities in General**

25 For U.S. federal income tax law purposes, an entity can be organized as a corporation, a  
26 partnership, or a hybrid entity (otherwise known as S corporations and limited liability companies).  
27 The two primary differences between corporations and partnerships are how the entity’s earnings are  
28 taxed and whether or not the shareholder/owners are shielded from the liabilities of the entity.  
Generally, corporations are treated as independent tax-paying entities, unaffected by the personal  
characteristics of their shareholders or changes in their composition as a result of transfers of stock

1 from old shareholders to new ones, giving rise to the potential for double taxation. Because  
2 corporations are treated independently, corporate income is taxed to a corporation as it is received or  
3 accrued, and is taxed at the shareholder level when and if the corporation distributes earnings to the  
4 shareholders or they sell their stock. Partnerships, however, are not entities subject to income tax.  
Instead, the partners are taxed directly on partnership income whether or not it is actually distributed

5 Hybrid entities, on the other hand, combine the two primary differences between corporations  
6 and partnerships. As to S corporations, shareholders are shielded from entity level liability similar to  
7 that of a corporation; however, generally, the earnings of the entity are taxed at the ownership level  
8 similar to that of a partnership. As to limited liability companies, member-owners are shielded from  
9 entity level liability similar to that of a corporation; however, unique to the LLC, an option exists to  
be taxed as a corporation or taxed as a partnership, provided that the LLC has at least two member-  
owners, as set forth under Treasury Regulations Section 301.7701-3.

10 Generally, pass-through entities are subject to a single layer of tax on their earnings at the  
11 ownership level (partner, member, or shareholder depending on entity type). Taxable income of pass-  
12 through entities is computed at the entity level (generally each type of entity will file a tax return  
13 showing no tax liability at the entity level); however, each owner is taxed separately on his, her, or its  
14 distributive share of income, gain, loss, deduction, and/or credit, as applicable. The character of the  
15 items included in taxable income is determined at the entity level with no regard to the owners'  
individual characteristics. With respect to tax attributes, pass-through entities are generally not  
allowed to maintain certain tax attributes, such as net operating losses, given such entities are not  
directly taxable. These tax attributes pass-through to the owners, and usage, carryback, or  
carryforward of these attributes is determined at the ownership level.

16 BECAUSE THE FINAL TAX TREATMENT OUTCOME DEPENDS ON EACH PARTY'S  
17 SPECIFIC SITUATION, PARTIES IN INTEREST ARE URGED TO CONSULT WITH THEIR  
18 TAX ADVISORS REGARDING THE TAX IMPLICATIONS TO THEM WITH RESPECT TO THE  
19 TRANSACTIONS CONTEMPLATED UNDER OR IN CONNECTION WITH THE PLAN AND  
THEIR SPECIFIC SITUATION, AND NOTHING HEREIN IS INTENDED TO CONSTITUTE  
ADVICE TO ANY PARTY.

## 20 **B. Consequences to Creditors**

### 21 **1. Holders of Claims**

22 Generally, a holder of a Claim should in most, but not all circumstances, recognize gain or loss  
23 equal to the difference between the "amount realized" by such holder in exchange for its Claim and  
24 such holder's adjusted tax basis in the Claim. The "amount realized" is equal to the sum of the cash  
25 and the fair market value of any other consideration received under a plan of reorganization in respect  
26 of a holder's Claim. The tax basis of a holder in a Claim will generally be equal to the holder's cost  
27 therefore. To the extent applicable, the character of any recognized gain or loss (*e.g.*, ordinary income,  
28 or short-term or long-term capital gain or loss) will depend upon the status of the holder, the nature of  
the Claim in the holder's hands, the purpose and circumstances of its acquisition, the holder's holding  
period of the Claim, and the extent to which the holder previously claimed a deduction for the  
worthlessness of all or a portion of the Claim. Generally, if the Claim is a capital asset in the holder's  
hands, any gain or loss realized will generally be characterized as capital gain or loss, and will  
constitute long-term capital gain or loss if the holder has held such Claim for more than one year.

1 A Holder who received Cash in satisfaction of its Claims may recognize ordinary income or  
2 loss to the extent that any portion of such consideration is characterized as accrued interest. A Holder  
3 who did not previously include in income accrued but unpaid interest attributable to its Claim, and  
4 who receives a distribution on account of its Claim pursuant to the Plan, will be treated as having  
5 received interest income to the extent that any consideration received is characterized for United States  
6 federal income tax purposes as interest, regardless of whether such Holder realizes an overall gain or  
7 loss as a result of surrendering its Claim. A Holder who previously included in its income accrued but  
8 unpaid interest attributable to its Claim should recognize an ordinary loss to the extent that such  
9 accrued but unpaid interest is not satisfied, regardless of whether such Holder realizes an overall gain  
10 or loss as a result of the distribution it may receive under the Plan on account of its Claim.

11 Under the Plan, certain Creditors may receive only a partial distribution of their Allowed  
12 Claims. Whether the Holder of such Claims will recognize a loss or any other tax treatment will  
13 depend upon facts and circumstances that are specific to the nature of the Holder and its Claims.  
14 Creditors should consult their own tax advisors.

## 15 **2. Non-United States Persons**

16 A Holder of a Claim that is a Non-U.S. Person generally will not be subject to United States  
17 federal income tax with respect to property (including money) received in exchange for such Claim  
18 pursuant to the Plan, unless (i) such Holder is engaged in a trade or business in the United States to  
19 which income, gain or loss from the exchange is “effectively connected” for United States federal  
20 income tax purposes, or (ii) if such Holder is an individual, such Holder is present in the United States  
21 for 183 days or more during the taxable year of the exchange and certain other requirements are met.

### 22 **C. Importance of Obtaining Professional Tax Assistance**

23 THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN  
24 INCOME TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL  
25 TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR  
26 INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX  
27 CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON  
28 A CLAIM HOLDER’S OR INTEREST HOLDER’S PARTICULAR CIRCUMSTANCES.  
ACCORDINGLY, CLAIM AND INTEREST HOLDERS ARE URGED TO CONSULT THEIR  
TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND  
APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.]



1 **X. RECOMMENDATION**

2 In the opinion of the Plan Proponents, the Plan is superior and preferable to the alternatives  
3 described in this Disclosure Statement. Accordingly, the Plan Proponents recommend that Holders of  
4 Claims entitled to vote on the Plan vote to accept the Plan and support Confirmation of the Plan.

5 May 5, 2021



6 Brad Smith, CRO of Debtors and Debtors in Possession

7  
8  
9  
10 May \_\_\_\_, 2021

11 [\_\_\_\_\_] \_\_\_\_\_  
12 Authorized Representative of  
13 Official Committee of Unsecured Creditors

14 Prepared by:

15 *Debtors' Counsel*

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23 -and-

24 *Committee Counsel*

25 Robert J. Feinstein (Pro Hac Vice)  
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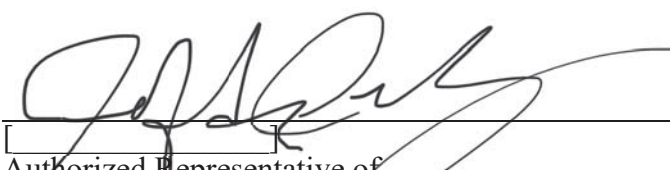
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4 Claims entitled to vote on the Plan vote to accept the Plan and support Confirmation of the Plan.

5 May \_\_, 2021

6 \_\_\_\_\_  
7 Brad Smith, CRO of Debtors and Debtors in Possession

8  
9  
10 May 4, 2021

11 \_\_\_\_\_  
12   
13 Authorized Representative of  
14 Official Committee of Unsecured Creditors

15 Prepared by:

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**EXHIBIT A**  
**Joint Plan of Liquidation**

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*Counsel for the Official Committee of  
Unsecured Creditors  
Co-Plan Proponents*

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SANTA ANA DIVISION**

In re:

FREEDOM COMMUNICATIONS, INC., a  
Delaware corporation, et al.,<sup>1</sup>

Debtors and  
Debtors-in-Possession.

Affects:

☒ All Debtors

☐ Freedom Communications, Inc., a Delaware  
corporation, ONLY

☐ Freedom Communications Holdings, Inc., a  
Delaware corporation, ONLY

☐ Freedom Services, Inc., a Delaware  
corporation, ONLY

Case No.: 8:15-bk-15311-MW

Chapter 11

(Jointly Administered with Case Nos.  
8:15-bk-15312-MW; 8:15-bk-15313-MW;  
8:15-bk-15315-MW; 8:15-bk-15316-MW;  
8:15-bk-15317-MW; 8:15-bk-15318-MW;  
8:15-bk-15319-MW; 8:15-bk-15320-MW;  
8:15-bk-15321-MW; 8:15-bk-15322-MW;  
8:15-bk-15323-MW; 8:15-bk-15324-MW;  
8:15-bk-15325-MW; 8:15-bk-15326-MW;  
8:15-bk-15327-MW; 8:15-bk-15328-MW;  
8:15-bk-15329-MW; 8:15-bk-15330-MW;  
8:15-bk-15332-MW; 8:15-bk-15337-MW;  
8:15-bk-15339-MW; 8:15-bk-15340-MW;  
8:15-bk-15342-MW; 8:15-bk-15343-MW)

<sup>1</sup> The last four digits of the Debtors' federal tax identification numbers are as follows: Freedom Communications, Inc. (0750); Freedom Communications Holdings, Inc. (2814); Freedom Services, Inc. (3125); 2100 Freedom, Inc. (7300); OCR Community Publications, Inc. (9752); Daily Press, LLC (3610); Freedom California Mary Publishing, Inc. (4121); Freedom California Ville Publishing Company LP (7735); Freedom Colorado Information, Inc. (7806); Freedom Interactive Newspapers, Inc. (9343); Freedom Interactive Newspapers of Texas, Inc. (8187); Freedom Newspaper Acquisitions, Inc. (4322); Freedom Newspapers (7766); Freedom Newspapers, Inc. (3240); Freedom Newspapers of Southwestern Arizona, Inc. (5797); OCR Information Marketing, Inc. (7983); Odessa American (7714); Orange County Register Communications, Inc. (7980); Victor Valley Publishing Company (6082); Victorville Publishing Company (7617); Freedom SPV II, LLC (8253); Freedom SPV VI, LLC (8434); Freedom SPV I, LLC (3293); Freedom SPV IV, LLC (8500); and Freedom SPV V, LLC (9036). The Debtors' mailing address is 625 N. Grand Avenue, Santa Ana, California 92701.

☐ 2100 Freedom, Inc., a Delaware corporation, ONLY

☐ OCR Community Publications, Inc., a California corporation, ONLY

☐ Daily Press, LLC, a California limited liability company, ONLY

☐ Freedom California Mary Publishing, Inc., a California corporation, ONLY

☐ Freedom California Ville Publishing Company LP, a California limited partnership, ONLY

☐ Freedom Colorado Information, Inc., a Delaware corporation, ONLY

☐ Freedom Interactive Newspapers, Inc., a California corporation, ONLY

☐ Freedom Interactive Newspapers of Texas, Inc., a Delaware corporation, ONLY

☐ Freedom Newspaper Acquisitions, Inc., a Delaware corporation, ONLY

☐ Freedom Newspapers, a Texas general partnership, ONLY

☐ Freedom Newspapers, Inc., a Delaware corporation, ONLY

☐ Freedom Newspapers of Southwestern Arizona, Inc., a California corporation, ONLY

☐ OCR Information Marketing, Inc., a California corporation, ONLY

☐ Odessa American, a Texas general partnership, ONLY

☐ Orange County Register Communications, Inc., a California corporation, ONLY

☐ Victor Valley Publishing Company, a California corporation, ONLY

☐ Victorville Publishing Company, a California limited partnership, ONLY

☐ Freedom SPV II, LLC, a Delaware limited liability company, ONLY

☐ Freedom SPV VI, LLC, a Delaware limited liability company, ONLY

**SECOND AMENDED JOINT CHAPTER 11  
PLAN OF LIQUIDATION PROPOSED BY  
DEBTORS AND OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS, AS  
MODIFIED**

**Disclosure Statement Approval Hearing:**

Date: April 28, 2021

Time: 2:00 p.m.

Place: Courtroom 6C  
411 West Fourth Street  
Santa Ana, CA 92701

Judge: Honorable Mark S. Wallace

**Confirmation Hearing:**

Date: July 7, 2021

Time: 2:00 p.m.

Place: Courtroom 6C  
411 West Fourth Street  
Santa Ana, CA 92701

Judge: Honorable Mark S. Wallace

- ☐ Freedom SPV I, LLC, a Delaware limited liability company, ONLY
- ☐ Freedom SPV IV, LLC, a Delaware limited liability company, ONLY
- ☐ Freedom SPV V, LLC, a Delaware limited liability company, ONLY

## INTRODUCTION<sup>2</sup>

The Debtors and the Committee hereby propose this Plan, which provides for the distribution of the remaining assets of the Debtors' estates, consisting primarily of net cash proceeds from certain litigation settlements. Reference is made to the Disclosure Statement for (i) a discussion of the Debtors' history, businesses, assets and liabilities, (ii) a summary and analysis of this Plan, and (iii) certain related matters, including risk factors relating to the consummation of this Plan and Distributions to be made under this Plan. The Debtors and the Committee are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

This Plan provides for the liquidation, collection, disposition and distribution of the remaining assets of the Debtors' Estates and winding-up the Debtors' affairs and the Chapter 11 Cases. Substantially all of the Debtors' commercial assets were sold to a third party buyer and remaining material causes of action of the Debtors were addressed and resolved under certain settlements including with the Pension Benefit Guaranty Corporation. The Plan proposes to fairly and efficiently allocate the Debtors' remaining Distributable Assets in a manner that is supported by the principal constituencies in the Chapter 11 Cases and will allow such cases to be promptly resolved.

This Plan will be implemented through the substantive consolidation of the Debtors' Estate for the purposes of voting and Distributions under the Plan, the re-vesting of the Estates' assets in Liquidating Debtor Freedom Communications, Inc., and the utilization of the current CRO as the Plan Administrator to liquidate or otherwise dispose of the Estates' remaining assets, if and to the extent such assets were not previously monetized or otherwise transferred by the Debtors prior to the Effective Date. All Intercompany Claims will be waived and eliminated. The Plan Administrator will act for the Liquidating Debtors in the same fiduciary capacity as applicable to a board of directors of a Delaware corporation implementing such liquidation and wind-down as contemplated under this Plan, subject to the provisions hereof, and shall, among other powers, wind up the affairs of the Liquidating Debtors; use, manage, sell, abandon and/or otherwise dispose of the remaining property of the Estates; prosecute objections to Claims and any litigation on behalf of the Liquidating Debtors; cause distributions to be made to Creditors pursuant to this Plan; and take such other actions required under or consistent with this Plan.

Under the Plan, all assets will be distributed in accordance with the priorities established in the Bankruptcy Code, including payment in full on the Effective Date of Allowed Administrative Expenses, unless otherwise agreed with the Holders of such Claims.

The Holders of Allowed Miscellaneous Secured Claims will either: (a) be paid in cash up to the value of their collateral, or (b) have their obligations assumed or otherwise addressed as provided for herein, including pursuant to agreements with such Holders. As discussed in the Disclosure Statement, the Secured Claims of the Debtors' prepetition secured lenders, the debtor-in-possession financing lenders, and the PBGC were paid in full or otherwise addressed and resolved prior to the

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<sup>2</sup> Capitalized terms used in this Introduction have the meanings ascribed to those terms in Article I below.

1 filing of this Plan.

2 Holders of Allowed General Unsecured Claims in Class 3 will receive any remaining Net  
3 Distributable Estate Assets after the payment of (or reserves for) Allowed Administrative Expenses,  
4 Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Miscellaneous Secured  
5 Claims, and Plan Expenses; provided that in the event that the aggregate Cash recovery for Holders of  
6 Allowed General Unsecured Claims (other than the PBGC) exceeds \$1,000,000, then any excess Cash  
7 proceeds will be shared ratably by the Holders of Allowed General Unsecured Claims and the Holder  
8 of the PBGC Unsecured Claims in Class 4. The PBGC (or other Holder of the PBGC Unsecured  
9 Claims) will receive the treatment provided for the PBGC Unsecured Claims set forth in the PBGC  
10 Settlement, including, as noted, the PBGC sharing ratably with Holders of Allowed Class 3 General  
11 Unsecured Claims any excess Cash proceeds over \$1,000,000 in the aggregate.

12  
13 Lastly, all Interests in the Debtors will be canceled, and any associated management rights held  
14 by Holders of Interests will be void and of no force and effect as of the Effective Date. Holders of  
15 Interests will not receive any Distribution or other property pursuant to the Plan.

16 The Disclosure Statement distributed with this Plan contains a discussion of, among other  
17 things, the Debtors' history, a summary of the Debtors' assets and liabilities, a summary of what  
18 Holders of Claims and Interests will receive under this Plan, a discussion of certain alternatives to this  
19 Plan, and a summary of the procedures and voting requirements necessary for Confirmation of this  
20 Plan. The Disclosure Statement is intended to provide Holders of Claims with information sufficient  
21 to enable such Holders to vote on this Plan.

22 No solicitation materials, other than the Disclosure Statement and related materials transmitted  
23 therewith, have been approved for use in soliciting acceptances and rejections of this Plan. Nothing  
24 in the Plan should be construed as constituting a solicitation of acceptances of the Plan unless and until  
25 the Disclosure Statement has been approved and distributed to all Holders of Claims to the extent  
26 required by section 1125 of the Bankruptcy Code.

27 ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED  
28 TO READ CAREFULLY THE DISCLOSURE STATEMENT AND THE PLAN, EACH IN ITS  
ENTIRETY, BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## 18 **ARTICLE I**

### 19 **DEFINED TERMS AND RULES OF INTERPRETATION**

20 For purposes of "this Plan" or "the Plan" as used herein:

21 (a) whenever from the context it is appropriate, each term, whether stated in the singular or  
22 the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine  
23 or neuter gender shall include the masculine, feminine and neuter gender;

24 (b) any reference in the Plan to a contract, instrument, release, indenture, or other agreement  
25 or document being in a particular form or on particular terms and conditions means that such document  
26 shall be substantially in such form or substantially on such terms and conditions;

27 (c) any reference in the Plan to an existing document or exhibit Filed, or to be Filed, shall  
28 mean such document or exhibit, as it may have been or may be amended, modified or supplemented;

(d) unless otherwise specified, all references in the Plan to sections and exhibits are references  
to sections and exhibits of or to the Plan;



(e) the words “herein,” “hereof,” “hereto,” “hereunder,” “herewith,” and other words of similar import refer to the Plan in its entirety rather than to a particular portion of the Plan;

(f) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply;

(g) any term used in capitalized form in the Plan that is not defined in the Plan, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning set forth in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and

(h) the definition given to any term or provision in the Plan supersedes and controls any different meaning that may be given to that term or provision in the Disclosure Statement, on any Ballot, or in any other document other than the Confirmation Order.

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

The following capitalized terms used in the Plan shall have following meanings:

**1.1 Administrative Expense:** An unpaid administrative expense of the kind described in sections 365, 503(b) and 507(a)(2) of the Bankruptcy Code against any of the Debtors, including, without limitation, (a) the actual, necessary costs and expenses of preserving the Estates of the Debtors, (b) compensation and reimbursement of expenses of professionals and reimbursement of expenses of Committee members, in each case, to the extent allowable under sections 327, 328, 330(a), 331, 503(b) and/or 1103 of the Bankruptcy Code and Allowed or otherwise payable pursuant to orders of the Bankruptcy Court, and (c) all fees and charges assessed against the Estates under 28 U.S.C. § 1930, including U.S. Trustee Fees.

**1.2 Allowed, Allowed Claim, or Allowed [ ] Claim:** With respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim that has been scheduled by any of the Debtors in their Schedules as other than disputed, contingent or unliquidated which has not been superseded by a filed proof of claim and which scheduled Claim has not been amended; (b) a Claim that has been allowed by a Final Order; (c) a Claim that is allowed by the Liquidating Debtors on or after the Effective Date and, to the extent necessary, approved by the Bankruptcy Court; (d) a Claim that has been timely filed by the Bar Date for which no objection has been filed by the Objection Deadline; or (e) a Claim that is allowed pursuant to the terms of this Plan. For the avoidance of doubt: (i) Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed Claims” hereunder solely by virtue of being allowed for voting purposes, and (ii) except for any Claim that is expressly Allowed herein, any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated or disputed and for which no Proof of Claim has been Filed shall not be considered Allowed under this Plan.

**1.3 Avoidance Claims:** Any Rights of Action arising under chapter 5 of the Bankruptcy Code or applicable federal or state law and the proceeds thereof. As discussed in the Disclosure Statement, the Debtors and Liquidating Debtors prosecuted or otherwise pursued numerous Avoidance Claims prior to the filing of the Plan, and do not anticipate prosecuting any Avoidance Claims after the Effective Date.

**1.4 Ballot:** The form approved by the Bankruptcy Court and distributed to each Holder of an Impaired Claim entitled to vote on the Plan, on which is to be indicated, among other things, acceptance or rejection of the Plan.

**1.5 Bankruptcy Code:** Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as may be amended).



1 **1.6 Bankruptcy Court:** The United States Bankruptcy Court for the Central District of California,  
2 or in the event such court ceases to exercise jurisdiction over any Chapter 11 Case, such court or  
3 adjunct thereof that exercises jurisdiction over such Chapter 11 Case in lieu of the United States  
4 Bankruptcy Court for the Central District of California.

5 **1.7 Bankruptcy Rules:** The Federal Rules of Bankruptcy Procedure promulgated pursuant to  
6 28 U.S.C. § 2075, as now in effect or hereinafter amended, together with the Local Rules of the  
7 Bankruptcy Court.

8 **1.8 Bar Date:** The applicable deadlines in the Chapter 11 Cases for filing any and all Claims  
9 (including Administrative Expenses).

10 **1.9 Bar Date Order:** The order or orders of the Bankruptcy Court setting the Bar Date, including  
11 the *Order Granting Motion for Order Establishing a Bar Date for Filing Proofs of Claim and*  
12 *Approving Form and Manner of Notice of Bar Date* [Docket No. 355].

13 **1.10 Business Day:** Any day, other than a Saturday, a Sunday or a “legal holiday,” as defined in  
14 Bankruptcy Rule 9006(a).

15 **1.11 Cash:** Currency of the United States of America and cash equivalents, including, but not  
16 limited to, bank deposits, immediately available or cleared checks, drafts, wire transfers and other  
17 similar forms of payment.

18 **1.12 Chapter 11 Cases:** (a) When used with reference to a particular Debtor, the case pending for  
19 that Debtor under chapter 11 of the Bankruptcy Code and (b) when used with reference to all Debtors,  
20 the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court under  
21 case number 15-bk-15311-MW.

22 **1.13 Claim:** Any claim against any of the Debtors or any property of the Debtors within the  
23 meaning of section 101(5) of the Bankruptcy Code including, without limitation, claims of the kind  
24 specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code.

25 **1.14 Class:** Each category of Claims or Interests classified in Article III of the Plan pursuant to  
26 section 1122 of the Bankruptcy Code.

27 **1.15 Class 3 Distribution Date(s):** This term has the meaning set forth in Section 3.2.3 of this Plan.

28 **1.16 Committee:** The Official Committee of Unsecured Creditors appointed by the U.S. Trustee  
in these Chapter 11 Cases, as it may be reconstituted from time to time.

**1.17 Committee Retained Professionals:** The Committee’s attorneys and other professionals  
(solely in their respective capacity as professionals of the Committee).

**1.18 Confirmation:** The approval by the Bankruptcy Court of this Plan in accordance with the  
provisions of chapter 11 of the Bankruptcy Code, as effectuated by the Confirmation Order.

**1.19 Confirmation Date:** The date on which the clerk of the Bankruptcy Court enters the  
Confirmation Order on the docket of the Chapter 11 Cases.

**1.20 Confirmation Hearing:** The hearing(s) on Confirmation of the Plan, to be held on the date  
or dates established by the Bankruptcy Court pursuant to section 1129 of the Bankruptcy Code, as it  
may be adjourned or continued from time to time.

**1.21 Confirmation Order:** The order entered by the Bankruptcy Court confirming the Plan.

1 **1.22 Consummation:** Substantial consummation of the Plan as that term is used in section 1127(b)  
2 of the Bankruptcy Code.

3 **1.23 Creditor:** Any Person who is the Holder of a Claim.

4 **1.24 Debtor Retained Professionals:** The Debtors' attorneys and other professionals (solely in  
5 their respective capacity as attorneys or other professionals of the Debtors).

6 **1.25 Debtors:** The debtors and debtors in possession in the Chapter 11 Cases.

7 **1.26 Disallowed or Disallowed Claim:** With respect to any Claim, except as otherwise provided  
8 herein, a Claim or any portion thereof that (a) has been disallowed by agreement with the creditor,  
9 (b) has been disallowed by Final Order, (c) is listed in the Schedules in an unknown amount, as zero,  
10 as contingent, disputed, or unliquidated, or is not listed in the Schedules, and as to which no proof of  
11 Claim or Administrative Expense has been Filed, or (iv) has been withdrawn by the applicable creditor.

12 **1.27 Disclosure Statement:** The *Second Amended Disclosure Statement in Respect of Second*  
13 *Amended Joint Chapter 11 Plan of Liquidation Proposed By Debtors and Official Committee of*  
14 *Unsecured Creditors*, as it may be amended, modified or supplemented from time to time, submitted  
15 pursuant to section 1125 of the Bankruptcy Code in connection with the solicitation of acceptances of  
16 the Plan.

17 **1.28 Disputed:** With respect to any Claim or Interest, any Claim or Interest that is: (a) disputed  
18 under the Plan, or subject to a timely objection and/or request for estimation in accordance with section  
19 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018, which objection and/or request for  
20 estimation has not been withdrawn or determined by a Final Order; (b) a Claim, on account of which  
21 a proof of Claim was filed or which has been otherwise asserted and in respect of which Claim the  
22 Objection Deadline has not expired, (i) for which a corresponding Claim has not been listed in the  
23 Debtors' Schedules or for which the corresponding Claim is listed in the Debtors' Schedules with a  
24 lower amount, with a differing classification, or as disputed, contingent, or unliquidated, (ii) which  
25 has not been allowed either by a Final Order, by the Plan, or under a stipulation or settlement with the  
26 Debtors or the Liquidating Debtors, and (iii) which Claim the Plan Administrator has not determined  
27 will not be subject to an objection or request for estimation; (c) contingent or unliquidated; (d)  
28 improperly asserted, by the untimely or otherwise improper filing of proof of such Claim as required  
by order of the Bankruptcy Court; or (e) any other Claim that is not Allowed. A Claim that is Disputed  
as to its amount shall not be Allowed in any amount for purposes of distribution until it is no longer  
Disputed.

1 **1.29 Distributable Assets:** Except as otherwise noted below, any and all real or personal property  
2 of any of the Debtors of any nature, including, without limitation, any Claims, Retained Rights of  
3 Action, books and records, any other general intangibles of any of the Debtors, and any and all  
4 proceeds of the foregoing, as the case may be, of any nature whatsoever (whether liquidated or  
5 unliquidated, matured or unmatured, or fixed or contingent), including, without limitation, property of  
6 the applicable Estate within the scope of section 541 of the Bankruptcy Code. Notwithstanding the  
7 foregoing, the term "Distributable Assets" does not include any property that has been abandoned by  
8 any Estate pursuant to a Final Order of the Bankruptcy Court.

9 **1.30 Distributable Estate Assets:** Collectively, (i) the Cash on hand of the Debtors from and after  
10 the Effective Date (which was approximately \$2,215,140.08 in Cash as of June 2, 2020); (ii) Retained  
11 Rights of Action; and (iii) any other remaining property or assets of the Debtors immediately prior to  
12 the Effective Date.

13 **1.31 Distribution:** The transfer of Cash or other property by the Plan Administrator to the Holders  
14 of Allowed Claims.

1 **1.32 Effective Date:** The first Business Day immediately following the first day upon which all of  
2 the conditions to the occurrence of the Effective Date have been satisfied or waived in accordance  
3 with the Plan.

4 **1.33 Equity Security:** Any equity security as defined in section 101(16) of the Bankruptcy Code  
5 in a Debtor.

6 **1.34 Estates:** The estates created pursuant to section 541(a) of the Bankruptcy Code upon the  
7 commencement of the Chapter 11 Cases.

8 **1.35 Excess Net Distributable Assets:** This term has the meaning set forth in Section 3.2.3 of this  
9 Plan.

10 **1.36 Exculpated Parties:** Each in their capacities as such, (a) the Debtors, (b) the present and  
11 former officers, directors, managers, and employees of the Debtors who served in such capacities at  
12 any point from and after the Petition Date, (c) the Debtor Retained Professionals, (d) the Committee  
13 and its present and former members (solely in their respective capacity as members of the Committee),  
14 (e) the Committee Retained Professionals, and (f) the respective successors or assigns of the foregoing  
15 parties.

16 **1.37 FCI:** Debtor Freedom Communications, Inc., either in its capacity as debtor and debtor in  
17 possession under chapter 11 of the Bankruptcy Code in the Chapter 11 Cases or otherwise from and  
18 after the Effective Date.

19 **1.38 Fee Applications:** Applications of Professional Persons for allowance of compensation and  
20 reimbursement of expenses incurred in the Chapter 11 Cases

21 **1.39 File or Filed:** Filed of record and entered on the docket in the Chapter 11 Cases.

22 **1.40 Final Decree:** The order entered pursuant to section 350 of the Bankruptcy Code and  
23 Bankruptcy Rule 3022 closing a Chapter 11 Case.

24 **1.41 Final Order:** A judgment, order, ruling or other decree issued and entered by the Bankruptcy  
25 Court or by any state or other federal court or other tribunal which judgment, order, ruling or other  
26 decree has not been reversed, stayed, revoked, modified, supplemented or amended and as to which  
27 (a) the time to appeal or petition for review, rehearing or certiorari has expired and as to which no  
28 appeal or petition for review, rehearing or certiorari is pending, or (b) any appeal or petition for review,  
rehearing or certiorari has been finally decided and no further appeal or petition for review, rehearing  
or certiorari can be taken or granted. For the avoidance of doubt, no order shall fail to be a Final Order  
solely because of the possibility that a motion pursuant to Bankruptcy Code section 502(j), Rule 59 or  
Rule 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rules 9023 or 9024 may be or has  
been filed with respect to such order.

**1.42 Final Resolution Date:** The date on which all Disputed Claims of Creditors shall have been  
resolved by Final Order or otherwise finally determined.

**1.43 General Unsecured Claim:** A Claim, other than (a) an Administrative Expense, (b) a Priority  
Tax Claim, (c) a Priority Non-Tax Claim, (d) an Intercompany Claim, (e) a Miscellaneous Secured  
Claim, and (f) a PBGC Unsecured Claim.

**1.44 Governmental Unit:** This term shall have the meaning set forth in section 101(27) of the  
Bankruptcy Code

**1.45 Holder:** The beneficial owner of record of any Claim or Interest.

- 1 **1.46 Impaired:** This term shall have the meaning set forth in section 1124 of the Bankruptcy Code.
- 2 **1.47 Insider:** This term shall have the meaning set forth in section 101(31) of the Bankruptcy Code.
- 3 **1.48 Insured Claim:** Any Claim or portion of a Claim (other than a Claim held by an employee of  
4 the Debtors for workers' compensation coverage) that is insured under the Debtors' insurance policies,  
but only to the extent of such coverage.
- 5 **1.49 Intercompany Claim:** Any Claim asserted by one of the Debtors against any of the other  
6 Debtors.
- 7 **1.50 Interest:** (a) Any Equity Security, including all membership interests, shares or similar  
8 securities, whether or not transferable or denominated "stock" and whether issued, unissued,  
authorized or outstanding; (b) any warrant, option, or contractual right to purchase, sell, subscribe or  
9 acquire such Equity Securities at any time and all rights arising with respect thereto; and (c) any similar  
interest in any of the Debtors.
- 10 **1.51 IRS:** The Internal Revenue Service.
- 11 **1.52 Lien:** Any charge against or interest in property to secure payment or performance of a Claim,  
debt, or obligation.
- 12 **1.53 Liquidating Debtors:** The Debtors on and after the Effective Date.
- 13 **1.54 Miscellaneous Secured Claim:** Any Secured Claim that has not been fully paid or otherwise  
14 satisfied or resolved pursuant to order(s) of the Bankruptcy Court prior to the entry of an order  
approving the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code. For the  
15 avoidance of doubt, this term does not include any Secured Claims of the PBGC, which claims shall  
be entitled to the treatment set forth in the PBGC Settlement and PBGC Settlement Order.
- 16 **1.55 Net Distributable Estate Assets:** The Distributable Estate Assets from and after the Effective  
17 Date, once such assets have been reduced to Cash, net of amounts paid in respect of Allowed  
Administrative Expenses, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed  
18 Miscellaneous Secured Claims, and Plan Expenses and/or reserves established for any of the foregoing,  
and excluding those Distributable Estate Assets that are subject to any Liens until such time that such  
19 Liens are satisfied or otherwise addressed in full.
- 20 **1.56 Objection Deadline:** The deadline to object to Claims and/or Interests specified in Section  
8.2 of the Plan, as may be extended pursuant thereto.
- 21 **1.57 PBGC:** Pension Benefit Guaranty Corporation or its successor or assign.
- 22 **1.58 PBGC Settlement:** That certain *Settlement Agreement* dated November 22, 2019, between  
23 and among the Committee, the PBGC, and the Debtors, as amended, modified and/or supplemented  
from time to time, and as approved by the Bankruptcy Court and subject to the PBGC Settlement  
24 Order.
- 25 **1.59 PBGC Settlement Order:** The order of the Bankruptcy Court entered January 13, 2020  
[Docket No. 1609] approving the PBGC Settlement, subject to the terms and conditions of the PBGC  
26 Settlement Order.
- 27 **1.60 PBGC Unsecured Claim(s):** The general unsecured claims of the PBGC against the Debtors  
as described in the PBGC Settlement.
- 28 **1.61 Person:** Any person or organization created or recognized by law, including any association,

company, cooperative, corporation, entity, estate, fund, individual, joint stock company, joint venture, limited liability company, partnership, trust, trustee, unincorporated organization, government or any political subdivision thereof, or any other entity or organization of whatever nature.

**1.62 Petition Date:** November 1, 2015 or November 2, 2015, the date, as applicable, on which each of the Debtors filed its petition for relief under chapter 11 of the Bankruptcy Code.

**1.63 Plan:** This *Second Amended Joint Chapter 11 Plan of Liquidation Proposed by Debtors and Official Committee of Unsecured Creditors*, as it may be amended or modified from time to time.

**1.64 Plan Administrator:** Brad Smith, or any duly selected successor.

**1.65 Plan Expenses:** The expenses incurred or payable by the Liquidating Debtors following the Effective Date (including the reasonable fees and costs of attorneys and other professionals) relating to implementation of the Plan, for the purpose of (a) resolving Claims and effectuating Distributions to Creditors under the Plan, (b) otherwise implementing the Plan and closing the Chapter 11 Cases, or (c) undertaking any other matter relating to the Plan.

**1.66 Plan Proponents:** Together, the Debtors and the Committee.

**1.67 Plan Supplement:** The supplement to the Plan to be Filed by the Plan Proponents with the Bankruptcy Court, which supplement shall contain forms of certain substantially final documents (if any) required for the implementation of the Plan, no later than ten (10) calendar days prior to the deadline for voting on the Plan. The Plan Proponents shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement through the Effective Date.

**1.68 Post-Effective Date Service List:** Collectively, (i) the Plan Administrator; (ii) the U.S. Trustee; (iii) PBGC; and (iv) any other party specifically requesting service of all documents in these Bankruptcy Cases from and after the Effective Date.

**1.69 Priority Non-Tax Claim:** Any Claim, other than an Administrative Expense and a Priority Tax Claim, to the extent entitled to priority under section 507(a) of the Bankruptcy Code.

**1.70 Priority Tax Claim:** A Claim that is entitled to priority under section 507(a)(8) of the Bankruptcy Code.

**1.71 Pro Rata:** This term means, at any time, the proportion that the face amount of a Claim in a particular Class (or particular Classes, if applicable) bears to the aggregate face amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) in such Class(es); and "face amount," as used herein, means (a) when used in reference to a Disputed Claim, the full stated liquidated amount claimed by the Holder of the Claim in any proof of Claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicably bankruptcy law; and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

**1.72 Pro Rata Class 3 / Class 4 Distribution Trigger Event:** This term has the meaning set forth in Section 3.2.3 of this Plan.

**1.73 Professional Fee Claim:** An Administrative Expense of a Professional Person for compensation for services rendered and reimbursement of costs, expenses or other charges incurred on or after the Petition Date and on or before the Effective Date.

**1.74 Professional Person:** Persons retained or to be compensated by the Debtors or their Estates pursuant to sections 326, 327, 328, 330, 363, 503(b), and/or 1103 of the Bankruptcy Code.



1 **1.75 Record Date:** The Effective Date or such other date that may be approved by the Bankruptcy  
2 Court.

3 **1.76 Released Debtor/Committee Parties:** Collectively, (i) the Debtors, (ii) the Estates, (iii) the  
4 Debtors' directors, officers, managers, and employees (as applicable) who served in such capacities  
5 during the Chapter 11 Cases or a portion thereof, (iv) the Debtor Retained Professionals, (v) the  
6 Committee and its members (solely in their respective capacity as members of the Committee), (vi) the  
7 Committee Retained Professionals, and (viii) the respective successors or assigns of the foregoing  
8 parties.

9 **1.77 Released Parties:** Collectively, (i) the Debtors' directors, officers, managers, and employees  
10 (as applicable) who served in such capacities during the Chapter 11 Cases or a portion thereof, (ii) the  
11 Debtor Retained Professionals, (iii) the Committee and its members (solely in their respective capacity  
12 as members of the Committee), (iv) the Committee Retained Professionals, and (vi) the respective  
13 successors or assigns of the foregoing parties.

14 **1.78 Releasing Creditor:** Each Holder of a Claim that votes to accept, or is deemed to accept, the  
15 Plan, other than any Holder of a Class 3 Claim that affirmatively elects on its Ballot to opt out of being  
16 a Releasing Creditor.

17 **1.79 Retained Rights of Action:** All Rights of Action belonging to any of the Debtors or the  
18 Estates as of the Effective Date, including, without limitation and as applicable, Avoidance Claims  
19 (including those disclosed in the Schedules), but excluding those Rights of Action specifically released  
20 under the Plan or the Confirmation Order. The Retained Rights of Action include, without limitation,  
21 (x) any and all rights of the Debtors or the Estates to pursue any Rights of Action against any third  
22 parties, whether or not pending and whether or not disclosed or referenced in the Schedules or in the  
23 Disclosure Statement; and (y) potential claims for tax refunds. As discussed in the Disclosure  
24 Statement, the Debtors and Liquidating Debtors do not anticipate prosecuting or otherwise pursuing  
25 any Avoidance Claims after the Effective Date.

26 **1.80 Rights of Action:** Any and all claims, demands, rights, defenses, actions, causes of action  
27 (including, without limitation and as applicable, Avoidance Claims), suits, contracts, agreements,  
28 obligations, accounts, defenses, offsets, powers and privileges, to the extent not otherwise previously  
waived, released, assigned, transferred or disposed of, of any kind or character whatsoever, known or  
unknown, suspected or unsuspected, whether arising prior to, on or after the Petition Date, in contract  
or in tort, at law or in equity, or under any other theory of law, held by any Person against any other  
Person, and any proceeds thereof, including but not limited to (1) rights of setoff, counterclaim or  
recoupment, and claims on contracts or for breaches of duties imposed by law; (2) the right to object  
to Claims or Interests; (3) claims pursuant to section 362 of the Bankruptcy Code; (4) such claims and  
defenses as fraud, negligence, breach of fiduciary duty, corporate waste, unlawful dividends, mistake,  
duress and usury; (5) all claims or rights under Bankruptcy Code sections 502, 509, 510, 542, 543,  
544, 545, 547, 548, 549, 550, 551, 552, 553, and 558, all fraudulent-conveyance, fraudulent-transfer,  
and voidable-transactions laws, all non-bankruptcy laws vesting in creditors' rights to avoid, rescind,  
or recover on account of transfers or obligations, all preference laws, the Uniform Fraudulent Transfer  
Act (as it may have been codified in any particular jurisdiction), the Uniform Fraudulent Conveyance  
Act (as it may have been codified in any particular jurisdiction), the Uniform Voidable Transactions  
Act (as it may have been codified in any particular jurisdiction), and all similar laws and statutes;  
(6) claims for tax refunds; and (7) any other claims which may be asserted against any of the Debtors'  
affiliates, insiders and/or any other third parties.

29 **1.81 Schedules:** The schedules of assets and liabilities and statement of financial affairs filed by  
30 each Debtor with the Bankruptcy Court pursuant to Bankruptcy Rule 1007, as they have been or may  
be amended from time to time.

31 **1.82 Secured Claim:** Any Claim of any Person (a) that is secured by a Lien on property in which

any of the Debtors or their Estates has an interest, which Lien is valid, perfected and enforceable and not subject to avoidance under applicable law or by reason of a Final Order but only to the extent of the value, as determined by the Bankruptcy Court pursuant to section 506(a) of the Bankruptcy Code, of any interest of the claimant in the property of any of the Estates securing such Claim or (b) to the extent that such Person has a valid and enforceable right of setoff under applicable non-bankruptcy law and section 553 of the Bankruptcy Code.

**1.83 Tax:** Any tax, charge, fee, levy, impost or other assessment by any federal, state, local or foreign taxing authority, including, without limitation, income, excise, property, sales, transfer, employment, payroll, franchise, profits, license, use, ad valorem, estimated, severance, stamp, occupation and withholding tax. "Tax" shall include any interest or additions attributable to, imposed on or with respect to such assessments.

**1.84 Timely Filed:** With respect to a Claim, that a proof of such Claim was filed within such applicable period of time fixed by the Plan, statute, or pursuant to both Bankruptcy Rule 3003(c)(3) and a Final Order (including the Bar Date Order), or has otherwise been deemed timely filed by a Final Order of the Bankruptcy Court.

**1.85 Unclaimed Property:** All Cash deemed to be "Unclaimed Property" pursuant to Article VII of the Plan.

**1.86 Unimpaired:** With respect to a Class of Claims or Interests, a Class of Claims or Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

**1.87 U.S. Trustee:** The Office of the United States Trustee.

**1.88 U.S. Trustee Fees:** Fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930.

## **ARTICLE II**

### **TREATMENT OF UNCLASSIFIED CLAIMS: ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

**2.1 Introduction.** As required by the Bankruptcy Code, Administrative Expenses and Priority Tax Claims are not placed into voting Classes. Instead, they are left unclassified, are not considered Impaired, do not vote on the Plan, and receive treatment specified by statute, order of the Bankruptcy Court or agreement of the parties. All postpetition payments or credits by or on behalf of the Debtors in respect of an Administrative Expense or Priority Tax Claim shall reduce the Allowed amount thereof.

**2.2 Administrative Expenses.** Except as otherwise provided for herein, and subject to the requirements of the Plan, on or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) thirty (30) calendar days following the date on which an Administrative Expense becomes an Allowed Administrative Expense, the Holder of such Allowed Administrative Expense shall receive, in full satisfaction, settlement, and release of and in exchange for such Allowed Administrative Expense, (a) Cash equal to the unpaid portion of such Allowed Administrative Expense or (b) such other less favorable treatment as to which such Holder and the Debtors or Liquidating Debtors shall have agreed upon in writing; *provided, however*, that Allowed Administrative Expenses with respect to liabilities incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements related thereto. Unless otherwise agreed by the Liquidating Debtors, (a) requests for payment of all Administrative Expenses must be Filed and served as described in Section 11.2 of the Plan, and (b) certain different and additional requirements shall apply to the Administrative Expenses of Professional Persons as set forth in Section 11.3 of the Plan. No interest or penalties of any nature shall be paid in respect of an Allowed Administrative Expense.

1 **2.3 Professional Fee Claims.** Professional Fee Claims shall be paid as set forth in Section 11.3  
2 of the Plan.

3 **2.4 Priority Tax Claims.** Pursuant to section 1123(a)(1) of the Bankruptcy Code, Priority Tax  
4 Claims are not classified. Thus, Holders of Priority Tax Claims are not entitled to vote to accept or  
5 reject the Plan. Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less  
6 favorable treatment, in exchange for full and final satisfaction, settlement, and release of each Allowed  
7 Priority Tax Claim, each Holder of an Allowed Priority Tax Claim due and payable on or before the  
8 Effective Date shall receive, on the later of (i) the Effective Date and (ii) thirty (30) calendar days  
9 following the date on which a Priority Tax Claim becomes an Allowed Priority Tax Claim, at the  
10 option of the Liquidating Debtors, one of the following treatments: (1) Cash in an amount equal to the  
11 amount of such Allowed Priority Tax Claim, plus interest at the rate determined under applicable non-  
bankruptcy law and to the extent provided for by section 511 of the Bankruptcy Code; or (2) such  
other treatment as may be agreed upon by such Holder and the Debtors or Liquidating Debtors or  
otherwise determined upon an order of the Bankruptcy Court. Any Allowed Priority Tax Claim (or  
portion thereof) not yet due and payable as of the Effective Date will be paid by the Liquidating  
Debtors no later than when due and payable under applicable non-bankruptcy law without regard to  
the commencement of the Chapter 11 Cases; provided that upon request of the Liquidating Debtors,  
the Bankruptcy Court shall determine the amount of any Disputed Priority Tax Claim. Any Holder of  
a Priority Tax Claim may agree to accept different treatment as to which the Liquidating Debtors and  
such Holder have agreed upon in writing.

12 **2.5 Statutory Fees.** All fees payable on or before the Effective Date pursuant to section 1930 of  
13 title 28 of the United States Code shall be paid by the Debtors on or before the Effective Date or as  
14 soon as practicable thereafter. From and after the Effective Date, the Liquidating Debtors shall pay  
15 the fees assessed against their respective Estates only until such time as the particular Chapter 11 Cases  
are closed, dismissed or converted. In addition, the Liquidating Debtors shall file post-confirmation  
quarterly reports in conformity with the U.S. Trustee guidelines until entry of an order closing or  
converting the Chapter 11 Cases.

### 16 **ARTICLE III**

## 17 **CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS**

18 **3.1 Summary.** The categories of Claims and Interests listed below classify Claims and Interests  
19 for all purposes, including voting, confirmation and distribution pursuant to the Plan and pursuant to  
20 sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Interest (or a portion thereof) is  
21 classified in a particular Class only to the extent that the Claim or Interest (or a portion thereof)  
22 qualifies within the description of that Class. A Claim or Interest (or a portion thereof) is also  
classified in a particular Class only to the extent that such Claim or Interest (or a portion thereof) is an  
Allowed Claim or Allowed Interest in that Class and has not been paid, released or otherwise satisfied  
prior to the Effective Date. Any postpetition payment by or on behalf of the Estates in respect of a  
Claim shall reduce the Allowed amount thereof.

## 23 **3.2 Classification and Treatment of Claims and Interests.**

### 24 **3.2.1 Class 1 – Priority Non-Tax Claims.**

25 (a) **Classification:** Class 1 consists of all Priority Non-Tax Claims.

26 (b) **Treatment:** At the election of the Liquidating Debtors, each Holder of a Priority Non-  
27 Tax Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Priority  
28 Non-Tax Claim, on or as soon as practicable after the later of (i) the Effective Date, or (ii) thirty (30)  
calendar days following the date on which such Priority Non-Tax Claim becomes an Allowed Priority  
Non-Tax Claim, (a) a Cash payment from the Liquidating Debtors equal to the Allowed amount of



such Claim, or (b) such other treatment as otherwise agreed by the Holder of such Claim and the Debtors or the Liquidating Debtors.

(c) Impairment/Voting: Class 1 Priority Non-Tax Claims are Unimpaired by the Plan, and Holders of such Class 1 Priority Non-Tax Claims are therefore conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, Holders of Class 1 Priority Non-Tax Claims are not entitled to vote to accept or reject the Plan.

### **3.2.2 Class 2 – Miscellaneous Secured Claims.**

(a) Classification: Class 2 consists of any Miscellaneous Secured Claims. Although all Miscellaneous Secured Claims have been placed in one Class for the purposes of nomenclature, each Miscellaneous Secured Claim, to the extent secured by a Lien on any property or interest in property of any of the Debtors different from that securing any other Miscellaneous Secured Claim, shall be treated as being in a separate sub-Class for purposes of voting and receiving distributions under the Plan.

(b) Treatment: Except to the extent that a Holder of an Allowed Miscellaneous Secured Claim has been paid by the Debtors, in whole or in part, prior to the Effective Date, on the later of (i) the Effective Date and (ii) thirty (30) calendar days following the date on which such Miscellaneous Secured Claim becomes an Allowed Miscellaneous Secured Claim, at the option of the Liquidating Debtors, in full and final satisfaction of such Miscellaneous Secured Claim, (i) each Allowed Miscellaneous Secured Claim shall be reinstated and Unimpaired in accordance with section 1124 of the Bankruptcy Code, or (ii) each Holder of an Allowed Miscellaneous Secured Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Miscellaneous Secured Claim, (x) payment in full in Cash of the unpaid portion of such Allowed Miscellaneous Secured Claim, (y) the collateral securing such Allowed Miscellaneous Secured Claim, or (z) such other treatment as may be agreed to by the Holder of such Claim and the Debtors or the Liquidating Debtors.

(c) Impairment/Voting: Class 2 Miscellaneous Secured Claims are Unimpaired by the Plan, and Holders of such Class 2 Miscellaneous Secured Claims are therefore conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, Holders of Class 2 Miscellaneous Secured Claims are not entitled to vote to accept or reject the Plan.

### **3.2.3 Class 3 – General Unsecured Claims.**

(a) Classification: Class 3 consists of all General Unsecured Claims.

(b) Treatment: Except to the extent that a Holder of an Allowed Class 3 General Unsecured Claim agrees to a less favorable treatment, in exchange for full and final satisfaction, settlement and release of the each Allowed Class 3 General Unsecured Claim, each Holder of an Allowed Class 3 General Unsecured Claim shall receive a Cash payment equal to its Pro Rata share of the Net Distributable Estate Assets on one or more dates (the “Class 3 Distribution Date(s)”) as soon as reasonably practicable after (i) all General Unsecured Claims have been Allowed, Disallowed or otherwise resolved and (ii) the payment of (or reserves for) all Allowed Administrative Expenses, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Miscellaneous Secured Claims and Plan Expenses (unless the holder of the applicable claim agrees to other less favorable treatment); *provided, however*, in the event that an aggregate of at least \$1,000,000 in Cash in Net Distributable Assets is or will be distributed, as Distributions under the Plan, to the Holders of Allowed Class 3 General Unsecured Claims on account of such Claims (the “Pro Rata Class 3 / Class 4 Distribution Trigger Event”), any and all Net Distributable Assets in excess of such \$1,000,000 Cash threshold (the “Excess Net Distributable Assets”) shall be distributed by the Liquidating Debtors to the Holders of Allowed Class 3 Claims and the PBGC (or other Holder of the Class 4 Claims), on account of their Class 3 and Class 4 Claims, respectively, on a Pro Rata basis as soon as reasonably practicable on the Class 3 Distribution Date(s); *provided further* that in the discretion of the Plan

1 Administrator, Allowed Class 3 General Unsecured Claims may receive Distributions before the  
2 reconciliation of all Disputed Class 3 General Unsecured Claims provided that (x) reserves are  
3 maintained for any Class 3 General Unsecured Claim that is Disputed at the time of such Distribution  
and (y) the Plan Administrator shall make a corrective Distribution following the resolution of any  
Disputed Claim within thirty (30) days of such resolution.

4 (c) Impairment/Voting: Class 3 General Unsecured Claims are Impaired under the Plan.  
5 Therefore, Holders of such Class 3 General Unsecured Claims are entitled to vote to accept or reject  
the Plan.

### 6 **3.2.4 Class 4 – PBGC Unsecured Claims.**

7 (a) Classification: Class 4 consists of all PBGC Unsecured Claims.

8 (b) Treatment: The Holder of the PBGC Unsecured Claims shall receive the treatment  
9 provided for the PBGC on account of the PBGC Unsecured Claims set forth in the PBGC Settlement.  
Specifically, pursuant to the PBGC Settlement, the PBGC has agreed to waive any right to receive  
10 Distributions under the Plan, on account of the PBGC Unsecured Claims, unless and until the Pro Rata  
Class 3 / Class 4 Distribution Trigger Event occurs or is otherwise satisfied; upon the occurrence of  
11 the Pro Rata Class 3 / Class 4 Distribution Trigger Event, the PBGC shall be entitled to share on a Pro  
Rata basis with the Holders of Allowed Class 3 Claims any Excess Net Distributable Assets. Nothing  
12 in the Plan is intended to or will modify the PBGC Settlement, and in the event of any discrepancy  
between the treatment noted above and the treatment provided for the PBGC under the PBGC  
Settlement, the terms of the PBGC Settlement govern.

13 (c) Impairment/Voting: Class 4 PBGC Unsecured Claims are Impaired under the Plan.  
14 Therefore, Holders of such Class 4 PBGC Unsecured Claims are entitled to vote to accept or reject the  
Plan.

### 15 **3.2.5 Class 5 – Interests in the Debtors.**

16 (a) Classification: Class 5 consists of all Interests.

17 (b) Treatment: Holders of Interests shall receive no distributions under the Plan, and on the  
18 Effective Date, all Interests shall be deemed void and of no force and effect.

19 (c) Impairment/Voting: Class 5 Interests are Impaired and Holders of such Class 5 Interests  
20 are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore,  
Holders of Class 5 Interests are not entitled to vote to accept or reject the Plan.

## 21 **ARTICLE IV**

### 22 **ACCEPTANCE OR REJECTION OF THE PLAN**

23 **4.1 Identification of Unimpaired Classes.** The following Classes of Claims are Unimpaired  
24 under the Plan:

25 (a) Class 1 – Priority Non-Tax Claims

26 (b) Class 2 – Miscellaneous Secured Claims

27 **4.2 Identification of Impaired Classes.** The following Classes of Claims and Interests are  
Impaired under the Plan:

28 (a) Class 3 – General Unsecured Claims

(b) Class 4 – PBGC Unsecured Claims

(c) Class 5 – Interests in the Debtors

**4.3 Classes Permitted and Not Permitted to Vote.** Classes 1 and 2 are Unimpaired. Holders of Claims in these Classes are conclusively presumed pursuant to section 1126(f) of the Bankruptcy Code to have accepted the Plan and therefore shall not be entitled to vote to accept or reject the Plan. Classes 3, 4 and 5 are Impaired. Holders of Claims in Class 3 and 4 are permitted to vote to accept or reject the Plan. Holders of Interests in Class 5 are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Plan Proponents reserve all rights with respect to all Claims and Interests classified by the Plan. An Impaired Class of Claims that votes shall have accepted the Plan if (a) the Holders of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (b) the Holders of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims.

**4.4 Effect of Non-Voting.** If no Holder of a Claim eligible to vote in a particular Class timely votes to accept or reject the Plan, the Plan Proponents may seek to have the Plan deemed accepted by the Holders of such Claims in such Class for purposes of section 1129 of the Bankruptcy Code.

**4.5 Nonconsensual Confirmation.** In the event any Class of Claims votes to reject the Plan and given the deemed rejection of the Plan by the Holders of Interests in Class 5, the Plan Proponents request that the Bankruptcy Court confirm the Plan notwithstanding such rejection pursuant to section 1129(b) of the Bankruptcy Code on the basis that the Plan is fair and equitable and does not discriminate unfairly as to the Holders of any Class of Claims or Interests.

**4.6 Postpetition Interest.** Nothing in the Plan or the Disclosure Statement shall be deemed to entitle the Holder of a Claim to receive postpetition interest on account of such Claim, except to the extent that the Holder of a Claim has the benefit of a Lien on assets the value of which exceeds the amount of such Claim or the Plan expressly provides for postpetition interest on account of such Claim.

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

**4.8 Special Provisions Regarding Insured Claims.**

(a) With respect to any Insured Claim, any party with rights against or under the applicable insurance policy may pursue such rights. Nothing herein shall constitute a waiver of any causes of action the Debtors or the Liquidating Debtors may hold against any Person, including the Debtors' insurance carriers; and nothing herein is intended to, shall, or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; *provided, however*, that the Debtors and the Liquidating Debtors do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

(b) The Plan shall not modify the scope of, or alter in any other way, the rights and obligations of the Debtors' insurers under their policies, and the Debtors' insurers shall retain any and all rights, claims and defenses to liability and/or coverage that such insurers may have, including the right to contest and/or litigate with any party the existence, primacy and/or scope of liability and/or

1 available coverage under any alleged applicable policy. The Plan shall not operate as a waiver of any  
2 other Claims the Debtors' insurers have asserted or may assert in any proof of claim, including, without  
3 limitation, any rights or defenses arising out of, or in the nature of, setoff or recoupment, or the Debtors'  
rights and defenses to such proofs of claim.

## 4 **ARTICLE V**

### 5 **MEANS FOR IMPLEMENTATION OF THE PLAN**

6 **5.1 Settlement of Intercompany Claims.** Upon the Effective Date, pursuant to section 1123(b)  
7 of the Bankruptcy Code and Bankruptcy Rule 9019, each Debtor and their successors and assigns  
8 hereby waive and release each other and all of their respective successors from any and all  
Intercompany Claims and Rights of Action among and between any or all of the Debtors, which waiver  
and release shall be effective as a bar to all actions, causes of action, suits, Claims, Liens, or demands  
of any kind with respect to any Intercompany Claim or Right of Action among or between any or all  
of the Debtors.

### 9 **5.2 Partial Substantive Consolidation.**

10 (a) In furtherance of the settlements contained in the Plan, the entry of the Confirmation  
11 Order shall constitute approval by the Bankruptcy Court, pursuant to sections 105(a) and 1123(a)(5)(C)  
12 of the Bankruptcy Code, as of the Effective Date, of the substantive consolidation of the Debtors and  
their respective Estates into the Estate of Debtor FCI, solely for purposes of voting and distributions  
under the Plan. Pursuant to the Confirmation Order, on and after the Effective Date, (i) all  
13 Distributable Assets to be used for distributions to Creditors of any of the Debtors will be treated as  
though they were merged into Liquidating Debtor FCI; and (ii) any obligation of any Debtor and all  
14 guarantees thereof executed by, or joint liability of, any of the Debtors will be treated as one obligation  
of Liquidating Debtor FCI for distribution purposes pursuant to this Plan.

15 (b) Notwithstanding the foregoing, the substantive consolidation of the Debtors for voting  
16 and distribution purposes shall not affect or impair (i) any rights, Claims, remedies or defenses of (or  
between) the separate Debtors as of the Petition Date, including with respect to any Retained Rights  
17 of Action; (ii) the legal and organizational structure of the Debtors; (iii) any Liens that are maintained,  
recognized, or preserved under the Plan; and (iv) claims under or with respect to any insurance policy  
18 of any Debtor (or any right to the proceeds of any such policy or policies).

19 (c) The Disclosure Statement and the Plan shall be deemed to be a motion by the Plan  
Proponents for substantive consolidation. Any objection by an affected Creditor to such consolidation  
20 shall be treated as an objection to Confirmation and shall be determined by the Bankruptcy Court in  
the context of considering Confirmation of the Plan.

21 (d) If the Bankruptcy Court determines that substantive consolidation of any given  
22 Debtor(s) is not appropriate, then the Plan Proponents may request that the Bankruptcy Court  
otherwise confirm the Plan and approve the treatment of and distributions to the different Classes  
23 under the Plan on an adjusted, Debtor-by-Debtor basis. Furthermore, the Plan Proponents reserve  
their rights to seek Confirmation of the Plan without implementing substantive consolidation of any  
24 given Debtor, and, in the Plan Proponents' discretion, to request that the Bankruptcy Court approve  
the treatment of and distributions to any given Class under the Plan on an adjusted, Debtor-by-Debtor  
25 basis.

26 (e) Notwithstanding the substantive consolidation called for herein, each and every Debtor  
shall remain responsible for the payment of U.S. Trustee fees pursuant to 28 U.S.C. § 1930 until its  
27 particular case is closed; provided, however, the Debtors or some of them may apply to close the cases  
of those Debtors following Confirmation.



### **5.3 Continued Corporate Existence and Vesting of Assets.**

(a) On and after the Effective Date, subject to the requirements of the Plan, the Liquidating Debtors will continue to exist as separate corporations or limited liability companies (as applicable) and shall retain all of the powers of corporations or limited liability companies (as applicable) under applicable non-bankruptcy law, and without prejudice to any right to amend their respective operating agreement, dissolve, merge or convert into another form of business entity, or to alter or terminate their existence. The existing stock, membership and/or other equity interests (as applicable) of the Debtors shall be deemed to be held through the Plan Administrator. Further, the Debtors' bylaws, operating agreements, and/or other corporate governance documents (as applicable) shall be deemed to include a provision prohibiting the issuance of nonvoting equity securities and such other provisions as may be required pursuant to section 1123(a)(6) of the Bankruptcy Code.

(b) Except as otherwise provided in the Plan, on and after the Effective Date, all Distributable Assets and property of the Debtors and their Estates, including any interests in subsidiaries and affiliates and any Retained Rights of Action of the Debtors, will vest in Liquidating Debtor FCI free and clear of all Claims, Liens, charges, other encumbrances and Interests. Neither the occurrence of the Effective Date, nor the effectiveness of this Plan, nor any provision of applicable non-bankruptcy law shall cause a dissolution of the Debtors, which shall be continued as corporations or limited liability companies (as applicable) following the Effective Date subject to the terms of the Plan.

(c) On and after the Effective Date, subject to the requirements of the Plan, the Liquidating Debtors shall be permitted to conduct their business (to the extent permitted by the Plan), reconcile Claims, use and dispose of assets, prosecute litigation, make required tax filings, and otherwise take any and all actions as may be appropriate to implement the Plan without supervision by the Bankruptcy Court and free of any restrictions under the Bankruptcy Code or the Bankruptcy Rules. The Liquidating Debtors shall be authorized, without limitation, to use and dispose of the Distributable Assets of the Debtors and their Estates, to investigate and pursue any Retained Rights of Action as the representative of the Debtors' Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, to acquire and dispose of other property, and to otherwise administer their affairs.

### **5.4 Corporate Action; Winding Up of Affairs.**

(a) On the Effective Date, the matters under the Plan involving or requiring, as applicable, corporate or limited liability company action of the members, managers, directors, or officers of the Debtors, including but not limited to actions requiring a vote or other approval of, as applicable, the board of managers or board of directors or any of the members or officers of the Debtors or the execution of any documentation incident to or in furtherance of the Plan, shall be deemed to have been authorized by the Confirmation Order and to have occurred and be in effect from and after the Effective Date, without any further action by the Bankruptcy Court or the members, managers, directors, or officers of the Debtors.

(b) Without limiting the generality of the foregoing, on the Effective Date and automatically and without further action, (i) any existing director, manager and officer of the Debtors will be deemed to have resigned on the Effective Date without any further corporate action, (ii) the Plan Administrator shall be deemed the sole manager, director, officer and representative of the Liquidating Debtors to exercise the rights, power and authority of the Liquidating Debtors under applicable provisions of this Plan and bankruptcy and non-bankruptcy law, and (iii) all matters provided under this Plan shall be deemed to be authorized and approved without further approval from the Bankruptcy Court. The Confirmation Order shall modify the Debtors' operating agreements, bylaws and any other corporate governance documents such that the provisions of this Plan can be effectuated. The Plan shall be administered by the Plan Administrator, and all actions taken thereunder in the name of the Liquidating Debtors shall be taken through the Plan Administrator. All corporate governance activities of the Liquidating Debtors shall be exercised by the Plan Administrator in his or

her discretion, subject to the terms of this Plan.

(c) Following the Confirmation Date, the Liquidating Debtors shall not engage in any business activities or take any actions, except those necessary or appropriate to (i) effectuate the Plan and (ii) dispose of their assets and wind up the affairs of the Debtors and their Estates as soon as reasonably practicable. On and after the Effective Date, the Plan Administrator may, in the name of the Liquidating Debtors, take such actions without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Plan Administrator may, without application to or approval of the Bankruptcy Court, pay, from the proceeds of Distributable Assets, the charges that he or she incurs after the Effective Date for professional fees and expenses that, but for the occurrence of the Effective Date, would constitute Allowed Administrative Expenses.

(d) From and after the Effective Date, (i) the Debtors, for all purposes, shall be deemed to have withdrawn their business operations from any state or territory in which they were previously conducting or are registered or licensed to conduct their business operations, and the Debtors shall not be required to file any document, pay any sum or take any other action, in order to effectuate such withdrawal, and (ii) the Debtors shall not be liable in any manner to any taxing authority for franchise, business, license or similar taxes accruing on or after the Effective Date.

(e) Pursuant to section 1146(c) of the Bankruptcy Code, any transfers effected pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment.

## **5.5 Plan Administrator.**

(a) On the Effective Date, the Plan Administrator shall begin acting for the Liquidating Debtors in the same fiduciary capacity as applicable to a board of directors of a Delaware corporation implementing such liquidation and wind-down as contemplated under this Plan, subject to the provisions hereof. The Plan Administrator shall serve in such capacity through the earlier of the date that all of the Debtors are dissolved in accordance with this Plan and the date such Plan Administrator resigns, is terminated or otherwise unable to serve; *provided, however*, that any successor Plan Administrator appointed pursuant to the Plan shall serve in such capacity after the effective date of such person's appointment as Plan Administrator.

(b) The qualifications and proposed compensation of and other disclosures regarding the Plan Administrator shall be set forth as part of the Plan Supplement; such compensation may be paid from the Liquidating Debtors' Cash on hand, without further notice or order of the Bankruptcy Court. Further, the Plan Administrator shall be entitled to reimbursement, from the Liquidating Debtors' Cash on hand, for his or her actual, reasonable, and necessary expenses incurred in connection with the performance of his or her duties, without the need for further notice or Bankruptcy Court approval. All distributions to be made to Creditors under the Plan shall be made by the Plan Administrator (or his or her designated agent). The Plan Administrator shall deposit and hold all Cash in trust for the benefit of Creditors (including Professional Persons) receiving distributions under the Plan. The duties and powers of the Plan Administrator shall include, without limitation, the following (without need of further Court approval):

(i) To exercise all power and authority that may be exercised, to commence all proceedings (including the power to continue any actions and proceedings that may have been commenced by the Debtors prior to the Effective Date) that may be commenced, and to take all actions that may be taken by any officer, director, or manager of the Liquidating Debtors with like effect as if authorized, exercised, and taken by unanimous action of such officers, directors, and managers, including consummating the Plan and all transfers thereunder on

1       behalf of the Liquidating Debtors;

2               (ii) To wind up the affairs of the Liquidating Debtors and any or all of their subsidiaries  
3       and affiliates and their Estates to the extent appropriate as expeditiously as reasonably possible;

4               (iii) To maintain all accounts, make distributions, and take other actions required under  
5       or consistent with the Plan, including the maintenance of appropriate reserves, in the name of  
6       the Liquidating Debtors;

7               (iv) To use, manage, sell, abandon, convert to Cash and/or otherwise dispose of the  
8       Distributable Assets for the purpose of liquidating or otherwise disposing of all remaining  
9       property of the Estates, making distributions and fully consummating this Plan;

10              (v) To take all steps necessary or appropriate to terminate the corporate existence of  
11       the Debtors consistent with this Plan;

12              (vi) To prosecute objections to Claims and Interests, and to compromise or settle any  
13       Claims or Interests (Disputed or otherwise);

14              (vii) To prosecute any and all Retained Rights of Action and compromise or settle any  
15       Retained Rights of Action; provided, however, the Plan Administrator will not, on behalf of  
16       the Debtors and Liquidating Debtors, prosecute or otherwise pursue any Avoidance Claims  
17       after the Effective Date;

18              (viii) To prepare and file tax returns to the extent required by law;

19              (ix) To employ and compensate any and all such professionals and agents as the Plan  
20       Administrator, in his or her sole discretion, deems appropriate to perform his or her duties  
21       under the Plan without further order of the Bankruptcy Court; and

22              (x) To take all other actions not inconsistent with the provisions of the Plan that the  
23       Plan Administrator deems reasonably necessary or desirable in connection with the  
24       administration of the Plan, including, without limitation, filing all motions, pleadings, reports,  
25       and other documents in connection with the administration and closing of the Chapter 11 Cases.

26       (c)     The Plan Administrator may be removed by the Bankruptcy Court upon application for  
27       good cause shown. In the event of the resignation, removal, death, or incapacity of the Plan  
28       Administrator, the Bankruptcy Court shall, upon motion or *sua sponte*, appoint another Person to  
29       become Plan Administrator, with notice thereof provided to the Post-Effective Date Service List. Any  
30       successor Plan Administrator, without any further act, shall become fully vested with all of the rights,  
31       powers, duties, and obligations of his or her predecessor.

32       **5.6     Source of Funding.** The source of all distributions and payments under this Plan will be the  
33       Distributable Assets and the proceeds thereof, including, without limitation, the Debtors' Cash on hand  
34       and proceeds from any sale or other disposition of the Debtors' remaining assets and prosecution of  
35       Retained Rights of Action.

36       **5.7     Retained Rights of Action.**

37       (a)     In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Debtors  
38       shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Retained  
39       Rights of Action, whether arising before or after the Petition Date, including any actions specifically  
40       enumerated in the Plan Supplement, and the Liquidating Debtors' rights to commence, prosecute, or  
41       settle such Retained Rights of Action shall be preserved notwithstanding the occurrence of the  
42       Effective Date. The Plan Administrator may pursue such Retained Rights of Action, as appropriate,

1 in accordance with the best interests of the Liquidating Debtors; provided, however, the Plan  
2 Administrator will not, on behalf of the Debtors and Liquidating Debtors, prosecute or otherwise  
3 pursue any Avoidance Claims after the Effective Date. **No Person may rely on the absence of a  
4 specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Retained  
5 Right of Action against it as any indication that the Debtors or Liquidating Debtors, as  
6 applicable, will not pursue any and all available Retained Rights of Action against it. The  
7 Debtors or Liquidating Debtors, as applicable, expressly reserve all rights to prosecute any and  
8 all Retained Rights of Action against any Person, except as otherwise expressly provided in the  
9 Plan.** Unless any Right of Action is expressly waived, relinquished, exculpated, released,  
10 compromised, or settled in the Plan or a Bankruptcy Court order, the Debtors and the Liquidating  
11 Debtors expressly reserve all Rights of Action for later adjudication, and, therefore, no preclusion  
12 doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion,  
13 estoppel (judicial, equitable, or otherwise), or laches shall apply to such Retained Rights of Action  
14 upon, after, or as a consequence of Confirmation or Consummation of the Plan.

15 (b) In accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Rights of  
16 Action shall vest in the Liquidating Debtors. The Liquidating Debtors shall have standing as the  
17 representative of the Debtors' Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to  
18 pursue, or decline to pursue, the Retained Rights of Action and objections to Claims, as appropriate,  
19 in the business judgment of the Plan Administrator. The Liquidating Debtors, acting through the Plan  
20 Administrator, may settle, release, sell, assign, otherwise transfer, or compromise Retained Rights of  
21 Action and/or objections to Claims without need for notice or order of the Bankruptcy Court.

22 **5.8 Interests in Non-Debtors Affiliates and Subsidiaries.** As of the Effective Date, except as  
23 expressly provided in the Plan or by separate order of the Bankruptcy Court, the Liquidating Debtors  
24 shall retain any stock or interests that they may hold in any non-Debtor affiliates or subsidiaries and  
25 retain any rights to which such stock or interests may be entitled under applicable law with respect to  
26 such shares or other interests. After the Effective Date, the Liquidating Debtors may sell, transfer,  
27 assign or otherwise dispose of such shares or interests as permitted by applicable law.

28 **5.9 Payment of Plan Expenses.** The Liquidating Debtors may pay all reasonable Plan Expenses  
without further notice to Creditors or Holders of Interests or approval of the Bankruptcy Court.

**5.10 Dissolution of Debtors; Final Decree.** Once the Plan Administrator determines that the Final  
Resolution Date has occurred as to any of the Liquidating Debtors, such Liquidating Debtors shall be  
dissolved for all purposes by the Plan Administrator without the necessity for any other or further  
actions to be taken by or on behalf of any Liquidating Debtors or payments to be made in connection  
therewith; *provided, however*, that, without the need of any further approval, the Plan Administrator  
in his or her discretion may execute and file documents and take all other actions as he or she deems  
appropriate relating to the dissolution of the Liquidating Debtors under the laws of Delaware and/or  
any other applicable states, and in such event, all applicable regulatory or governmental agencies shall  
take all steps necessary to allow and effect the prompt dissolution of the Liquidating Debtors as  
provided herein, without the payment of any fee, tax, or charge and without need for the filing of  
certificates. At any time following the Effective Date, the Plan Administrator, on behalf of the  
Liquidating Debtors, shall be authorized to move for the entry of a final decree closing any or all of  
the Chapter 11 Cases pursuant to section 350 of the Bankruptcy Code.

**5.11 Records.** The Liquidating Debtors and Plan Administrator shall maintain reasonably good  
and sufficient books and records of accounting relating to the Distributable Assets, the Liquidating  
Debtors' Cash, the management thereof, all transactions undertaken by such parties, all expenses  
incurred by or on behalf of the Liquidating Debtors and Plan Administrator, and all distributions  
contemplated or effectuated under this Plan. Upon the entry of a final decree closing the Chapter 11  
Cases, unless otherwise ordered by the Bankruptcy Court, the Liquidating Debtors and Plan  
Administrator may destroy or otherwise dispose of all records maintained by the Liquidating Debtors  
and/or Plan Administrator. Notwithstanding anything to the contrary, the Plan Administrator may,



upon notice to the Post-Effective Date Service List and without Bankruptcy Court approval, destroy any documents that he or she believes are no longer required to effectuate the terms and conditions of this Plan.

## **ARTICLE VI**

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

**6.1 Rejection of Executory Contracts and Unexpired Leases.** Except for any executory contracts or unexpired leases: (i) that previously were assumed, assumed and assigned, or rejected by an order of the Bankruptcy Court, pursuant to section 365 of the Bankruptcy Code; (ii) that are listed for assumption by the Debtors as of the Effective Date in a Plan Supplement to be filed and served on affected non-Debtor counterparties; (iii) as to which a motion for approval of the assumption or rejection of such contract or lease has been Filed and served prior to the Effective Date; (iv) that constitute contracts of insurance in favor of, or that benefit, the Debtors or the Estates; or (v) that were previously sold, conveyed or otherwise assigned pursuant to Final Order, each executory contract and unexpired lease entered into by the Debtors prior to the Petition Date that has not previously expired or terminated pursuant to its own terms shall be deemed rejected pursuant to section 365 of the Bankruptcy Code as of the Effective Date. Without limiting the foregoing, the indemnification obligations in favor of the Debtors' current directors, officers, managers, and representatives, to the extent not previously rejected, shall be assumed as of the Effective Date, and all other pre-Effective Date indemnification obligations of the Debtors shall be deemed rejected as of the Effective Date to the extent that such obligations are contained in executory contracts within the meaning of section 365 of the Bankruptcy Code, but only to the extent not inconsistent with any existing insurance obligations. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such assumptions or rejections, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date.

**6.2 Bar Date for Rejection Claims.** If the rejection of an executory contract or unexpired lease pursuant to the Plan or otherwise gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors or their Estates unless a proof of Claim is Filed and served on the Plan Administrator and its counsel within thirty (30) calendar days after the earlier of (a) the Effective Date and (b) service of a notice that the executory contract or unexpired lease has been rejected. All such Claims for which proofs of Claim are required to be Filed, if Allowed, will be, and will be treated as, General Unsecured Claims, subject to the provisions of the Plan.

## **ARTICLE VII**

### **DISTRIBUTIONS AND RELATED MATTERS**

**7.1 Dates of Distribution.** Whenever any payment or distribution to be made under the Plan shall be due on a day other than a Business Day, such payment or distribution shall instead be made, without interest, by the Liquidating Debtors (or their agent) on the immediately following Business Day.

**7.2 Cash Distributions.** Distributions of Cash may be made either by check drawn on a domestic bank or wire or ACH transfer from a domestic bank, at the option of the Liquidating Debtors, except that Cash payments made to foreign Creditors may be made in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

**7.3 Rounding of Payments.** Whenever payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent. To the extent Cash remains undistributed as a result of the rounding of such fraction to the nearest whole cent, such Cash shall be treated as "Unclaimed Property" under the Plan.

**7.4 Disputed Claims.** Notwithstanding all references in the Plan to Claims that are Allowed,

solely for the purpose of calculating (but not distributing) the amount or number of distributions to be made on account of Allowed Class 3 General Unsecured Claims under the Plan, such calculations may be made, in the Plan Administrator's sole discretion, as if each Disputed Claim were an Allowed Claim, except that if the Bankruptcy Court estimates the likely portion of a Disputed Claim to be Allowed or authorized or otherwise determines the amount or number which would constitute a sufficient reserve for a Disputed Claim (which estimates and determinations may be requested by the Liquidating Debtors), such amount or number as determined by the Bankruptcy Court may be used for calculations as to such Disputed Claim instead.

**7.5 Undeliverable and Unclaimed Distributions.** In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Plan Administrator has determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided, however*, that such distributions shall be deemed Unclaimed Property at the expiration of ninety (90) calendar days from the date of such attempted distribution. After such date, all Unclaimed Property shall revert to the Liquidating Debtors automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial, or state escheat, abandoned or unclaimed property laws to the contrary), and the Claim of any Holder to such property or Interest in property shall be forever barred. The Plan Administrator may implement reasonable attempts to reach any recipient of an undeliverable distribution prior to reverting such property to the Liquidating Debtors.

**7.6 Minimum Distributions.** Notwithstanding any other provision of the Plan, in the Plan Administrator's sole discretion, the Plan Administrator will not be required to make distributions of Cash less than \$25 in value, and each such Claim to which this limitation applies shall be deemed fully and finally satisfied and not entitled to any further payment or consideration pursuant to Article IX and its Holder is forever barred pursuant to Article IX from asserting that Claim or Claims against the Debtors, the Liquidating Debtors, their Estates, or their property.

**7.7 Compliance With Tax Requirements.**

(a) The Liquidating Debtors shall comply with all withholding and reporting requirements imposed by federal, state, or local taxing authorities in connection with making distributions pursuant to the Plan.

(b) In connection with each distribution with respect to which the filing of an information return (such as an IRS Form 1099 or 1042) or withholding is required, the Liquidating Debtors shall file such information return with the IRS and provide any required statements in connection therewith to the recipients of such distribution, or effect any such withholding and deposit all moneys so withheld to the extent required by law. With respect to any Person from whom a tax identification number, certified tax identification number or other tax information required by law to avoid withholding has not been received, the Liquidating Debtors may, in their sole option, withhold the amount required and distribute the balance to such Person or decline to make such distribution until the information is received.

**7.8 Record Date in Respect to Distributions.** Except as set forth below, the record date and time for the purpose of determining which Persons are entitled to receive any and all distributions on account of any Allowed Claims or Interests, irrespective of the date of or number of distributions, shall be the Record Date.

**ARTICLE VIII**

**LITIGATION, OBJECTIONS TO CLAIMS, AND DETERMINATION OF TAXES**

**8.1 Litigation.** Except as may be expressly provided otherwise in the Plan, the Liquidating

Debtors, through the Plan Administrator, shall be responsible for pursuing Retained Rights of Action, any objection to the allowance of any Claim, and the determination of tax issues and liabilities.

**8.2 Objections to Claims; Objection Deadline.** As of the Effective Date, the Liquidating Debtors shall be authorized to file objections, settle, compromise, withdraw or litigate to judgment objections to Claims. Any objection to a Claim shall be filed with the Bankruptcy Court and served on the Person holding such Claim within one hundred eighty (180) calendar days after the Effective Date (as may be extended pursuant to this section, the “Objection Deadline”), provided that the Liquidating Debtors may seek one or more extensions thereof subject to Bankruptcy Court approval and with notice only to parties that have requested such notice pursuant to Bankruptcy Rule 2002.

**8.3 Tax Determinations.** In addition to any other available remedies or procedures with respect to Tax issues or liabilities or rights to tax refunds, the Liquidating Debtors, at any time, may utilize (and receive the benefits of) section 505 of the Bankruptcy Code with respect to: (1) any tax issue or liability or right to a tax refund relating to an act or event occurring prior to the Effective Date; or (2) any tax liability or right to a tax refund arising prior to the Effective Date. If the Liquidating Debtors utilize section 505(b) of the Bankruptcy Code: (1) the Bankruptcy Court shall determine the amount of the subject Tax liability or right to a Tax refund in the event that the appropriate Governmental Unit timely determines a Tax to be due in excess of the amount indicated on the subject return; and (2) if the prerequisites are met for obtaining a discharge of Tax liability in accordance with section 505(b) of the Bankruptcy Code, the Liquidating Debtors shall be entitled to such discharge which shall apply to any and all Taxes relating to the period covered by such return.

**8.4 Temporary or Permanent Resolution of Disputed Claims.** The Liquidating Debtors may request that the Bankruptcy Court estimate any contingent or unliquidated Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, irrespective of whether any Person has previously objected to such Disputed Claim. The Bankruptcy Court will retain jurisdiction and power to estimate any contingent or unliquidated Disputed Claim at any time. If the Bankruptcy Court estimates any contingent or unliquidated Disputed Claim, that estimated amount will constitute either the Allowed amount of such Disputed Claim or a maximum limitation on such Disputed Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Disputed Claim, then the Liquidating Debtors may elect to pursue any supplemental proceedings to object to any ultimate payment on account of such Disputed Claim. In addition, the Liquidating Debtors may resolve or adjudicate any Disputed Claim in the manner in which the amount of such Claim or Interest and the rights of the Holder of such Claim or Interest would have been resolved or adjudicated if the Chapter 11 Cases had not been commenced. All of the aforementioned objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

**8.5 Setoffs.** The Liquidating Debtors may, but shall not be required to, setoff against any Claim, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim may be setoff against claims of any nature whatsoever that the Debtors or the Estates may have against the Holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Liquidating Debtors of any such claim that the Liquidating Debtors may have against such Holder, unless otherwise agreed to in writing by such Holder and the Liquidating Debtors.

## **ARTICLE IX**

### **INJUNCTIONS, EXCULPATION, RELEASES AND RELATED PROVISIONS**

#### **9.1 Injunctions.**

**9.1.1 Generally.** Unless otherwise provided in the Plan or the Confirmation Order, all injunctions and stays provided for in the Chapter 11 Cases pursuant to sections 105 and 362 of the Bankruptcy Code or otherwise in effect on the Confirmation Date, shall remain in full force and effect until the

Effective Date. From and after the Effective Date, all Persons are permanently enjoined from, and restrained against, commencing or continuing in any court any suit, action or other proceeding, or otherwise asserting any claim or interest, seeking to hold (i) the Liquidating Debtors or their Estates, or (ii) the property of the Debtors or their Estates, liable for any Claim, obligation, right, interest, debt or liability that has been released pursuant to the Plan.

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

**9.2 Exculpation.** As of and subject to the occurrence of the Effective Date, for good and valuable consideration, including the consideration provided under the Plan, the Exculpated Parties shall neither have nor incur any liability to any Person for any act taken or omitted to be taken, on or after the Petition Date, in connection with, or related to, the formulation, preparation, dissemination, implementation, administration, Confirmation or Consummation of the Plan or any contract, instrument, waiver, release or other agreement or document created or entered into, in connection with the Plan, or any other act taken or omitted to be taken in connection with the Chapter 11 Cases or the Debtors up to and including the Effective Date; *provided, however*, that the foregoing provisions of this subsection shall have no effect on the liability of any Person that results from any such act or omission that is determined in a Final Order to have constituted willful misconduct or actual fraud. For the avoidance of doubt, the scope of the exculpation provided under this Section 9.2 does not include any of the current or former members of the Debtors or any of the former directors, officers, managers and representatives of the Debtors who did not serve in such capacities during the Chapter 11 Cases or a portion thereof. Notwithstanding anything in the Plan to the contrary, no Person serving as Plan Administrator shall have or incur any personal liability as the manager, member, director or officer of the Debtors or Liquidating Debtors for any act taken or omission made in connection with the wind-up or dissolution of the Liquidating Debtors or any nondebtor subsidiary or affiliate; *provided, however*, that the foregoing shall have no effect on the liability of the Plan Administrator that results from any such act or omission that is determined in a Final Order to have constituted willful misconduct or actual fraud.

**9.3 Debtor Release.** As of and subject to the occurrence of the Effective Date, for good and valuable consideration, the Debtors, for themselves and the Estates, hereby irrevocably, unconditionally and generally release the Released Parties from any and all claims, obligations, rights, suits, damages, causes of action, and liabilities, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, in law or equity or otherwise, which the Debtors or their Estates ever had, now have or hereafter can, shall or may have against any of the Released Parties from the beginning of time to the Effective Date that in any way relate to the Debtors, their direct or indirect non-Debtor subsidiaries, the Estates, or the Chapter 11 Cases; *provided, however*, that the foregoing provisions of this subsection shall have no effect on the liability of any Person that results from any such act or omission that is determined in a Final Order to have constituted willful misconduct or actual fraud. For the avoidance of doubt, the scope of the release provided under this Section 9.3 does not include any of the current or former members of the Debtors or any of the former directors, officers, managers and representatives of the Debtors who did not serve in such capacities during the Chapter 11 Cases or a portion thereof.



1 **9.4 Consenting Creditor Release.** As of and subject to the occurrence of the Effective Date  
2 and except for the treatment provided in the Plan, for good and valuable consideration each  
3 Releasing Creditor, for itself and its respective present or former officers, directors, managers,  
4 shareholders, trustees, partners and partnerships, members, agents, employees, representatives,  
5 attorneys, accountants, professionals, and successors or assigns, in each case solely in their  
6 capacity as such, shall be deemed to have completely, conclusively, unconditionally and  
7 irrevocably released the Released Debtor/Committee Parties from any and all claims,  
8 obligations, rights, suits, damages, causes of action, and liabilities, whether known or unknown,  
9 foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured,  
10 in law or equity or otherwise, which the Releasing Creditor, the Debtors or their Estates ever  
11 had, now have or hereafter can, shall or may have against any of the Released Debtor/Committee  
12 Parties from the beginning of time to the Effective Date that in any way relate to the Debtors,  
13 their direct or indirect non-Debtor subsidiaries, the Estates, or the Chapter 11 Cases, *provided,*  
14 *however,* that the foregoing release does not affect or impair any obligations under any  
15 intercreditor agreements or any other agreements or arrangements between and among non-  
16 Debtor parties. For the avoidance of doubt, the Released Debtor/Committee Parties do not  
include any of the current or former non-Debtor members of the Debtors or any former  
directors, officers, managers and representatives of the Debtors who did not serve in such  
capacities during the Chapter 11 Cases or a portion thereof.

## 11 **ARTICLE X**

### 12 **RETENTION OF JURISDICTION AND POWER**

13 **10.1 Retention of Jurisdiction.** Notwithstanding the entry of the Confirmation Order or the  
14 occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction and power over the  
15 Chapter 11 Cases and any of the proceedings related to the Chapter 11 Cases pursuant to section 1142  
16 of the Bankruptcy Code and 28 U.S.C. § 1334 to the fullest extent permitted by applicable law,  
including, without limitation, such jurisdiction and power as appropriate to ensure that the purpose  
and intent of the Plan are carried out. Without limiting the generality of the foregoing, the Bankruptcy  
Court shall retain jurisdiction and power for the following purposes:

17 (a) establish the priority or secured or unsecured status of, allow, disallow, determine, liquidate,  
18 classify, or estimate any Claim or Interest (including, without limitation and by example only,  
19 determination of Tax issues or liabilities in accordance with section 505 of the Bankruptcy Code),  
20 resolve any objections to the allowance, priority, or secured or unsecured status of Claims or Interests,  
or resolve any dispute as to the treatment necessary to reinstate a Claim or Interest pursuant to the  
Plan, including but not limited to determining whether any Creditor has a valid lien against any of the  
Debtors' assets;

21 (b) grant or deny any applications for allowance of compensation or reimbursement of  
22 expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the  
Effective Date;

23 (c) resolve any matters related to the rejection of any executory contract or unexpired lease to  
24 which any of the Debtors is a party or with respect to which any of the Debtors may be liable, and to  
hear, determine and, if necessary, liquidate any Claims arising therefrom;

25 (d) ensure that distributions to Holders of Allowed Claims are made pursuant to the provisions  
26 of the Plan, and to effectuate performance of the provisions of the Plan;

27 (e) decide or resolve any motions, adversary proceedings, contested or litigated matters and  
28 any other matters and grant or deny any applications involving any of the Debtors that may be pending  
before the Effective Date or that may be commenced thereafter as provided in the Plan;

1 (f) enter such orders as may be necessary or appropriate to implement or consummate the  
2 provisions of the Plan and all contracts, instruments, releases, indentures and other agreements or  
3 documents created in connection with the Plan, the Disclosure Statement or the Confirmation Order,  
4 except as otherwise provided in the Confirmation Order or in the Plan, including, without limitation,  
5 any stay orders as may be appropriate in the event that the Confirmation Order is for any reason  
6 reversed, stayed, revoked, modified, supplemented or amended;

7 (g) resolve any cases, controversies, suits or disputes that may arise in connection with the  
8 consummation, interpretation or enforcement of the Plan, the Confirmation Order, or any other order  
9 of the Bankruptcy Court;

10 (h) subject to the restrictions on modifications provided in any contract, instrument, release,  
11 indenture or other agreement or document created in connection with the Plan, modify the Plan before  
12 or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or modify the Disclosure  
13 Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement  
14 or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;  
15 or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the  
16 Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture  
17 or other agreement or document created in connection with the Plan, the Disclosure Statement or the  
18 Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, to  
19 the extent authorized by the Bankruptcy Code;

20 (i) issue injunctions, enter and implement other orders or take such other actions as may be  
21 necessary or appropriate to restrain interference by any Person with the consummation,  
22 implementation or enforcement of the Plan or the Confirmation Order;

23 (j) consider and act on the compromise and settlement of any Claim or Retained Right of  
24 Action;

25 (k) decide or resolve any Retained Rights of Action;

26 (l) enter such orders as may be necessary or appropriate in connection with the recovery of the  
27 assets of the Liquidating Debtors wherever located;

28 (m) hear and decide any objections to Claims brought by the Liquidating Debtors or any other  
party in interest, to the extent authorized by the Plan;

(n) hear and decide any litigation, as applicable, brought by the Liquidating Debtors;

(o) hear and determine any motions or contested matters involving Priority Tax Claims or  
Taxes either arising prior (or for periods including times prior) to the Effective Date or relating to the  
administration of the Chapter 11 Cases, including, without limitation (i) matters involving federal,  
state, and local Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, (ii)  
matters concerning Tax refunds due for any period including times prior to the Effective Date, and (iii)  
any matters arising prior to the Effective Date affecting Tax attributes of any of the Debtors;

(p) determine such other matters as may be provided for in the Confirmation Order or as may  
from time to time be authorized under the provisions of the Bankruptcy Code or any other applicable  
law;

(q) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and  
rulings issued or entered in connection with the Chapter 11 Cases or the Plan, including any order  
approving any stipulation or settlement in the Chapter 11 Cases;

(r) remand to state court any claim, cause of action, or proceeding involving the Debtors that

was removed to federal court, in whole or in part in reliance upon 28 U.S.C. § 1334;

(s) determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, except as otherwise provided in the Plan;

(t) determine any other matter not inconsistent with the Bankruptcy Code; and

(u) enter an order or final decree concluding the Chapter 11 Cases.

**10.2 Failure of the Bankruptcy Court to Exercise Jurisdiction.** If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth immediately above, the provisions of this Article X shall have no effect on, and shall not control, limit, or prohibit the exercise of jurisdiction by any other court having competent jurisdiction with respect to, such matter.

## **ARTICLE XI**

### **MISCELLANEOUS PROVISIONS**

**11.1 Headings.** The headings used in the Plan are inserted for convenience only and neither constitute a portion of the Plan nor in any manner affect the construction of the provisions of the Plan.

**11.2 Bar Date for Administrative Expenses.** Requests for payment of all Administrative Expenses, other than for which a request and/or proof of Claim has previously been filed, must be Filed and served on the Liquidating Debtors and the U.S. Trustee by no later than thirty (30) calendar days after the Effective Date. The Liquidating Debtors shall have until the Objection Deadline to object to a Timely Filed request for payment of an Administrative Expense (as may be extended), *provided, that*, the Liquidating Debtors may seek extension(s) thereof subject to Bankruptcy Court approval and with notice only to parties that have requested such notice pursuant to Bankruptcy Rule 2002. Nothing in the Plan shall prohibit the Liquidating Debtors from paying Administrative Expenses in the ordinary course in accordance with applicable law during or after the Chapter 11 Cases.

**11.3 Professional Fee Claims.** Notwithstanding the foregoing provisions of this Article XI, but except as may be expressly provided in other sections of the Plan, Professional Persons requesting compensation or reimbursement of expenses incurred after the Petition Date and prior to the Effective Date must file and serve, on all parties entitled to notice thereof, a Fee Application for final allowance of compensation and reimbursement of expenses no later than thirty (30) calendar days after the Effective Date and any objections to such applications must be made in accordance with applicable rules of the Bankruptcy Court. Professional Fee Claims shall be paid in accordance with the terms of the order(s) authorizing such payments as promptly as possible on the Effective Date for any outstanding amounts due as of the Effective Date, and as soon as practicable thereafter as such obligation to pay becomes due unless otherwise agreed upon by the applicable Professional. From and after the Effective Date, the Liquidating Debtors shall in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of professionals thereafter incurred by the Liquidating Debtors.

**11.4 Non-Voting Equity Securities.** If and to the extent applicable, the Debtors shall comply with the provisions of section 1123(a)(6) of the Bankruptcy Code.

**11.5 Subordination Agreements.** Pursuant to section 510(a) of the Bankruptcy Code, to the extent

1 there is any subordination agreement in place between creditors that is enforceable under non-  
2 bankruptcy law, the Liquidating Debtors shall honor such subordination agreement and turn over any  
distributions required to be turned over pursuant to the terms of such agreements.

3 **11.6 Notices.** All notices and requests in connection with the Plan shall be in writing and shall be  
4 hand delivered or sent by mail, e-mail, or facsimile addressed to.

5 Plan Administrator:  
6 mailto:Brad Smith  
7 Glass Ratner  
8 555 W. 5<sup>th</sup> Street, Suite 3725  
9 Los Angeles, CA 90013  
10 Email: bsmith@glassratner.com

11 Debtors' Counsel:  
12 SHULMAN BASTIAN FRIEDMAN & BUI LLP  
13 Attn: Alan J. Friedman  
14 100 Spectrum Center Drive, Suite 600  
15 Irvine, California 92618  
16 Telephone: (949) 340-3400  
17 Facsimile: (949) 340-3000  
18 Email: afriedman@shulmanbastian.com

19 Committee Counsel:  
20 PACHULSKI STANG ZIEHL & JONES LLP  
21 Attn: Jeffrey W. Dulberg  
22 10100 Santa Monica Blvd., 13th Floor  
23 Los Angeles, CA 90067  
24 Telephone: (310) 277-6910  
25 Facsimile: (310) 201-0760  
26 Email: jdulberg@pszjlaw.com

27 All notices and requests to any Person of record holding any Claim or Interest shall be sent to such  
28 Person at the Person's last known address or to the last known address of the Person's attorney of  
record. Any such Person may designate in writing any other address for purposes of this section of  
the Plan, which designation will be effective on receipt.

29 **11.7 Successors and Assigns.** The rights, duties and obligations of any Person named or referred  
to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of  
such Person.

30 **11.8 Severability of Plan Provisions.** If, prior to Confirmation, any non-material term or provision  
of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court  
will have the power to alter and interpret such term or provision to make it valid or enforceable to the  
maximum extent practicable, consistent with the original purpose of the term or provision held to be  
invalid, void or unenforceable, and such term or provision will then be applicable as altered or  
interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms  
and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired  
or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a  
judicial determination that each term and provision of the Plan, as it may have been altered or  
interpreted in accordance with the foregoing, is valid and enforceable pursuant to their terms.



1 **11.9 No Waiver.** Neither the failure of the Debtors to list a Claim in the Debtors' Schedules, the  
2 failure of the Debtors to object to any Claim or Interest for purposes of voting, the failure of the  
3 Debtors to object to a Claim or Interest prior to Confirmation or the Effective Date, the failure of the  
4 Debtors to assert a Retained Right of Action prior to Confirmation or the Effective Date, the absence  
5 of a proof of Claim having been filed with respect to a Claim, nor any action or inaction of the Debtors  
6 or any other Person with respect to a Claim, Interest or Retained Right of Action other than a legally  
effective express waiver or release shall be deemed a waiver or release of the right of the Liquidating  
Debtors or their successors, before or after solicitation of votes on the Plan or before or after  
Confirmation or the Effective Date, to (a) object to or examine such Claim or Interest, in whole or in  
part or (b) retain and either assign or exclusively assert, pursue, prosecute, utilize, otherwise act or  
otherwise enforce any Rights of Action.

7 **11.10 Inconsistencies.** In the event the terms or provisions of the Plan are inconsistent with the terms  
8 and provisions of the exhibits to the Plan or documents executed in connection with the Plan, the terms  
9 of the Plan shall control; *provided, however*, that the Confirmation Order shall control and take  
precedence in the event of any inconsistency between the Confirmation Order, any provision of the  
Plan, and any of the foregoing documents.

10 **11.11 Plan Supplement.** No later than ten (10) calendar days prior to the deadline to vote on this  
11 Plan, the Plan Proponents shall File with the Bankruptcy Court the Plan Supplement, which shall  
12 contain such substantially final agreements, other documents and information as may be necessary or  
13 appropriate to effectuate and further evidence the terms and conditions of the Plan. Holders of Claims  
or Interests may obtain a copy of the Plan Supplement upon written request to the Debtors or the  
Committee.

14 **11.12 Preservation of Insurance.** The Debtors' release from and payment of Claims as provided in  
15 the Plan shall not diminish or impair the enforceability of any insurance policy that may cover or  
otherwise apply to or regarding any Claims, including, without limitation, any Claims on account of  
the Debtors' officers or managers.

16 **11.13 Waiver of Stay.** The Plan Proponents request as part of the Confirmation Order a waiver of  
17 the fourteen (14) day stay of Bankruptcy Rule 3020(e) and, to the extent applicable, a waiver of the  
fourteen (14) day stay of Bankruptcy Rule 6004(h).

18 **11.14 Choice of Law.** Except to the extent a rule of law or procedures is supplied by federal law  
19 (including but not limited to the Bankruptcy Code and the Bankruptcy Rules), this Plan shall be  
20 governed by, and construed in accordance with, the laws of the State of Delaware applicable to  
21 contracts executed in and to be performed in that State. Any applicable non-bankruptcy law that would  
22 prohibit, limit, or otherwise restrict implementation of the Plan based on (i) the commencement of the  
Chapter 11 Cases, (ii) the appointment of the Plan Administrator, (iii) the wind down of the Debtors,  
or (iv) any other act or action to be done pursuant to or contemplated by the Plan is superseded and  
rendered inoperative by the Plan and federal bankruptcy law.

23 **11.15 Modification or Withdrawal of Plan.**

24 (a) The Plan Proponents may jointly seek to amend or modify the Plan at any time prior to  
25 its Confirmation in the manner provided by section 1127 of the Bankruptcy Code or as otherwise  
26 permitted by law without additional disclosure pursuant to section 1125 of the Bankruptcy Code,  
except as the Bankruptcy Court may otherwise order, and except as otherwise set forth herein, the Plan  
Proponents reserve the right to jointly amend the terms of the Plan or waive any conditions to its  
Confirmation, effectiveness or consummation, if the Plan Proponents jointly determine that such  
amendments or waivers are necessary or desirable to confirm, effectuate or consummate the Plan.

27 (b) After Confirmation of the Plan, but prior to the Effective Date, the Plan Proponents  
28 may, pursuant to section 1127 of the Bankruptcy Code, seek to jointly modify the Plan. After the

Effective Date, the Liquidating Debtors may apply to the Bankruptcy Court to remedy defects or omissions in the Plan or to reconcile inconsistencies in the Plan.

(c) The Debtors and the Committee each reserve the right to revoke and withdraw the Plan at any time prior to the Effective Date, in which case the Plan will be deemed to be null and void. If either the Debtors or the Committee revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts or unexpired leases affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (iii) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests or Rights of Action of the Debtors or the Estates against any other Person; (b) prejudice in any manner the rights of the Debtors, the Estates, the Committee, or any other Person; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtors, the Estates, the Committee, or any other Person.

## **ARTICLE XII** **CONDITIONS TO EFFECTIVENESS**

**12.1 Conditions to Effectiveness.** The Plan will not be consummated and the Effective Date will not occur unless and until (A) the Confirmation Order is entered in a form acceptable to the Debtors and the Committee; (B) all documents to be provided in the Plan Supplement are in form and substance acceptable to the Debtors and the Committee; (C) the Confirmation Order shall be a Final Order; (D) the Debtors and the Committee determine in their respective reasonable business judgment that the Estates have sufficient Cash to pay all Allowed Administrative Expenses, Allowed Priority Tax Claims and Allowed Priority Non-Tax Claims, as of the Effective Date, to the extent the Holders thereof are entitled to payment as of such date under the Plan and unless otherwise agreed by such Holders, (E) the Debtors and the Committee determine in their respective reasonable business judgment that the Estates have sufficient Cash to pay all asserted, accrued, and estimated Administrative Expenses that have not yet been Allowed or are otherwise not yet payable as of the Effective Date but which such Administrative Expenses are anticipated to be later Allowed or otherwise payable and the Holders of any such Administrative Expenses have not agreed to alternative treatment; and (F) a reserve has been established for Professional Fee Claims reasonably estimated by Professional Persons to become due and owing on account of services provided on or before the Effective Date. Any of the foregoing conditions may be jointly waived by the Debtors and the Committee and such waiver shall not require any notice, Bankruptcy Court order, or any further action. In the event the foregoing conditions are not either satisfied or waived as provided herein, the Plan Proponents will seek to convert the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

## **ARTICLE XIII** **EFFECT OF CONFIRMATION**

**13.1 Binding Effect of Confirmation.** Confirmation will bind the Debtors, the Committee, all Holders of Claims or Interests and other parties in interest to the provisions of the Plan whether or not the Claim or Interest of such Holder is Impaired under the Plan and whether or not the Holder of such Claim or Interest has accepted the Plan.

**13.2 Good Faith.** Confirmation of the Plan shall constitute a conclusive determination that: (i) the Plan has been proposed in good faith and in compliance with applicable provisions of the Bankruptcy Code; and (ii) all Persons' solicitations of acceptances or rejections of the Plan and the offer, issuance, sale, or purchase of a security offered or sold under the Plan have been in good faith and in compliance with applicable provisions of the Bankruptcy Code and, in each case, that the Plan Proponents and their respective representatives have acted in good faith in connection therewith.

**13.3 No Limitations on Effect of Confirmation.** Nothing contained in the Plan will limit the effect of Confirmation as described in section 1141 of the Bankruptcy Code.

1 **ARTICLE XIV**

2 **CONFIRMATION REQUEST AND RECOMMENDATION**

3 **14.1 Request for Confirmation.** The Plan Proponents jointly request that the Bankruptcy Court  
4 confirm the Plan and that it do so, if applicable, pursuant to section 1129(b) of the Bankruptcy Code  
notwithstanding the rejection of the Plan by any Impaired Class.

5 **14.2 Recommendation for Confirmation.** The Plan Proponents believe that confirmation and  
6 implementation of the Plan are the best alternative under the circumstances and urge all Impaired  
Creditors entitled to vote on the Plan to vote in favor of and support Confirmation of the Plan.

7  
8 May 5, 2021



9  
10 Brad Smith  
CRO of Debtors and Debtors in Possession

11  
12 May \_\_\_\_, 2021

13  
14 \_\_\_\_\_  
Authorized Representative of  
Official Committee of Unsecured Creditors

15 Submitted by:

16 *Debtors' Counsel*

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21 -and-

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24 Jeffrey W. Dulberg (Bar No. 181200)  
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25 10100 Santa Monica Blvd., 13th Floor  
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26 Telephone: (310) 277-6910  
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jdulberg@pszjlaw.com  
28

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7  
8 May \_\_, 2021

9  
10 Brad Smith  
CRO of Debtors and Debtors in Possession

11 May 4, 2021

12  
13   
14 Authorized Representative of  
Official Committee of Unsecured Creditors

15 Submitted by:

16 *Debtors' Counsel*

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21 -and-

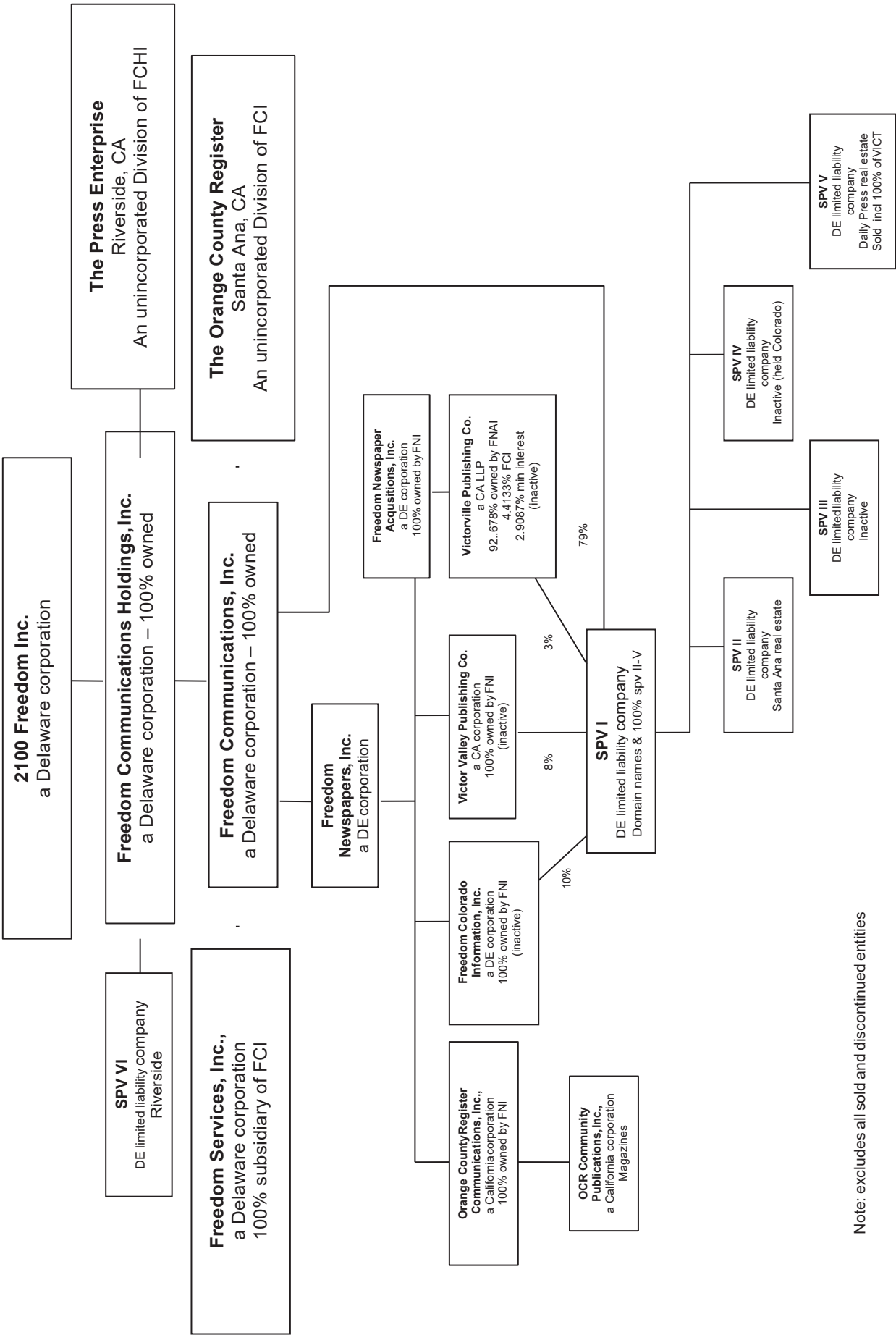
22 *Committee Counsel*

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**EXHIBIT B**  
**Organizational Chart**

FREEDOM ORGANIZATIONAL CHART



Note: excludes all sold and discontinued entities