

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

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In re:

Klausner Lumber Two LLC,<sup>1</sup>

Debtor.

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)  
) Chapter 11  
)  
) Case No. 20-11518 (KBO)  
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)  
)

**FIRST AMENDED DISCLOSURE STATEMENT PURSUANT TO SECTION 1125  
OF THE BANKRUPTCY CODE WITH RESPECT TO CHAPTER 11 PLAN  
FOR KLAUSNER LUMBER TWO LLC JOINTLY PROPOSED BY THE DEBTOR  
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

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Dated: January 18, 2022

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<sup>1</sup> The last four digits of the Debtor's federal EIN are 4897. The Debtor's mailing address is Klausner Lumber Two LLC, P.O. Box C, Redding Ridge, CT 06876.

**This Disclosure Statement and its related documents are the only documents authorized by the Bankruptcy Court to be used in connection with the solicitation of votes accepting the *Chapter 11 Plan for Klausner Lumber Two LLC Proposed Jointly by the Debtor and the Official Committee of Unsecured Creditors* described herein (as may be amended, modified, or supplemented, the “Plan”).<sup>1</sup> No representations have been authorized by the Bankruptcy Court concerning the Debtor, its business operations or the value of its assets, except as explicitly set forth in this Disclosure Statement.**

**This Disclosure Statement contains a summary of the Plan. This Disclosure Statement is qualified in its entirety by reference to the more detailed provisions set forth in the Plan (which is included as Exhibit A to this Disclosure Statement). In the event of a conflict between the Plan and the Disclosure Statement, the provisions of the Plan will govern. All Holders of Claims and Interests are encouraged to review the full text of the Plan and to read carefully this Disclosure Statement, including all exhibits annexed hereto, before deciding whether to vote to accept the Plan.**

**The statements contained in this Disclosure Statement are made as of the date hereof, and the delivery of this Disclosure Statement will not, under any circumstances, create any implication that the information contained herein is correct at any time after the date hereof.**

**Holders of Claims and Interests should not construe the contents of this Disclosure Statement as providing any legal, business, financial, or tax advice. Each such Holder should consult with his or her own legal, business, financial, and tax advisors as to any such matters concerning the Plan and the transactions contemplated thereby.**

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
A. General .....	1
B. Disclosure Statement Enclosures .....	1
II. SOME FREQUENTLY ASKED QUESTIONS .....	2
A. What is Chapter 11? .....	2
B. What is a Plan? .....	2
C. What is a Disclosure Statement? .....	2
D. How Does One Vote? .....	2
E. Confirmation Hearing .....	4
F. Recommendation .....	4
III. OVERVIEW OF THE PLAN .....	4
IV. BACKGROUND OF THE DEBTOR AND CERTAIN EVENTS PRECEDING THE FILING OF THE CHAPTER 11 CASE .....	7
A. Background of the Debtor .....	7
B. Events Leading to the Chapter 11 Filing .....	8
C. The Debtor's Officers and Directors .....	10
D. The Debtor's Corporate and Capital Structure .....	10
1. Corporate Structure .....	11
2. Corporate Ownership .....	11
3. Pre-Petition Capital Structure .....	11
V. EVENTS DURING THE CHAPTER 11 CASE .....	11
A. Commencement of the Chapter 11 Case .....	11
B. First-Day Relief .....	12
C. The Debtor's Retention of Professionals and Administrative Advisor / Claims and Noticing Agent .....	12
D. Appointment of Creditors' Committee and Creditors' Committee Professionals .....	13

E.	The Debtor’s Motion to Sell or Abandon Miscellaneous Assets.....	14
F.	The Debtor’s Motions (i) for Approval of Its Settlement With the County, and (ii) to Obtain DIP Financing .....	14
G.	Other Key Settlements .....	16
H.	Marketing and Sale of Substantially all of the Debtor’s Assets to Binderholz.....	17
I.	Creditors’ Committee Investigations .....	18
J.	Creditors’ Committee Complaint against Carolina Sawmills.....	19
K.	Schedules of Assets and Liabilities and Statement of Financial Affairs, Claims Bar Date and Claims Objections .....	20
L.	Exclusivity Extension Motions .....	22
M.	WARN Act Litigation, Mediation and Settlement .....	23
N.	Additional Objections By Carolina Sawmills.....	24
VI.	SUMMARY OF THE PLAN .....	24
A.	Description, Classification and Treatment of Claims and Interests.....	24
1.	Unclassified Administrative Expense Claims.....	24
a.	Professional Fee Claims.....	25
2.	Priority Tax Claims.....	25
3.	Class 1 – CS Secured Claims.....	26
4.	Class 2 – Priority Claims .....	26
5.	Class 3 – WARN Act Class Settlement Claims.....	26
6.	Class 4 – CS Deficiency/Unsecured Claims .....	27
7.	Class 5 - General Unsecured Claims .....	27
8.	Class 6 – Klausner Group Unsecured Claims.....	27
9.	Class 7 – Subordinated Claims .....	28
10.	Class 8 – Interests .....	28
B.	Special Provision Governing Unimpaired Claims.....	28
C.	Confirmation Pursuant to Section 1129(a)(10) of the Bankruptcy Code .....	28
D.	Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code (“Cram Down”).....	29

E.	Elimination of Vacant Classes .....	29
F.	Voting Classes; Presumed Acceptance by Non-Voting Classes.....	29
G.	Subordinated Claims and Interests.....	29
H.	Implementation of the Plan .....	29
1.	Cancellation of Notes, Instruments, Certificates, and Other Documents .....	29
2.	Exemption from Certain Taxes and Fees.....	29
3.	Effectuation of the Plan .....	29
a.	Establishment of the Segregated Account .....	30
b.	Sources of Consideration for Plan Distributions .....	30
c.	Liquidating Trust & Vesting of Assets .....	30
d.	Dissolution and Board of Directors .....	30
e.	Corporate Action.....	31
VII.	THE LIQUIDATING TRUST .....	31
A.	Liquidating Trust .....	31
B.	Purpose of the Liquidating Trust .....	31
C.	Liquidating Trust Assets .....	32
D.	The Liquidating Trustee.....	32
E.	Beneficiaries of the Liquidating Trust.....	33
F.	Vesting and Transfer of Liquidating Trust Assets to the Liquidating Trust .....	33
G.	Liquidating Trust Expenses .....	33
H.	Role of the Liquidating Trustee.....	33
I.	Prosecution and Resolution of Causes of Action .....	35
J.	Federal Income Tax Treatment of the Liquidating Trust for the Liquidating Trust Assets.....	35
K.	Indemnification .....	36
L.	Term of the Liquidating Trust.....	37
M.	Retention of Professionals by the Liquidating Trust .....	37
N.	Conflicts Between the Liquidating Trust Agreement and the Plan .....	37

O.	Wind Down .....	37
VIII.	PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS .....	38
A.	Allowance of Claims.....	38
B.	Claims Administration Responsibilities .....	38
C.	Estimation of Claims.....	39
D.	Disputed Claims.....	39
E.	Adjustment to Claims Without Objection.....	39
F.	Time to File Objections to Claims .....	39
G.	Disallowance of Claims .....	39
H.	Amendments to Claims .....	40
I.	No Distributions Pending Allowance .....	40
J.	Distributions After Allowance .....	40
IX.	DISTRIBUTIONS UNDER THE PLAN .....	40
A.	Timing and Calculation of Amounts to Be Distributed .....	40
B.	Liquidating Trustee .....	41
C.	Delivery of Distributions and Undeliverable or Unclaimed Distributions .....	41
1.	Record Date for Distributions .....	41
2.	Delivery of Distributions .....	41
3.	Distribution .....	41
4.	Minimum Distributions.....	42
5.	Undeliverable Distributions and Unclaimed Property .....	42
D.	Manner of Payment.....	42
E.	Compliance with Tax and Other Legal Requirements.....	42
F.	Allocations .....	43
G.	No Post-petition Interest on Claims .....	43
H.	Setoffs and Recoupment .....	43
I.	Claims Paid or Payable by Third Parties .....	43
1.	Claims Paid by Third Parties .....	43

2.	Claims Payable by Third Parties .....	43
3.	Applicability of Insurance Policies .....	44
4.	Provisions Regarding Vesting of Insurance Policies in Liquidating Trust .....	44
X. UNEXPIRED LEASES AND EXECUTORY CONTRACTS.....		44
A.	Rejection of Executory Contracts and Unexpired Leases.....	44
B.	Claims Based on Rejection of Executory Contracts or Unexpired Leases .....	44
C.	Indemnification Obligations .....	45
D.	Director and Officer Liability Insurance.....	45
XI. RETENTION OF JURISDICTION.....		45
XII. CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN .....		47
A.	Conditions Precedent to Confirmation.....	47
B.	Conditions Precedent to the Effective Date .....	48
C.	Waiver of Conditions .....	48
D.	Substantial Consummation .....	48
E.	Effect of Nonoccurrence of Conditions to the Effective Date .....	48
XIII. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN .....		49
A.	Modification and Amendments.....	49
B.	Effect of Confirmation on Modifications .....	49
C.	Revocation or Withdrawal of the Plan.....	49
XIV. RELEASE, INJUNCTION, EXCULPATION AND RELATED PROVISIONS.....		49
A.	Term of Injunctions or Stays.....	49
B.	Release of Liens .....	50
C.	Release by the Debtor .....	50
D.	Release by Holders of Claims or Interests .....	51
E.	Exculpation .....	52
F.	Injunction .....	52
G.	Protection Against Discriminatory Treatment .....	53

H.	Setoffs .....	53
I.	Subordination Rights .....	53
XV.	MISCELLANEOUS PROVISIONS .....	53
A.	Immediate Binding Effect.....	53
B.	Additional Documents .....	54
C.	Dissolution of the Creditors' Committee.....	54
D.	Reservation of Rights.....	54
E.	Successors and Assigns.....	54
F.	Service of Documents .....	54
G.	Entire Agreement .....	56
H.	Exhibits .....	56
I.	Non-severability of Plan Provisions .....	56
J.	Votes Solicited in Good Faith.....	56
K.	Waiver or Estoppel .....	56
XVI.	VOTING REQUIREMENTS, ACCEPTANCE AND CONFIRMATION OF THE PLAN .....	57
A.	Parties in Interest Entitled to Vote .....	57
B.	Classes Impaired Under the Plan .....	57
C.	Voting Procedures and Requirements.....	57
1.	Ballots .....	57
2.	Returning Ballots .....	58
D.	Confirmation Hearing .....	59
E.	Confirmation .....	59
F.	Acceptance of the Plan.....	59
1.	No Unfair Discrimination.	
2.	Fair and Equitable Test.	
G.	Best Interests Test and Liquidation Analysis.....	60
H.	Feasibility.....	61
I.	The Liquidating Trust .....	62



J.	Compliance with the Applicable Provisions of the Bankruptcy Code .....	63
K.	Additional Disclosures Concerning the Releases Under Article IX of the Plan .....	63
L.	Additional Disclosures Concerning Indemnification Obligations Under the Plan .....	63
XVII. RISK FACTORS .....		63
A.	Certain Bankruptcy Considerations .....	64
1.	Parties in Interest May Object to the Debtor’s Classification of Claims .....	64
2.	The Debtor May Not be Able to Secure Confirmation of the Plan .....	64
3.	The Confirmation and Consummation of the Plan Are Also Subject to Certain Conditions as Described in the Plan .....	64
4.	The Debtor May Object to the Amount or Classification of a Claim or Interest .....	64
B.	Risks Relating to the Administration of the Liquidating Trust.....	65
1.	Post-Confirmation Operations .....	65
C.	Risks Relating to the Allowance of Certain Claims under the Plan .....	65
D.	Risks Relating to the Tax Consequences of the Plan.....	65
XVII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN.....		66
A.	Federal Income Tax Consequences to U.S. Holders of Claims and Interests.....	67
B.	Federal Income Tax Consequences to the Debtor .....	68
C.	Federal Income Tax Consequences to Beneficiaries of the Liquidating Trust. ....	69
D.	Withholding on Distribution and Information Reporting .....	70
E.	Importance of Obtaining Professional Tax Assistance.....	71
XVIII. RECOMMENDATION .....		72
XIX. CONCLUSION.....		73

## I. INTRODUCTION

### A. General

On June 10, 2020 (the “Petition Date”), Klausner Lumber Two LLC (“KL2” or the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

The Debtor and the Official Committee of Unsecured Creditors in the Chapter 11 Case (the “Creditors’ Committee”, and together with the Debtor, the “Proponents”), jointly submit this *First Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code with Respect to Chapter 11 Plan for Klausner Lumber Two LLC Jointly Proposed by the Debtor and the Official Committee of Unsecured Creditors*, dated January 18, 2022 (as the same may be amended, supplemented or modified the “Disclosure Statement”), pursuant to section 1125 of the Bankruptcy Code, in connection with the solicitation of acceptances or rejections of the *First Amended Chapter 11 Plan for Klausner Lumber Two LLC Proposed Jointly by the Debtor and the Official Committee of Unsecured Creditors*, dated January 14, 2022 (as the same may be amended, supplemented or modified, the “Plan”) from certain Holders of Claims against the Debtor. A copy of the Plan is annexed hereto as Exhibit A. All capitalized terms used in this Disclosure Statement that are not otherwise defined herein have the meanings ascribed to them in the Plan, which is incorporated by reference into this Disclosure Statement.

The Proponents urge all voting creditors, all equity holders, and all other parties in interest to read this Disclosure Statement and the Plan carefully. This Disclosure Statement does not include a description of each and every term of the Plan. Accordingly, the description of the Plan set forth herein is qualified in its entirety by the terms of the Plan.

### B. Disclosure Statement Enclosures

Accompanying this Disclosure Statement are copies of:

1. The Plan.
2. A notice (the “Confirmation Hearing Notice”), including, among other things: (a) notice of the filing of the Disclosure Statement and Plan, and of approval of the Disclosure Statement; (b) the deadline for the submission of Ballots to vote to accept or reject the Plan (the “Voting Deadline”); (c) the deadline for filing a motion pursuant to Bankruptcy Rule 3018(a); (d) the deadline for objecting to confirmation of the Plan and information on how to object to Confirmation of the Plan; (e) the time, date, and place of the Confirmation Hearing; (f) information on releases and how to opt in to the releases; and (g) instructions on how to obtain copies of the Disclosure Statement and the Plan.
3. The *Order (I) Approving the Disclosure Statement, (II) Establishing Procedures for the Solicitation and Tabulation of Votes to Accept or Reject the Plan Jointly Proposed by the Debtor and the Official Committee of Unsecured Creditors, (III) Approving the Form of Ballot and Solicitation Materials, (IV) Establishing the Voting Record Date, (V) Fixing the Date, Time, and Place for the Confirmation Hearing and the Deadline for Filing Objections Thereto, and (VI) Approving Related Notice Procedures* [D.I. 1173] (the “Disclosure Statement Order”).
4. A Ballot, with a preaddressed, postage-prepaid return envelope for creditors who may be entitled to vote to accept or reject the Plan.

## II. SOME FREQUENTLY ASKED QUESTIONS

### A. What is Chapter 11?

Chapter 11 is a chapter of the Bankruptcy Code permitting debtors a period of time in which to organize their affairs and to review their assets and obligations in order to reorganize or liquidate their businesses. The Debtor commenced its Chapter 11 Case on the Petition Date (June 10, 2020) by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court.

The commencement of the Chapter 11 Case triggered the application of the “automatic stay” under section 362 of the Bankruptcy Code. The automatic stay halts, with certain exceptions, nearly all attempts to collect prepetition claims from debtors or otherwise interfere with debtors’ property.

### B. What is a Plan?

A primary purpose of a chapter 11 case is to permit the formulation of a plan of reorganization or liquidation. An orderly liquidation provides for the distribution to creditors (and sometimes, equity holders) of the value achieved through the liquidation of a debtor’s assets. The Plan proposed by the Proponents provides that the Debtor’s orderly liquidation will be accomplished principally through the elimination of all existing equity interests, and the distribution of cash to the Debtor’s creditors as set forth below and in the Plan.

The Plan proposed by the Proponents further provides, among other things, that after Confirmation and Consummation of the Plan, a Liquidating Trustee will be appointed to administer the Debtor’s liquidation and to oversee distributions to creditors.

### C. What is a Disclosure Statement?

After a plan has been proposed, the holders of claims against, or equity interests in, the debtor that are impaired by the terms of the plan and who are to receive distributions under the plan are entitled to vote on whether to accept or reject the plan. Section 1125 of the Bankruptcy Code requires the disclosure of “adequate information” to all such voting creditors and equity holders by way of a court-approved “disclosure statement” before a debtor (or anyone else) may solicit any votes on a plan. The Bankruptcy Code provides that a disclosure statement must contain “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.” Following a hearing held on January 18, 2022, this Disclosure Statement was approved by the Bankruptcy Court as containing “adequate information” in accordance with section 1125 of the Bankruptcy Code.

The Debtor presents this Disclosure Statement to the voting Holders of Allowed Claims against the Debtor in order to satisfy the disclosure requirements of the Bankruptcy Code by providing each voting Holder of an Allowed Claim with sufficient information to make an informed decision whether to accept or reject the Plan.

### D. How Does One Vote?

<p style="text-align: center;"><b>THIS DISCUSSION OF THE SOLICITATION AND VOTING PROCESS IS ONLY A SUMMARY. PLEASE REFER TO THE DISCLOSURE STATEMENT ORDER ENCLOSED HEREWITH FOR A MORE COMPREHENSIVE DESCRIPTION OF THE SOLICITATION AND VOTING PROCESS.</b></p>
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To vote on the Plan, a Holder of an Allowed Claim in a Class that is entitled to vote on the Plan must complete the Ballot (enclosed with this Disclosure Statement) and comply with the voting instructions outlined in Section VII of this Disclosure Statement.

Pursuant to the Bankruptcy Code, only Classes of Claims and Interests that are “impaired” under the Plan may vote to accept or reject the Plan. Generally, a claim or interest is impaired under a plan if the holder’s legal, equitable, or contractual rights are changed under such plan. Holders of claims or interests that are not impaired are presumed to accept the plan. Holders of claims or interests in an impaired class that are not going to receive or retain any property under a plan on account of such claims or interests are deemed to have rejected the plan. The Bankruptcy Code defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the claims that cast ballots for acceptance or rejection of the plan.

Under the Plan, Claims in Classes 3, 4, 5, 6 and 7 are impaired.

Under the Plan, Holders of Interests in Class 8 will receive no distribution and, accordingly, such Holders are deemed to reject the Plan. Therefore, their votes are not being solicited.

Under the Plan, Claims in Classes 1 and 2 are Unimpaired, and, therefore, the Holders of Claims in Classes 1 and 2 are presumed to have accepted the Plan. Accordingly, a ballot to accept or reject the Plan is being provided only to Holders of Claims in Classes 3, 4, 5, 6 and 7.

For a summary of the treatment of each Class of Claims and Interests, see the section captioned “Overview of the Plan,” below.

This Disclosure Statement, along with a Ballot or Ballots used for voting on the Plan, is being distributed to the Holders of Claims that may be entitled to vote to accept or reject the Plan.

The Bankruptcy Court has fixed the date of the Disclosure Statement Hearing as the “Voting Record Date.” Only Persons who hold Claims in Classes 3, 4, 5, 6 and 7 on the Voting Record Date are entitled to vote whether to accept the Plan.

Pursuant to section 502 of the Bankruptcy Code and Bankruptcy Rule 3018, the Bankruptcy Court may temporarily allow a Claim for voting or other purposes. Pursuant to the Disclosure Statement Order, voting tabulation procedures have been established, which include rules providing for the temporary allowance or disallowance of certain Claims for voting purposes only. These voting procedures, including the tabulation rules, are described in the solicitation materials provided with your Ballot.

**The Ballots have been specifically designed for the purpose of soliciting votes on the Plan from Holders of Claims within Classes 3, 4, 5, 6 and 7 who are entitled to a vote with respect thereto. Accordingly, in voting on the Plan, please use only the Ballot sent to you with this Disclosure Statement. To be counted, please complete and sign your Ballot, and submit it so as to be received by 5:00 p.m. (Prevailing Eastern Time), on February 21, 2022, using one of the following methods:**

**If by Mail or Hand Delivery:**

**Klausner Lumber Two LLC Ballot Processing Center  
c/o Donlin, Recano & Company, Inc.  
6201 15<sup>th</sup> Avenue  
Brooklyn, NY 11219**

**If by Electronic, Online Submission via the Online Portal:**

<https://www.donlinrecano.com/Clients/k2/vote>. Please make sure to follow the instructions on the Online Portal to submit your Ballot.

**IMPORTANT NOTE:** You will need the following information to retrieve and submit your customized electronic Ballot:

Unique E-Ballot ID#: \_\_\_\_\_

The Online Portal is the sole manner in which Ballots will be accepted via electronic or online transmission. Ballots submitted by facsimile, email or other means of electronic transmission will not be counted. Ballots should not be sent to the Debtor or the Bankruptcy Court.

**ANY BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED, NOR WILL ANY BALLOTS RECEIVED BY TELECOPY, FACSIMILE, OR EMAIL BE ACCEPTED, EXCEPT AS OTHERWISE PERMITTED BY THE TABULATION RULES.** Following the Voting Deadline, the Notice and Claims Agent will prepare and file with the Bankruptcy Court a certification of the results of the balloting with respect to the Plan.

If you have any questions regarding the Ballot, did not receive a return envelope with your Ballot, did not receive an electronic copy of the Disclosure Statement and the Plan, or need physical copies of the Ballot or other enclosed materials, please contact the Debtor's solicitation and claims agent, Donlin Recano & Company, Inc. ("DRC"), by email at [klausnerinfo@donlinrecano.com](mailto:klausnerinfo@donlinrecano.com) with a reference to "Klausner Lumber Two" in the subject line, or via telephone at (800) 903-3727 (toll-free) or (212) 481-1411 for international callers and request to speak with a member of the solicitation team.

**E. Confirmation Hearing**

The Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan for March 8, 2022 at 10:00 a.m. (Prevailing Eastern Time), in the United States Bankruptcy Court, 824 N. Market St., Wilmington, DE 19801 (the "Confirmation Hearing"). The Bankruptcy Court has directed that objections, if any, to Confirmation of the Plan be served and filed on or before February 21, 2022 at 4:00 p.m. (ET), in the manner described in the Confirmation Hearing Notice accompanying this Disclosure Statement. The date of the Confirmation Hearing may be adjourned from time to time without further notice except for an in-court announcement at the Confirmation Hearing of the date and time as to which the Confirmation Hearing has been adjourned.

**F. Recommendation**

**The Debtor and the Creditors' Committee Believe that the Plan Provides the Greatest Possible Recovery to Creditors.**

**The Debtor and the Creditors' Committee Urge All Creditors who are Entitled to Vote, to Vote in Favor of the Plan.**

**III.  
OVERVIEW OF THE PLAN**

The following is a brief summary of the treatment of Claims and Interests under the Plan. The description of the Plan set forth below constitutes a summary only. Creditors and other parties in interest are urged to review the more detailed description of the Plan contained in this Disclosure Statement and the Plan itself, which is annexed as Exhibit A to this Disclosure Statement.

Set forth below is a table summarizing the classification and treatment of Claims and Interests under the Plan and the estimated distributions to be received by the Holders of such Claims and Interests thereunder (the “Distribution Summary”). Actual distributions may differ from the estimates set forth in the Distribution Summary depending upon, among other things, variations in the amounts of Allowed Claims and the existence and disposition of Disputed Claims. As discussed more fully below and in the Plan, each Holder of an Allowed Unsecured Claim<sup>1</sup> shall receive its Pro Rata Share of the Net Distribution Proceeds in accordance with the treatment provided for such Class in the Plan and described below.

#### **SUMMARY OF ESTIMATED DISTRIBUTIONS UNDER THE PLAN[1]**

<b>Description/Class</b>	<b>Treatment under the Plan</b>	<b>Estimated Allowed Amounts[2]</b>	<b>Estimated Recovery</b>	<b>Impaired</b>
Class 1 – CS Secured Claims	Each Holder of an Allowed CS Secured Claim shall receive on account of such Claim at the Liquidating Trustee’s exclusive election, except to the extent that any Holder of an Allowed CS Secured Claim agrees to less favorable treatment therefor, either: (i) Cash equal to the amount of such Allowed S Secured Claim; (ii) the property that serves as security for such Allowed CS Secured Claim; or (iii) such other treatment that shall render such Allowed CS Secured Claims Unimpaired pursuant to section 1124 of the Bankruptcy Code (which may include Reinstatement).	\$0.00 – \$48,662,927[3]	100%	No.
Class 2 – Priority Claims[4]	Each Holder of an Allowed Priority Claim shall receive on account thereof payment of the full amount of such Allowed Priority Claim in Cash or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code, except to the extent the Holder of an Allowed Priority Claim agrees to less favorable treatment.	\$52,740	100%	No.
Class 3 - WARN Act Class Settlement Claims[4][5]	Each Holder of an Allowed WARN Act Class Settlement Claim shall receive its WARN Pro Rata Share of the Net WARN Act Class Settlement Amount less any and all state, federal and/or other payroll tax withholdings, with such distribution to be paid as follows: (i) fifty percent (50%) of each Holder’s WARN Pro Rata Share of the Net WARN Act Class Settlement Amount less any and all state, federal,	\$540,000	62.96%	Yes.

<sup>1</sup> “Allowed Unsecured Claim” means an Allowed Claim in Class 4 (CS Deficiency/Unsecured Claims), Class 5 (General Unsecured Claims), or Class 6 (Klausner Group Unsecured Claims).

	and/or other payroll tax withholdings to be paid within 15 days after the Effective Date; and (ii) the remaining fifty percent (50%) of each Holder's WARN Pro Rata Share of the Net WARN Act Class Settlement Amount less any and all state, federal, and/or other payroll tax withholdings will be paid within sixty (60) days following the initial distribution.			
Class 4 – CS Deficiency/Unsecured Claims	Each Holder of the Allowed CS Deficiency/Unsecured Claims shall receive its Pro Rata Share of an amount equal to the Net Distribution Proceeds. For the avoidance of doubt, each Holder of the Allowed CS Deficiency/Unsecured Claims shall receive its Pro Rata Share of the Net Distribution Proceeds along with other Holders of Allowed Unsecured Claims.	\$0.00 – \$107,841,050	0.00% – 100% <b>[6][7]</b>	Yes.
Class 5 – General Unsecured Claims	Each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata Share of an amount equal to the Net Distribution Proceeds. For the avoidance of doubt, each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata Share of the Net Distribution Proceeds along with other Holders of Allowed Unsecured Claims.	\$26,966,352 – \$41,544,831	0.00% – 100% <b>[6][7]</b>	Yes.
Class 6 – Klausner Group Unsecured Claims	Each Holder of an Allowed Klausner Group Unsecured Claim shall receive its Pro Rata Share of an amount equal to the Net Distribution Proceeds. For the avoidance of doubt, each Holder of an Allowed Klausner Group Unsecured Claims shall receive its Pro Rata Share of the Net Distribution Proceeds along with other Holders of Allowed Unsecured Claims.	\$0.00 – \$43,818,394	0.00% – 100% <b>[6][7]</b>	Yes.
Class 7 – Subordinated Claims	Each Holder of an Allowed Subordinated Claim will receive its Pro Rata Share of an amount equal to the Net Distribution Proceeds remaining after satisfaction in full of all Allowed Claims in all senior classes ( <i>i.e.</i> , Classes 1, 2, 3, 4, 5 and 6).	\$0.00 – \$151,659,444	0.00% – 14.66% <b>[6]</b>	Yes.
Class 8 – Interests	All Interests shall be canceled and extinguished and shall be of no further force or effect. No Holder of Interests shall receive or retain any property under the Plan on account of such Interest.	\$0.00	0.00%	Yes.

**The treatment and distribution provided to Holders of Allowed Claims and Interests pursuant to the Plan are in full and complete satisfaction of the Allowed Claims and Interests, as the case may be. The Distribution Summary is not and does not purport to be a valuation of the Debtor's assets. The Distribution Summary was calculated based on a number of values, estimates and assumptions that are inherently subject to contingencies beyond the control of the Debtor or its Professionals. All numbers contained in this analysis are estimates. Accordingly, there can be no assurance that the values reflected in the Distribution Summary or recovery percentages will be realized, and actual results could vary materially from those shown in this Summary. The ranges in the Distribution Summary reflect the potential outcomes that could result from the CS Adversary Proceeding and the reconciliation of the certain additional asserted Claims, including but not limited to those asserted by the Klausner Group.**

[1] As set forth more fully below, the Distribution Summary presented herein is an estimate based on a number of significant assumptions. The Distribution Summary is not and does not purport to be a valuation of the Debtor's assets. The Distribution Summary was calculated based on a number of values, estimates and assumptions that are inherently subject to contingencies beyond the control of the Debtor or its Professionals. All numbers contained in this analysis are estimates. Accordingly, there can be no assurance that the values reflected in the Distribution Summary or recovery percentages will be realized, and actual results could vary materially from those shown in this Summary.

[2] Estimates are non-binding and include certain disputed claims, the resolution of which may result in no allowed claim or allowed claims that differ materially from the estimates.

[3] The maximum amount shown assumes Carolina Sawmills is fully successful in their arguments and reflects the total estimated proceeds available for distribution after payment of the CS Carved Out Amounts; however, such amount may be lower depending on the outcome of the CS Adversary Proceeding or the ultimate value of the collateral securing any Allowed CS Secured Claims.

[4] Class 2 (Priority Claims) and Class 3 (WARN Claims) are assumed to be paid out prior to any Secured or other Claims of Carolina Sawmills pursuant to the CS County Stipulation and Order.

[5] The amounts shown here are based on the WARN Act Settlement, which has been approved by the Court pursuant to the *Order (I) Certifying a Class for Settlement Purposes, (II) Appointing Plaintiff Cornelius Turner as Class Representative and Plaintiffs' Counsel as Class Counsel, (III) Preliminarily Approving Settlement, (IV) Approving Class Notice, and (V) Scheduling Fairness Hearing [Docket No. 944] and Order Granting (I) Final Approval of Settlement Agreement, (II) Approving Class Counsel's Fees and Expenses and (III) Granting Related Relief [Docket No. 986]*, and reflect the distribution of the Net WARN Act Class Settlement Amount.

[6] This range reflects the potential outcomes that could result from the CS Adversary Proceeding and the reconciliation of the certain additional asserted Claims, including those asserted by the Klausner Group.

[7] For purposes of additional disclosure, the Proponents estimate that: (a) in the hypothetical scenario in which all Claims asserted by Carolina Sawmills are placed into Class 7 (Subordinated Claims) as requested by the Creditors' Committee pursuant to the CS Adversary Proceeding, the estimated potential recovery range would be 57.64% – 69.51%; (b) in the hypothetical scenario in which all Claims asserted by the Klausner Group are placed into Class 7 (Subordinated Claims), the estimated potential recovery range would be 32.93% – 36.50%; and (c) in the hypothetical scenario in which all Claims asserted by Carolina Sawmills and the Klausner Group are placed into Class 7 (Subordinated Claims), the estimated potential recovery would be 100%. For the avoidance of doubt, the Debtor takes no position with regard to the classification of any Claims asserted by Carolina Sawmills.

#### IV. BACKGROUND OF THE DEBTOR AND CERTAIN EVENTS PRECEDING THE FILING OF THE CHAPTER 11 CASE

##### A. Background of the Debtor

The Debtor was formed several years ago, along with sister entity Klausner Lumber One LLC (“KL1”), to build two state-of-the-art sawmills: the Debtor in eastern North Carolina, an area known for its abundant timber and agricultural resources, and KL1 in north-central Florida which had similar natural



advantages for a large, modern timber mill.

KL1 and KL2, along with certain affiliates that provided support to their core business operations, were to be the new, United States operations of Austria's Klausner family of companies. Prior to the Great Recession, such companies were collectively the sixth largest sawmill operation in the world. KL1 and KL2 were to be the first new sawmills built in the United States for some time. Using European technology that would result in efficiencies of operations and production, and far greater utilization/less waste of raw materials, the operations would, if successful, have a competitive advantage over traditional East Coast lumber mills. In addition, KL1 and KL2 would be located in rural, timber-rich areas with a populace that would greatly benefit from new, large employers in the region.

In light of this, as discussed below, it is asserted that approximately \$166 million was invested in KL2 to build a sawmill from the ground up and render it operational. It is also asserted that the Debtor raised such funds from various sources, including loans and capital investments from the Debtor's affiliates and other parties related to the Debtor. The Debtor also obtained a loan from Carolina Sawmills L.P. ("Carolina Sawmills"), the Debtor's pre-petition lender. Carolina Sawmills raised the capital for its loan to the Debtor from foreign investors the ("EB- 5 Investors") pursuant to the immigrant-investor program commonly known as "EB-5").

In addition, as discussed more fully below, pursuant to an Economic Development Agreement ("EDA") executed by Halifax County (the "County") – which is the county where the Debtor's operations were to be built – and the Debtor on or about November 1, 2012, the County conveyed approximately 430 acres of land that the County acquired for the sawmill site to the Debtor by a deed filed on January 6, 2014 (the "Real Property"). The County reserved or retained a future interest in in the "Original Property" (as defined in the EDA) described as a "right of entry or power of termination" (the "Right of Entry"). Such governmental support helped KL2's attempts to build a state-of-the-art sawmill and provided hope and expectations that KL2 would generate a substantial number of jobs in an area that historically did not have large, local employers.

Construction of the KL2 sawmill (the "Sawmill") began in Enfield, North Carolina, in 2014. As the result of several setbacks and delays during construction over the next several years, KL2 never became fully operational.

## **B. Events Leading to the Chapter 11 Filing**

As noted above, the KL2 sawmill is located in Enfield, Halifax County, North Carolina. Pursuant to the EDA, the transfer of the Real Property by the County to the Debtor was made subject to the Right of Entry. On March 26, 2015, the Debtor filed a Deed of Trust, Assignment of Leases, Security Agreement and Fixture Filing (effective as of November 14, 2014) (the "Deed of Trust") in the land records of Halifax County, North Carolina to secure the repayment of a construction loan from Carolina Sawmills to the Debtor (the "Construction Loan") in the original principal amount of \$68,000,000.00. The collateral described in the Deed of Trust includes, *inter alia*, the Real Property. On November 10, 2016, the Debtor recorded a Modification Agreement in the land records of Halifax County increasing the principal amount of the Construction Loan to \$75,000,000.00.

In addition to the Deed of Trust, on April 15, 2015, Carolina Sawmills filed a UCC-1 financing statement with the Delaware Department of State to perfect its alleged security interest in certain of the Debtor's personal property pursuant that certain Carolina Sawmills Security Agreement dated February 26, 2015.

The County has asserted that since entering into the EDA, it spent \$7,757,621.91 on the project site (the "Economic Incentive Amount"), including funding for the acquisition of the Real Property, improvements to public roads, water, storm water and wastewater systems, and construction of a rail spur.

Further, over the years, the County asserted that the Debtor was unable to fulfill its obligations under the EDA by becoming operational and hiring the requisite number of employees, and that the Debtor and the County entered into various forbearance negotiations and discussions to give the Debtor more time to fulfill its obligations. The County also asserted that the Debtor continued to be unable to fulfill its obligations, and in late 2019, the County made formal demand for repayment of the Economic Incentive Amount; and further, that demand letter notified the Debtor of the County's intent to exercise its Right of Entry on the Debtor's Real Property.

On or about March 16, 2020, the Debtor claims that its ongoing precarious financial standing combined with the impact of the global pandemic resulted in the shutdown of the Sawmill. Thereafter, on April 9, 2020, the County recorded a document in Book 2615, Page 750 of the Halifax Public Registry, which it claims exercised its Right of Entry and terminated the Debtor's rights to the Real Property.

On April 13, 2020, the County filed an action (the "County Complaint") in North Carolina state court against KL2 and Carolina Sawmills (the "County Proceeding"), seeking, among other things, a declaratory judgment confirming the validity of the exercise of its Right to Entry and to recover the funds it had expended for land acquisition and necessary improvements; subsequently, the County also undertook to insure the Sawmill assets, pay the sawmill utility bills, and provide security for the Sawmill.

While this was happening, the Debtor's senior management, all of whom were European individuals experienced in sawmill operations and/or the financial aspects of KL2, spent 2019 and early 2020 considering (in conjunction with similar efforts for KL1) various liquidity, sale, and capital raising options, all of which were challenging. In addition, by early 2020, KL2's foreign related parties appeared to be facing financial issues of their own. Indeed, these difficulties culminated in foreign insolvency proceedings being filed by two parties related to KL2 on April 15, 2020 (Klausner Nordamerika Beteiligungs GmbH and Klausner Trading International GmbH) in Austria's Innsbruck Regional Court. As such, KL2 and its related parties' distress left KL2 on very unsound financial footing. As 2020 progressed, it appeared that KL1 and KL2 would have to commence insolvency or liquidation proceedings.

In March of 2020, the impact on KL1 and KL2 of COVID-19 and the global pandemic that followed manifested itself, with an impact unforeseen by virtually all of America. The rapid escalation of COVID-19's spread and concerns about COVID-19's consequences rendered unfeasible any plans for a controlled liquidation or bankruptcy. KL2's management team was concerned that potential travel restrictions would preclude them from returning to Europe and that they would become stranded in the United States. KL2 dismissed all employees and left the facility while it was in the "commissioning" phase. As noted above, the Sawmill never became operational.

The liquidity problems at KL2 were acute, and KL2's foreign related parties – long the source of financial support for KL2's operations – were unable to provide further funding. Moreover, KL2 had been shuttered for several months, raising fears among trade creditors and the industry.

On or about March 16, 2020, KL2's entire management team and numerous engineers and operators returned to Europe in light of the pandemic growing in the United States and to avoid being impacted by potential long-term travel restrictions. Shortly thereafter, the U.S. did in fact adopt travel regulations that prohibited return travel of European management and technicians. Thus, having no ability to operate, no financing, and no liquidity, KL2's operations were shuttered immediately.

The lack of any source of financing left KL2's operations financially crippled. All possible value for any and all creditors and other constituents was on the precipice of being lost, despite the tens of millions of dollars loaned and otherwise provided to the Debtor, including the millions of dollars in local government spending and support, and substantial amounts owed to trade creditors.

Shortly thereafter, in March of 2020, Asgaard Capital LLC ("Asgaard") was introduced to KL2's

senior managers in Europe. Asgaard realized the significant risk to creditor recoveries if the then-current path was continued as well as the potential opportunity to creditors that existed under an alternate scenario. Asgaard assembled a team, including new bankruptcy counsel and an investment banker, for KL2 to consider. A few weeks later, a new proposed independent director for KL2 was approached by such professionals. Over the course of April, Asgaard and the other new professionals diligently pursued pre- and post-petition financing, which was desperately needed to pay for insurance, security and administrative expenses to enable KL2 to seek to sell all or substantially all of its assets as a going concern. KL2's professionals also engaged in negotiations with the County, to find a path forward and resolve the North Carolina state court litigation commenced by the County. In addition, there was an action filed in North Carolina seeking appointment of a receiver for KL2, which also needed to be resolved.

A bankruptcy stay was desperately needed. But with no buyer, no funds, no financing, no operations, no insurance, no new fiduciaries, and no plan, there appeared to be no hope. Then, shortly before the Petition Date, KL2's newly hired investment banker, Cypress Holdings LLC ("Cypress")<sup>2</sup> began to obtain interest from large, well-capitalized, competing sawmills in North America. Additionally, two potential lenders considered providing a modest, but sufficient, post-petition loan. KL2 maintained its corporate control, as the action to appoint a receiver was not progressing, and the Austrian insolvency proceedings had not affected KL2 or its governing individuals.

Asgaard negotiated with two potential new post-petition lenders. This succeeded, and the Debtor believed that the financing terms, timing, and budget would allow a sale process to proceed. In this regard, on August 13, 2020, KL2 filed a motion [D.I. 130] for approval of post-petition financing of up to \$3.5 million, to cover the costs to market and sell the Sawmill, with a wholly unaffiliated lender. As discussed below, during the Chapter 11 Case, the Debtor and the Creditors' Committee, with the assistance of the bankruptcy professionals retained in this case, negotiated a number of settlement agreements to resolve issues with various creditors, the County, lenders and interested parties, resulting in a very successful auction sale process and the Plan now being presented.

### **C. The Debtor's Officers and Directors**

As of the Petition Date, the Debtor's officers and directors were (i) Leopold Stephan, the sole member of the Board of Directors prior to the Petition Date, and (ii) Robert Prusak, the Chief Restructuring Officer. On June 15, 2020, shortly after the commencement of the Chapter 11 Case, Dan T. Motulsky was appointed as an Independent Director. These directors and officers have served the Debtor throughout the Chapter 11 Case.

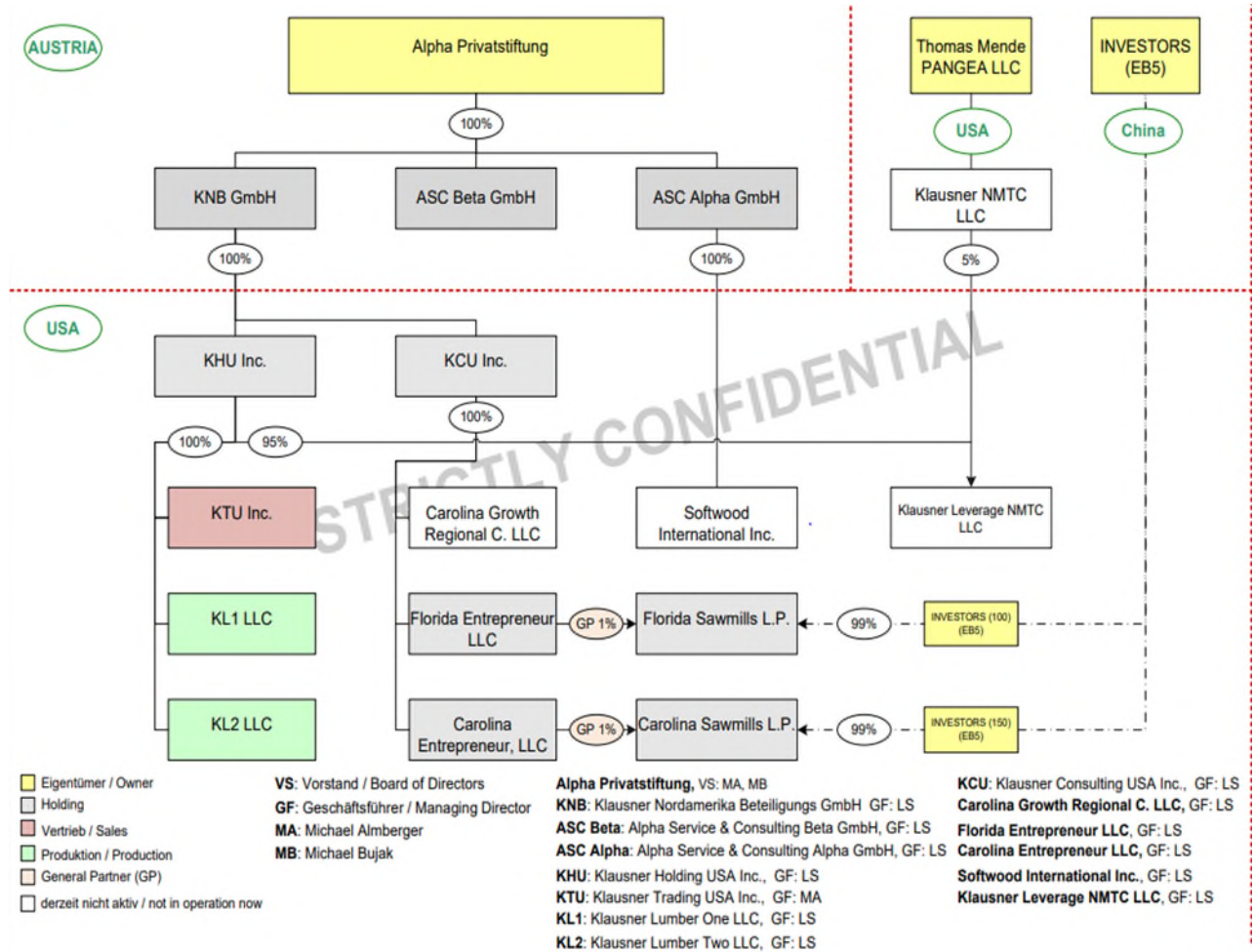
### **D. The Debtor's Corporate and Capital Structure**

The following description provides a synopsis of the Debtor's corporate and capital structure as of the Petition Date:

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<sup>2</sup> Cypress had also been working with the Debtor's sister company, KL1, in connection with the potential sale of its assets. On May 30, 2020, KL1 filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

## 1. Corporate Structure



## 2. Corporate Ownership

As of the Petition Date, the Debtor was 100% owned by non-debtor Klausner Holding USA, Inc. Klausner Holding USA, Inc. was 100% owned by non-debtor KNB GmbH (Austria). In turn, KNB GmbH was 100% owned by non-debtor Alpha Privatstiftung (Austria).

## 3. Pre-Petition Capital Structure

Prior to the commencement of the Chapter 11 Case, the Debtor entered into the Construction Loan with Carolina Sawmills, pursuant to which Carolina Sawmills agreed to lend to the Debtor up to \$75 Million for the acquisition of land and costs of constructing the sawmill. As noted above, it is asserted that approximately \$166 million was invested in KL2, including the Construction Loan plus other funds raised from other sources, such as the Debtor's affiliates and other parties related to the Debtor.

## V. EVENTS DURING THE CHAPTER 11 CASE

### A. Commencement of the Chapter 11 Case

On the Petition Date (*i.e.*, June 10, 2020), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The Chapter 11 Case was assigned to Bankruptcy Judge

Karen B. Owens. The Debtor has continued to manage and possess its business and property as a debtor in possession since the Petition Date. No trustee or examiner has been appointed in the Chapter 11 Case. Set forth below is a summary of material events that have occurred since the Petition Date.

**B. First-Day Relief**

Because the Debtor was not in operation as of the Petition Date, there were no traditional “First Day” motions filed in the Debtor’s case at the outset. To ensure a smooth transition into bankruptcy and to allow the Debtor to administer its Estate and pursue a sale of its assets, the initial documents filed were primarily applications to retain professionals, as discussed more fully below. In addition, KL2’s new professionals recognized the need for KL2 to be represented independently from its non-debtor affiliates, including an independent director wholly unaffiliated with KL-1. The Debtor thus sought the retention of conflicts counsel and other professionals as needed during the course of the case.

**C. The Debtor’s Retention of Professionals and Administrative Advisor / Claims and Noticing Agent**

On June 25, 2020, the Debtor filed: (i) an application for an order authorizing the retention and employment of Westerman Ball Ederer Miller Zucker & Sharfstein LLP (“Westerman Ball”) as co-counsel for the Debtor [D.I. 30]; and (ii) an application for an order authorizing the employment and retention of Morris, Nichols, Arsht and Tunnell, LLP (“MNAT”) as co-counsel for the Debtor [D.I. 74]. The Bankruptcy Court granted these motions by orders entered on July 14, 2020 with respect to Westerman Ball and MNAT. [D.I. 50 and 51, respectively].

On July 9, 2020, the Debtor filed a motion for an order authorizing the employment and retention of Asgaard to provide the Debtor with a Chief Restructuring Officer (“CRO”) and other personnel and designate Robert Prusak as CRO. [D.I. 41].

On July 15, 2020, Carolina Sawmills filed an objection to the Debtor’s motions to retain the above-referenced professionals. [D.I. 57]. After various hearings, amendments and supplements, the Bankruptcy Court granted the motion for an order authorizing the employment of Asgaard and approving Mr. Prusak as CRO, by order dated September 2, 2020. [D.I. 198]. The orders entered on July 14, 2020 with respect to Westerman Ball and MNAT remained in full force and effect.

On August 11, 2020, the Debtor filed an application for an order authorizing the employment and retention of Cypress Holdings LLC as investment banker to the Debtor [D.I. 124], which was approved by the Bankruptcy Court on August 31, 2020. [D.I. 196].

Thereafter, the Debtor filed additional applications to retain certain professionals to assist it with respect to discrete matters in the Chapter 11 Case, including:

- An application dated July 30, 2020 to retain Dinsmore & Shohl LLP as Bankruptcy Conflicts Counsel [D.I. 105], approved by order dated August 18, 2020 [D.I. 146];
- An application dated August 10, 2020 to retain Ellis & Winters LLP as North Carolina State Court counsel (in connection with the pre-petition action commenced by the County), which was approved by order dated August 27, 2020 [D.I. 170];
- An application dated August 21, 2020 to retain Curtis Mallet-Prevost Colt and Mosle LLP as EB-5 Counsel, Immigration and Tax counsel [D.I. 153, as supplemented on November 10, 2020, D.I. 385], which was approved by order dated September 9, 2020 [D.I. 215];

- An application dated September 18, 2020 to retain the Law Office of Susan P. Kaufman LLC as Delaware bankruptcy conflicts counsel [D.I. 250], which was approved by order dated October 6, 2020 [D.I. 289];
- An application dated October 2, 2020 to retain McCausland Keen+Buckman as Intellectual Property Counsel for the Debtor [D.I. 284], which was approved by order dated October 30, 2020 [D.I. 368];
- An application dated March 2, 2021 to retain CBIZ Accounting Tax and Advisory of New York, LLC and CBIZ Accounting Tax and Advisory of San Diego, LLC as Tax Accountants to the Debtor [D.I. 656], which was approved by order dated March 25, 2021 [D.I. 692]; and
- An application dated June 10, 2021 to retain Fallace & Larkin, L.C. as Florida Counsel for the Debtor [D.I. 808], which was approved by order dated July 14, 2021 [D.I. 850].

Additionally, on September 15, 2020, the Debtor filed an application to retain Donlin Recano & Company, Inc. (“DRC”) to serve as administrative advisor / official claims and noticing agent to the Debtor [D.I. 238]. DRC was retained to, among other duties, notify creditors of the filings of the Debtor’s petition, send out proof of claim forms and the notice of the claims bar date to the Debtor’s creditors, maintain the official claims register, send out Ballots with respect to the proposed Plan, and tabulate the voting results. The Bankruptcy Court granted the Debtor’s application by order entered on July 8, 2020 [D.I. 38], as supplemented by order dated October 8, 2020, authorizing the Debtor to retain DRC as Administrative Advisor [D.I. 299].

An order establishing procedures for interim compensation and reimbursement of expenses for all retained professionals was entered on August 26, 2020 [D.I. 167].

#### **D. Appointment of Creditors’ Committee and Creditors’ Committee Professionals**

On June 25, 2020, the Office of the United States Trustee filed the *Notice of Appointment of Committee of Unsecured Creditors* [D. I. 27], notifying parties in interest that the U.S. Trustee had appointed a statutory committee of unsecured creditors in the Chapter 11 Case. The Creditors’ Committee comprised: (i) Greenline CDF Subfund XXXIV, LLC, Attn: J. Nathan Perry; (ii) VSC Fire & Security, Inc., Attn: Fritz A. Mehler; and (iii) LSAB Sverige Forsalning AB, Attn: Asa Wall. On December 23, 2020, the notice was amended to replace Jimmy Weiborn for Asa Wall. [D.I. 528].

On July 13, 2020, the Creditors’ Committee filed an application to retain Elliot Greenburg, P.C. as counsel for the Creditors’ Committee [D.I. 42], which was granted by order dated August 27, 2020 [D.I. 170]. On January 15, 2021, the Creditors’ Committee filed an application to retain Armstrong Teasdale LLP as successor counsel to the Creditors’ Committee [D.I. 558], which application was approved on February 4, 2021. [D.I. 607].

On August 24, 2020, the Creditors’ Committee filed an application to retain EisnerAmper LLP (n/k/a Eisner Advisory Group LLC) (“Eisner”) as financial advisor to the Creditors’ Committee [D.I. 157], which application was granted by order dated September 10, 2020. [D.I. 227]. Throughout the Chapter 11 Case, the Debtor and its advisors have engaged with the Creditors’ Committee and its advisors on a range of issues, including with respect to certain investigations, and have sought to obtain the Creditors’ Committee’s support wherever possible.

**E. The Debtor's Motion to Sell or Abandon Miscellaneous Assets**

On July 9, 2020, the Debtor filed a motion for approval to sell or abandon various miscellaneous, unencumbered assets that were located on the Real Property, to generate cash flow in the interim period between the Petition Date and approval of DIP Financing (as defined herein) by the Bankruptcy Court. [D.I. 39]. (the "Miscellaneous Assets Motion").

On July 21, 2020, Carolina Sawmills filed an objection to the Miscellaneous Assets Motion. [D.I. 73]. After various evidentiary hearings and amendments and supplements to the motion and proposed order, on September 16, 2020, the Bankruptcy Court entered a revised order approving the Miscellaneous Assets Motion. [D.I. 242]

**F. The Debtor's Motions (i) for Approval of Its Settlement With the County, and (ii) to Obtain DIP Financing**

In the early stages of the Chapter 11 Case, the Debtor had certain key objectives it sought to accomplish, including reaching a settlement with the County and obtaining debtor-in-possession financing. The Debtor succeeded in accomplishing each of these goals.

First, with respect to reaching a settlement with the County, both before and after the Petition Date, the Debtor and its bankruptcy professionals held discussions with the County concerning a potential settlement of the disputes between the Debtor and the County to enable the Debtor to sell the Real Property along with the rest of its assets in a single transaction. The culmination of these discussions was embodied in that certain Release and Settlement Agreement and related Contingent Obligations Rider (the "County Settlement"), as described more fully in the *Motion of the Debtor Pursuant to Bankruptcy Rule 9019, Local Rule 9013-1 and 11 U.S.C. §§ 105(a) and 363(b), for Entry of an Order Authorizing Settlement with the County* [D.I. 95] (the "County Settlement Motion") filed with the Bankruptcy Court on July 28, 2020.

Pursuant to the County Settlement, the County was to be repaid a portion of the Economic Incentive Amount upon the closing of a sale that includes the Real Property and in return would convey the Real Property in fee simple to the Debtor which, in turn, would convey to the buyer, all rights to the Real Property free and clear of all liens claims and encumbrances.

On August 13, 2020, Carolina Sawmills filed its Objection to the County Settlement [D.I. 127] (the "County Settlement Objection") wherein it raised a number of factual and legal issues regarding the Settlement Agreement, including the fact that Carolina Sawmills was not a party to the Settlement Agreement and had not agreed to release any of its liens; and requested that the Bankruptcy Court deny the County Settlement Motion for the reasons set forth therein. Following an emergency hearing held on August 18, 2020, the Bankruptcy Court granted the Debtor's request to adjourn the hearing on the County Settlement Motion to September 16, 2020, which hearing was subsequently further adjourned to November 9, 2020.

On August 13, 2020, the Debtor filed its *Motion of the Debtor for Entry of an Order (I) Authorizing the Debtor to Obtain Post-Petition Financing, Granting Senior Post-Petition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [D.I. 130] (the "DIP Financing Motion"), pursuant to which the Debtor sought approval of, *inter alia*, debtor-in-possession financing (including any amendments, modifications, increases or replacements thereof, the "DIP Financing") in the aggregate principal amount of \$3.4 million (the "Total DIP Principal Amount").

On August 27, 2020, Carolina Sawmills filed its Objection to the DIP Financing Motion [D.I. 173] (the "DIP Financing Objection") whereby it argued, *inter alia*, that that certain Consent and Subordination

Agreement executed prior to the Petition Date in connection with the DIP Financing was not valid or enforceable. Thereafter, on August 30, 2020, the Debtor filed a reply [D.I. 183] to the DIP Financing Objection, and on October 16, 2020, the Debtor filed a reply [D.I. 318] to the County Settlement Objection and a supplemental reply [D.I. 319] to the DIP Financing Objection.

On September 8, 2020, after the Debtor, the Committee, Carolina Sawmills and the County agreed to participate in a mediation with former Bankruptcy Judge Kevin Gross (the Mediator) concerning the above-referenced disputes, the Bankruptcy Court entered an order [D.I. 212] (the “Consensual DIP Order”) approving a portion of the relief sought in the DIP Financing Motion upon the agreement of the parties. The Consensual DIP Order also scheduled a further hearing with respect to the DIP Financing Motion and the Debtor’s authorization to borrow the remaining amount of the Total DIP Principal Amount for September 16, 2020, which hearing was subsequently adjourned to November 9, 2020. Thereafter, on September 9, 2020, the parties participated in an all-day mediation session with the Mediator regarding the various disputes outlined above.

By mid-October 2020, the attempt to settle the disputes of the parties had reached an impasse. On October 21, 2020, the Debtor filed a *Notice of the Revised Settlement with the County and Objection Deadlines and Hearing Dates for its Approval* [D.I. 346] (the “Notice of Amended County Settlement”) with an amended and restated release and settlement agreement attached thereto (the “Revised County Settlement”), that was intended to resolve certain of the objections of Carolina Sawmills to the County Settlement Motion.

At a hearing held on October 20, 2020, the Bankruptcy Court scheduled a hearing on the County Settlement Motion as revised by the Notice of Amended County Settlement, including the Revised County Settlement, the County Settlement Objection, the final portion of the relief requested in the DIP Financing Motion, and the DIP Financing Objection for November 9, 2020. The Bankruptcy Court directed the parties to continue mediation of the disputes with the Mediator.

On October 29, 2020, as a result of an all-day mediation session with the Mediator, the parties reached a global resolution on the County Settlement Motion as revised by the Notice of Amended County Settlement, including the Revised County Settlement, the County Settlement Objection, the final portion of the relief requested in the DIP Financing Motion, and the DIP Financing Objection. Subsequently, on November 5, 2020, the parties filed a *Certification of Counsel Regarding (I) Proposed Order Approving Settlement with Halifax County, (II) Proposed Further Order Approving DIP Financing, and (III) Proposed Settlement of Objections of Carolina Sawmills, L.P.* [D.I. 346], which sought to settle and resolve their disputes concerning the County Settlement Motion and the DIP Financing Motion.

Following a hearing on November 9, 2020, the Bankruptcy Court entered the *Order Approving Stipulation Regarding Motion to Approve County Settlement* [D.I. 377], which approved the *Stipulation Regarding Motion to Approve County Settlement* attached thereto as Exhibit 1 [D.I. 377-1] (the “CS Settlement”). The CS Settlement provides, among other things, that: (a) the Debtor may proceed with entry of an order approving of the County Settlement Motion as revised by the Notice of Amended County Settlement (*i.e.*, the Revised County Settlement Order, as such term is defined below) and the entry of an order approving the final portion of the relief requested in the DIP Financing Motion (*i.e.*, the Further DIP Financing Order, as such term is defined below) at the November 9<sup>th</sup> hearing; (b) the proceeds of any sale of the Debtor’s assets and the Sawmill<sup>3</sup> (less necessary “Carved Out Amounts”<sup>4</sup> to fund the Chapter 11

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<sup>3</sup> As such term is defined in the CS Settlement.

<sup>4</sup> The term “Carved Out Amounts” is defined in the CS Settlement as “the proceeds of the sale of the Sawmill sufficient to allow for the payment in full of the following, free and clear of the CSLP Liens, if any: (a) the amount due to the County from the proceeds of sale under the Amended County Settlement, which include (i) \$4.6 million plus (ii) real and personal property taxes owed to the County plus (iii) reimbursement of previously incurred carrying expenses



Case and the chapter 11 plan process) shall be reserved until the dispute concerning Carolina Sawmills' liens have been litigated (or settlement) by and between Carolina Sawmills and the Committee; (c) for a full reservation of rights by the Creditors' Committee on behalf of the Debtor's estate and by Carolina Sawmills with respect to the CSLP Liens<sup>5</sup> (CS Settlement at ¶6); (d) for the assignment by the Debtor of "its rights, title and interests to prosecute and contest the validity, priority and extent of the CSLP Liens (which definition includes, for the avoidance of doubt, any and all claims asserted by [Carolina Sawmills]) to the [Creditors' Committee] for and on behalf of the Debtor's estate" and, for the Creditors' Committee to have standing to prosecute and contest such matters (CS Settlement at ¶8); and (e) an agreement between the Creditors' Committee and Carolina Sawmills to continue mediation in an effort to settle the dispute over the validity, extent and priority of the CSLP Liens (*Id.*, at ¶15).

On November 9, 2020, the Bankruptcy Court also entered the: (a) *Order (Second Final) (I) Authorizing the Debtor to Obtain Post-Petition Financing, Granting Senior Post-Petition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [D.I. 378] (the "Further DIP Financing Order"); and (b) *Order Approving Motion of the Debtor Pursuant to Bankruptcy Rule 9019, Local Rule 9013-1 and 11 U.S.C. §§ 105(a) and 363(b), For Entry of an Order Authorizing Revised Settlement with the County* [D.I. 380], including the *Amended and Restated Release and Settlement Agreement* attached thereto as Exhibit 1 [D.I. 380-1] (collectively, the "Revised County Settlement Order").

#### **G. Other Key Settlements**

On June 24, 2020, shortly after the Petition Date, Deutsche Leasing USA, Inc. filed a motion for relief from the automatic stay in order to repossess certain personal property that had been leased to the Debtor [D.I. 21]. After negotiations and an exchange of information, on July 30, 2020, the Bankruptcy Court entered an *Agreed Order Granting the Motion for Relief from the Automatic Stay to Effect Repossession of Property* [D.I. 102].

On August 13, 2020, the Debtor filed a Motion to Approve a Settlement with Ohana Tree Holding LLC pursuant to Bankruptcy Rule 9019, to permit payment of up to \$19,500.00 to this creditor, in consideration for providing necessary information it had gathered to the Debtor's EB-5 Investors, so that the EB-5 Investors would not lose their green card status [D.I. 128]. On September 2, 2020, the Bankruptcy Court approved this settlement [D.I. 200].

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plus (iv) ongoing reimbursement of expenses, all as set forth therein; (b) the outstanding balance of any DIP financing; (c) any valid liens or allowed secured claims senior to the DIP Financing, including those relating to personal property taxes, real property taxes and mechanics' liens; (d) all allowed administrative expenses, including the allowed fees and expenses of all Bankruptcy Court-approved retained professionals in the case; € all allowed priority claims against the Debtor; (f) any U.S. Trustee fees; and (g) allowed post-effective date fees and expenses incurred in connection with implementation of a confirmed chapter 11 plan in an amount not to exceed \$225,000." CS Settlement at ¶3.

<sup>5</sup> The term "Carved Out Amounts" is defined in the CS Settlement as "the proceeds of the sale of the Sawmill sufficient to allow for the payment in full of the following, free and clear of the CSLP Liens, if any: (a) the amount due to the County from the proceeds of sale under the Amended County Settlement, which include (i) \$4.6 million plus (ii) real and personal property taxes owed to the County plus (iii) reimbursement of previously incurred carrying expenses plus (iv) ongoing reimbursement of expenses, all as set forth therein; (b) the outstanding balance of any DIP financing; (c) any valid liens or allowed secured claims senior to the DIP Financing, including those relating to personal property taxes, real property taxes and mechanics' liens; (d) all allowed administrative expenses, including the allowed fees and expenses of all Bankruptcy Court-approved retained professionals in the case; € all allowed priority claims against the Debtor; (f) any U.S. Trustee fees; and (g) allowed post-effective date fees and expenses incurred in connection with implementation of a confirmed chapter 11 plan in an amount not to exceed \$225,000." CS Settlement at ¶3.

On September 3, 2020, the Debtor, along with KL1 and Kalmar USA, Inc., sought approval of a settlement that fixed the allowed amount of Kalmar USA, Inc.'s claims against each of KL1 and the Debtor. The Bankruptcy Court approved this settlement on September 16, 2020 [D.I. 240].

On September 24, 2020, the Debtor sought approval of a settlement with Colony Square Apartments relating to unpaid rent due with respect to certain apartment units that had been used by certain of the Debtor's officers and directors. The Debtor was able to negotiate an amicable reduction of the amount due, including an offset for televisions and furnishings that were left in the apartments [D.I. 268].

On January 29, 2021, the Debtor, with KL1, filed a joint motion for approval of a compromise with Klausner Trading concerning a settlement of 401(k) funds [D.I. 593] (the "401K Settlement"). On February 17, 2021, the Bankruptcy Court entered an order approving the 401(k) Settlement [D.I. 623].

## **H. Marketing and Sale of Substantially all of the Debtor's Assets to Binderholz**

The key imperative for the Debtor and its professionals early in the Chapter 11 Case was to seek to market and sell the Real Property together with substantially all of the personal property that was owned by the Debtor, including without limitation, certain machinery, equipment, inventory and other assets owned by the Debtor. This initially presented a significant dilemma for the Debtor since, as discussed above, the Sawmill had been shuttered and was not operational, and the Debtor was engaged in a dispute with the County concerning the Real Property.

Nevertheless, the Debtor prudently engaged Cypress to assist the CRO and the Debtor's other professionals, including Asgaard, in the sale process. Cypress began marketing KL2 in April 2020, which was even before the Petition Date. During this initial marketing process, Cypress organized a large virtual data room ("VDR") that contained operational, legal, financial and descriptive information.

During the marketing process, Cypress reached out to approximately 75 prospective strategic buyers and 192 prospective financial buyers, several of whom contacted Cypress after seeing the filing of the Debtor's bankruptcy petition. Approximately 44 prospective buyers requested or signed NDAs to secure access to the VDR and engage in other diligence activities with Cypress. Of the 44 parties which executed NDAs, the marketing process generated interest in submitting actual bids from more than six prospective buyers which Cypress believed had both a strong interest in KL2 and the financial wherewithal to close on a transaction to maximize the value of the Debtor's assets. Cypress worked with these parties further over a period of several months, responding to information requests, discussing the sale, the happenings of the Chapter 11 Case, the timing of matters, and many other topics germane to their interest, and keeping them apprised of developments in the sales process.

Cypress and the Debtor worked diligently to secure an advantageous stalking horse bid. In October 2020, representatives of Mayr-Melnhof Holz Holding AG ("MM-H") contacted Cypress to inquire about the sale process generally and the timing of the Debtor designating a stalking horse for the assets being sold. Cypress inquired whether MM-H might be interested in becoming the stalking horse, particularly since MM-H had been highly involved in the KL1 sale process and served as back-up bidder in the KL1 case.

Cypress and the Debtor's other professionals continued to negotiate with MM-H on the terms of a stalking horse bid throughout October and early November 2020, and on or about November 6, 2020, MM-H submitted a stalking horse asset purchase agreement (the "Stalking Horse APA") which included, *inter alia*, a cash purchase price of \$30 million, together with a deposit of \$3 million.

On November 9, 2020, the Debtor filed its *Motion for Entry of (A) an Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtor's Assets Free and Clear of All Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases,*

(II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Authorizing the Debtor to Provide (But Not Approving) Certain Bid Protections for Any Stalking Horse Purchaser, and (IV) Granting Related Relief; and (B) an Order (I) Approving the Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtor's Assets Free and Clear of all Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [D.I. 381] (the "Bidding Procedures and Sale Motion"). The Bidding Procedures and Sale Motion included the Stalking Horse APA, which sought to approve same, including certain bid protections and related relief.

On November 17, 2020, Carolina Sawmills filed an objection to the bidding procedures portion of the Bidding Procedures and Sale Motion. On that same date, the Debtor filed the *Declaration of Robert Prusak in Support of Motion to Approve Bidding Procedures and Bid Protections* [D.I. 415].

Following a contested hearing on the Bidding Procedures and Sale Motion that was held on November 18, 2021, on November 19, 2020, the Bankruptcy Court granted the relief requested in the motion and entered the *Order (I) Scheduling a Hearing on the Approval of a Sale of Substantially All of the Debtor's Assets Free and Clear of All Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and The Form and Manner of Notice Thereof, (III) Designating the Stalking Horse Purchaser and Approving Certain Bid Protection, and (IV) Granting Related Relief* [D.I. 421] (the "Bidding Procedures Order").

In accordance with the Bidding Procedures Order, the Debtor continued to conduct a fulsome marketing and sale process led by Cypress and the Debtor's CRO (*i.e.*, Robert Prusak). Mr. Prusak conducted technical due diligence meetings and led numerous site tours for potential purchasers and served as an integral point of contact with respect to operational inquiries—a crucial function given the lack of historical management remaining with the Debtor. Mr. Prusak also created a video tour that contained both static and operational scenarios to provide to potential buyers who might otherwise have not been able to participate in the sale process due to COVID-induced travel restrictions.

The Debtor's marketing and sale efforts were wildly successful. On December 10, 2020, the Debtor filed a *Notice of Successful Bidder for the Sale of Substantially All of the Debtor's Assets* [D.I. 481] (the "Successful Bidder Notice"). As set forth in the Successful Bidder Notice, although MM-H had been designated as the Stalking Horse Bidder, after a fulsome auction process and qualifying, competing bids, the Debtor selected Binder Beteiligungs AG, acting through Binderholz Enfield LLC ("Binderholz") as the successful bidder, with a cash offer of \$83,400,000.00, plus assumption of liabilities aggregating \$3,287,500.00. *See* D.I. 481.

On January 12, 2021, the Debtor filed a Notice of Closing of Sale of Substantially all of the Debtor's Assets to Binderholz [D.I. 553].

## **I. Creditors' Committee Investigations**

Shortly after its appointment, counsel to the Creditors' Committee issued informal discovery requests to the Debtor as part of its investigation of the Debtor's prepetition operations. Thereafter, on October 6, 2020, the Creditors' Committee filed a motion [D.I. 291] (the "2004 Motion"), pursuant to which the Creditors' Committee sought, among other things, subpoenas to obtain information concerning the circumstances surrounding the Debtor's bankruptcy filing and prepetition transactions by and between the Debtor and its insiders, related entities, and affiliates, including Carolina Sawmills. On October 19, 2020, the Bankruptcy Court entered an order granting the 2004 Motion [D.I. 326]. The Debtor has cooperated fully with the Creditors' Committee on these requests.

As part of their investigation, on March 26, 2021, the Creditors' Committee filed notices of service of subpoenas on Klausner NMTC LLC [D.I. 693], Klausner Leverage NMTC LLC [D.I. 694], and Klausner Consulting USA, Inc. [D.I. 695]. Similarly, on March 29, 2021, the Creditors' Committee filed notices of service of subpoenas to Pangea Holdings LLC [D.I. 696], Carolina Entrepreneur LLC [D.I. 698], Softwood International Inc. [D.I. 699], Carolina Regrowth Regional Center [D.I. 700], Klausner Trading USA, Inc. [D.I. 701] and Klausner Holding USA, Inc. [702].

#### **J. Creditors' Committee Complaint against Carolina Sawmills**

As noted above, pursuant to the CS Settlement, the Creditors' Committee was granted standing by the Bankruptcy Court to prosecute and contest the validity, priority and extent of the CSLP Liens and matters involving Carolina Sawmills. Accordingly, on August 9, 2021, the Creditors' Committee commenced an action in the Bankruptcy Court against Carolina Sawmills, entitled *Official Committee of Unsecured Creditors of Klausner Lumber Two LLC v. Carolina Sawmills, L.P.*, which case was assigned Adversary Proceeding No. 21-51010. (the "CS Adversary Proceeding"), by filing the *Complaint and Objection to Claim No. 54 Filed by Carolina Sawmills, L.P.* [D.I. 925; Adv. Pro. D.I. 1] (the "CS Complaint") seeking, *inter alia*, certain declaratory relief with respect to the validity, priority or extent of Carolina Sawmills' alleged liens, claims and interests in the case, recharacterization of Carolina Sawmills' debt to equity, equitable subordination and objections to Claim No. 54 filed by Carolina Sawmills in the Chapter 11 Case. On October 20, 2021, Carolina Sawmills filed *Carolina Sawmills, L.P.'s Answer and Response to the Complaint and Objection to Claim No. 54 Filed by the Official Committee of Unsecured Creditors of Klausner Lumber Two LLC* [Adv. Pro. D.I. 20], denying the allegations asserted in the CS Complaint and raising certain affirmative defenses. (*See* n. 3, 6 and 7, *supra* for additional disclosures concerning potential impact on distributions based on the outcome of the CS Adversary Proceeding.)

During the pendency of the matter, the Creditors' Committee and Carolina Sawmills agreed to try and settle and resolve their disputes with respect to the allegations asserted in the CS Adversary Proceeding with the assistance of the Mediator. Accordingly, on October 1, 2021 and October 4, 2021, the parties engaged in mediations sessions with the Mediator.

On October 5, 2021, the Mediator filed *Mediator's Report to the Court* [D.I. 1021] (the "Mediator's Report"). The Mediator indicated in the Mediator's Report, among other things, that the Mediator "is satisfied that the parties met in good faith and negotiated in a similar vein," but that "[u]nfortunately, the mediation did not result in a settlement because there is a central gating issue, a legal issue, which both mediation parties agree that the Court will have to resolve after briefing and, if appropriate, oral argument." Further, that "the [Creditors'] Committee and CSLP [*i.e.*, Carolina Sawmills] have promised to return to mediation after the Court's determination of the central issue."

On November 18, 2021, the Court held a status conference concerning the CS Adversary Proceeding with the Creditors' Committee and Carolina Sawmills. During that hearing, the parties informed the Court and others in attendance as to the central issues in the dispute embodied by the CS Complaint and Carolina Sawmills' answer to the CS Complaint. The Creditors' Committee reported that Carolina Sawmills believes that "the net proceeds from the sale to Binder are not property of the estate," although the Creditors' Committee "vehemently disagree[s] with that" position. *See* November 18, 2021 Hr'g Tr. (D.I. 1102) at 7:25-8:2. Carolina Sawmills did not dispute this characterization of the parties' dispute but noted that "because of the intertwined nature of the legal disputes and the factual disputes" Carolina Sawmills does not see the possibility of "a quick motion for summary judgment." *See id.* at 13:1-6. Thus, the Debtor understands from the status conference hearing that the Creditors' Committee and Carolina Sawmills are preparing proposed scheduling orders concerning the conduct of the CS Adversary Proceeding, which remains pending.

On December 20, 2021, the Bankruptcy Court entered a Scheduling Order in the CS Adversary Proceeding which seeks to resolve various legal issues identified therein "via motion practice prior to full

merits discovery on all factual and legal issues set forth in the Complaint and any affirmative defenses or counterclaims that Defendant may raise in response to the Complaint, ..." [Adv. Pro D.I 29].

The CS Adversary Proceeding remains pending.

**K. Schedules of Assets and Liabilities and Statement of Financial Affairs, Claims Bar Date and Claims Objections**

1. Schedules and Statements. On June 18, 2020, the Debtor filed a motion to extend the deadline to file its Schedules, given the logistical difficulties in assembling this information with prior management overseas [D.I. 16, 36]. On July 8, 2020, the Bankruptcy Court entered an *Order (I) Extending the Time to File Schedules of Assets and Liabilities and Statement of Income and Financial Affairs* [D.I. 38]. The Debtor's Schedules were filed on July 24, 2020 [D.I. 76, 77]. Amended Schedules were filed on January 29, 2021 [D.I. 586] and February 23, 2021 [D.I. 634].

2. Bar Date Documents. On November 30, 2020, the Debtor filed a *Motion for Entry of an Order (I) Establishing a General Bar Date to File Proofs of Claim, (II) Establishing a Bar Date for Governmental Units to File proofs of Claim, (III) Approving the Form and Manner for Filing Proofs of Claim, (IV) Approving the Proposed Notice of Bar Dates and (V) Granting Related Relief* [D.I. 438] (the "Bar Date Motion"). On December 15, 2020, the Bankruptcy Court entered an order granting the Bar Date Motion (the "Bar Date Order") establishing (i) January 29, 2021 at 5:00 P.M. (Prevailing Eastern Time) as the last date by which creditors asserting prepetition claims (including section 503(b)(9) Claims) were required to file Proofs of Claim, with certain exceptions (the "General Bar Date"), (ii) January 29, 2021 at 5:00 P.M. (Prevailing Eastern Time) as the last date by which Governmental Units asserting prepetition claims were required to file Proofs of Claim (the "Governmental Bar Date") and (ii) January 29, 2021 at 5:00 P.M. (Prevailing Eastern Time) as the last date administrative claims arising from the Petition Date through and including December 31, 2020, with certain exceptions (the "Administrative Claims Bar Date") [D.I. 501]. The Debtor completed service of the Bar Date Order on known creditors by December 15, 2020.

3. Claim Objections and Resolutions. The Debtor, with the assistance of the Creditors' Committee, has been working to reconcile and resolve claims and, where necessary, file objections to claims in the Debtor's case.<sup>6</sup>

**Deloitte and Scharpenack Claims**

On May 3, 2021, the Debtor filed an objection to the claim asserted by Deloitte Financial Advisory GmbH ("Deloitte") [D.I. 750]. Deloitte filed a response to the Debtor's objection on June 1, 2021 [D.I. 795].

On May 3, 2021, the Debtor also commenced an adversary case, 21-50429 via complaint and objection to Claim against Scharpenack GmbH. ("Scharpenack") [D.I. 751].<sup>7</sup> On June 22, 2021, the Bankruptcy Court entered an agreed mediation order, referring this and other related matters to mediation before the Mediator (*i.e.*, Hon. Kevin Gross (ret.)). The all-day mediation, conducted on June 25, 2021, resulted in, among other things, an agreed allowance of an unsecured Claim by Scharpenack in the amount of \$200,000 (which Claims had previously been asserted by Scharpenack to aggregate \$2 million).

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<sup>6</sup> In this regard, the Debtor notes the pendency of the Creditors' Committee's objection to Claim No. 54 of Carolina Sawmills as part of the CS Adversary Proceeding. *See* Article V.J., *infra*.

<sup>7</sup> On June 24, 2021, Carolina Sawmills brought its own objection to Claims ECN 12 and ECN 15 filed by Scharpenack. [D.I. 829].

On July 28, 2021, Carolina Sawmills filed *Carolina Sawmills, L.P.’s Limited Objection and Response to the Debtor’s Motion to Approve the Settlement Agreements With: (I) Scharpenack GMBH [Docket No. 853]; and (II) Deloitte Financial Advisory GMBH [Docket No. 851]* [D.I. 885].

On August 12, 2021, the Bankruptcy Court entered an order approving the settlement agreements between the Debtor and Deloitte [D.I. 938] and the Debtor and Scharpenack [D.I. 939].

### **Omnibus Claim Objections**

On May 27, 2021, the Debtor filed its *First Omnibus Objection (Non-Substantive) to Certain Claims* [D.I. 792], and its *Second Omnibus Objection (Substantive) to Certain Claims* [D.I. 793].

On December 9, 2021, the Bankruptcy Court entered an order granting the Debtor’s first omnibus objection (non-substantive) to certain Claims [D.I. 1115], and on July 14, 2021, the Bankruptcy Court entered an order granting the Debtor’s second omnibus objection (substantive) to certain Claims [D.I. 849].

### **KL1/KL2 Claims**

On July 21, 2021, the Debtor, KL1, the Creditors’ Committee and the official committee of unsecured creditors for KL1 filed a joint motion for entry of an order authorizing and approving that certain settlement agreement by and between KL1 and the Debtor [D.I. 868] (the “KL1/KL2 Settlement Motion”).

On August 4, 2021, Carolina Sawmills filed an objection to the KL1/KL2 Settlement Motion [D.I. 905].

On August 12, 2021, the Bankruptcy Court entered an order authorizing and approving the KL1/KL2 Settlement Motion [D.I. 936].

### **MM-H Claims**

On July 21, 2021, the Creditors’ Committee, the Debtor, KL1, and the official committee of unsecured creditors for KL1 filed the *Joint Motion of Debtors and Official Committees of Unsecured Creditors for Entry of an Order Approving the Stipulation with Mayr-Melhof Holz Holding AG* [D.I. 869] (the “MM-H Settlement Motion”).

On August 4, 2021, Carolina Sawmills filed an objection to the MM-H Settlement Motion [D.I. 906].

On August 12, 2021, the Bankruptcy Court entered an order approving the MM-H Settlement Motion [D.I. 935].

### **Other Potential Claims Objections**

As discussed below, pursuant to Article VIII.F of the Plan, any Claims objections must be filed by the Claims Objection Deadline (*i.e.*, “one hundred twenty (120) days after the Effective Date, or such later date as may be ordered by the Bankruptcy Court ...”). As noted above, the Debtor previously filed and successfully prosecuted two omnibus objections to claims, and also amicably settled and resolved several other significant Claims without the need for litigation. Although the Debtor was actively engaged in settlement communications with certain creditors concerning the validity, priority and extent of their Claims, given the current status of the Chapter 11 Case,

including in the CS Adversary Proceeding, the Debtor and Creditors' Committee thought it prudent to slow down for now any further settlement negotiations and the Claims reconciliation process in general. The Claims that the Debtor had been actively reviewing and/or negotiating include, among others, the following claims: (a) Greenline CDF Subfund XXXIV LLC, Claim No. 81 in the amount of \$17,728,189.79; (b) Greenline CDF Subfund XXIX LLC, Claim No. 85 in the amount of \$4,432,047.46; (c) Mahild Drying Technologies GMBH, Claim No. 34 in the amount of \$1,026,360.00; (d) Piedmont Natural Gas, Claim No. 30 in the amount of \$2,750,107.43; (e) Kop-Coat Inc., Claim No. 32 in the amount of \$207,945.00; (f) Halifax Electric Membership Corp., Claim No. 43 in the amount of \$2,217,294.95; (g) VSC Fire and Security Inc., Claim No. 40 in the amount of \$341,742.26; (h) Klausner Trading International GMBH, Claim No. 69 in the amount of \$1,079,751.20; (i) Klausner Nordamerika Beteiligungs GMBH, Claim No. 70 in the amount of \$9,339,523.89; (j) Klausner Holding USA Inc., Claim No. 91 in the amount of \$14,142,824.59; (k) Klausner Holz Niedersachsen GMBH, Claim No. 93 in the amount of \$47,141.12; (l) Klausner Holz Sachsen GMBH, Claim No. 94 in the amount of \$128,951.17; (m) Klausner Holz Thuringen GMBH, Claim No. 95 in the amount of \$2,801,049.38; and (n) Klausner Trading USA Inc., Claim No. 96 in the amount of \$16,279,152.15.

Claims (h) through (n) above include Claims of the Klausner Group, as defined in the Plan and may, depending on the outcome of one or more claims objections or settlements, be Klausner Group Unsecured Claims, as defined in the Plan, or Subordinated Claims, as defined in the Plan. These Claims generally assert unsecured claims for purported loans to the Debtor or alleged payments made by members of the Klausner Group. The Debtor and the Committee believe these Claims to be significantly overstated as well as potentially subject to recharacterization of debt to equity, setoff against Causes of Action held by the Debtor, and/or disallowance due to the action of section 502(d) of the Bankruptcy Code. The Debtor and Committee would expect these claims to be resolved (whether by objection or settlement) after a final result is arrived at in the CS Adversary Proceeding concerning the CS Liens and Claims.

#### **L. Exclusivity Extension Motions**

On October 7, 2020, the Debtor sought authorization from the Bankruptcy Court to extend the periods during which the Debtor (a) had the exclusive right to file a chapter 11 plan by four months, through and including, February 8, 2021, and (b) had the exclusive right to solicit acceptances thereof by approximately four months through and including April 7, 2021 [D.I. 296] (the "First Exclusivity Motion"). The Bankruptcy Court entered an order approving the First Exclusivity Motion on October 28, 2020 [D.I. 361].

On February 4, 2021, the Debtor sought authorization from the Bankruptcy Court to further extend the periods during which the Debtor (a) had the exclusive right to file a chapter 11 plan by two months through and including June 8, 2021, and (b) had the exclusive right to solicit acceptances thereof by approximately two months to August 9, 2021 [D.I. 604] (the "Second Exclusivity Motion"). The Bankruptcy Court entered an order approving the Second Exclusivity Motion on March 25, 2021 [D.I. 691].

On June 7, 2021, the Debtor sought a third authorization from the Bankruptcy Court to further extend the periods during which the Debtor (a) had the exclusive right to file a chapter 11 plan by four months through and including October 10, 2021, and (b) had the exclusive right to solicit acceptances thereof by approximately four months through and including December 10, 2021 [D.I. 803] (the "Third Exclusivity Motion"). The Bankruptcy Court entered an order approving the Third Exclusivity Motion on July 29, 2021 [D.I. 887].

On September 30, 2021, the Debtor sought a fourth authorization from the Bankruptcy Court to further extend the periods during which the Debtor (a) has the exclusive right to file a chapter 11 plan by two months through and including December 10, 2021, and (b) has the exclusive right to solicit acceptances

thereof by approximately two months through and including February 10, 2022 [D.I. 1015] (the “Fourth Exclusivity Motion”). The Bankruptcy Court entered an order approving the Fourth Exclusivity Motion on October 12, 2021 [D.I. 1028].

**M. WARN Act Litigation, Mediation and Settlement**

On March 27, 2020, Johnnie Raymond and other individuals including Helmut Thomay and Cornelius Turner, on behalf of themselves and others similarly situated (collectively, “WARN Act Plaintiffs”), filed a *First Amended Class Action Complaint* in the United States District Court for the Middle District of Florida, Jacksonville Division (the “Middle District of Florida”), for violation of WARN, FLSA, and unpaid wage claims, titled *Johnnie Raymond, et al. v. Klausner Lumber One, LLC, Klausner Lumber Two, LLC, Klausner Holding USA, Inc., Leopold Stephan, Christoph Schaetz and David Larkin* (3:20-cv-00287-BJD-MCR) (“Florida Complaint”).

On May 18, 2020, the WARN Act Plaintiffs filed a class action adversary proceeding complaint (together with the Florida Complaint, the “WARN Action”) against the Debtor, KL1, Klausner Holding USA, Inc., and Klausner Trading USA, Inc. (collectively, the “WARN Defendants”) in the Bankruptcy Court seeking WARN Claims for backpay and benefits, unpaid wages pursuant to the North Carolina Wage and Hour Act, § 95-25.3 and the Florida Constitution, and payment of accrued but unused paid time off for the WARN Defendants’ former employees with priority treatment under Sections 507(a)(4) and (5) of the Bankruptcy Code for the amounts up to the allowed cap, with the balance treated as general unsecured. (Adv. No. 20-50602-KBO).

On May 29, 2020, the Florida Complaint was stayed by the Middle District of Florida, and the case was administratively closed pending the outcome of the ongoing adversary proceeding pending in the KL1 case (which names KL2 as a co-defendant). By virtue of the Debtor having filed for bankruptcy on the Petition Date, on November 30, 2020, the Bankruptcy Court entered the parties’ *Agreed Order (I) Appointing Mediator, (II) Referring Certain Matters to Mediation, and (III) Granting Related Relief Filed Klausner Lumber One, LLC, Klausner Lumber Two, LLC* [KL1 Adv. Doc. 46] (the “WARN Mediation Order”). Pursuant to the WARN Mediation Order, on December 11, 2020, the parties attended a mediation with the Mediator. The parties were unable to resolve the WARN Action at mediation, but the parties continued to engage in settlement discussions with the Mediator’s assistance.

As a result of these continued efforts, KL2 reached an amicable resolution of the WARN Action with the WARN Act Plaintiffs. In this regard, on July 21, 2021, the Debtor and Cornelius Turner, on behalf of himself and the WARN Act Claimants, filed a *Joint Motion, Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rules 9019 and 7023 for an Order (I) Certifying a Class for Settlement Purposes, (II) Appointing Plaintiff Cornelius Turner as Class Representative and Plaintiffs’ Counsel as Class Counsel, (III) Preliminarily Approving Settlement, (IV), Approving Class Notice and (V) Scheduling Fairness Hearing* [D.I. 874] (the “WARN Class Settlement Motion”).

On August 4, 2021, Carolina Sawmills filed an objection to the WARN Class Settlement Motion [D.I. 907].

On August 6, 2021, the Debtor and Cornelius Turner, on behalf of himself and the WARN Act Claimants, filed a joint reply in support of the WARN Class Settlement Motion [D.I. 914].

On August 11, 2021, the Bankruptcy Court conducted a contested hearing on the WARN Class Settlement Motion. Thereafter, on August 12, 2021, the Bankruptcy Court entered an *Order (I) Certifying a Class for Settlement Purposes, (II) Appointing Plaintiff Cornelius Turner as Class Representative and Plaintiffs’ Counsel as Class Counsel. (III) Preliminarily Approving Settlement, (IV) Approving Class Notice, and (V) Scheduling a Fairness Hearing* [D.I. 944]. On September 10, 2021, Class Counsel filed a



*Declaration of Class Counsel Confirming No Class Member Has Opted out of or Objected to the Proposed Settlement* [D.I. 979].

On September 14, 2021, the Bankruptcy Court entered an *Order Granting (I) Final Approval of the Settlement Agreement, (II) Approving Class Counsel's Fees and Expenses and (III) Granting Related Relief* [D.I. 986].

**N. Additional Objections By Carolina Sawmills**

On August 23, 2021, Carolina Sawmills filed *Omnibus Objections and Reservation of Rights to the Fourth Interim Fee Applications Filed By (I) Westerman Ball Ederer Miller Zucker & Sharfstein, LLP [Docket No. 902]; (II) Morris, Nichols, Arsht & Tunnell LLP [Docket No. 900]; and Dinsmore & Shohl LLP [Docket No. 899]* [D.I. 963]. The Debtor's professionals filed an omnibus reply to this objection on September 13, 2021 [D.I. 983].

On September 29, 2021, the Bankruptcy Court entered *the Fourth Omnibus Order Granting Interim Allowance of Fees and Expenses for Certain Professionals* (relating to D.I. 894, 898, 899, 900, 902, 903, 926, 927 and 1011) [D.I. 1012].

On September 13, 2021, Carolina Sawmills filed an *Objection to the Fifteenth Staffing and Compensation Report of Asgaard Capital LLC for the Period August 1-31, 2021* [D.I. 983]. Asgaard filed a *Reply in Support of its Fifteenth Staffing and Compensation Report for the Period August 1-31, 2021* on October 11, 2021 [D.I. 1026].

On October 26, 2021, the Bankruptcy Court entered an *Order Approving Fifteenth Staffing and Compensation Report of Asgaard Capital LLC for the Period August 1, 2021 through August 31, 2021, as Reduced* [D.I. 1059].

**VI.  
SUMMARY OF THE PLAN**

**THE FOLLOWING IS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN. IT IS NOT A COMPLETE STATEMENT OF THE PLAN OR ITS OPERATION AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, WHICH IS ANNEXED TO THIS DISCLOSURE STATEMENT AS EXHIBIT A. IN CERTAIN RESPECTS, THE PLAN DEALS WITH COMPLEX LEGAL CONCEPTS AND INCORPORATES THE DEFINITIONS AND REQUIREMENTS OF THE BANKRUPTCY CODE. THEREFORE, YOU MAY WISH TO CONSULT WITH COUNSEL OF YOUR CHOICE BEFORE VOTING ON THE PLAN.**

**A. Description, Classification and Treatment of Claims and Interests**

Among the various categories of Claims and Interests are: (i) Administrative Expense Claims; (ii) Priority Tax Claims; (iii) CS Secured Claims; (iv) Priority Claims; (v) WARN Act Class Settlement Claims; (vi) CS Deficiency/Unsecured Claims; (vii) General Unsecured Claims; (viii) Klausner Group Unsecured Claims; (ix) Subordinated Claims and (x) Interests.

**1. Unclassified Administrative Expense Claims**

Administrative Claims are Claims for costs and expenses of administration of the Debtor's Estate pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) to the extent they meet the statutory requirements, the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; (b) Allowed Professional Fee Claims; and (c) all Allowed requests for compensation or expense

reimbursement for making a substantial contribution in the Chapter 11 Case pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code. Administrative Expense Claims also consist of fees and expenses of Professionals employed in the Chapter 11 Case.

Except with respect to Administrative Expense Claims that (a) are Professional Fee Claims, (b) have already been paid during the Chapter 11 Case, or (c) the Holder of an Allowed Administrative Expense Claim has agreed to less favorable treatment, each Holder of an Allowed Administrative Expense Claim shall receive in full satisfaction of its Administrative Expense Claim, Cash equal to the amount of such Allowed Administrative Expense Claim either: (i) on the Effective Date; (ii) if the Administrative Expense Claim is not Allowed as of the Effective Date, thirty (30) days after the date on which an order allowing such Administrative Expense Claim becomes a Final Order, or as soon thereafter as reasonably practicable; or (iii) if the Allowed Administrative Expense Claim is based on a liability incurred by the Debtor in the ordinary course of its business after the Petition Date, pursuant to the terms and conditions of the particular transaction or agreement giving rise to such Allowed Administrative Expense Claim, without any further action by the Holders of such Allowed Administrative Expense Claim and without any further notice to, or action, order, or approval of, the Bankruptcy Court. The Debtor estimates that the total amount of Administrative Expense Claims that will be paid over the course of this Chapter 11 Case is between approximately \$20.9 million and \$28.4 million, of which \$20.9 million has been paid pursuant to orders of the Bankruptcy Court<sup>8</sup>.

Pursuant to Local Rule 3002-1, the government shall not be required to file any Proof of Claim or applicable for allowance for any Claims covered by section 503(b)(1)(B), (C), or (D).

a. Professional Fee Claims

The Plan provides that all final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Effective Date shall be Filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules and prior Bankruptcy Court orders. The Liquidating Trust (or the authorized signatories to the Professional Fee Escrow Account, after consultation with the Liquidating Trust) shall pay the amount of the Allowed Professional Fee Claims owing to the Professionals in Cash to such Professionals from the funds held in the Professional Fee Escrow Account within two (2) Business Days or as soon thereafter as reasonably practicable after such Professional Fee Claims are allowed by entry of an order of the Bankruptcy Court. To the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Expense Claim for any such deficiency, and the Debtor, the Post-Effective Date Debtor or the Liquidating Trustee, as applicable, shall pay the full unpaid amount of such Allowed Administrative Expense Claim in Cash.

2. Priority Tax Claims

Priority Tax Claims are Claims against the Debtor that are entitled to priority in accordance with section 507(a)(8) of the Bankruptcy Code. The Plan provides that, except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction and compromise of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. For the avoidance of doubt, Holders of Allowed Priority Tax Claims will receive interest on such Allowed Priority Tax Claims after the Effective Date in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code. The Debtor estimates that the total amount of Priority Tax Claims that will be paid

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<sup>8</sup> These amounts include Professional Fee Claims (including those related to the Wind Down), transactions fees, financing fees, U.S. Trustee fees and operating expenses.

over the course of this Chapter 11 Case will be approximately \$1.25 million. All of the Priority Tax Claims have already been paid at closing.<sup>9</sup>

3. **Class 1 – CS Secured Claims**

- a. *Classification:* Class 1 consists of the CS Secured Claims.
- b. *Treatment:* Each Holder of an Allowed CS Secured Claim shall receive on account of such Claim at the Liquidating Trustee's exclusive election, except to the extent that any Holder of an Allowed CS Secured Claim agrees to less favorable treatment therefor, either: (i) Cash equal to the amount of such Allowed CS Secured Claim; (ii) the property that serves as security for such Allowed CS Secured Claim; or (iii) such other treatment that shall render such Allowed CS Secured Claims Unimpaired pursuant to section 1124 of the Bankruptcy Code (which may include Reinstatement).
- c. *Voting:* Class 1 is Unimpaired. Holders of CS Secured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

4. **Class 2 – Priority Claims**

- a. *Classification:* Class 2 consists of Priority Claims.
- b. *Treatment:* Each Holder of an Allowed Priority Claim shall receive on account thereof payment of the full amount of such Allowed Priority Claim in Cash or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code, except to the extent the Holder of an Allowed Priority Claim agrees to less favorable treatment.
- c. *Voting:* Class 2 is Unimpaired. Holders of Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 2 are not entitled to vote to accept or reject the Plan.

5. **Class 3 – WARN Act Class Settlement Claims**

- a. *Classification:* Class 3 consists of all of the Allowed WARN Act Class Settlement Claims of the WARN Act Class Claimants.
- b. *Treatment:* Each Holder of an Allowed WARN Act Class Settlement Claim shall receive its WARN Pro Rata Share of the Net WARN Act Class Settlement Amount less any and all state, federal and/or other payroll tax withholdings, with such distribution to be paid as follows: (i) fifty percent (50%) of each Holder's WARN Pro Rata Share of the Net WARN Act Class Settlement Amount less any and all state, federal, and/or other

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<sup>9</sup> These amounts include property taxes paid at the closing of the sale but do not include transfer taxes associated with the sale.

payroll tax withholdings to be paid within 15 days after the Effective Date; and (ii) the remaining fifty percent (50%) of each Holder's WARN Pro Rata Share of the Net WARN Act Class Settlement Amount less any and all state, federal, and/or other payroll tax withholdings will be paid within sixty (60) days following the initial distribution.

- c. *Voting:* Class 3 is Impaired. Holders of Allowed WARN Act Class Settlement Claims are entitled to vote to accept or reject the Plan.

6. **Class 4 – CS Deficiency/Unsecured Claims**

- a. *Classification:* Class 4 consists of CS Deficiency/Unsecured Claims.
- b. *Treatment:* Each Holder of the Allowed CS Deficiency/Unsecured Claims shall receive its Pro Rata Share of an amount equal to the Net Distribution Proceeds. For the avoidance of doubt, each Holder of the Allowed CS Deficiency/Unsecured Claims shall receive its Pro Rata Share of the Net Distribution Proceeds along with other Holders of Allowed Unsecured Claims.
- c. *Voting:* Class 4 is Impaired. Holders of CS Deficiency/Unsecured Claims are entitled to vote to accept or reject the Plan.

7. **Class 5 - General Unsecured Claims**

- a. *Classification:* Class 5 consists of all General Unsecured Claims.
- b. *Treatment:* Each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata Share of an amount equal to the Net Distribution Proceeds. For the avoidance of doubt, each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata Share of the Net Distribution Proceeds along with other Holders of Allowed Unsecured Claims.
- c. *Voting:* Class 5 is Impaired. Holders of Allowed General Unsecured Claims are entitled to vote to accept or reject the Plan.

8. **Class 6 – Klausner Group Unsecured Claims**

- a. *Classification:* Class 6 consists of Klausner Group Unsecured Claims.

- b. *Treatment:* Each Holder of an Allowed Klausner Group Unsecured Claim shall receive its Pro Rata Share of an amount equal to the Net Distribution Proceeds. For the avoidance of doubt, each Holder of an Allowed Klausner Group Unsecured Claims shall receive its Pro Rata Share of the Net Distribution Proceeds along with other Holders of Allowed Unsecured Claims.
- c. *Voting:* Class 6 is Impaired. Holders of Allowed Klausner Group Unsecured Claims are entitled to vote to accept or reject the Plan.

9. **Class 7 – Subordinated Claims**

- a. *Classification:* Class 7 consists of all Subordinated Claims.
- b. *Treatment:* Each Holder of an Allowed Subordinated Claim will receive its Pro Rata Share of an amount equal to the Net Distribution Proceeds remaining after satisfaction in full of all Allowed Claims in all senior classes (*i.e.*, Classes 1, 2, 3, 4, 5 and 6).
- c. *Voting:* Class 7 is Impaired. Holders of Allowed Subordinated Claims are entitled to vote to accept or reject the Plan.

10. **Class 8 – Interests**

- a. *Classification:* Class 8 consists of all Interests in the Debtor.
- b. *Treatment:* All Interests shall be canceled and extinguished and shall be of no further force or effect. No Holder of Interests shall receive or retain any property under the Plan on account of such Interest.
- c. *Voting:* Class 8 is Impaired. Holders of Interests in the Debtor are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Interests in Class 8 are not entitled to vote to accept or reject the Plan.

**B. Special Provision Governing Unimpaired Claims**

Except as otherwise specifically provided in the Plan, nothing under the Plan shall affect the Debtor's, Post-Effective Date Debtor's or the Liquidating Trust's rights in respect of any Unimpaired Claim, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

**C. Confirmation Pursuant to Section 1129(a)(10) of the Bankruptcy Code**

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims, determined without including any acceptance of the Plan by any Insider. If any Impaired Class of Claims entitled to vote shall not accept the Plan by the statutory majority required under section 1126(c) of the Bankruptcy Code, the Proponents reserve the right to modify the Plan in accordance with Article X of the Plan, including but not limited to the treatment applicable to any Class of Claims to render such Class of Claims Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

**D. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code (“Cram Down”)**

With respect to any Impaired Class that does not accept the Plan or is deemed to have rejected the Plan pursuant to section 1126(f) of the Bankruptcy Code, the Debtor intends to request that the Bankruptcy Court “cram down” any such Class(es) and confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.

**E. Elimination of Vacant Classes**

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

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

If a Class of Claims or Interests is eligible to vote and no Holder of an Allowed Claim or Allowed Interest in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by such Class.

**G. Subordinated Claims and Interests**

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and their respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtor/Post-Effective Date Debtor or Liquidating Trust, as applicable, reserves the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**H. Implementation of the Plan**

**1. Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the Effective Date, except as otherwise specifically provided for in the Plan, the obligations of the Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest or equity in the Debtor or any warrants, options, or other securities exercisable or exchangeable for, or convertible into, debt, equity, ownership, or profits interests in the Debtor giving rise to any Claim or Interest shall be canceled and deemed surrendered as to the Debtor and shall not have any continuing obligations thereunder.

**2. Exemption from Certain Taxes and Fees**

To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfers under a plan confirmed under section 1129 of the Bankruptcy Code, may not be taxed under any law imposing a stamp tax.

**3. Effectuation of the Plan**

The following provisions shall govern the effectuation of the Plan:

a. Establishment of the Segregated Account

Except as otherwise provided in the Plan, on or before the Effective Date, the Debtor shall establish and fund the Segregated Account with the remaining Sale Proceeds, which funds, subject to the terms of the Plan, shall be held in the Segregated Account by the Liquidating Trustee pending a determination of the rights of the Debtor/Post-Effective Date Debtor, Liquidating Trust and Carolina Sawmills with respect to (i) the Net Sale Proceeds and (ii) any other Debtor assets remaining after the sale of the Sale Assets that would have been subject to the CS Liens and Claims as of the Petition Date. The Liquidating Trustee is authorized and directed to pay the CS Carved Out Amounts from the funds in the Segregated Account.

b. Sources of Consideration for Plan Distributions

The Liquidating Trustee will pay all Allowed CS Carved Out Amounts and any other distributions pursuant to the Plan initially from funds in the Segregated Account and thereafter from any other Liquidating Trust Assets and the earnings thereon and proceeds thereof. The Liquidating Trustee, on behalf of the Liquidating Trust, shall distribute such Cash in accordance with the provisions of the Plan and the Liquidating Trust Agreement, including: (a) to the Holders of Allowed Administrative Expense Claims and Allowed Priority Tax Claims; (b) to Holders of Allowed Priority Claims; and (c) to Holders of Allowed Class 3 WARN Act Settlement Claims.

c. Liquidating Trust & Vesting of Assets

On the Effective Date, the Debtor and the Liquidating Trustee shall enter into the Liquidating Trust Agreement. Additionally, on the Effective Date, the Debtor shall irrevocably transfer and assign, and shall be deemed to have transferred and assigned, to the Liquidating Trust all right, title, and interest in and to the Liquidating Trust Assets in accordance with the Plan including without limitation, all Cash in the Debtor's possession, custody or control, free and clear of all Liens, Claims, charges, or other encumbrances except for rights to such distributions provided to Holders of Allowed Claims and Allowed Interests as provided in the Plan. In his, her, or its capacity as Liquidating Trustee, the Liquidating Trustee shall accept all Liquidating Trust Assets on behalf of the beneficiaries thereof and be authorized to obtain, seek the turnover, prosecute, liquidate, and collect all of the Liquidating Trust Assets not in his, her, or its possession. The Liquidating Trust will be deemed created and effective without any further action by the Bankruptcy Court or any Person as of the Effective Date. For the avoidance of doubt, if the CS Adversary Proceeding is still pending as of the Effective Date, the Liquidating Trust Assets shall not include the funds deposited into the Segregated Account pending further order of the Bankruptcy Court at the conclusion of CS Adversary Proceeding.

d. Dissolution and Board of Directors

On the Effective Date, the Liquidating Trustee shall be appointed for the purpose of conducting the Wind-Down and shall succeed to such powers as would have been applicable to the Debtor's officers, directors, and shareholders, and the Debtor shall be authorized to be (and, upon the conclusion of the Wind-Down (subject to Article VII.O), shall be) dissolved by the Liquidating Trustee. The Liquidating Trustee shall act for the Debtor in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions of the Plan (and all certificates of formation, membership agreements, articles of incorporation or amendment by-laws, and related documents, as applicable, are deemed amended pursuant to the Plan to permit and authorize the same). From and after the Effective Date, the Liquidating Trustee shall be the sole representative of and shall act for the post-Effective Date Debtor and the Estate.

Upon a certification to be Filed with the Bankruptcy Court by the Liquidating Trustee of all distributions having been made and completion of all its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Case, the Liquidating Trust shall be deemed to be dissolved without any further action by the Liquidating Trustee, including the filing of any documents with the secretary of state

for the state in which the Debtor is formed or any other jurisdiction. Notwithstanding the foregoing, the Liquidating Trustee shall retain the authority to take all necessary actions to dissolve the Debtor in, and withdraw the Debtor from, applicable states and provinces to the extent required by applicable law.

e. Corporate Action

Upon the Effective Date, all actions contemplated under the Plan, regardless of whether taken before, on, or after the Effective Date, shall be deemed authorized and approved in all respects. All matters provided for in the Plan or deemed necessary or desirable by the Debtor before, on, or after the Effective Date involving the corporate structure of the Debtor, the Post-Effective Date Debtor or the Liquidating Trust, and any corporate action required by the Debtor, the Post-Effective Date Debtor or the Liquidating Trust in connection with the Plan or corporate structure of the Debtor or Liquidating Trust, shall be deemed to have occurred and shall be in effect on the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtor or the Liquidating Trust. Before, on, or after the Effective Date, the appropriate officers of the Debtor (including the Chief Restructuring Officer) or the Liquidating Trust, as applicable, shall be authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Liquidating Trust. The authorizations and approvals contemplated by this Article VI.H.II.4.e shall be effective notwithstanding any requirements under any non-bankruptcy law.

## **VII. THE LIQUIDATING TRUST**

### **A. Liquidating Trust**

The Liquidating Trust shall be formed on the Effective Date and shall continue in existence for the benefit of the Liquidating Trust beneficiaries. The powers, authority, responsibilities, and duties of the Liquidating Trust and the Liquidating Trustee are set forth in and shall be governed by the Plan and the Liquidating Trust Agreement. The Liquidating Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, without limitation, any and all provisions necessary to ensure the continued treatment of the Liquidating Trust as a grantor trust and the beneficiaries of the Liquidating Trust as the grantors and owners thereof for federal income tax purposes. The Liquidating Trust Agreement may provide powers, duties, and authorities in addition to those explicitly stated in the Plan, but only to the extent that such powers, duties, and authorities do not affect the status of the Liquidating Trust as a “liquidating trust” for United States federal income tax purposes.

On the Effective Date, the Debtor and the Liquidating Trustee shall execute the Liquidating Trust Agreement and shall take all other steps necessary to establish the Liquidating Trust pursuant to the Liquidating Trust Agreement and the Plan.

The Plan Proponents are proposing Allen D. Wilen of Eisner as the initial Liquidating Trustee. Since their appointment in the case, Eisner has served as financial advisors to the Creditors’ Committee. Mr. Wilen is a partner and National Director of Eisner’s Financial Advisory Services Group and has had primarily responsibility for handling this case at the company. Mr. Wilen has extensive experience in bankruptcy cases, including having previously served as a liquidating trustee and plan administrator in numerous other Chapter 11 bankruptcy cases.

### **B. Purpose of the Liquidating Trust**

The Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the sole purpose of liquidating and administering the Liquidating Trust Assets and making distributions on account thereof as provided for under the Plan in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating



Trust is intended to qualify as a liquidating trust pursuant to Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. The Liquidating Trust shall not be deemed a successor in interest of the Debtor for any purpose other than as specifically set forth in the Plan or in the Liquidating Trust Agreement. Pursuant to such purpose, the Liquidating Trust shall engage in (1) resolving Disputed Claims, (2) prosecuting Causes of Action, (3) pursuing any and all Liquidating Trust Assets, (4) making distributions on account of Allowed Claims as provided in the Liquidating Trust Agreement and in the Plan, (5) maximizing recovery of the Liquidating Trust Assets for the benefit of the Liquidating Trust beneficiaries, (6) distributing the proceeds of the Liquidating Trust Assets to the Liquidating Trust beneficiaries in accordance with the Plan and the Liquidating Trust Agreement, (7) maintaining and funding the Segregated Account, (8) filing appropriate tax returns for the Liquidating Trust, and (9) all other matters not expressly set forth in the Plan, as may be reasonably necessary, in the opinion of the Liquidating Trustee, to effectuate the Plan and the terms of the Liquidating Trust Agreement. As of the Effective Date, the Liquidating Trust, by and through the Liquidation Trustee, shall be authorized to act on behalf of the Debtor, the Post-Effective Date Debtor and, to the extent necessary, deemed to be substituted as the party-in-lieu of the Debtor/Post-Effective Date Debtor in all matters, including (a) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, in connection with, relating to, or in any manner arising from the Liquidating Trust and/or Liquidating Trust Assets, (b) any and all tax or regulatory filings, relating to the Liquidating Trust, and (c) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court in connection with, relating to, or in any manner arising from the Liquidating Trust and/or Liquidating Trust Assets, in each case without the need or requirement for the Liquidating Trust to file motions or substitutions of parties or counsel in each such matter.

#### **C. Liquidating Trust Assets**

On the Effective Date, and in accordance with sections 1123 and 1141 of the Bankruptcy Code and pursuant to the terms of the Plan, all title and interest in all of the Liquidating Trust Assets, as well as the rights and powers of the Debtor in such Liquidating Trust Assets, shall automatically vest, transfer and be assigned in and to the Liquidating Trust, free and clear of all Claims and Interests, except as otherwise provided by Court order, for the benefit of the Liquidating Trust beneficiaries. Upon the transfer and assignment of the Liquidating Trust Assets, the Debtor shall have no interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust. Upon delivery of the Liquidating Trust Assets to the Liquidating Trust, the Debtor and its predecessors, successors and assigns, shall be discharged and released from all liability with respect to the delivery of such distributions and shall have no reversionary or further interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Liquidating Trust Assets to the Liquidating Trust shall not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to section 1146(a) of the Bankruptcy Code. The Liquidating Trustee shall agree to accept and hold the Liquidating Trust Assets in the Liquidating Trust for the benefit of the beneficiaries of the Liquidating Trust, subject to the terms of the Plan and the Liquidating Trust Agreement.

The Debtor, the Liquidating Trustee, the Liquidating Trust beneficiaries, and any party under the control of such parties will execute any documents or other instruments and shall take all other steps as reasonably necessary to cause title to the Liquidating Trust Assets to be transferred to the Liquidating Trust.

#### **D. The Liquidating Trustee**

The Liquidating Trustee shall be a Person or Entity mutually acceptable to the Debtor and the Creditors' Committee, whose appointment shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. The Debtor presently anticipates that Allen Wilen of Eisner will be appointed as the Liquidating Trustee. Following appointment, the Liquidating Trustee shall act in accordance with the Plan

and Liquidating Trust Agreement, and in such capacity shall have the same powers as the board of directors, managers and/or officers of the Debtor (and all bylaws, articles of incorporation, and related corporate documents are deemed amended by the Plan to permit and authorize the same). The Liquidating Trustee may be removed at any time by order of the Bankruptcy Court, after notice and a hearing and upon a showing of cause. In the event of resignation or removal, death or incapacity of the Liquidating Trustee, the Bankruptcy Court shall designate another Person or Entity to serve as Liquidating Trustee. Thereupon, the successor Liquidating Trustee, without any further act or need for an order of the Bankruptcy Court, shall become fully vested with all of the rights, powers, duties, and obligations of the predecessor; *provided, however*, that the Liquidating Trustee shall be deemed removed on the date the Chapter 11 Case is closed, and no successor thereto shall be designated. All documented and reasonable fees and expenses incurred by the Liquidating Trustee and its professionals (which the Liquidating Trustee may retain in accordance with Article VII.M of the Plan) following the Effective Date shall initially be paid from funds in the Segregated Account attributable to the CS Carve Out Amount allocated for post-Effective Date fees and expenses incurred in connection with implementation of the Plan and, thereafter, from the other Liquidating Trust Assets as set forth in the Liquidating Trust Agreement.

**E. Beneficiaries of the Liquidating Trust**

The holders of Allowed General Unsecured Claims shall be the beneficiaries of the Liquidating Trust. Such beneficiaries shall be bound by the Liquidating Trust Agreement. The interests of the beneficiaries in the Liquidating Trust shall be uncertificated and nontransferable except upon death of the interest holder or by operation of law.

**F. Vesting and Transfer of Liquidating Trust Assets to the Liquidating Trust**

Pursuant to section 1141(b) of the Bankruptcy Code, the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Liens, Claims, and Interests, except as otherwise specifically provided in the Plan or in the Confirmation Order; *provided, however*, that the Liquidating Trustee may abandon or otherwise not accept any non-Cash Liquidating Trust Assets that the Liquidating Trustee believes, in good faith, have no value or are burdensome to the Liquidating Trust. Any non-Cash Liquidating Trust Assets that the Liquidating Trustee so abandons or otherwise does not accept shall not be property of the Liquidating Trust.

**G. Liquidating Trust Expenses**

Subject to the provisions of the Liquidating Trust Agreement, all costs, expenses, and obligations incurred by the Liquidating Trustee in administering the Plan, the Liquidating Trust, or in any manner connected, incidental, or related thereto, that results in distributions from the Liquidating Trust shall be charged against the Liquidating Trust Assets remaining in the hands of the Liquidating Trustee. Such costs, expenses, and obligations shall be paid in accordance with the Liquidating Trust Agreement, which shall provide for an initial distribution to the Segregated Account to fund a prompt distribution to Holders of Allowed General Unsecured Claims and any other similarly situated creditors in accordance with Article III.B of the Plan.

The Liquidating Trust Expenses shall initially be paid from funds in the Segregated Account attributable to the CS Carve Out Amount allocated for post-Effective Date fees and expenses incurred in connection with implementation of the Plan and, thereafter, from the other Liquidating Trust Assets as set forth in the Liquidating Trust Agreement.

**H. Role of the Liquidating Trustee**

The Liquidating Trustee shall be the exclusive trustee of the Liquidating Trust and the Liquidating Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3) as well as the representative

of the Estate appointed pursuant to section 1123(b)(3) of the Bankruptcy Code regarding all Liquidating Trust Assets. The powers, rights, and responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and shall include, without limitation, the authority and responsibility to: (1) receive, manage, invest, supervise, and protect the Liquidating Trust Assets, including through the creation of reserves as provided for under the Plan; (2) retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals (which may include Professionals retained during the Chapter 11 Case), and consultants to advise and assist in the administration, prosecution, and distribution of Liquidating Trust Assets; (3) calculate and implement distributions of Liquidating Trust Assets; (4) investigate, prosecute, compromise, and settle, in accordance with the specific terms of the Liquidating Trust Agreement, Causes of Action vested in the Liquidating Trust; and (5) address and resolve issues involving objections, reconciliation, and allowance of Claims in accordance with the Plan. The Liquidating Trust is the successor to the Debtor and the Estate.

On the Effective Date, the Liquidating Trustee shall: (a) take possession of all books, records, and files of the Debtor and the Estate and (b) provide for the retention and storage of such books, records, and files until such time as the Liquidating Trust determines, in accordance with the Liquidating Trust Agreement and applicable law and regulation, that retention of same is no longer necessary or required.

The Liquidating Trustee may, but shall not be required to, invest Cash (including any earnings thereon or proceeds therefrom) as permitted by section 345 of the Bankruptcy Code or in other prudent investments; *provided, however*, that such investments are permitted to be made by a liquidating trust within the meaning of Treasury Regulation § 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings, or other controlling authorities.

The Liquidating Trustee shall have the right to object to Claims.

The Liquidating Trustee shall administer the Liquidating Trust's tax obligations, including (w) filing tax returns as a grantor trust pursuant to Treasury Regulation § 1.671-4(a) including, to the extent applicable, for any disputed claims reserve pursuant to Treasury Regulations § 1.468B-9; (x) paying the Liquidating Trust's tax obligations; (y) requesting, if necessary, an expedited determination of any unpaid tax liability of the Liquidating Trust for all taxable periods of the Liquidating Trust through the dissolution of the Liquidating Trust, as determined under section 505(b) of the Bankruptcy Code and applicable tax laws; and (z) representing the interest and account of the Liquidating Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit. The Liquidating Trust also shall annually (for tax years in which distributions from the Liquidating Trust are made) send to each known beneficiary a separate statement setting forth the beneficiary's share of items of income, gain, loss, deduction, or credit and all such holders shall report such items on their federal income tax returns; *provided, however*, that no such statement need be sent to any Class that is not expected to receive any distribution from the Liquidating Trust. The Liquidating Trust's taxable income, gain, loss, deduction, or credit will be allocated to the Liquidating Trust's beneficiaries in accordance with their relative beneficial interests in the Liquidating Trust. As soon as practicable after the Effective Date, the Liquidating Trustee shall make a good faith valuation of assets of the Liquidating Trust, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Liquidating Trustee also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any governmental unit for taxing purposes. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

The Liquidating Trust shall be responsible for payments of all Allowed tax obligations of the Debtor, and any taxes imposed on the Liquidating Trust or the Liquidating Trust Assets.

Notwithstanding anything in the Plan or Liquidating Trust Agreement to the contrary, the

Liquidating Trustee shall always act consistently with, and not contrary to, the purpose of the Liquidating Trust as set forth in Article VII.B of the Plan. The Liquidating Trustee shall have fiduciary duties to the Liquidating Trust beneficiaries consistent with the fiduciary duties that a member of an official committee appointed pursuant to section 1102 of the Bankruptcy Code has to the creditor constituents represented by such committee and shall exercise his, her, or its responsibilities accordingly; *provided, however*, that the Liquidating Trustee shall not owe fiduciary obligations to any defendants or potential defendants of Causes of Action in their capacities as such, it being the intent of such fiduciary duties to ensure that the Liquidating Trustee's obligations are to maximize the value of the Liquidating Trust Assets, including the Causes of Action.

#### **I. Prosecution and Resolution of Causes of Action**

From and after the Effective Date, prosecution and settlement of all Causes of Action, including without limitation, the CS Adversary Proceeding if such proceeding has not been resolved prior to the Effective Date, transferred and assigned to the Liquidating Trust shall be the primary responsibility of the Liquidating Trust and the Liquidating Trustee pursuant to the Plan and the Confirmation Order. From and after the Effective Date, the Liquidating Trust and Liquidating Trustee shall have exclusive rights, powers, and interests of the Debtor and the Debtor's Estate to pursue, settle, or abandon such Causes of Action as the sole representative of the Debtor and, the Debtor's Estate pursuant to section 1123(b)(3) of the Bankruptcy Code. Proceeds recovered from all Causes of Action will be deposited into the Segregated Account and will be used or distributed by the Liquidating Trustee in accordance with the provisions of the Plan and Liquidating Trust Agreement. All Causes of Action that are not expressly released or waived under the Plan are reserved and preserved, transferred to and vest in the Liquidating Trust and Liquidating Trustee in accordance with the Plan. No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtor or the Liquidating Trustee will not pursue any and all available Causes of Action against such Person. The Liquidating Trustee expressly reserves all Causes of Action, except for any Causes of Action against any Person that are expressly released or waived under the Plan. Therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of confirmation or consummation of the Plan. To the extent released in the Plan, no claims or Causes of Action against the Released Parties shall be transferred to the Liquidating Trust, the Liquidating Trustee shall not have standing to pursue such claims or Causes of Action, and all such claims and Causes of Action shall be released pursuant to the Plan.

Settlement by the Liquidating Trustee of any Cause of Action transferred and assigned to the Liquidating Trust shall only require: (1) approval of the Liquidating Trustee in his, her, or its discretion in consultation with counsel to Carolina Sawmills if the amount claimed by the Liquidating Trust against a Person is less than two hundred fifty thousand dollars (\$250,000); and (2) approval of the Liquidating Trustee in his, her, or its discretion and approval of the Bankruptcy Court, upon notice and a hearing, if the amount claimed by the Liquidating Trust against a Person is unliquidated or equals or exceeds two hundred fifty thousand dollars (\$250,000); *provided, however*, the Liquidating Trustee shall not be required to nor shall he, she or it consult with counsel to Carolina Sawmills in connection with any Claims or Causes of Action against Carolina Sawmills, including without limitation, the CS Adversary Proceeding.

#### **J. Federal Income Tax Treatment of the Liquidating Trust for the Liquidating Trust Assets**

Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), for all United States federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee and the Liquidating Trust beneficiaries) shall treat the transfer of Liquidating Trust Assets to the Liquidating Trust as (1) a transfer of Liquidating Trust Assets (subject to any obligations relating to those assets) directly to Liquidating Trust beneficiaries

(other than to the extent Liquidating Trust Assets are allocable to Disputed Claims), followed by (2) the transfer by such beneficiaries to the Liquidating Trust of Liquidating Trust Assets in exchange for Liquidating Trust Interests. Accordingly, except in the event of contrary definitive guidance, Liquidating Trust beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of Liquidating Trust Assets (other than such Liquidating Trust Assets as are allocable to Disputed Claims). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

Allocations of Liquidating Trust taxable income (other than taxable income allocable to any assets allocable to, or retained on account of, Disputed Claims) among Liquidating Trust beneficiaries shall be determined by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all its assets (valued at their tax book value, other than assets allocable to Disputed Claims) to the holders of Liquidating Trust interests, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of Liquidating Trust Assets for purpose of this paragraph shall equal its fair market value on the date Liquidating Trust Assets are transferred to the Liquidating Trust, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by such Liquidating Trustee), the Liquidating Trustee (a) may timely elect to treat any Liquidating Trust Assets allocable to Disputed Claims as a “disputed ownership fund” governed by Treas. Reg. § 1.468B-9, and (b) to the extent permitted by applicable law, shall report consistently for state and local income tax purposes. If a “disputed ownership fund” election is made, all parties (including the Liquidating Trustee and Liquidating Trust beneficiaries) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

The Liquidating Trust shall be responsible for payment, initially from funds in the Segregated Account attributable to the CS Carve Out Amount allocated for post-Effective Date fees and expenses incurred in connection with implementation of the Plan and, thereafter, from any other Liquidating Trust Assets, of any taxes imposed on the Liquidating Trust (including any Cash reserved for future payment of Disputed Claims in accordance with Article VIII.D of the Plan) or the Liquidating Trust Assets.

## **K. Indemnification**

Subject to the Bankruptcy Code, the Bankruptcy Rules and any prior orders of the Bankruptcy Court, the Liquidating Trust shall indemnify the Indemnified Persons for, and shall reimburse them for, or hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including, without limitation, the reasonable fees and expenses of their respective professionals) incurred without gross negligence, willful misconduct, or actual fraud on the part of the Indemnified Persons (which gross negligence, willful misconduct, or actual fraud, if any, must be determined by Final Order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the Indemnified Persons in connection with the acceptance, administration, exercise, or performance of their duties under the Plan or the Liquidating Trust Agreement, as applicable, without the need for filing any Proof of Claim or requests for payment of an Administrative Expense Claim. An act or omission taken with the approval of the Bankruptcy Court will conclusively be deemed not to constitute gross negligence, willful misconduct, or actual fraud. The Indemnified Persons shall be entitled to advancement for any indemnity obligations, including the right to seek approval from the Bankruptcy

Court, after notice and a hearing, for the withholding or sequestration of funds necessary to provide for the future payment of potential indemnification obligations of the Indemnified Persons.

**L. Term of the Liquidating Trust**

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (1) all Disputed Claims have been resolved, (2) all of the Liquidating Trust Assets have been liquidated or abandoned, (3) all duties and obligations of the Liquidating Trustee under the Liquidating Trust Agreement and the Plan have been fulfilled, (4) all distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made, and (5) the Debtor's Chapter 11 Case has been closed; *provided, however*, that in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that an extension is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets and/or distributions in accordance with the Plan.

**M. Retention of Professionals by the Liquidating Trust**

The Liquidating Trustee may, in connection with the performance of his, her, or its functions, in the Liquidating Trustee's sole and absolute discretion, retain, consult with, and compensate attorneys, accountants, advisors, or agents to assist in his, her, or its duties on such terms (including on a contingency or hourly basis) as he, she, or it deems reasonable and appropriate without Bankruptcy Court approval. The Liquidating Trustee may assert the reasonable reliance on the advice of counsel as a defense to any claim asserted against the Liquidating Trustee. Notwithstanding such authority, the Liquidating Trustee shall be under no obligation to consult with any such attorneys, accountants, advisors, or agents, and his, her, or its determination not to do so shall not result in the imposition of liability on the Liquidating Trustee or his, her, or its members unless such determination is based on willful misconduct, gross negligence, or actual fraud.

**N. Conflicts Between the Liquidating Trust Agreement and the Plan**

In the event of any inconsistencies or conflict between the Liquidating Trust Agreement and the Plan, the terms and provisions of the Plan shall control.

**O. Wind Down**

The Liquidating Trustee, for and on behalf of the Post-Effective Date Debtor, shall have the power and authority to take any action necessary to wind down and dissolve the Debtor, without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of the Debtor.

As soon as practicable on or after the Effective Date, but in no event later than the closing of the Chapter 11 Case, the Liquidating Trustee shall solely be responsible for the following: (1) to the extent applicable, file a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtor under the applicable laws of its state of incorporation or formation; (2) to the extent applicable, complete and file any final or otherwise required federal, state, and local tax returns and pay any taxes required to be paid for the Debtor, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of the Debtor or the Estate for any tax incurred during the administration of the Debtor's Chapter 11 Case, as determined under applicable tax laws, and represent the interests and account of the Debtor or the Estate before any taxing authority in all matters, including, without limitation, any action, suit, proceeding, or audit; and (3) take such other actions and/or undertake administrative functions as the Liquidating Trustee and Post-Effective Date Debtor may reasonably determine to be necessary or desirable

to carry out the purposes of the Plan. Any certificate of dissolution or equivalent document may be executed by the Liquidating Trustee without need for any additional action or approval by any Person or Entity. From and after the Effective Date, except with respect to the Liquidating Trust as set forth in the Plan, the Liquidating Trustee, for and on behalf of the Post-Effective Date Debtor, (a) for all purposes shall be deemed to have withdrawn the Debtor's/Post-Effective Date Debtor's business operations (if any) from any state in which the Debtor was previously conducting, or is registered or licensed to conduct, its business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (b) shall be deemed to have canceled pursuant to the Plan all Interests, and (c) 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. Notwithstanding the Debtor's dissolution, the Debtor/Post-Effective Date Debtor shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

The filing of the final monthly report (for the month in which the Effective Date occurs) shall be the responsibility of the Debtor, and the filing of subsequent quarterly reports shall be the responsibility of the Liquidating Trustee except to the extent quarterly reporting is required by any other post-Effective Date entity.

For the avoidance of doubt, all reasonable expenses incurred by the Liquidating Trustee, for and on behalf of the Post-Effective Date Debtor, in connection with the Wind Down shall be deemed Liquidating Trust Expenses and shall initially be paid from funds in the Segregated Account attributable to the CS Carve Out Amount allocated for post-Effective Date fees and expenses incurred in connection with implementation of the Plan and, thereafter, from any other Liquidating Trust Assets.

## **VIII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS**

### **A. Allowance of Claims**

After the Effective Date, the Liquidating Trust shall have and retain any and all rights and defenses the Debtor had with respect to any Claim immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order) in the Chapter 11 Case allowing such Claim. For the avoidance of doubt, pursuant to Local Rule 3002-1(a), the government shall not be required to file any proof of claim or application for the allowance of any claims covered by section 503(b)(1)(B), (C), or (D) of the Bankruptcy Code.

### **B. Claims Administration Responsibilities**

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Liquidating Trustee shall have the sole authority to File and prosecute objections to Claims on behalf of the Liquidating Trust, and the Liquidating Trustee shall have the sole authority, on behalf of the Liquidating Trust, to: (1) settle, compromise, withdraw, litigate to judgment, or otherwise resolve objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise; (2) settle, compromise, or resolve any Disputed Claim without any further notice to, or action, order, or approval of, the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to, or action, order, or approval of, the Bankruptcy Court; *provided, however*, that nothing in the Plan shall preclude the U.S. Trustee or other parties with requisite standing from objecting to any Claim. On and after the Effective Date, the Liquidating Trustee shall use commercially reasonable efforts to resolve

Claims and advance the claims resolution process through estimation or otherwise.

**C. Estimation of Claims**

Before, on, or after the Effective Date, the Debtor or the Liquidating Trustee, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claim, including during the litigation of any objection to any Claim or during the pendency of any appeal relating to such objection. Notwithstanding any provision in the Plan to the contrary, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim, such estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions and discharge) and may be used as evidence in any supplemental proceedings. The Debtor or the Liquidating Trustee, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before seven (7) days after the date on which such Claim is estimated. The foregoing Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

**D. Disputed Claims**

On or after the Effective Date, the Liquidating Trustee shall retain funds for potential payment of Disputed Claims in the event such Disputed Claims, or the disputed portion thereof, is Allowed, in an amount or amounts as reasonably determined by the Liquidating Trustee consistent with the Proof of Claim Filed by the applicable Holder of such Disputed Claim and the proposed distributions for such Claims as set forth in Article III of the Plan.

**E. Adjustment to Claims Without Objection**

Any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor, the Post-Effective Date Debtor, or the Liquidating Trustee, as applicable, upon Filing a notice of satisfaction with the Bankruptcy Court. However, if the Holder of such Claim Files a timely objection to such notice of satisfaction, the status of the Claim will be determined by the Bankruptcy Court.

**F. Time to File Objections to Claims**

Any objections to Claims shall be Filed on or before the Claims Objection Deadline. If the Debtor or the Liquidating Trustee, as applicable, files a motion to extend the Claims Objection Deadline, the Claims Objection Deadline shall be automatically extended until the Bankruptcy Court acts on such motion, without the necessity for the entry of a bridge order.

**G. Disallowance of Claims**

Pursuant to section 502(d) of the Bankruptcy Code, any Claims held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy



Code shall not be deemed Allowed. Holders of such Claims may not receive any distributions on account of such Claims until such time as (1) such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that Entity have been turned over or paid to the Debtor, Post-Effective Date Debtor, or the Liquidating Trustee, as applicable, or (2) such Claims are Allowed by a Final Order of the Bankruptcy Court. All Proofs of Claim Filed on account of an indemnification obligation shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to, or action, order, or approval of, the Bankruptcy Court.

**Except as otherwise provided in the Plan or as agreed to by the Debtor, the Post-Effective Date Debtor, or the Liquidating Trustee, as applicable, any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtor, the Post-Effective Date Debtor, or the Liquidating Trustee and without further notice to any party or action, approval, or order of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims. A Proof of Claim Filed after the Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order Allowing such late-Filed Claim.**

#### **H. Amendments to Claims**

On or after the applicable Bar Date, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, and any such new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further notice to, or action, order, or approval of, the Bankruptcy Court to the maximum extent provided by applicable law.

#### **I. No Distributions Pending Allowance**

If an objection to a Claim or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim, unless otherwise determined by the Liquidating Trustee on behalf of the Liquidating Trust.

#### **J. Distributions After Allowance**

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Trustee shall provide to the Holder of such Claim the distribution to which such Holder is entitled under the Plan as of the Effective Date, less any previous distributions (if any) that were made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law or as otherwise provided in the Plan.

### **IX. DISTRIBUTIONS UNDER THE PLAN**

#### **A. Timing and Calculation of Amounts to Be Distributed**

Unless otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or, if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed, or as soon as reasonably practicable thereafter), each Holder (or such Holder's affiliate) of an

Allowed Claim or Allowed Interest shall receive the full amount of the distributions that the Plan provides for Allowed Claims and Interests in each applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VIII of the Plan. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

**B. Liquidating Trustee**

Distributions under the Plan shall be made by the Liquidating Trustee or any Entity or Entities selected by the Debtor or the Liquidating Trust to make or facilitate distributions contemplated under the Plan.

**C. Delivery of Distributions and Undeliverable or Unclaimed Distributions**

**1. Record Date for Distributions**

On the Distribution Record Date, the Claims Register shall be closed, and the Liquidating Trust shall instead be authorized and entitled to recognize only those Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

**2. Delivery of Distributions**

Except as otherwise provided in the Plan or in the WARN Act Class Settlement Agreement, distributions to Holders of Allowed Claims shall be made to Holders of record as of the Distribution Record Date by the Liquidating Trustee: (a) to the signatory set forth on any Proof of Claim Filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no Proof of Claim is Filed or if the Debtor has been notified in writing of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related Proof of Claim; (c) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Liquidating Trust has not received a written notice of a change of address; or (d) on any counsel that has appeared in the Chapter 11 Case on such Holder's behalf. Subject to this Article IX.C, distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtor, the Post-Effective Date Debtor, the Liquidating Trustee, and/or the Liquidating Trust, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence, willful misconduct or actual fraud.

**3. Distribution**

The Net Sale Proceeds in the Segregated Account shall first be used to satisfy (a) all Allowed Administrative Expense Claims, including all Allowed Professional Fee Claims, (b) all Allowed Priority Claims, including all Allowed Priority Tax Claims and Allowed WARN Act Class Settlement Claims, (c) all U.S. Trustee Fees due and payable and any interest thereon pursuant to section 3717 of Title 31 of the United States Code, and (d) all post-Effective Date fees and expenses incurred in connection with implementation of the Plan in an amount not to exceed \$225,000.00. To the extent there are any funds in the Segregated Account after satisfaction of the foregoing Claims, fees, and expenses, any funds in the Segregated Account shall be allocated and paid in the following priority (in each case on a Pro Rata basis): *first*, on account of all Secured Claims; *second* on account of all Allowed Unsecured Claims, including any Allowed CS Deficiency/Unsecured Claims, Allowed General Unsecured Claims, and Allowed Klausner

Group Unsecured Claims; and *third*, on account of all Allowed Subordinated Claims.

**4. Minimum Distributions**

Holders of Allowed Claims entitled to distributions of \$50 (whether Cash or otherwise) or less shall not receive distributions. Each such Claim shall be discharged and its Holder shall be forever barred pursuant to Article IX of the Plan from asserting that Claim against the Debtor, Post-Effective Date Debtor or the Liquidating Trust, as applicable, or its property; *provided, however*, that distributions that would otherwise be made to such Holder shall carry over until the next date of a distribution to such Holders (on account of a Disputed Claim or otherwise) until the cumulative amount of Allowed Claims held by such Holder is more than \$50, at which time (if such occurs) such cumulative amount shall be paid to such Holder.

**5. Undeliverable Distributions and Unclaimed Property**

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 Liquidating Trustee 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 under section 347(b) of the Bankruptcy Code at the expiration of six (6) months from the Effective Date, except as may be provided otherwise in the WARN Act Class Settlement Agreement. After such date, all unclaimed property or interests in property shall revert to the Liquidating Trust, without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal 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 discharged and forever barred, except as may be provided otherwise in the WARN Act Class Settlement Agreement.

**D. Manner of Payment**

Unless otherwise set forth in the Plan, all distributions of Cash to the Holders of Allowed Claims under the Plan shall be made by the Liquidating Trustee. At the option of the Liquidating Trustee, any Cash payment to be made under the Plan may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

**E. Compliance with Tax and Other Legal Requirements**

In connection with the Plan and the WARN Act Class Settlement Agreement, to the extent applicable, the Liquidating Trustee and the Liquidating Trust shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Any taxes withheld and deposited with the appropriate Governmental Unit shall be treated as if distributed to the applicable Holder for purposes of determining the distributions to which such Holder is entitled to receive. Notwithstanding any provision in the Plan to the contrary, the Liquidating Trustee and the Liquidating Trust shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including: (1) liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, (2) withholding distributions pending receipt of information necessary to facilitate such distributions, (3) establishing any other mechanisms she, he or it believes are reasonable and appropriate, and (4) obtaining, if such information is not already in the possession of the Liquidating Trustee or the Liquidating Trust, (a) in the case of a U.S. Holder, a properly executed Internal Revenue Service Form W-9, and (b) in the case of a non-U.S. Holder, a properly executed applicable Internal Revenue Service Form W-8 and any other forms required by any applicable law (or in each of the cases of clauses (a) and (b) above, such Holder otherwise establishes eligibility for an exemption). The Liquidating Trustee and the Liquidating Trust reserve the right, but are not required, to allocate to the applicable Holders all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child

support, and other spousal awards, liens, and encumbrances.

**F. Allocations**

Distributions in respect of an Allowed Claim shall be allocated first to the principal amount of such Claim (as determined for federal income tax purposes) and then, to the extent the consideration distributed with respect to such Claim exceeds the principal amount of such Claim, to accrued but unpaid interest as Allowed in the Plan.

**G. No Post-petition Interest on Claims**

Unless otherwise specifically provided for in an order of the Bankruptcy Court, the Plan, or the Confirmation Order or required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any such Claim.

**H. Setoffs and Recoupment**

The Debtor, the Post-Effective Date Debtor or the Liquidating Trust, as applicable, may, but shall not be required to, set off against or recoup any payments or distributions to be made pursuant to the Plan in respect of any Claims of any nature whatsoever that the Debtor, Post-Effective Date Debtor or the Liquidating Trust may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, Post-Effective Date Debtor, the Liquidating Trust, or their successors of any such Claim it may have against the Holder of such Claim.

**I. Claims Paid or Payable by Third Parties**

**1. Claims Paid by Third Parties**

To the extent that the Holder of an Allowed Claim receives payment in full on account of such Claim from a party that is not the Debtor, the Post-Effective Date Debtor or the Liquidating Trust, such Claim shall be Disallowed without an objection having to be Filed and without any further notice to, or action, order, or approval of, the Bankruptcy Court.; provided, that the Debtor, Post-Effective Date Debtor, or the Liquidating Trust as applicable shall file notice of satisfaction or other pleading evidencing such satisfaction and serve the same on the affected claimant. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not the Debtor, the Post-Effective Date Debtor or the Liquidating Trust on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the Debtor, the Post-Effective Date Debtor or Liquidating Trust, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

**2. Claims Payable by Third Parties**

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to the Debtor's insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtor's insurers agrees to pay in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction or otherwise settled), then immediately upon such insurers' agreement, the applicable portion of such Claim shall be expunged without a Claims objection having to be Filed and without any further notice to, or action, order, or approval of the Bankruptcy Court.; provided, that the Debtor, Post-Effective Date Debtor, or Plan

Administrator as applicable shall file notice of satisfaction or other pleading evidencing such satisfaction and serve the same on the affected claimant.

**3. Applicability of Insurance Policies**

Except as otherwise provided in the Plan, payments to Holders of Claims by the Debtor's insurance carriers shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything in the Plan to the contrary, nothing shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtor or any other Entity may hold against any other Entity, including insurers under any policies of insurance, including the D&O Liability Insurance Policies, or applicable indemnity, nor shall anything contained in the Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

**4. Provisions Regarding Vesting of Insurance Policies in Liquidating Trust**

Notwithstanding anything to the contrary in the Plan Documents, the Confirmation Order, any bar date notice or claim objection, any other document related to any of the foregoing or any other prior order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening, grants an injunction, discharge or release, or requires a party to opt out of any releases), the Liquidating Trust shall succeed to all of the Debtor's rights and obligations under the D&O Liability Insurance Policies, which policies shall be enforceable by and against the Liquidating Trust.

**X.**

**UNEXPIRED LEASES AND EXECUTORY CONTRACTS**

**A. Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided in the Plan or otherwise agreed to by the Debtor and the counterparty to an Executory Contract or Unexpired Lease, all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected in the Chapter 11 Case shall be deemed rejected, effective as of the Effective Date, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than: (1) those that have been previously assumed or rejected by a Final Order, or approved or authorized by the Bankruptcy Court as part of a Professional's retention, employment, or engagement; and (2) to the extent they may be executory, the D&O Liability Insurance Policies (which shall be treated in accordance with the applicable provisions of Articles V and VI of the Plan regardless of whether they may be executory), the latter of which shall vest or re-vest, as applicable, in the Liquidating Trust and be fully enforceable by the Liquidating Trust and any insured in accordance with its terms, except as such terms may have been modified by any order of the Bankruptcy Court authorizing and providing for its assumption under applicable bankruptcy or other federal law or as otherwise agreed by the Debtor.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the rejection of such Executory Contracts or Unexpired Leases, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, except as otherwise provided in the Plan or the Confirmation Order. Unless otherwise indicated or agreed by the Debtor and the applicable contract counterparties, the rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date.

**B. Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Proofs of Claims with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be Filed with the Bankruptcy Court within thirty (30) days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with**

the Bankruptcy Court within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against the Debtor, the Debtor's Estate, the Post-Effective Date Debtor, the Liquidating Trust, or the property for any of the foregoing without the need for any objection by the Debtor, the Post-Effective Date Debtor or the Liquidating Trust, as applicable, or further notice to, or action, order, or approval of, the Bankruptcy Court or any other Entity. Any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. Claims arising from the rejection of the Debtor's Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.B.5 of the Plan.

**C. Indemnification Obligations**

All indemnification obligations that either (i) arose after the Petition Date for the current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, financial advisors, agents, and other professionals of the Debtor, as applicable or (ii) arose prior to the Petition Date with respect to the Debtor's Professionals, Robert Prusak (the Debtor's Chief Restructuring Officer), or Daniel T. Motulsky (the Debtor's independent director), as applicable, (each of the Persons or Entities in the foregoing clauses, an "Indemnification Claimant") shall be assumed by the Liquidating Trust and shall remain in full force and effect after the Effective Date, without the need for filing any Proof of Claim or request for payment of an Administrative Expense Claim. All of the foregoing parties shall be entitled to advancement for any indemnity obligations, including the right to seek approval from the Bankruptcy Court, after notice and a hearing, for the withholding or sequestration of funds necessary to provide for the future payment of potential indemnification obligations. Nothing in this section is intended to enlarge or reduce the rights of any party having or claiming rights of indemnification, nor any party disputing any such rights or claims. Notwithstanding anything to the contrary in the Plan, after the Effective Date, each Indemnification Claimant shall retain all rights, including to assert any and all rights of setoff, against the Post-Effective Date Debtor and the Liquidating Trust that such Indemnification Claimant had against the Debtor immediately prior to the Effective Date.

**D. Director and Officer Liability Insurance**

In accordance with Article VII.H of the Plan, upon the Effective Date, the Liquidating Trust shall be deemed to succeed to all of the Debtor's rights and benefits under all D&O Liability Insurance Policies with respect to the Debtor's present and former directors, managers, officers, and employees, and coverage for defense and indemnity under any of the D&O Liability Insurance Policies shall remain available to all individuals and entities covered thereby, including those within the definition of "Insured Person" in any of the D&O Liability Insurance Policies, subject in all respects to the terms and conditions of the D&O Liability Insurance Policies. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtor's assumption of each of the unexpired D&O Liability Insurance Policies. From and after the Effective Date, neither the Liquidating Trustee nor the Liquidating Trust shall take any action to alter or modify in any way the D&O Liability Insurance Policies with respect to coverage for any claims insured thereunder. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the foregoing succession by the Liquidating Trust to the Debtor's rights and benefits under each of the D&O Liability Insurance Policies. Nothing in this Section X.D or this Plan will limit the rights of any other Insured Persons to coverage under the D&O Liability Insurance Policies.

**XI.  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Case and all matters in connection with, relating to, or in any manner arising from the Chapter 11 Case and the Plan

to the fullest lawful extent, including jurisdiction to:

- (1) allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim, including the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims;
- (2) decide and resolve all matters in connection with, relating to, or in any manner arising from to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;
- (3) resolve any matters in connection with, relating to, or in any manner arising from: (a) the assumption or rejection of any Executory Contract or Unexpired Lease and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, or any other matter related to such Executory Contract or Unexpired Lease; and (b) any dispute regarding whether a contract or lease is or was executory or expired;
- (4) ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
- (5) adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date;
- (6) adjudicate, decide, or resolve any and all matters in connection with, relating to, or in any manner arising from Causes of Action, including without limitation, the CS Adversary Proceeding;
- (7) adjudicate, decide, or resolve any and all matters in connection with, relating to, or in any manner arising from sections 1141 and 1145 of the Bankruptcy Code;
- (8) adjudicate, decide, or resolve any and all matters in connection with, relating to, or in any manner arising from the WARN Act Class Settlement Agreement;
- (9) enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;
- (10) enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;
- (11) resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
- (12) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
- (13) resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, discharges, releases, injunctions, exculpations, and other provisions contained in Article IX of the Plan and enter such orders as may be necessary or appropriate to implement or enforce such releases, injunctions, and other provisions;

- (14) resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI of the Plan;
- (15) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
- (16) determine any other matters that may be connected to, relate to, or in any manner arise from the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement;
- (17) adjudicate any and all disputes in connection with, relating to, or in any manner arising from to distributions under the Plan or any transactions contemplated therein;
- (18) consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
- (19) determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;
- (20) hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
- (21) hear and determine all disputes involving the existence, nature, or scope of the release provisions set forth in the Plan, including any dispute in connection with, relating to, or in any manner arising from to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;
- (22) enforce all orders previously entered by the Bankruptcy Court in the Chapter 11 Case;
- (23) hear any other matter as to which the Bankruptcy Court has jurisdiction;
- (24) enter an order closing the Chapter 11 Case; and
- (25) enforce the injunction, release, and exculpation provisions provided in Article IX of the Plan.

## **XII. CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

### **A. Conditions Precedent to Confirmation**

Unless waived pursuant to the provisions of this Article XII, it shall be a condition to Confirmation that the Confirmation Order has been entered by the Bankruptcy Court and shall provide that:

- (a) the form of Confirmation Order is reasonably acceptable to the Proponents;
- (b) the Debtor is authorized to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, and other agreements or documents to be executed and/or delivered in connection with the Plan; and
- (c) the provisions of the Confirmation Order are non-severable and mutually dependent.



**B. Conditions Precedent to the Effective Date**

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of this Article XII):

- (a) the Confirmation Order shall have been duly entered in form and substance reasonably acceptable to the Proponents and shall not have been subject to any reversal, stay, modification, or vacatur;
- (b) all actions, documents, authorizations, consents, regulatory approvals, rulings, or agreements necessary to implement the Plan shall have been obtained, effected, or executed;
- (c) all Allowed Professional Fee Claims approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such Allowed Professional Fee Claims after the Effective Date shall have been placed in the Professional Fee Escrow Account pending approval of the Professional Fee Claims by the Bankruptcy Court;
- (d) the Liquidating Trustee has accepted her, his, or its engagement in writing and executed the Liquidating Trust Agreement;
- (e) the Segregated Account shall have been formed and funded in accordance with this Plan; and
- (f) either (i) the CS Adversary Proceeding has been fully and finally resolved such that the amount and extent of any CS Deficiency/Unsecured Claim, any CS Liens and Claims, and any CS Secured Claims have been determined; (ii) with the express consent and agreement of Carolina Sawmills, the Creditor's Committee, the proposed Liquidating Trustee, and the Debtor, Carolina Sawmills has agreed to allow the Liquidating Trustee and its advisors to be paid all actual and necessary fees of the Liquidating Trust (or such amount as agreed to as being sufficient by the Debtor, Carolina Sawmills and the Liquidating Trust) as additional CS Carved Out Amounts from the Segregated Account so as to permit the Liquidating Trust to litigate, settle, or otherwise resolve the CS Adversary Proceeding from and after the Effective Date; or (iii) as otherwise agreed to by the Creditors' Committee, the Debtor, and the proposed Liquidating Trustee.

**C. Waiver of Conditions**

The conditions to the Confirmation and the Effective Date of the Plan set forth in Article X of the Plan (other than Article X.B.6) may be waived by the Debtor, after consultation with the Creditors' Committee, without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

**D. Substantial Consummation**

"Substantial Consummation" of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

**E. Effect of Nonoccurrence of Conditions to the Effective Date**

If the Effective Date does not occur by the earlier of (1) sixty (60) days after all of the conditions precedent to the Effective Date set forth in Article X have been satisfied (or waived pursuant to the provisions of Article X), or (2) January 31, 2023 (or, for cause, such later date as may be established by the

Bankruptcy Court), the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims or Interests; (2) prejudice in any manner the rights of the Debtor, any Holders of a Claim or Interest, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtor, any Holders, or any other Entity in any respect.

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

#### **A. Modification and Amendments**

Subject to the limitations contained in the Plan, the Debtor reserves the right to modify the Plan, including, but not limited to, by changing the treatment applicable to any Class of Claims. The Debtor further reserves the right to seek Confirmation of a modified Plan consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtor or the Liquidating Trust, as applicable, expressly reserves their right to alter, amend, or modify materially the Plan, one or more times, after Confirmation and before the Effective Date, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

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

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

#### **C. Revocation or Withdrawal of the Plan**

The Debtor reserves the right to revoke or withdraw the Plan before the Effective Date. If the Debtor revokes or withdraws the Plan, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtor or any other Entity, including the Holders of Claims; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

### **XIV. RELEASE, INJUNCTION, EXCULPATION AND RELATED PROVISIONS**

#### **A. Term of Injunctions or Stays**

Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to section 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect through the Effective Date and shall continue in effect for the maximum time permitted by section 362 of the Bankruptcy Code. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in

accordance with their terms.

The Debtor shall not receive a “discharge” in violation of section 1141(d)(3) of the Bankruptcy Code; *provided, however*, that no Person or Entity may assert any Claim, seek or receive any payment from, or seek recourse against, the Debtor, the Post-Effective Date Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee and/or any of its or their respective successors, assigns and/or property, except as expressly provided in the Plan.

**B. Release of Liens**

Except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Liquidating Trust and its successors and assigns, in each case without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtor or the Liquidating Trust, as applicable.

**C. Release by the Debtor**

**Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, except for claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence, each Released Party is deemed released and discharged by the Debtor, the Post-Effective Date Debtor, the Estate and the Liquidating Trust from any and all Causes of Action that the Debtor, the Post-Effective Date Debtor, the Estate or the Liquidating Trust has or would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or that any Holder of any Claim or Interest could have asserted on behalf of the Debtor, including Causes of Action in connection with, relating to, or in any manner arising from, in whole or in part:**

- a. **the Debtor, the Debtor’s operations and restructuring efforts, and the formulation, preparation, dissemination, negotiation, or filing of the Plan Documents;**
- b. **any Plan Document, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan;**
- c. **the Chapter 11 Case, including without limitation, the management, administration and implementation thereof, the Plan, the Disclosure Statement, the WARN Act Class Settlement Agreement, any postpetition financing documents, the filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan or the distribution of property under the Plan or any other related agreement; or**
- d. **the business or contractual arrangements between the Debtor and any Released Party, and any other act or omission, transaction, agreement, event, or other occurrence in connection with, relating to, or in any manner arising from any of the foregoing.**

**Notwithstanding anything to the contrary in the foregoing, these releases do not release (a)**

any post-Effective Date obligations of any Entity under the Plan, any Plan Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or (b) any of the Debtor's current and former directors, officers and managers (other than Daniel T. Motulsky, the Debtor's independent director, or Robert Prusak, the Debtor's Chief Restructuring Officer) for acts or omissions prior to the Petition Date.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth above, which includes by reference each of the related provisions and definitions contained in the Plan, *and further*, shall constitute the Bankruptcy Court's finding that the releases set forth above are: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good-faith settlement and compromise of the claims released by the releases set forth above; (c) in the best interests of the Debtor and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after reasonable investigation by the Debtor and after notice and opportunity for hearing; and (f) a bar to the Debtor, the Post-Effective Date Debtor, the Estate or the Liquidating Trustee for or on behalf of the Liquidating Trust asserting any claim released by the releases set forth above against any of the Released Parties.

**D. Release by Holders of Claims or Interests**

1. As of the Effective Date, except for claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence, each Releasing Party is deemed to have released the Released Parties from any and all Causes of Action, including any derivative claims asserted on behalf of the Debtor, that such Entity has or would have been legally entitled to assert (whether individually or collectively), including Causes of Action in connection with, relating to, or in any manner arising from, in whole or in part:

- a. the Debtor, the Debtor's operations and restructuring efforts, and the formulation, preparation, dissemination, negotiation, or filing of the Plan Documents;
- b. any Plan Document, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan;
- c. the Chapter 11 Case, including without limitation, the filing, management, administration and implementation thereof, the Plan, the Disclosure Statement, the WARN Act Class Settlement Agreement, any postpetition financing documents, the filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan or the distribution of property under the Plan or any other related agreement; or
- d. the business or contractual arrangements between the Debtor and any Released Party, and any other act or omission, transaction, agreement, event, or other occurrence in connection with, relating to, or in any manner arising from any of the foregoing.

2. Notwithstanding anything to the contrary in the foregoing, these releases do not release (a) any post-Effective Date obligations of any Entity under the Plan, any Plan Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or (b) any of the Debtor's current and former directors, officers and managers (other than Daniel T. Motulsky, the Debtor's independent director, or Robert Prusak, the Debtor's

Chief Restructuring Officer) for acts or omissions prior to the Petition Date, or (c) any claims a Releasing Party may directly have against a Released Party under (a) or (b) of section D.2 of Article IX of the Plan.

For the avoidance of doubt, nothing in the Plan, the Plan Supplement, or the Confirmation Order shall preclude the Liquidating Trust, Liquidating Trustee, or other successors of the Debtor, the Post-Effective Date Debtor and the Estate, from seeking or obtaining any recovery from the D&O Liability Insurance Policies or other available insurance, subject to the provisions of any such insurance policies and applicable law.

**E. Exculpation**

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur and each Exculpated Party is hereby released and exculpated from any Cause of Action or claim for any act or omission occurring from the Petition Date through the Effective Date in connection with, relating to, or in any manner arising from, the Chapter 11 Case, including without limitation, the management, administration and implementation thereof, the Disclosure Statement, the Plan, the WARN Act Class Settlement Agreement, any postpetition financing documents, or any Plan Document, contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan, the Chapter 11 Case or its filing, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities. The Exculpated Parties have, and upon closing of the Chapter 11 Case or the Effective Date shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. For the avoidance of doubt, no Exculpated Party shall be exculpated for any act or omission that occurred prior to the Petition Date.

**F. Injunction**

Except with respect to the obligations arising under the Plan or the Confirmation Order, and except as otherwise expressly provided in the Plan or the Confirmation Order, all Entities that held, hold, or may hold Claims or Interests that have been released or exculpated pursuant to the Plan, are permanently enjoined from and after the Effective Date from taking any of the following actions against, as applicable, the Debtor, the Post-Effective Date Debtor or the Liquidating Trust, or the Exculpated Parties or Released Parties: (1) commencing or continuing in any manner any action, suit, proceeding or audit of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of, in connection with, or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right in a document Filed with the Bankruptcy Court explicitly preserving

such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve, any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action, suit, proceeding or audit of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan, or subject to exculpation under the Plan. For the avoidance of doubt and notwithstanding anything to the contrary in the Plan, the Debtor is not receiving a discharge under section 524(a) of the Bankruptcy Code and the injunction set forth in the Plan shall, with respect to the Debtor, terminate upon the later of (a) distribution of all of the Debtor's property under the Plan, and (b) the closing of the Chapter 11 Case.

**G. Protection Against Discriminatory Treatment**

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Liquidating Trust or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to or discriminate with respect to such a grant against the Liquidating Trust, or another Entity with whom the Liquidating Trust has been associated, solely because the Debtor has been a debtor under chapter 11 of the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Case (or during the Chapter 11 Case), or have not paid a debt that is dischargeable in the Chapter 11 Case.

**H. Setoffs**

In no event shall any Holder of a Claim be entitled to set off against such Claim any claim, right, or Cause of Action of the Debtor or the Liquidating Trust, as applicable, unless such Holder actually has provided notice of such setoff in writing to the Debtor on or before the Confirmation Date, which notice may be provided in a timely filed Proof of Claim.

**I. Subordination Rights**

Any distributions under the Plan shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

**XV.  
MISCELLANEOUS PROVISIONS**

**A. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, on the Effective Date, the terms of the Plan, the final versions of the documents contained in the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Liquidating Trust, any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor counterparties to Executory Contracts and Unexpired Leases with the Debtor. All Claims and debts shall be fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

**B. Additional Documents**

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

**C. Dissolution of the Creditors' Committee**

On the Effective Date, the Creditors' Committee shall dissolve automatically and the members thereof shall be released and discharged from all rights, duties, responsibilities, and liabilities in connection with, relating to, or in any manner arising from, the Chapter 11 Case and under the Bankruptcy Code, except for the limited purpose of prosecuting requests for payment of Professional Fee Claims for services and reimbursement of expenses incurred prior to the Effective Date by the Creditors' Committee and its Professionals. After the Effective Date, the Liquidating Trust shall no longer be responsible for paying any fees or expenses incurred by the members of or advisors to the Creditors' Committee after the Effective Date.

**D. Reservation of Rights**

Before the Effective Date, neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor or the Liquidating Trust with respect to any Claims or Interests.

**E. Successors and Assigns**

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

**F. Service of Documents**

All notices, requests, and demands to or upon the Debtor or the Liquidating Trust to be effective shall be in writing (including by facsimile transmission), with an electronic copy delivered to the recipients listed email address, and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtor, to:

Klausner Lumber Two LLC  
c/o Asgaard Capital, LLC  
107 Millcreek Corners, Suite B  
Brandon, MS, 39047  
Attn.: Robert Prusak, CRO  
Telephone: (203) 722-3448  
Email: [rprusak@asgaardcapital.com](mailto:rprusak@asgaardcapital.com)  
With a copy to Charles Reardon at [creardon@asgaardcapital.com](mailto:creardon@asgaardcapital.com)

And with copies to:

Westerman Ball Ederer Miller Zucker & Sharfstein, LLP  
1201 RXR Plaza  
Uniondale, NY 11556  
Attn.: Thomas A. Draghi  
Telephone: (516) 622-9200  
Facsimile: (516) 622-9212  
Email: [tdraghi@westermanllp.com](mailto:tdraghi@westermanllp.com)  
Attn.: William C. Heuer  
Email: [wheuer@westermanllp.com](mailto:wheuer@westermanllp.com)  
- and -

Morris, Nichols, Arsht & Tunnell LLP  
1201 North Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, DE 19899  
Attn.: Eric Schwartz  
Telephone: (302) 658-9200  
Facsimile: (302) 658-3989  
Email: [eschwartz@morrisnichols.com](mailto:eschwartz@morrisnichols.com)  
Attn.: Daniel B. Butz  
Email: [dbutz@morrisnichols.com](mailto:dbutz@morrisnichols.com)

If to the Liquidating Trustee:

Allen D. Wilen  
Eisner Advisory Group LLC  
111 Wood Avenue South  
Iselin, NJ 08830  
Telephone: (732) 243-7386  
Facsimile: (732) 951-7486  
Email: [allen.wilen@eisneramper.com](mailto:allen.wilen@eisneramper.com)

with copies to Counsel to the Liquidating Trustee:

Armstrong Teasdale LLP  
300 Delaware Avenue, Suite 210  
Wilmington, Delaware 19801  
Telephone: (302) 824-7089  
Attn.: Eric M. Suttty  
Email: [esuttty@atllp.com](mailto:esuttty@atllp.com)  
Attn.: Jonathan M. Stemerman  
Email: [jstemerman@atllp.com](mailto:jstemerman@atllp.com)

After the Effective Date, the Liquidating Trustee shall have the authority to send a notice to parties in interest providing that, to continue to receive documents pursuant to Bankruptcy Rule 2002, such party must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Entities or parties in interest receiving documents pursuant to Bankruptcy Rule 2002 to (1) those Entities who have Filed such renewed requests; (2) Entities whose rights are affected by such documents; and (3) the U.S. Trustee.



**G. Entire Agreement**

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

**H. Exhibits**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available for free at <https://www.donlinrecano.com/Clients/k2/Index> or for a fee via PACER at: <https://www.pacer.gov>.

**I. Non-severability of Plan Provisions**

If, before Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtor's or the Liquidating Trust's consent, as applicable; and (3) non-severable and mutually dependent.

**J. Votes Solicited in Good Faith**

Upon entry of the Confirmation Order, the Debtor shall be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and, pursuant to section 1125(e) of the Bankruptcy Code, the Debtor and its respective current and former Affiliates, and such Affiliates' partners, subsidiaries, predecessors, current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly, but excluding Holders of Interests), members, officers, principals, employees, agents, managed accounts or funds, advisors, attorneys, accountants, investment bankers, consultants, contractors, representatives, management companies, fund advisors, and other professionals, together with their respective successors and assigns, shall be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan, and, therefore, neither any of such parties, individuals, Entities, nor the Liquidating Trust, as applicable, shall have any liability for the violation of any applicable law (including the Securities Act), rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan.

**K. Waiver or Estoppel**

Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured, or not subordinated by virtue of an agreement made with the Debtor or its counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed before the Confirmation Date.

**XVI.**  
**VOTING REQUIREMENTS, ACCEPTANCE**  
**AND CONFIRMATION OF THE PLAN**

The Bankruptcy Code requires that, in order to confirm the Plan, the Bankruptcy Court must make a series of findings concerning the Plan and the Debtor, including that (i) the Plan has classified Claims and Interests in a permissible manner, (ii) the Plan complies with applicable provisions of the Bankruptcy Code, (iii) the Debtor has complied with applicable provisions of the Bankruptcy Code, (iv) the Proponents have proposed the Plan in good faith and not by any means forbidden by law, (v) the disclosure required by section 1125 of the Bankruptcy Code has been made, (vi) the Plan has been accepted by the requisite votes of creditors (except to the extent that cramdown is available under section 1129(b) of the Bankruptcy Code), (vii) the Plan is feasible and Confirmation is not likely to be followed by liquidation other than the liquidation as provided for in the Plan, (viii) the Plan is in the “best interests” of all holders of Claims or Interests in an impaired Class by providing to such Holders on account of their Claims or Interests property of a value, as of the Effective Date, that is not less than the amount that such holder would receive or retain in a chapter 7 liquidation, unless each Holder of a Claim or Interest in such Class has accepted the Plan, and (ix) all fees and expenses payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the hearing on Confirmation, have been paid or the Plan provides for the payment of such fees on the Effective Date.

**A. Parties in Interest Entitled to Vote**

Pursuant to the Bankruptcy Code, only Classes of Claims and Interests that are “impaired” (as defined in section 1124 of the Bankruptcy Code) under the Plan are entitled to vote to accept or reject the Plan. A Class is impaired if the legal, equitable or contractual rights to which the Claims or Interests of that Class entitle the Holders of such Claims or Interests are modified, other than by curing defaults and reinstating the debt. Classes of Claims and Interests that are not impaired are not entitled to vote on the Plan and are presumed to have accepted the Plan. Classes of Claims and Interests that receive no distributions under the Plan are not entitled to vote on the Plan and are deemed to have rejected the Plan.

**B. Classes Impaired Under the Plan**

Acceptances of the Plan are being solicited only from those Holders of Claims in impaired Classes that will or may receive a distribution under the Plan. Accordingly, the Debtor is soliciting acceptances from Holders of Claims in Classes 3, 4, 5, 6 and 7. The Holders of Class 8 Interests will not receive any distributions under the Plan, and are deemed to reject the Plan, and the Debtor will not be soliciting acceptances from this Class.

**C. Voting Procedures and Requirements**

**THIS DISCUSSION OF THE SOLICITATION AND VOTING  
PROCESS IS ONLY A SUMMARY. PLEASE REFER TO THE  
DISCLOSURE STATEMENT ORDER ENCLOSED HERewith  
FOR A MORE COMPREHENSIVE DESCRIPTION OF THE  
SOLICITATION AND VOTING PROCESS.**

**1. Ballots**

In voting for or against the Plan, please use only the Ballot or Ballots sent to you with this Disclosure Statement. **If you have any questions regarding the Ballot, did not receive a return envelope with your Ballot, did not receive an electronic copy of the Disclosure Statement and the Plan, or need physical copies of the Ballot or other enclosed materials, please contact the Debtor’s solicitation and claims agent, Donlin Recano & Company, Inc. (“DRC”), by email at**

[klausnerinfo@donlinrecano.com](mailto:klausnerinfo@donlinrecano.com) with a reference to “Klausner Lumber Two” in the subject line, or via telephone at (800) 903-3727 (toll-free) or (212) 481-1411 for international callers and request to speak with a member of the solicitation team.

In most cases, each Ballot enclosed with this Disclosure Statement has been encoded with the amount of your Claim for voting purposes (if your Claim is a Disputed Claim this amount may not be the amount ultimately allowed for purposes of distributions under the Plan) and the Class in which your Claim has been classified. **YOU MUST FOLLOW THE DIRECTIONS CONTAINED ON THE ENCLOSED BALLOT CAREFULLY. IF YOU FAIL TO DO SO, YOUR VOTE MAY NOT BE COUNTED.**

2. **Returning Ballots**

The Ballots have been specifically designed for the purpose of soliciting votes on the Plan from Holders of Claims within Classes 3, 4, 5, 6 and 7 who are entitled to a vote with respect thereto. Accordingly, in voting on the Plan, please use only the Ballot sent to you with this Disclosure Statement. Please complete and sign your Ballot and return in accordance with the voting instructions provided with the Ballot.

To be counted, your Ballot or Ballots must be received by 5:00 p.m. (Prevailing Eastern Time), on February 21, 2022 using one of the following methods:

**If by Mail or Hand Delivery:**

Klausner Lumber Two LLC Ballot Processing Center  
c/o Donlin, Recano & Company, Inc.  
6201 15<sup>th</sup> Avenue  
Brooklyn, NY 11219

**If by Electronic, Online Submission via the Online Portal:**

<https://www.donlinrecano.com/Clients/k2/vote>. Please make sure to follow the instructions on the Online Portal to submit your Ballot.

**IMPORTANT NOTE:** You will need the following information to retrieve and submit your customized electronic Ballot:

Unique E-Ballot ID#: \_\_\_\_\_

The Online Portal is the sole manner in which Ballots will be accepted via electronic or online transmissions. Ballots submitted by facsimile, email or other means of electronic transmission will not be counted. Ballots should not be sent to the Debtor or the Bankruptcy Court

**EXCEPT AS OTHERWISE PERMITTED BY THE TABULATION RULES, ANY BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE COUNTED, NOR WILL ANY BALLOTS RECEIVED BY TELECOPY, FACSIMILE, OR EMAIL BE ACCEPTED.** Following the Voting Deadline, the Notice and Claims Agent will prepare and file with the Bankruptcy Court a certification of the results of the balloting with respect to the Plan.

**D. Confirmation Hearing**

The Bankruptcy Code requires the Bankruptcy Court, after notice, to conduct a hearing regarding whether the Debtor and the Plan have fulfilled the confirmation requirements of section 1129 of the Bankruptcy Code.

The Confirmation Hearing has been scheduled for March 8, 2022 at 10:00 a.m. (Prevailing Eastern Time), before the Honorable Karen B. Owens, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement at the Confirmation Hearing of the date to which the Confirmation Hearing has been adjourned.

**E. Confirmation**

At the Confirmation Hearing, the Bankruptcy Court will Confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for Confirmation are that the Plan (i) be accepted by the requisite holders of Claims and Interests or, if not so accepted, be “fair and equitable” and “does not discriminate unfairly” as to the non-accepting Class of Claims or Interests, (ii) be in the “best interests” of each holder of a Claim or Interest that does not vote to accept the Plan in each impaired class under the Plan, (iii) be feasible, and (iv) comply with the applicable provisions of the Bankruptcy Code.

**F. Acceptance of the Plan**

As a condition to Confirmation, the Bankruptcy Code requires that each class of impaired Claims or Interests vote to accept the Plan, except under certain circumstances. Generally, a class is “impaired” under a plan unless such plan leaves unaltered the legal, equitable and/or contractual rights to which such claim or interest entitles the holder of such claim or interest. Classes of claims and interests that are not impaired are not entitled to vote on the plan and are conclusively presumed to have accepted the plan. A plan is accepted by an impaired class of claims if holders of at least two-thirds in dollar amount and more than one-half in number of claims of that class vote to accept the plan. A plan is accepted by an impaired class of interests if holders of at least two-thirds of the number of shares in such class vote to accept the plan. Only those holders of claims or interests who actually vote count in these tabulations. Holders of claims who fail to vote are not counted as either accepting or rejecting a plan for purposes of determining whether the requirements for confirmation have been met.

In addition to this voting requirement, section 1129 of the Bankruptcy Code requires that a chapter 11 plan be accepted by each holder of a claim or interest in an impaired class or that the Plan otherwise be found by the bankruptcy court to be in the best interests of each holder of a claim or interest in such class. This is the “Best Interests Test” discussed below. In addition, each impaired class must accept the Plan for the Plan to be Confirmed without application of the “fair and equitable” and “unfair discrimination” tests in section 1129(b) of the Bankruptcy Code discussed below.

In the event that any impaired class of Claims or Interests does not accept the Plan, the Bankruptcy Court may nevertheless confirm the Plan if all other requirements under section 1129(a) of the Bankruptcy Code are satisfied, and if, with respect to each impaired class which has not accepted the Plan, the Bankruptcy Court determines that the Plan does not “discriminate unfairly” and is “fair and equitable” with respect to such class. Confirmation under section 1129(b) of the Bankruptcy Code requires that at least one impaired Class of Claims accepts the Plan, excluding any acceptance of the Plan by an “insider” (as that term is defined in section 101 of the Bankruptcy Code). The Debtor intends to seek confirmation of the Plan notwithstanding the nonacceptance of one or more impaired Classes.

1. No Unfair Discrimination. A plan of reorganization does not “discriminate unfairly” with respect to a nonaccepting class if the value of the cash and/or securities to be distributed to the nonaccepting class is equal or otherwise fair when compared to the value of distributions to other classes whose legal rights are the same as those of the nonaccepting Class. The Debtor believes that the Plan would not discriminate unfairly against any nonaccepting class of claims or interests.
2. Fair and Equitable Test. The "fair and equitable" test of section 1129(b) of the Bankruptcy Code requires absolute priority in the payment of claims and interests with respect to any nonaccepting class or classes. The "fair and equitable" test established by the Bankruptcy Code is different for secured claims, unsecured claims and interests, and includes the following treatment:
  - a. Secured Claims. A plan is fair and equitable with respect to a nonaccepting class of secured claims if (i) the holder of each claim in such class will retain its lien or liens and receive deferred cash payments totaling the allowed amount of its claim, of a value, as of the effective date of the plan, equal to the value of such holder's interest in the collateral, (ii) the holder of each claim in such class will receive the proceeds from the sale of such collateral, or (iii) the holder of each claim in such class will realize the indubitable equivalent of its allowed secured claim.
  - b. Unsecured Claims. A plan is fair and equitable with respect to a nonaccepting class of unsecured claims if (i) the holder of each claim in such class will receive or retain under the plan property of a value, as of the effective date of the plan, equal to the allowed amount of its claim, or (ii) holders of claims or interests that are junior to the claims of such creditors will not receive or retain any property under the plan on account of such junior claim or interest.
  - c. Interests. A plan is fair and equitable with respect to a non-accepting class of interests if the plan provides that (i) each member of such class receives or retains on account of its interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest, or (ii) holders of interests that are junior to the interests of such class will not receive or retain any property under the plan on account of such junior interests.

Based upon the classifications made and distributions provided for under the Plan, the Debtor believes the Plan is fair and equitable as to all Classes.

#### **G. Best Interests Test and Liquidation Analysis**

Even if a plan is accepted by the holders of each class of claims and interests, the Bankruptcy Code requires a court to determine that such plan is in the best interests of all holders of claims or interests that are impaired by that plan and that have not accepted the plan. The “best interests” test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires a court to find either that all members of an impaired class of claims or interests have accepted the plan or that the plan will provide a member who has not accepted the plan with a recovery of property of a value, as of the effective date of the plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate what Holders of Allowed Claims and Allowed Interests would receive if the Debtor was hypothetically liquidated under chapter 7 of the Bankruptcy Code, the Bankruptcy Court must first

determine the dollar amount that would be realized from the liquidation (the “Liquidation Fund”) of the Debtor. The Liquidation Fund would consist of the net proceeds from the disposition of the Debtor’s assets (after satisfaction of all valid liens) augmented by the Cash held by the Debtor, recoveries on actions against third parties and any currently budgeted administrative expenses or priority Claims that could be avoided or reduced in a chapter 7 case, if any. The Liquidation Fund would then be reduced by the costs of the liquidation. The costs of liquidation under chapter 7 would include the fees and expenses of a trustee, as well as those of counsel and other professionals that might be retained by the trustee, selling expenses, any unpaid expenses incurred by the Debtor during its case (such as fees for attorneys, financial advisors and accountants) which would be allowed in the chapter 7 proceeding, interest expense on secured debt and claims incurred by the Debtor during the pendency of the case. These claims would be paid in full out of the Liquidation Fund before the balance of the Liquidation Fund, if any, would be made available to Holders of Allowed Unsecured Claims. In addition, other claims which would arise upon conversion to a chapter 7 case (*e.g.*, the costs and expenses of the liquidation, and such additional administrative expenses and priority Claims that may result from the use of chapter 7 for purposes of liquidation) would dilute the balance of the Liquidation Fund available to Holders of Allowed Unsecured Claims. Moreover, additional Claims against the Debtor’s Estate may be filed as the result of the establishment of a new bar date for the filing of claims in a chapter 7 case for the Debtor. The present value of the distributions out of the Liquidation Fund (after deducting the amounts described above) is then compared with the present value of the property offered to each of the Classes of Claims and Interests under the Plan to determine if the Plan is in the best interests of each holder of a Claim.

The Creditors’ Committee and the Debtor (*i.e.*, the Proponents) believe that a chapter 7 liquidation of the Debtor’s remaining assets would result in less value to be realized by Holders of Claims than they would receive under the Plan. That belief is based upon, among other factors: (i) the additional administrative expenses involved in the appointment of a trustee, attorneys, accountants, and other chapter 7 professionals; (ii) the substantial time which would elapse before creditors would receive any distribution in respect of their Claims due to a trustee’s need to become familiar with the Debtor’s Chapter 11 Case, the Debtor’s books and records, and his or her duty to conduct his or her own investigations; (iii) the additional unsecured Claims that may be asserted against the Debtor; (iv) the substantial cost and delay which can be avoided by a largely consensual Plan; (v) the potential for lower returns on the Debtor’s assets in a chapter 7 proceeding, as compared to the value of such assets to the Liquidating Trust; (vi) the disruption related to a change in management and other personnel; (vii) turmoil in the record-keeping and information systems involved in the administration of the Debtor’s Estate; and (viii) the potential for diminished recoveries on any causes of action of the Debtor, given the potential difficulties in managing related legal actions and marshaling and presenting required evidence without the presence of the Debtor’s CRO, the Liquidating Trustee and others that have been involved through the administration of the Chapter 11 Case.

Accordingly, the Debtor believes that Holders of Allowed Claims would receive less than anticipated under the Plan if the Chapter 11 Case was converted to a chapter 7 case, and therefore, the classification and treatment of Claims and Interests in the Plan complies with section 1129(a)(7) of the Bankruptcy Code.

The foregoing analysis is supplemented by the Liquidation Analysis annexed hereto as Exhibit B.

## **H. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation is not likely to be followed by the liquidation or need for further financial reorganization of the Debtor or any successor to the Debtor (unless such liquidation or reorganization is proposed in the Plan). Because the Plan proposes a liquidation of all the Debtor’s assets, for purposes of determining whether the Plan meets this requirement, the Debtor’s management analyzed the Liquidating Trust’s ability to meet its respective obligations under the Plan. Based on the Debtor’s analysis, including the information contained in Distribution Summary (*see infra pp. 5-7*) regarding recoveries available to creditors under the Plan, the Debtor and the Liquidating Trust, as

applicable, will have sufficient assets to accomplish its tasks under the Plan. Therefore, the Proponents believe that liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

The Distribution Summary contained herein sets forth the Proponents' estimates of probable ranges of recoveries for the different Classes. The Distribution Summary contains various estimates and assumptions that are inherently subject to contingencies beyond the control of the Proponents and their Professionals. For example, many Claims are still going through the formal allowance process and ultimate amounts and priorities that will be Allowed by the Bankruptcy Court are still not certain. Accordingly, there can be no assurance that the recovery percentages set forth in the Distribution Summary will in fact be realized and, as such, the actual recoveries per Claim – and accordingly per Class – may vary materially from the estimated ranges shown below.

**THE DISTRIBUTION SUMMARY IS AN ESTIMATE BASED ON A NUMBER OF SIGNIFICANT ASSUMPTIONS. THE DISTRIBUTION SUMMARY IS NOT AND DOES NOT PURPORT TO BE A VALUATION OF THE DEBTOR'S ASSETS. UNDERLYING THE DISTRIBUTION SUMMARY CONTAINS A NUMBER OF VALUES, ESTIMATES AND ASSUMPTIONS THAT ARE INHERENTLY SUBJECT TO CONTINGENCIES BEYOND THE CONTROL OF THE DEBTOR OR ITS PROFESSIONALS. ALL NUMBERS CONTAINED IN THIS ANALYSIS ARE ESTIMATES. ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE VALUES REFLECTED IN THE DISTRIBUTION SUMMARY OR RECOVERY PERCENTAGES WILL BE REALIZED, AND ACTUAL RESULTS COULD VARY MATERIALLY FROM THOSE SHOWN IN THE ANALYSIS.**

#### **I. The Liquidating Trust**

The Plan provides that on and after the Effective Date, the Liquidating Trust shall continue in existence for purposes of (1) resolving Disputed Claims, (2) prosecuting Causes of Action, (3) pursuing any and all Liquidating Trust Assets, (4) making distributions on account of Allowed Claims as provided in the Liquidating Trust Agreement and in the Plan, (5) maximizing recovery of the Liquidating Trust Assets for the benefit of the Liquidating Trust beneficiaries, (6) distributing the proceeds of the Liquidating Trust Assets to the Liquidating Trust beneficiaries in accordance with the Plan and the Liquidating Trust Agreement, (7) maintaining and funding the Segregated Account, (8) filing appropriate tax returns for the Liquidating Trust, and (9) all other matters not expressly set forth in the Plan, as may be reasonably necessary, in the opinion of the Liquidating Trustee, to effectuate the Plan and the terms of the Liquidating Trust Agreement. As of the Effective Date, the Liquidating Trust, by and through the Liquidation Trustee, shall be authorized to act on behalf of the Debtor, the Post-Effective Date Debtor and, to the extent necessary, deemed to be substituted as the party-in-lieu of the Debtor/Post-Effective Date Debtor in all matters, including (a) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, in connection with, relating to, or in any manner arising from the Liquidating Trust and/or Liquidating Trust Assets, (b) any and all tax or regulatory filings, relating to the Liquidating Trust, and (c) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court in connection with, relating to, or in any manner arising from the Liquidating Trust and/or Liquidating Trust Assets, in each case without the need or requirement for the Liquidating Trust to file motions or substitutions of parties or counsel in each such matter.

The Plan further provides that the Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (1) all Disputed Claims have been resolved, (2) all of the Liquidating Trust Assets have been liquidated or abandoned, (3) all duties and obligations of the Liquidating Trustee under the Liquidating Trust Agreement and the Plan have been fulfilled, (4) all distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made, and (5) the Debtor's Chapter 11 Case has been closed; *provided, however*, that in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary (or the end of any extension period

approved by the Bankruptcy Court), determines that an extension is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets and/or distributions in accordance with the Plan.

**J. Compliance with the Applicable Provisions of the Bankruptcy Code**

Section 1129(a)(1) of the Bankruptcy Code requires that the Plan comply with all other applicable provisions of the Bankruptcy Code. The Debtor has considered each of these issues in the development of the Plan and believe that the Plan complies with all applicable provisions of the Bankruptcy Code.

**K. Additional Disclosures Concerning the Releases Under Article IX of the Plan**

Pursuant to Article IX of the Plan, and as repeated in Article XIV of this Disclosure Statement above, the Debtor will be releasing certain Released Parties under the Plan. The Released Parties include (a) the Debtor; (b) the Creditors' Committee and each of its members; (c) the Debtor's Professionals; (d) the Debtor's independent director, Daniel T. Motulsky; (e) Robert Prusak, the Debtor's Chief Restructuring Officer; (f) the Creditors' Committee's Professionals; and (g) solely for purposes of Article IX.C of the Plan and the release being provided by the Debtor, the Post-Effective Date Debtor, the Estate and the Liquidating Trust hereunder, Jeanne Lynch of Buzzard Brook Inc., an independent contractor of the Debtor.

The Debtor and the Committee believe that there are no colorable claims that the Debtor and the other Releasing Parties, on the one hand, and the Released Parties, on the other hand, may have against each other. Such releases are included in the Plan, amongst other reasons, to ensure that the Plan is not disturbed by collateral challenges to distributions that will eventually be made pursuant to the Plan. For the avoidance of doubt, neither the Klausner Group nor Carolina Sawmills is a Released Party or being released pursuant to Article IX of the Plan.

**L. Additional Disclosures Concerning Indemnification Obligations Under the Plan**

Pursuant to Article V.C. of the Plan, all Indemnification Obligations of the Debtor to Indemnification Claimants are being preserved. Indemnification Claimants include the persons identified in Article V.C. of the Plan as well as any persons covered by paragraph 6 of the *Order Authorizing the Employment and Retention of Cypress Holdings LLC as Investment Banker, Pursuant to Sections 327 and 328 of the Bankruptcy Code Effective (In Part) as of the Petition Date* (D.I. 196) and by paragraph 2.f. of the *Order Authorizing (I) the Employment and Retention of Asgaard Capital LLC to Provide the Debtor With a Chief Restructuring Officer and Certain Additional Personnel and (II) the Designation of Robert Prusak as Chief Restructuring Officer for the Debtor, Effective as of the Petition Date* (D.I. 198), which permitted the Debtor to indemnify "the CRO and those persons serving as Executive Officers of the Debtor on the same terms as provided to the Debtor's other officers and directors under the corporate bylaws, LLC documents, and applicable state law." *Id.* at ¶ 2.f. Daniel T. Motulsky, identified as an Indemnification Claimant in the Plan, is covered by both applicable law and the indemnification provision found in paragraph 4 of the Board Member Services and Indemnification Agreement between the Debtor and Mr. Motulsky.

The Debtor and the Committee do not believe that there are any colorable claims against any Indemnification Claimants. For the avoidance of doubt, neither the Klausner Group nor Carolina Sawmills is an Indemnification Claimant or being indemnified by the Debtor.

**XVII.  
RISK FACTORS**

**ALL IMPAIRED HOLDERS SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH OR**



**OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN.**

**A. Certain Bankruptcy Considerations**

**1. Parties in Interest May Object to the Debtor's Classification of Claims**

Section 1122 of the Bankruptcy Code provides that a chapter 11 plan may place a class or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtor believes that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

**2. The Debtor May Not be Able to Secure Confirmation of the Plan**

There can be no assurance that the Debtor will receive the requisite acceptances to confirm the Plan. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. The Bankruptcy Court could decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation have not been met, including that the terms of the Plan are fair and equitable to non-accepting Classes. Section 1129 of the Bankruptcy Code sets forth the requirements for Confirmation and requires, among other things, a finding by the Bankruptcy Court that the Plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting Classes, Confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial reorganization, and the value of distributions to non-accepting Holders of Claims or Interests within a particular Class under the Plan will not be less than the value of distributions such Holders would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. While there can be no assurance that these requirements will be met, the Debtor believes that the Plan will not be followed by a need for further liquidation or reorganization and that non-accepting Holders within each Class under the Plan will receive distributions at least as great as they would receive following a liquidation under chapter 7 of the Bankruptcy Code when taking into consideration all administrative claims and costs associated with any such chapter 7 case. The Debtor believes that Holders of Interests would receive no distribution under a liquidation pursuant to chapter 7.

**3. The Confirmation and Consummation of the Plan Are Also Subject to Certain Conditions as Described in the Plan**

If the Plan is not Confirmed, it is unclear whether another plan could be implemented and what distributions Holders of Claims ultimately would receive with respect to their Claims. If an alternative Plan could not be agreed to, it is possible that the Debtor would have to convert the Chapter 11 Case to chapter 7, in which case it is likely that Holders of Claims would receive less favorable treatment than they would receive under the Plan.

**4. The Debtor May Object to the Amount or Classification of a Claim or Interest**

The Debtor and the Liquidating Trust reserve and retain the right to object to the amount or classification of any Claim or Interest. The estimates set forth in this Disclosure Statement cannot be relied on by any creditor whose Claim is subject to an objection. Any such Claim Holder may not receive its specified share of the estimated distributions described in this Disclosure Statement.

**B. Risks Relating to the Administration of the Liquidating Trust**

**1. Post-Confirmation Operations**

The ultimate amount of Cash available to satisfy the Allowed amount of Claims in Classes 3, 4, 5, 6, and 7 depends, in part, on the results of the CS Adversary Proceeding and the success of the Liquidating Trust in monetizing its remaining assets, and the expense required to do so. To the extent that the Liquidating Trust's expenses exceed current expectations, the amount of Cash remaining to satisfy Allowed Claims in Classes 3, 4, 5, 6, and 7 will decrease.

The ultimate amount of Cash available for distribution to holders of Allowed Claims in Classes 3, 4, 5, 6, and 7 also will be affected by the performance and relative success of the Liquidating Trustee in pursuing preference, fraudulent conveyance, setoff and other claims under the Bankruptcy Code. The less successful the Liquidating Trust is in pursuing such matters, the less Cash there will be available for distribution to satisfy Allowed Claims and/or the greater will be the Allowed Claims over which the Cash will need to be allocated, resulting in a lower distribution per Allowed Claim.

**C. Risks Relating to the Allowance of Certain Claims under the Plan**

Approximately \$131 million in Unsecured Claims were asserted as of the General Bar Date. The Debtor believes that various objections to Claims (*see supra* pp. 20-21) will likely be sustained by Bankruptcy Court or settlements with such creditors will be reached that will result in the actual Allowed amounts of such Claims being substantially less; if, however, the Claims asserted against the Debtor are Allowed at or near the full asserted amounts, this could substantially reduce recoveries for all other creditors. In particular, and by way of example, the outcome of the CS Adversary Proceeding will definitely have a significant impact on potential distributions to Holders of Allowed Unsecured Claims. If, for example, it is determined that CSLP held a secured claim on substantially all of the Debtor's assets, then there is likely to be no distribution to Holders of Allowed Unsecured Claims. Alternatively, if CSLP is found not to have had any liens on any of the Debtor's assets, then the Holders of Allowed Unsecured Claims will receive a distribution. If CSLP Claim No. 54 is subordinated, the pro rata share available for distribution to Holders of Allowed Unsecured Claims will increase from the pro rata share that would otherwise be available if CSLP participates as an Allowed Unsecured Claimant *pari passu* with other Holders of Allowed Unsecured Claims.

**D. Risks Relating to the Tax Consequences of the Plan**

The U.S. federal income tax consequences to Holders of Claims or Interests as a result of Consummating the Plan are complex and subject to uncertainty. Holders of Claims or Interests should carefully review Section IX ("Certain Federal Income Tax Consequences of the Plan"), below.

Certain U.S. tax attributes of the Debtor, including net operating loss carryovers, may be reduced or eliminated as a consequence of the Plan. In addition, the Debtor's subsequent utilization of any net operating loss carryforwards remaining, and possibly certain other U.S. tax attributes, may be restricted following the Consummation of the Plan. The elimination, reduction and/or restriction on the use of net operating loss carryovers and/or such other tax attributes may increase the amount of tax payable by the Liquidating Trust following the Effective Date as compared with the amount of tax payable without such reduction having been required. For further discussion, Holders should refer to Section IX ("Certain Federal Income Tax Consequences of the Plan"), below.

Additionally, the Debtor has not yet prepared its state and local taxes for 2020. To the extent that taxes are owed in excess of estimated amounts, this will diminish recoveries available for Allowed Unsecured Claims.

Holders of Claims are strongly urged to consult with their tax advisors as to the U.S. federal income tax consequences of Consummating the Plan.

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**THESE RISK FACTORS CONTAIN CERTAIN STATEMENTS THAT ARE “FORWARD-LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. THESE STATEMENTS ARE SUBJECT TO A NUMBER OF ASSUMPTIONS, RISKS AND UNCERTAINTIES, MANY OF WHICH ARE BEYOND THE CONTROL OF THE DEBTOR AND THE LIQUIDATING TRUST, INCLUDING THE IMPLEMENTATION OF THE PLAN, THE CONTINUING AVAILABILITY OF SUFFICIENT BORROWING CAPACITY OR OTHER FINANCING TO FUND OPERATIONS, THE PRICES AT WHICH THE DEBTOR AND LIQUIDATING TRUST CAN SELL THEIR PRODUCTS AND SERVICES, CURRENCY EXCHANGE RATE FLUCTUATIONS, NATURAL DISASTERS AND UNUSUAL WEATHER CONDITIONS, TERRORIST ACTIONS OR ACTS OF WAR, OPERATING EFFICIENCIES, LABOR RELATIONS, ACTIONS OF GOVERNMENTAL BODIES, AND OTHER MARKET AND COMPETITIVE CONDITIONS. HOLDERS OF CLAIMS AND INTERESTS ARE CAUTIONED THAT THE FORWARD-LOOKING STATEMENTS SPEAK AS OF THE DATE MADE AND ARE NOT GUARANTEES OF FUTURE PERFORMANCE. ACTUAL RESULTS OR DEVELOPMENTS MAY DIFFER MATERIALLY FROM THE EXPECTATIONS EXPRESSED OR IMPLIED IN THE FORWARD-LOOKING STATEMENTS, AND THE DEBTOR UNDERTAKES NO OBLIGATION TO UPDATE ANY SUCH STATEMENTS.**

## **XVII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion addresses certain United States federal income tax consequences of the Consummation of the Plan to U.S. Holders (defined below) and to the Debtor. This discussion is for informational purposes only and is not tax advice. This discussion is based upon the Internal Revenue Code of 1986, as amended (the “Tax Code”), existing and proposed regulations thereunder, current administrative rulings, and judicial decisions as in effect on the date of the Plan, all of which are subject to change, possibly retroactively. No rulings or determinations by the Internal Revenue Service have been obtained or sought by the Debtor with respect to the Plan. An opinion of counsel has not been obtained with respect to the tax aspects of the Plan. This discussion does not purport to address the federal income tax consequences of the Plan to particular classes of taxpayers (such as partnerships and partners therein, Non-US Holders (as defined below), S corporations, mutual funds, small business investment companies, regulated investment companies, broker-dealers, insurance companies, tax-exempt organizations and financial institutions) or the state, local or foreign income and other tax consequences of the Plan.

For purposes of this summary, a “U.S. Holder” is a beneficial owner of a Claim or Interest that is (i) a citizen or individual resident of the United States, (ii) a corporation (or other entity treated as a corporation for United States federal income tax purposes) created or organized in the United States or under the laws of the United States or any political subdivision thereof, (iii) an estate the income of which is subject to United States federal income taxation regardless of its source, or (iv) a trust if: (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States fiduciaries have the authority to control all substantial decisions of the trust, or (ii) the trust was in existence on August 20, 1996 and properly elected to be treated as a United States person. A “Non-U.S. Holder” means a Holder of a Claim or Interest that is not a U.S. Holder and is, for U.S. federal income tax purposes, an individual, corporation (or other entity treated as a corporation for U.S. federal income tax purposes), estate or trust.

If a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) is a beneficial owner of a Claim or Interest, the tax treatment of a partner in such partnership will generally depend on the status of the partner and the activities of the partnership. Partners of partnerships holding Claims or Interests are encouraged to consult their independent tax advisors regarding the tax consequences to them of the Plan.

**NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE PLAN TO ANY HOLDER OF A CLAIM OR INTEREST. EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT A TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.**

**A. Federal Income Tax Consequences to U.S. Holders of Claims and Interests**

The following discusses certain U.S. federal income tax consequences of the transactions contemplated by the Plan to “U.S. Holders.” Generally, a Holder of a Claim will recognize gain or loss equal to the difference between the “amount realized” by such Holder in exchange for its Claim and such Holder’s adjusted tax basis in the Claim. The “amount realized” is equal to the sum of the Cash and the fair market value of any other consideration received under the Plan in respect of a Holder’s Claim. For this purpose, the value of the portion of the assets transferred to the Liquidating Trust that are deemed transferred to such Holder are treated as part of the amount realized by such Holder (discussed below in Federal Income Tax Consequences to Beneficiaries of the Liquidating Trust). The tax basis of a Holder in a Claim will generally be equal to the Holder’s cost therefor.

The character of any recognized gain or loss (*e.g.*, ordinary income, or short-term or long-term capital gain or loss) will depend upon the status of the Holder, the origin of the Claim, 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. Claims in Classes 3, 4, 5, 6 and 7 are generally ordinary course claims and will likely be treated as ordinary income by most Holders. 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. There are limitations on the deduction of capital losses by both corporate and noncorporate taxpayers.

The Plan provides that to the extent that any Allowed Claim entitled to a distribution is comprised of indebtedness and accrued but unpaid interest, such distribution shall be allocated to the principal amount of the Claim first and then, to the extent the distribution exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest. The IRS, however, could take the position that the distribution should be allocated first to interest and then to principal repayment. A Holder will generally recognize ordinary income to the extent that the amount of cash or property received (or to be received) under the Plan is attributable to accrued but unpaid interest not previously included in income by such Holder. Holders previously required to include in their gross income any accrued but unpaid interest on an Allowed Claim may be entitled to recognize a deductible loss to the extent such interest is not satisfied under the Plan. **U.S. Holders should consult their own tax advisors regarding the proper allocation of the consideration received by them under the Plan between principal and accrued but untaxed interest.**

In the event of the subsequent disallowance of any Disputed Unsecured Claim or the reallocation of undeliverable distributions, it is possible that a Holder of a previously Allowed Claim may receive additional distributions in respect of its Claim. Accordingly, it is possible that the recognition of any loss realized by a Holder with respect to an Allowed Unsecured Claim may be deferred until all Unsecured Claims are Allowed or Disallowed. Alternatively, it is possible that a Holder will have additional gains in respect of any additional distributions received. **Holders of Claims and Interests should consult their**

**own tax advisors.**

A Holder of a Claim constituting any installment obligation for tax purposes may be required to currently recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than its face value, distributed, transmitted, sold or otherwise disposed of within the meaning of section 453B of the Tax Code. **Holders of Claims and Interests should consult their own tax advisors.**

A Holder of an Interest may be entitled to a worthless securities deduction under section 165(g) of the Tax Code. The rules governing the character, timing, and amount of this deduction depends upon the facts and circumstances of the Holder with respect to which a deduction is claimed. **Accordingly, Holders are urged to consult their tax advisors with respect to their ability to take such a deduction.**

The tax treatment of a Holder of an Allowed Claim or Interest will depend upon facts and circumstances that are specific to the nature of the Holder and its Claims or Interests. **Accordingly, Holders of Claims and Interests should consult their own tax advisors.**

Under backup withholding rules, a Holder may be subject to backup withholding with respect to payments made pursuant to the Plan unless such Holder (a) is a corporation or is otherwise exempt from backup withholding and, when required, demonstrates this fact, or (b) provides a correct taxpayer identification and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of failure to report all dividend and interest income. Any amount withheld under these rules will be credited against the Holder's federal income tax liability. **Holders of Claims may be required to establish an exemption from backup withholding or to make arrangements with regard to payment thereof and should consult their own tax advisors.**

#### **B. Federal Income Tax Consequences to the Debtor**

The Debtor is a member of an affiliated group of corporations that files a consolidated federal income tax return with Klausner Holding USA, Inc. as the common parent (the "KHU Tax Group") or an entity disregarded as separate from its owner for U.S. federal income tax purposes whose business activities and operations are reflected on the consolidated U.S. federal income tax returns of the KHU Tax Group. The Debtor believed that, as of the Commencement Date, the KHU Tax Group had accumulated a large amount of consolidated net operating losses ("NOLs") and other tax attributes.

The KHU Tax Group's ability to utilize its NOLs and certain other tax attributes could be subject to limitation if the KHU Tax Group underwent or were to undergo an ownership change within the meaning of section 382 of the Tax Code after the Commencement Date. The Debtor believes that no ownership change of the KHU Tax Group for section 382 purposes has occurred to date and expects that no such ownership change will occur prior to the liquidation of the Debtor as of the Effective Date.

The Debtor will generally realize cancellation of indebtedness ("COD") income as a result of a Consummation of the Plan. Such amount will depend on a number of considerations including the value of consideration distributed to the Holders of Claims, the nature of the Claims and the amounts owed in respect thereof. COD income is, however, generally excluded from the gross income of a debtor if the discharge of indebtedness is granted by a bankruptcy court or pursuant to a plan approved by the bankruptcy court in a case under chapter 11 of the Bankruptcy Code. Such COD income would be excluded under the Tax Code and would reduce the Debtor's tax attributes following the calculation of their tax liability for that year.

Pursuant to the Plan, on or before the Effective Date, a Liquidating Trust will be established for the Debtor for which there are remaining assets (including reserves) as of the end of the Effective Date, and on the Effective Date, all of the Liquidating Trust Assets of the Debtor will be transferred to the Liquidating

Trust. The Debtor will thereafter be dissolved. Accordingly, as of the end of the Effective Date, the Debtor should be treated as having completely liquidated for U.S. federal income tax purposes. For U.S. federal income tax purposes, the transfer of the Liquidating Trust Assets to the Liquidating Trust generally is treated as equivalent to a sale of the assets at their then fair market value. It is not known at the present time whether the transfer of the Debtor's assets will result in any gain to the Debtor or whether the Debtor will have sufficient losses or loss carryforwards to offset any such gain. If the transfer results in gain and the Debtor does not have sufficient NOLs or other tax attributes to offset that gain, the transfer of such assets could result in federal income tax liability to the Debtor. Given that the Debtor will be dissolved in connection with the Plan and will not be in existence at the end of its taxable year, it will not suffer consequences from the reduction of its tax attributes after calculating its taxable income for the year. The Debtor believes that once the Debtor liquidates and transfers the Liquidating Trust Assets to the Liquidating Trust, it is unlikely that any NOL carryforwards that may remain after calculating its taxable income for the year will be available to be used. The Debtor also believes it is unlikely that any NOL carryforwards will be available to reduce any income or gain of the Liquidating Trust.

**C. Federal Income Tax Consequences to Beneficiaries of the Liquidating Trust.**

The Liquidating Trust will be organized for the primary purpose of liquidating the assets transferred to it with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Thus, the Liquidating Trust is intended to be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulations § 301.7701-4(d). The provisions of the Liquidating Trust Agreement and the Plan are intended to satisfy the guidelines for classification as a liquidating trust that are set forth in Revenue Procedure 94-45, 1994-2 C.B. 684. Under the Plan, all parties are required to treat the Liquidating Trust as a liquidating trust, subject to contrary definitive guidance from the IRS. In general, a liquidating trust is not a separate taxable entity but rather is treated as a grantor trust, pursuant to sections 671 through 679 of the Tax Code, owned by the persons who are treated as transferring assets to the Liquidating Trust.

No request for a ruling from the IRS will be sought on the classification of the Liquidating Trust. Accordingly, there can be no assurance that the IRS would not take a contrary position to the classification of the Liquidating Trust. If the IRS were to challenge successfully the classification of the Liquidating Trust as a grantor trust, the federal income tax consequences to the Liquidating Trust and the Beneficiaries could vary from those discussed in the Plan (including the potential for an entity-level tax).

Pursuant to the Plan, all of the Debtor's remaining assets other than those sold prior to the Effective Date will be transferred directly or indirectly to Holders of Allowed Claims in liquidation of the Debtor. For federal income tax purposes, any such assets transferred to the Liquidating Trust will be treated by the Debtor and by the Beneficiaries as having been transferred to the Beneficiaries, with such Beneficiaries then transferring the assets to the Liquidating Trust in exchange for beneficial interests in the Liquidating Trust. The Debtor will not retain a beneficial interest in the Liquidation Trust; instead, the beneficial interest in the Liquidating Trust will be held by the Beneficiaries. It is intended that the Liquidating Trust be treated, for U.S. federal income tax purposes, as a liquidating trust and as a grantor trust, with the Beneficiaries receiving Liquidating Trust interests being treated as the grantors and deemed owners of the Liquidating Trust Assets.

Each Beneficiary holding a beneficial interest in the Liquidating Trust must report on its federal income tax return its allocable share of income, gain, loss, deduction and credit recognized or incurred by the Liquidating Trust. None of the Debtor's loss carryforwards will be available to reduce any income or gain of the Liquidating Trust. Moreover, upon the sale or other disposition (or deemed disposition) of any Liquidating Trust Asset, each Beneficiary holding a beneficial interest in the Liquidating Trust must report on its federal income tax return its share of any gain or loss measured by the difference between (1) its share of the amount of cash and/or the fair market value of any property received by the Liquidating Trust

in exchange for the Liquidating Trust Asset so sold or otherwise disposed of, and (2) such Beneficiary's adjusted tax basis in its share of the Liquidating Trust Asset. The character of any such gain or loss to the Beneficiary will be determined as if such Beneficiary itself had directly sold or otherwise disposed of the Liquidating Trust Asset. The character of items of income, gain, loss, deduction and credit to any Beneficiary holding a beneficial interest in the Liquidating Trust, and the ability of the Beneficiary to benefit from any deductions or losses, may depend on the particular circumstances or status of the Beneficiary.

Given the treatment of the Liquidating Trust as a grantor trust, each Beneficiary holding a beneficial interest in the Liquidating Trust has an obligation to report its share of the Liquidating Trust's tax items (including gain on the sale or other disposition of a Liquidating Trust Asset) which is not dependent on the distribution of any cash or other Liquidating Trust Assets by the Liquidating Trust. Accordingly, a Beneficiary holding a beneficial interest in the Liquidating Trust may incur a tax liability as a result of owning a share of the Liquidating Trust Assets, regardless of whether the Liquidating Trust distributes cash or other assets. Although the Liquidating Trust Agreement provides that the Liquidating Trust will generally make distributions of cash at least quarterly, due to the requirement that the Liquidating Trust maintain certain reserves, the Liquidating Trust's ability to make current cash distributions may be limited or precluded. In addition, due to possible differences in the timing of income on, and the receipt of cash from the Liquidating Trust Assets, a Beneficiary holding a beneficial interest in the Liquidating Trust may be required to report and pay tax on a greater amount of income for a taxable year than the amount of cash received by the Beneficiary during the year.

The Liquidating Trustee (i) may elect to treat any Liquidating Trust Assets allocable to, or retained on account of, Disputed Claims (*i.e.*, a disputed claim reserve) as a "disputed ownership fund" governed by section 1.468B-9 of the Treasury Regulations, if applicable, and (ii) to the extent permitted by applicable law, will report consistently for state and local income tax purposes. Accordingly, if a "disputed ownership fund" election is made with respect to a disputed claim reserve, such reserve will be subject to tax annually on a separate entity basis on any net income earned with respect to the Liquidating Trust Assets (including any gain recognized upon the disposition of such assets). All distributions from such reserves (which distributions will be net of the expenses, including taxes, relating to the retention or disposition of such assets) will be treated as received by holders in respect of their Claims as if distributed by the Debtor. All parties (including, without limitation, the Debtor, the Liquidating Trustee and the Liquidating Trust beneficiaries) will be required to report for tax purposes consistently with the foregoing.

A disputed claim reserve will be responsible for payment, out of the assets of the disputed claim reserve, of any taxes imposed on the disputed claim reserve or its assets. In the event, and to the extent, any Cash in the disputed claim reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets of such reserve (including any income that may arise upon the distribution of the assets in such reserve), assets of the disputed claim reserve may be sold to pay such taxes.

The Liquidating Trust will file annual information tax returns with the IRS as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) that will include information concerning certain items relating to the holding or disposition (or deemed disposition) of the Liquidating Trust Assets (*e.g.*, income, gain, loss, deduction and credit). Each Beneficiary holding a beneficial interest in the Liquidating Trust will receive a copy of the information returns and must report on its federal income tax return its share of all such items. The information provided by the Liquidating Trust will pertain to Beneficiaries who received their interests in the Liquidating Trust in connection with the Plan.

#### **D. Withholding on Distribution and Information Reporting**

All distributions to Holders of Allowed General Unsecured Claims under the Plan are subject to any applicable tax withholding, including employment tax withholding. Under U.S. federal income tax law, interest, dividends, and other reportable payments may, under certain circumstances, be subject to

“backup withholding” at the then-applicable withholding rate (currently 24%). Backup withholding generally applies if the holder (i) fails to furnish its social security number or other taxpayer identification number, (ii) furnishes an incorrect taxpayer identification number, (iii) fails properly to report interest or dividends, or (iv) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the tax identification number provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons are exempt from backup withholding, including, in certain circumstances, corporations and financial institutions. **Holders of Allowed General Unsecured Claims are urged to consult their tax advisors regarding the Treasury Regulations governing backup withholding and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations.**

In addition, a Holder of an Allowed Unsecured Claim or a Liquidating Trust Beneficiary that is a Non-U.S. Holder may be subject to up to 30% withholding, depending on, among other things, the particular type of income and whether the type of income is subject to a lower treaty rate. As to certain Claims, it is possible that withholding may be required with respect to Distributions by the Debtor even if no withholding would have been required if payment was made prior to the Chapter 11 Case. A Non-U.S. Holder may also be subject to other adverse consequences in connection with the implementation of the Plan. As discussed above, the foregoing discussion of the U.S. federal income tax consequences of the Plan does not generally address the consequences to Non-U.S. Holders. **Non-U.S. Holders are urged to consult their tax advisors regarding potential withholding on Distributions by the Debtor or payments from the Liquidating Trust.**

In addition, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer’s claiming a loss in excess of specified thresholds. **Holders are urged to consult their tax advisors regarding these Treasury Regulations and whether the transactions contemplated by the Plan would be subject to these Treasury Regulations and require disclosure on the Holder’s tax returns.**

#### **E. Importance of Obtaining Professional Tax Assistance**

The foregoing is intended to be only a summary of certain of the U.S. federal income tax consequences of the Plan and is not a substitute for careful tax planning with a tax professional.

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

**NO STATEMENT IN THIS DISCLOSURE STATEMENT SHOULD BE CONSTRUED AS LEGAL OR TAX ADVICE. THE DEBTOR AND ITS PROFESSIONALS DO NOT ASSUME ANY RESPONSIBILITY OR LIABILITY FOR THE TAX CONSEQUENCES THE HOLDER OF A CLAIM MAY INCUR AS A RESULT OF THE TREATMENT AFFORDED ITS CLAIM UNDER THE PLAN AND DO NOT REPRESENT WHETHER THERE COULD BE ADDITIONAL TAX EXPOSURE TO THEMSELVES OR THEIR NON-DEBTOR AFFILIATES AS A RESULT OF THE PLAN.**



## **XVIII. RECOMMENDATION**

The Debtor and the Creditors' Committee strongly recommend that all creditors receiving a Ballot vote in favor of the Plan. The Debtor and the Creditors' Committee believe that the Plan is in the best interests of creditors. The Plan as structured, among other things, allows creditors to participate in distributions believed to be in excess of those which would otherwise be available were the Chapter 11 Case dismissed or converted under chapter 7 of the Bankruptcy Code, and minimizes delays in initiating recoveries to creditors.

**XIX.**  
**CONCLUSION**

For all of the reasons set forth in this Disclosure Statement, the Debtor and the Creditors' Committee believe that the Confirmation and Consummation of the Plan is preferable to all other alternatives. The Debtor and the Creditors' Committee urge all creditors entitled to vote, vote to accept the Plan to return their Ballots so that they will be received by 5:00 p.m. (Prevailing Eastern Time) on February 21, 2022.

DATED: January 18, 2022

Klausner Lumber Two LLC

/s/ Robert Prusak

By: Robert Prusak

Title: Chief Restructuring Officer

Official Committee of Unsecured Creditors

/s/ Eric M. Suttty

By: Eric. M. Suttty

Title: Counsel

**EXHIBIT A**

**JOINT CHAPTER 11 PLAN**

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

In re:	)	
	)	Chapter 11
	)	
Klausner Lumber Two LLC, <sup>1</sup>	)	Case No. 20-11518 (KBO)
	)	
Debtor.	)	
	)	

**FIRST AMENDED CHAPTER 11 PLAN FOR KLAUSNER LUMBER TWO LLC  
JOINTLY PROPOSED BY THE DEBTOR AND THE OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS**

Thomas A. Draghi (admitted *pro hac vice*)  
William C. Heuer (admitted *pro hac vice*)  
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Robert J. Dehney (No. 3578)  
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Dated: January 14, 2022

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<sup>1</sup> The last four digits of the Debtor's federal EIN are 4897. The Debtor's mailing address is Klausner Lumber Two LLC, P.O. Box C, Redding Ridge, CT 06876.

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
INTRODUCTION .....	1
ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW .....	1
A.    Defined Terms .....	1
B.    Rules of Interpretation .....	12
C.    Computation of Time .....	13
D.    Governing Law .....	13
E.    Reference to Monetary Figures .....	13
F.    Controlling Document .....	13
ARTICLE II. ADMINISTRATIVE EXPENSE AND PRIORITY TAX CLAIMS .....	13
A.    Administrative Expense Claims .....	13
B.    Priority Tax Claims .....	14
C.    Professional Compensation .....	14
1.    Final Fee Applications and Payment of Professional Fee Claims .....	14
2.    Professional Fee Escrow Account .....	15
3.    Professional Fee Reserve Amount .....	15
4.    Post-Effective Date Fees and Expenses .....	15
D.    Statutory Fees .....	15
ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS .....	16
A.    Classification of Claims and Interests .....	16
B.    Treatment of Claims and Interests .....	16
1. <u>Class 1 – CS Secured Claims</u> .....	17
2. <u>Class 2 – Priority Claims</u> .....	17
3. <u>Class 3 – WARN Act Class Settlement Claims</u> .....	17
4. <u>Class 4 – CS Deficiency/Unsecured Claims</u> .....	18
5. <u>Class 5 - General Unsecured Claims</u> .....	18
6. <u>Class 6 – Klausner Group Unsecured Claims</u> .....	19
7. <u>Class 7 – Subordinated Claims</u> .....	19
8. <u>Class 8 – Interests</u> .....	19
C.    Special Provision Governing Unimpaired Claims .....	19
D.    Confirmation Pursuant to Section 1129(a)(10) of the Bankruptcy Code .....	20

E.	Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code (“Cram Down”).....	20
F.	Elimination of Vacant Classes .....	20
G.	Voting Classes; Presumed Acceptance by Non-Voting Classes.....	20
H.	Subordinated Claims and Interests.....	20
	ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN.....	20
A.	Cancellation of Notes, Instruments, Certificates, and Other Documents .....	20
B.	Exemption from Certain Taxes and Fees .....	21
C.	Effectuation of the Plan .....	21
1.	Establishment of the Segregated Account .....	21
2.	Sources of Consideration for Plan Distributions .....	21
3.	Liquidating Trust & Vesting of Assets .....	21
4.	Dissolution and Board of Directors .....	22
5.	Corporate Action.....	22
	ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....	22
A.	Rejection of Executory Contracts and Unexpired Leases.....	22
B.	Claims Based on Rejection of Executory Contracts or Unexpired Leases .....	23
C.	Indemnification Obligations .....	23
D.	Director and Officer Liability Insurance.....	24
	ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS .....	24
A.	Timing and Calculation of Amounts to Be Distributed .....	24
B.	Liquidating Trustee.....	24
C.	Delivery of Distributions and Undeliverable or Unclaimed Distributions .....	24
1.	Record Date for Distribution .....	24
2.	Delivery of Distributions .....	25
3.	Distribution .....	25
4.	Minimum Distributions.....	25
5.	Undeliverable Distributions and Unclaimed Property .....	25
D.	Manner of Payment.....	26
E.	Compliance with Tax and Other Legal Requirements .....	26
F.	Allocations .....	26
G.	No Post-petition Interest on Claims.....	26
H.	Setoffs and Recoupment .....	27
I.	Claims Paid or Payable by Third Parties .....	27
1.	Claims Paid by Third Parties .....	27

2.	Claims Payable by Third Parties.....	27
3.	Applicability of Insurance Policies.....	27
4.	Provisions Regarding Vesting of Insurance Policies in Liquidating Trust.....	28
ARTICLE VII. THE LIQUIDATING TRUST.....		28
A.	The Liquidating Trust .....	28
B.	Purpose of the Liquidating Trust .....	28
C.	Liquidating Trust Assets .....	29
D.	The Liquidating Trustee.....	29
E.	Beneficiaries of the Liquidating Trust.....	30
F.	Vesting and Transfer of Liquidating Trust Assets to the Liquidating Trust .....	30
G.	Liquidating Trust Expenses.....	30
H.	Role of the Liquidating Trustee.....	30
I.	Prosecution and Resolution of Causes of Action.....	32
J.	Federal Income Tax Treatment of the Liquidating Trust for the Liquidating Trust Assets .....	32
K.	Indemnification .....	33
L.	Term of the Liquidating Trust .....	34
M.	Retention of Professionals by the Liquidating Trust .....	34
N.	Conflicts Between the Liquidating Trust Agreement and the Plan.....	34
O.	Wind Down.....	34
ARTICLE VIII.....		35
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS .....		35
A.	Allowance of Claims .....	35
B.	Claims Administration Responsibilities .....	35
C.	Estimation of Claims .....	36
D.	Disputed Claims.....	36
E.	Adjustment to Claims Without Objection.....	36
F.	Time to File Objections to Claims .....	36
G.	Disallowance of Claims .....	37
H.	Amendments to Claims.....	37
I.	No Distributions Pending Allowance .....	37
J.	Distributions After Allowance.....	37
ARTICLE IX. RELEASE, INJUNCTION, EXCULPATION AND RELATED PROVISIONS .....		38
A.	Term of Injunctions or Stays.....	38

B.	Release of Liens .....	38
C.	Release by the Debtor .....	38
D.	Release by Holders of Claims or Interests .....	39
E.	Exculpation .....	40
F.	Injunction .....	41
G.	Protection Against Discriminatory Treatment .....	41
H.	Setoffs .....	41
I.	Subordination Rights .....	42
ARTICLE X. CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN .....		42
A.	Conditions Precedent to Confirmation.....	42
B.	Conditions Precedent to the Effective Date .....	42
C.	Waiver of Conditions.....	43
D.	Substantial Consummation .....	43
E.	Effect of Nonoccurrence of Conditions to the Effective Date .....	43
ARTICLE XI. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN.....		43
A.	Modification and Amendments.....	43
B.	Effect of Confirmation on Modifications .....	44
C.	Revocation or Withdrawal of the Plan.....	44
ARTICLE XII. RETENTION OF JURISDICTION.....		44
ARTICLE XIII. MISCELLANEOUS PROVISIONS .....		46
A.	Immediate Binding Effect.....	46
B.	Additional Documents .....	46
C.	Dissolution of the Creditors' Committee .....	46
D.	Reservation of Rights.....	47
E.	Successors and Assigns .....	47
F.	Service of Documents .....	47
G.	Entire Agreement.....	48
H.	Exhibits .....	48
I.	Non-severability of Plan Provisions .....	48
J.	Votes Solicited in Good Faith.....	49
K.	Waiver or Estoppel .....	49



## **INTRODUCTION**

Capitalized terms used in this chapter 11 plan shall have the meanings set forth in Article I.A. The Proponents propose the Plan for the resolution of outstanding Claims against, and Interests in, the Debtor. Holders of Claims and Interests may refer to the Disclosure Statement for a discussion of the Debtor's history, business, assets, results of operations, and historical financial information, as well as a summary and description of the Plan. The Proponents are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS AND INTERESTS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

## **ARTICLE I. DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW**

### **A. *Defined Terms***

As used in the Plan, capitalized terms have the meanings set forth below.

1. “*Administrative Expense Claim*” means a Claim for costs and expenses of administration of the Debtor's Estate pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) to the extent they meet the statutory requirements, the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; (b) Allowed Professional Fee Claims; and (c) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Case pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code.

2. “*Administrative Expense Claims Bar Date*” means (i) January 29, 2021 at 5:00 p.m. for Administrative Expense Claims arising between the Petition Date and December 31, 2020 and (ii) the date that is thirty (30) days after the Effective Date or such other date ordered by the Bankruptcy Court for Administrative Expense Claims arising from December 31, 2020 through the Effective Date; *provided, however*, that with respect to Professional Fee Claims, the Administrative Expense Claim Bar Date shall be forty-five (45) days after the Effective Date, and indemnity claims preserved under this Plan may be asserted or Filed as and when they arise or are incurred.

3. “*Affiliate*” shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

4. “*Allowed*” means, with respect to any Claim, except as otherwise provided herein: (a) a Claim that is evidenced by a Proof of Claim filed in accordance with, and subject to the terms of, the Bar Date Order; (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; or (c) a Claim allowed pursuant to the Plan, any stipulation approved by the Bankruptcy Court, any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Plan, or a Final Order of the Bankruptcy Court, including a Claim estimated pursuant to section 502(c) of the Bankruptcy Code; *provided, however*, that, with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that (i) no objection to the allowance of such Claim, including an objection to the timeliness of such Claims, has been interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or (ii) if such an objection is so interposed, such Claim shall have been Allowed by a Final Order.

Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until (x) such Entity pays in full the amount that it owes to Debtor, or (y) such Claim is allowed pursuant to a Final Order of the Bankruptcy Court. “Allow” and “Allowing” shall have correlative meanings.

5. “*Allowed Unsecured Claim*” means an Allowed Claim in Class 4 (CS Deficiency/Unsecured Claims), Class 5 (General Unsecured Claims), or Class 6 (Klausner Group Unsecured Claims).

6. “*Bankruptcy Code*” means title 11 of the United States Code, as amended from time to time and as applicable to the Chapter 11 Case.

7. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware, and, to the extent of any withdrawal of reference under 28 U.S.C. § 157 and/or the General Order of the District Court pursuant to section 151 of title 28 of the United States Code, the United States District Court for the District of Delaware.

8. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, and the general, local, and chambers rules of the Bankruptcy Court, each as amended from time to time and as applicable to the Chapter 11 Case.

9. “*Bar Date*” means the dates established by the Bankruptcy Court pursuant to the Bar Date Order by which Proofs of Claim must be Filed.

10. “*Bar Date Order*” means the Bankruptcy Court’s *Order (I) Establishing a General Bar Date to File Proofs of Claim, (II) Establishing a Bar Date for Governmental Units to File Proofs of Claim, (III) Establishing a Bar Date to File Requests for Payment of Postpetition Administrative Claims, (IV) Establishing an Amended Schedules Bar Date, (V) Establishing a Rejection Damages Bar Date, (VI) Approving the Form and Manner for Filing Proofs of Claim, (VII) Approving the Proposed Notice of Bar Dates, and (VIII) Granting Related Relief* [D.I. 501], which was entered on December 15, 2020.

11. “*Business Day*” means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)(6)).

12. “*Carolina Sawmills*” means Carolina Sawmills, L.P.

13. “*Cash*” means the legal tender of the United States of America or the equivalent thereof.

14. “*Causes of Action*” means any claims, damages, remedies, causes of action, demands, rights, actions, proceedings, suits (including the CS Adversary Proceeding), obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, in tort, law, equity, or otherwise. For the avoidance of doubt, “Causes of Action” include: (a) all rights of setoff, counterclaim, or recoupment and claims on contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) claims and defenses such as fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code.

15. “*Chapter 11 Case*” means the above-captioned chapter 11 case of the Debtor in the Bankruptcy Court under Case No. 20-11518.

16. “*Chief Restructuring Officer*” means Robert Prusak of Asgaard Capital LLC.

17. “*Claim*” shall have the meaning set forth in section 101(5) of the Bankruptcy Code, asserted against the Debtor.

18. “*Claims Objection Deadline*” shall mean one hundred twenty (120) days after the Effective Date, or such later date as may be ordered by the Bankruptcy Court; *provided however*, that the Liquidating Trustee may seek extensions of this date from the Bankruptcy Court. The filing of a motion to extend the Claims Objection Deadline shall automatically extend the Claims Objection Deadline until a Final Order is entered on such motion, consistent with Local Rule 9006-2. In the event that such motion to extend the Claims Objection Deadline is denied, the Claims Objection Deadline shall be the later of the current Claims Objection Deadline (as previously extended, if applicable) or thirty (30) days after the Bankruptcy Court’s entry of an order denying the motion to extend the Claims Objection Deadline.

19. “*Claims Register*” means the official register of Claims maintained by the Notice and Claims Agent or the Bankruptcy Court.

20. “*Class*” means a category of Claims or Interests as designated in the Plan.

21. “*Confirmation*” means entry of the Confirmation Order on the docket of the Chapter 11 Case, subject to the conditions set forth in the Plan, including the conditions precedent to Confirmation as specified in Article X hereof (unless they have been waived in accordance with Article X).

22. “*Confirmation Date*” means the date on which Confirmation occurred.

23. “*Confirmation Hearing*” means a hearing held before the Bankruptcy Court to consider Confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

24. “*Confirmation Order*” means an order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

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

26. “*Creditor Releasing Party*” means (a) each Holder of a Claim that submitted a ballot with regard to the Plan and affirmatively opted in to being a Releasing Party by marking the box on its ballot designated for such purpose; and (b) each Holder of a Claim that is Unimpaired and presumed to accept the Plan and affirmatively opted in to being a Releasing Party by marking the box on its ballot designated for such purpose, in each case solely in such capacities.

27. “*Creditors’ Committee*” means the official committee of unsecured creditors appointed in the Chapter 11 Case.

28. “*Creditors’ Committee’s Professionals*” means (a) Armstrong Teasdale LLP; (b) Elliott Greenleaf, P.C.; (c) EisnerAmper LLP n/k/a Eisner Advisory Group LLC; and (d) any other Professional retained by the Creditors’ Committee, including each such Entities’ current and former Affiliates, and such Entities’ and such Affiliates’ partners, subsidiaries, predecessors, current and former directors, managers, officers, equity holders (regardless of whether such interests are held

directly or indirectly, but excluding Holders of Interests), members, principals, employees, agents, managed accounts or funds, advisors, attorneys, accountants, investment bankers, consultants, contractors, representatives, management companies, fund advisors, and other professionals, together with their respective successors and assigns.

29. “*CS Adversary Proceeding*” means the adversary proceeding commenced by the Creditors’ Committee against Carolina Sawmills pending in the Bankruptcy Court under Adversary Proceeding No. 21-51010 (KBO).

30. “*CS Carved Out Amounts*” means the sum sufficient to pay: (a) all Allowed Administrative Expense Claims, including all Allowed Professional Fee Claims; (b) all Allowed Priority Claims, including all Allowed Priority Tax Claims and Allowed WARN Act Class Settlement Claims; (c) all U.S. Trustee Fees due and payable and any interest thereon pursuant to section 3717 of Title 31 of the United States Code; and (d) all post-Effective Date fees and expenses incurred in connection with implementation of the Plan in an amount not to exceed \$225,000.00.

31. “*CS County Stipulation and Order*” means the *Order Approving Stipulation Regarding Motion to Approve County Settlement*, dated November 9, 2020 [D.I. 377], including the *Stipulation Regarding Motion to Approve County Settlement*, dated November 3, 2020 annexed thereto at Exhibit 1 [D.I. 377-1], issued in connection with the *Order Approving Motion of the Debtor Pursuant to Bankruptcy Rule 9019, Local Rule 9013-1 and 11 U.S.C. §§ 105(a) and 363(b), for Entry of an Order Authorizing Revised Settlement with the County*, dated November 9, 2020 [D.I. 380], including the *Amended and Restated Release and Settlement Agreement*, dated as of October 21, 2020 annexed thereto as Exhibit 1 [D.I. 380-1].

32. “*CS Deficiency/Unsecured Claim*” means a Claim held or asserted by Carolina Sawmills that is not Secured and is neither a Subordinated Claim nor an Interest.

33. “*CS Liens and Claims*” means any and all liens, security interests, claims and encumbrances, if any, that Carolina Sawmills has or had against or on (a) the property described in the Prepetition Loan Documents, including, without limitation, the Sale Assets and (b) to the extent set forth in the CS County Stipulation and Order, (i) the Net Sale Proceeds and (ii) any other Debtor assets remaining after the sale of the Sale Assets that would have been subject to any such liens, security interests, claims and encumbrances as of the Petition Date, if any.

34. “*CS Secured Claim*” means a Claim held or asserted by Carolina Sawmills that is Secured.

35. “*D&O Liability Insurance Policies*” means all insurance policies for directors’, managers’, members’, and officers’ liability (including employment practices liability and fiduciary liability) maintained by the Debtor prior to the Effective Date, including as such policies may extend to employees, and any such policies that have “tail” provisions.

36. “*Debtor*” means Klausner Lumber Two LLC, the debtor and debtor-in-possession in the Chapter 11 Case.

37. “*Debtor’s Professionals*” means: (a) the Chief Restructuring Officer; (b) Asgaard Capital LLC; (c) Cypress Holdings LLC; (d) Morris, Nichols, Arsht & Tunnell LLP; (e) Westerman Ball Ederer Miller Zucker & Sharfstein, LLP; (f) Dinsmore & Shohl LLP; (g) Curtis, Mallet-Prevost, Colt & Mosle LLP; (h) Ellis & Winters LLP; (i) Donlin Recano & Company; and (j) any other Professional retained by the Debtor, including each such Entities’ current and former Affiliates, and

such Entities' and such Affiliates' partners, subsidiaries, predecessors, current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly, but excluding Holders of Interests), members, principals, employees, agents, managed accounts or funds, advisors, attorneys, accountants, investment bankers, consultants, contractors, representatives, management companies, fund advisors, and other professionals, together with their respective successors and assigns

38. *"Disallowed"* means, with respect to any Claim, a Claim or any portion thereof that: (a) has been disallowed by a Final Order; (b) is listed in the Schedules as zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim or request for payment of an Administrative Expense Claim has been Filed in accordance with, and subject to the terms of, the Bar Date Order or deemed Filed with the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Bankruptcy Court, or otherwise deemed Filed under applicable law or the Plan; (c) is not listed in the Schedules and as to which no Proof of Claim or request for payment of an Administrative Expense Claim has been Filed in accordance with, and subject to the terms of, the Bar Date Order or deemed Filed with the Bankruptcy Court pursuant to the Bankruptcy Code, any Final Order of the Bankruptcy Court, or otherwise deemed Filed under applicable law or the Plan; (d) has been withdrawn by agreement of the Debtor or the Liquidating Trustee and the Holder thereof; or (e) has been withdrawn by the Holder thereof.

39. *"Disclosure Statement"* means the disclosure statement for the Plan, including all exhibits and schedules and any amendments thereto, that is prepared and distributed in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3018.

40. *"Disputed"* means a Claim that is not yet Allowed.

41. *"Distribution Record Date"* means the date for determining which Holders of Allowed Claims or Allowed Interests are eligible to receive distributions hereunder, which shall be: (a) the date on which the Bankruptcy Court approves the Disclosure Statement or (b) such other date as designated in a Final Order of the Bankruptcy Court.

42. *"Effective Date"* means, with respect to the Plan, the date that is the first Business Day selected by the Debtor on which: (a) no stay of the Confirmation Order is in effect; (b) all conditions precedent specified in Article X hereof have been satisfied or waived (in accordance with Article X hereof); and (c) the Plan is declared effective. The Debtor shall file a notice of the Effective Date no later than ten (10) Business Days after it occurs.

43. *"Entity"* shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

44. *"Estate"* means the estate created for the Debtor in the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

45. *"Exculpated Parties"* means, collectively, and in each case solely in its capacity as such: (a) the Debtor; (b) the Debtor's current and former officers, directors and managers who served in such positions at any time on or after the Petition Date; (c) the Debtor's Professionals; (d) the Creditors' Committee and each of its members; (e) the Creditors' Committee's Professionals; and (f) with respect to each of the foregoing Entities and Persons, such Entities' and Persons' respective current and former Affiliates, and such Entities' and such Affiliates' partners, subsidiaries, predecessors, current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly, but excluding Holders of Interests), members, principals, employees, agents, managed accounts or funds, advisors, attorneys, accountants, investment bankers, consultants,

contractors, representatives, management companies, fund advisors, and other professionals, together with their respective successors and assigns; *provided* that neither Carolina Sawmills nor any of the Klausner Group shall be an “Exculpated Party.” For the avoidance of doubt, no Exculpated Party shall be exculpated for any act or omission that occurred prior to the Petition Date.

46. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

47. “*Federal Judgment Rate*” means the federal judgment rate in effect as of the Petition Date, compounded annually.

48. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing in the Chapter 11 Case with the Bankruptcy Court or, with respect to the filing of a Proof of Claim or proof of Interest, the Notice and Claims Agent.

49. “*Final Order*” means: (a) an order or judgment of the Bankruptcy Court, as entered on the docket in the Chapter 11 Case (or any related adversary proceeding or contested matter) or the docket of any other court of competent jurisdiction; or (b) an order or judgment of any other court having jurisdiction over any appeal from (or petition seeking certiorari or other review of) any order or judgment entered by the Bankruptcy Court (or any other court of competent jurisdiction, including in an appeal taken) in the Chapter 11 Case (or in any related adversary proceeding or contested matter), that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired according to applicable law and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules of the Bankruptcy Court, may be filed shall not prevent such order from being a Final Order.

50. “*General Unsecured Claim*” means any Claim other than: (a) Administrative Expense Claims; (b) Priority Tax Claims; (c) CS Secured Claims; (d) Priority Claims; (e) WARN Act Class Settlement Claims; (f) CS Deficiency/Unsecured Claims; (g) Klausner Group Unsecured Claims; or (h) Subordinated Claims.

51. “*Governmental Unit*” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

52. “*Holder*” means an Entity holding a Claim or Interest, as applicable.

53. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

54. “*Indemnification Claimant*” shall have the meaning set forth in Article V.C. hereof.

55. “*Indemnified Persons*” means the Liquidating Trustee, her, his or its employees, officers, directors, agents, representatives, and professionals.

56. “*Insider*” shall have the meaning set forth in section 101(31) of the Bankruptcy Code.

57. “*Interest*” means any equity security (as defined in section 101(16) of the Bankruptcy Code) in the Debtor.

58. “*Interim Compensation Order*” means the order of the Bankruptcy Court establishing the procedures for interim compensation and reimbursement of expenses for professionals [D.I. 235].

59. “*Klausner Group*” means, collectively: (a) Klausner Trading International GmbH; (b) Klausner Nordamerika Beteiligungs GmbH; (c) Klausner Holz Thuringen GmbH; (d) Klausner Holz Sachsen GmbH; (e) Klausner Holz Niedersachsen GmbH; (f) Klausner Holding USA, Inc.; and (g) Klausner Trading USA, Inc.

60. “*Klausner Group Unsecured Claims*” means a Claim held or asserted by any member of the Klausner Group that is neither a Secured Claim nor a Subordinated Claim.

61. “*Lien*” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

62. “*Liquidating Trust*” means the grantor trust to be created upon the Effective Date for the benefit of its beneficiaries, as set forth in Article VII hereof.

63. “*Liquidating Trust Agreement*” means the agreement, substantially in the form included in the Plan Supplement, governing the operations of the Liquidating Trust, as it may be subsequently modified or amended from time to time.

64. “*Liquidating Trust Assets*” means the assets held in the Liquidating Trust comprising, as of the Effective Date: (a) all Litigation Claims; (b) the funds in the Segregated Account available for distribution under the Liquidating Trust Agreement and all proceeds thereof; and (c) all other unencumbered assets of the Debtor’s Estate remaining after all payments have been made pursuant to the Plan, Confirmation Order, and Liquidating Trust Agreement, as applicable. For the avoidance of doubt, the Liquidating Trust (x) is the successor-in-interest to, and shall be deemed a member at all relevant times of, the Debtor and the Creditors’ Committee for purposes of the Liquidating Trust Assets, (y) shall have direct or derivative standing (as applicable and as necessary) with respect to any of the Litigation Claims, including without limitation, with respect to any standing assigned or otherwise conveyed to the Creditors’ Committee to prosecute and contest the validity, priority and extent of the CS Liens and Claims, and (z) shall succeed to the appointment of the Creditors’ Committee as an Estate representative to prosecute and contest the validity, priority and extent of the CS Liens and Claims under the CS County Stipulation and Order, including the CS Adversary Proceeding.

65. “*Liquidating Trust Expenses*” shall mean all actual and necessary costs and expenses to be incurred after the Effective Date in connection with the administration of the Plan at the direction of the Liquidating Trustee, including the reasonable fees and expenses of the Liquidating Trustee and any professionals retained by the Liquidating Trustee and the reasonable fees and expenses associated with administering, holding, selling, transferring and liquidating the Liquidating Trust Assets, as well as the reasonable fees and expenses associated with administering the Plan and the Wind Down as set forth in Article VII.O. hereof.

66. “*Liquidating Trustee*” means the Person or Entity to be retained as the trustee of the Liquidating Trust, as of the Effective Date or as soon as reasonably practicable thereafter, that shall act as the fiduciary responsible for administering the Liquidating Trust, in accordance with Article VII.D hereof.

67. “*Litigation Claims*” means all Causes of Action belonging to the Debtor’s Estate, including, but not limited to, the CS Adversary Proceeding.

68. “*Net Distribution Proceeds*” means the funds in the Segregated Account available for distribution to Holders of Allowed Unsecured Claims after funding, reserving for or payment of (a) all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed CS Secured Claims, Allowed Priority Claims, and Allowed WARN Act Class Settlement Claims, and (b) the Liquidating Trust Expenses.

69. “*Net Sale Proceeds*” means the Sale Proceeds less the CS Carved Out Amounts.

70. “*Net WARN Act Class Settlement Amount*” means the WARN Settlement Amount less: (a) WARN Class Counsel Fees and Expenses; and (b) the Service Payment.

71. “*Notice and Claims Agent*” means Donlin, Recano & Company.

72. “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

73. “*Petition Date*” means June 10, 2020.

74. “*Plan*” means this plan, as it may be amended or supplemented from time to time, including all exhibits, schedules, supplements, appendices, annexes, and attachments thereto.

75. “*Plan Documents*” means the Plan, the Disclosure Statement, the Plan Supplement, the Confirmation Order, and the various agreements and other documents formalizing or implementing the Plan and the transactions contemplated thereunder.

76. “*Plan Supplement*” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, to be Filed by the Debtor no later than seven (7) days before the deadline for objecting to Confirmation of the Plan, or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, and additional documents Filed with the Bankruptcy Court before the Effective Date as amendments to the Plan Supplement. The Plan Supplement shall include the following: (a) the identity of the Liquidating Trustee; (b) the Liquidating Trust Agreement; and (c) any and all other documentation necessary to effectuate the Plan or that is contemplated by the Plan. The Debtor, after consultation with the Creditors’ Committee, shall have the right to amend the documents contained in, and exhibits to, the Plan Supplement until the Effective Date, pursuant to section 1127 of the Bankruptcy Code.

77. “*Post-Effective Date Debtor*” means the Debtor on and after the Effective Date.

78. “*Prepetition Loan Documents*” shall mean: (a) the Construction Loan Agreement, dated as of March 14, 2014, by and between the Debtor and Carolina Sawmills; (b) the Promissory Note, dated as of November 14, 2014, by the Debtor in favor of Carolina Sawmills; (c) the Amended and Restated Promissory Note, dated December 12, 2018, by the Debtor in favor of Carolina Sawmills; (d) the Deed of Trust recorded in the Halifax County Deed Registry on March 26, 2015; (e) the Security Agreement, dated as of February 26, 2015 by and between the Debtor and Carolina Sawmills; and (f) other agreements, modifications, documents, and instruments executed, delivered, and/or filed in connection with the foregoing.

79. “*Priority Claim*” means any Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, including Priority Wage Claims, other than: (a) an Administrative



Expense Claim; (b) a Priority Tax Claim, to the extent such Claim has not already been paid during the Chapter 11 Case; or (c) a WARN Act Class Settlement Claim. For the avoidance of doubt, “Priority Claims” include Claims arising under section 503(b)(9) of the Bankruptcy Code.

80. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

81. “*Priority Wage Claim*” means any Claim that is not a WARN Act Class Settlement Claim but is either: (a) a WARN Claim; and/or (b) a Claim entitled to priority in right of payment pursuant to Section 507(a)(4) or Section 507(a)(5) of the Bankruptcy Code; *provided, however*, that under no circumstances shall any Priority Wage Claim exceed the amount of \$13,650.

82. “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in such particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan.

83. “*Pro Rata Share*” means the proportional share that an Allowed Claim’s recovery in a particular Class bears to the aggregate recovery amount of Allowed Claims in that Class, or the proportional share that Allowed Claims’ recoveries in a particular Class bear to the aggregate recovery amount of Allowed Claims in a particular Class and other Classes entitled to share in the same recovery as such Allowed Claim under the Plan.

84. “*Professional*” means an Entity retained pursuant to an order of the Bankruptcy Court in accordance with sections 327, 363 or 1103 of the Bankruptcy Code, and to be compensated for services rendered pursuant to sections 327, 328, 329, 330, 331, 363, or 503 of the Bankruptcy Code.

85. “*Professional Fee Claims*” means all Administrative Expense Claims for the compensation of Professionals and the reimbursement of expenses incurred by such Professionals to the extent such fees and expenses have not been previously paid.

86. “*Professional Fee Escrow Account*” means an account in an amount equal to the total Professional Fee Reserve Amount to be funded by the Debtor on or before the Effective Date.

87. “*Professional Fee Reserve Amount*” means the aggregate amount of Professional Fee Claims that the Professionals estimate they have incurred and will incur in rendering services to the Debtor or the Creditors’ Committee prior to and as of the Effective Date and through the date on which the Debtor shall be dissolved pursuant to Article IV.D hereof, which estimates Professionals shall deliver to the Debtor, the Creditors’ Committee and counsel to Carolina Sawmills as set forth in Article II.C hereof.

88. “*Proof of Claim*” means a proof of Claim Filed with respect to the Debtor in the Chapter 11 Case.

89. “*Proponents*” means the Debtor and the Creditors’ Committee, as joint proponents of the Plan.

90. “*Reinstated*” or “*Reinstatement*” means, with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with section 1124 of the Bankruptcy Code.

91. “*Released Party*” means each of the following solely in their capacity as such: (a) the Debtor; (b) the Creditors’ Committee and each of its members; (c) the Debtor’s Professionals; (d) the Debtor’s independent director, Daniel T. Motulsky; (e) Robert Prusak, the Debtor’s Chief Restructuring Officer; (f) the Creditors’ Committee’s Professionals; and (g) solely for purposes of Article IX.C below and the release being provided by the Debtor, the Post-Effective Date Debtor, the Estate and the Liquidating Trust hereunder, Jeanne Lynch of Buzzard Brook Inc., an independent contractor of the Debtor.

92. “*Releasing Party*” means, collectively, and in each case solely in its capacity as such: (a) the Debtor; (b) the Liquidating Trust and Liquidating Trustee; (c) the Creditors’ Committee and each of its members; (d) each Creditor Releasing Party; and (e) any other Person or Entity claiming solely in a derivative capacity by or through each of the foregoing Entities described in clauses (a) through (d), including such Entities’ current and former Affiliates, and such Entities’ and such Affiliates’ partners, subsidiaries, predecessors, current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly, but excluding Holders of Interests), members, principals, employees, agents, managed accounts or funds, advisors, attorneys, accountants, investment bankers, consultants, contractors, representatives, management companies, fund advisors, and other professionals, together with their respective successors and assigns.

93. “*Sale Assets*” means the “Assets”, as such term is described and defined in the Sale Order, that were sold, transferred and conveyed to Binderholz Enfield LLC and, for the limited purposes described therein, Binder Beteiligungs AG, pursuant to the Sale Order.

94. “*Sale Order*” means the *Order (I) Approving APA, (II) Authorizing the Sale of Certain of The Debtor’s Assets Free and Clear of Certain Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief*, including the Asset Purchase Agreement, dated as of December 10, 2020, attached thereto as Exhibit I [D.I. 507].

95. “*Sale Proceeds*” means the proceeds from the sale of the Sale Assets.

96. “*Schedules*” means, collectively, the schedules of assets and liabilities and statement of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as such may have been amended, modified, or supplemented from time to time.

97. “*Secured*” means, when referring to a Claim: (a) secured by a Lien on property in which the Debtor has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the applicable Holder’s interest in the Debtor’s interest in such property or to the extent of the amount subject to setoff, as applicable, is determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to the Plan, or separate order of the Bankruptcy Court, as a Secured Claim.

98. “*Secured Claim*” means any Secured Claim (including Secured Tax Claims).

99. “*Secured Tax Claim*” means any Secured Claim against the Debtor that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

100. “*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77a–77aa, together with the rules and regulations promulgated thereunder, as amended from time to time.

101. “*Security*” means a security as defined in section 2(a)(1) of the Securities Act.

102. “*Segregated Account*” means one or more segregated accounts (which may be “book entry” (a) into which the remaining Sale Proceeds shall be deposited on the Effective Date and (i) subject to the terms of the Plan, be held by the Liquidating Trustee pending a determination of the rights of the Debtor/Post-Effective Date Debtor, Liquidating Trust and Carolina Sawmills with respect to the (x) the Net Sale Proceeds and (y) any other Debtor assets remaining after the sale of the Sale Assets that would have been subject to the CS Liens and Claims as of the Petition Date, (b) into which the Liquidating Trust may deposit all revenues and proceeds, if any, of any other assets of the Debtor or the Liquidating Trust, and (c) from which payments of the CS Carved Out Amounts and any other distributions required pursuant to this Plan shall be made in accordance with provisions of the Plan; *provided* that the CS Carved Out Amounts shall first be paid from the Net Sale Proceeds.

103. “*Subordinated Claim*” means any Claim subject to subordination under section 510(b) of the Bankruptcy Code or as otherwise may be permitted under applicable law.

104. “*Unexpired Lease*” means a lease of nonresidential real property to which the Debtor is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

105. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code, including through payment in full in Cash.

106. “*U.S. Trustee*” means the Office of the United States Trustee for the District of Delaware.

107. “*U.S. Trustee Fees*” means all fees payable pursuant to 28 U.S.C. section 1930(a)(6).

108. “*Voting Deadline*” means 5:00 p.m., prevailing Eastern Time, on February 21, 2022, which date may be extended by the Debtor in consultation with the Creditors’ Committee and counsel to Carolina Sawmills, or by order of the Bankruptcy Court.

109. “*WARN Act Claimants*” means all Persons listed on Exhibit A to the WARN Act Class Settlement Agreement.

110. “*WARN Act Class Settlement Agreement*” shall mean that certain Settlement and Release Agreement approved by the Bankruptcy Court, a copy of which is attached as Exhibit 1 to the *Joint Motion Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rules 9019 and 7023 for an Order (I) Certifying a Class for Settlement Purposes, (II) Appointing Plaintiff Cornelius Turner as Class Representative and Plaintiffs’ Counsel as Class Counsel, (III) Preliminarily Approving Settlement, (IV) Approving Class Notice, and (V) Scheduling Fairness Hearing* [D.I. 874], entered into by and among the Debtor and Plaintiff Cornelius Turner on behalf of himself and the WARN Act Claimants.

111. “*WARN Act Class Settlement Claim*” shall mean the Claim awarded to, collectively, the WARN Act Claimants in accordance with Section 5 of the WARN Act Class Settlement Agreement, in the amount of the WARN Settlement Amount.

112. “*WARN Claim*” means any Claim arising under or pursuant to the federal Worker Adjustment and Retraining Notification (WARN) Act, including the Claim filed by Cornelius Turner, on behalf of himself and the WARN Act Claimants, on or prior to the Bar Date.

113. “*WARN Class Counsel*” shall have the meaning ascribed to the term “*Class Counsel*” in Section 2 of the WARN Act Class Settlement Agreement.

114. “*WARN Class Counsel Fees and Expenses*” shall have the meaning ascribed to the term “*Class Counsel Fees and Expenses*” in Section 7 of the WARN Act Class Settlement Agreement for WARN Class Counsel.

115. “*WARN Pro Rata Share*” shall have the meaning ascribed to the term “Pro Rata Share” in Section 5 of the WARN Act Class Settlement Agreement.

116. “*WARN Service Payment*” shall have the meaning ascribed to the term “*Service Payment*” in Section 6 of the WARN Act Class Settlement Agreement.

117. “*WARN Settlement Amount*” shall have the meaning ascribed to the term “Settlement Amount” in Section 5 of the WARN Act Class Settlement Agreement.

118. “*Wind Down*” means the wind down and dissolution of the Debtor and the Estate on and following the Effective Date as set forth in Article VII.O hereof.

#### *B. Rules of Interpretation*

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed or to be Filed shall mean that document, schedule, or exhibit as it may thereafter be amended, modified, or supplemented; (4) any reference to an Entity as a Holder of a Claim or Interest includes that Entity’s successors and assigns; (5) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (9) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (10) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (11) all references to docket numbers of documents Filed in the Chapter 11 Case are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (12) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Case, unless otherwise stated; (13) any immaterial effectuating provisions may be interpreted by the Debtor, the Creditors’ Committee, or the Liquidating Trust in such a manner that is consistent with the overall purpose and intent of the Plan, all without further notice to, or action, order, or approval of, the Bankruptcy Court or any other Entity; and (14) except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtor, Post-Effective Date

Debtor, or to the Liquidating Trust shall mean the Debtor, Post-Effective Date Debtor, and the Liquidating Trust, as applicable, to the extent the context requires.

*C. Computation of Time*

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction or event may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction or event shall instead occur on the next succeeding Business Day. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

*D. Governing Law*

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated herein, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided, however*, that corporate or limited liability company governance matters relating to the Debtor or the Liquidating Trust shall be governed by the laws of the state of incorporation or formation of such Entity.

*E. Reference to Monetary Figures*

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

*F. Controlling Document*

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and any document included in the Plan Supplement, the terms of the relevant provision in the Plan shall control (unless stated otherwise in such document or in the Confirmation Order). In the event of an inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

**ARTICLE II.  
ADMINISTRATIVE EXPENSE AND PRIORITY TAX CLAIMS**

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

*A. Administrative Expense Claims*

Requests for payment of Administrative Expense Claims must be Filed on or before the Administrative Expense Claims Bar Date. Except as otherwise ordered by the Bankruptcy Court, Holders of Administrative Expense Claims that are required to, but do not, File and serve a request for payment of such Administrative Expense Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Expense Claims against the Debtor or its property and such Administrative Expense Claims shall be deemed released against the Debtor as of the Effective Date. Objections to such

requests, if any, must be Filed and served on the Liquidating Trustee and the requesting party by the Claims Objection Deadline.

Except with respect to Administrative Expense Claims that (a) are Professional Fee Claims, (b) have already been paid during the Chapter 11 Case, or (c) for which the Holder of an Allowed Administrative Expense Claim has agreed to less favorable treatment, each Holder of an Allowed Administrative Expense Claim shall receive in full satisfaction of its Administrative Expense Claim, Cash equal to the amount of such Allowed Administrative Expense Claim either: (i) on the Effective Date; (ii) if the Administrative Expense Claim is not Allowed as of the Effective Date, thirty (30) days after the date on which an order Allowing such Administrative Expense Claim becomes a Final Order, or as soon thereafter as reasonably practicable; or (iii) if the Allowed Administrative Expense Claim is based on a liability incurred by the Debtor in the ordinary course of its business after the Petition Date, pursuant to the terms and conditions of the particular transaction or agreement giving rise to such Allowed Administrative Expense Claim, without any further action by the Holders of such Allowed Administrative Expense Claim and without any further notice to, or action, order, or approval of, the Bankruptcy Court. Each Holder of an Allowed Administrative Expense Claim shall initially be paid from Cash in the Segregated Account to the extent there are funds in such account.

Pursuant to Local Rule 3002-1, the government shall not be required to file any Proof of Claim or applicable for allowance for any Claims covered by section 503(b)(1)(B), (C), or (D).

*B. Priority Tax Claims*

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction and compromise of, and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. For the avoidance of doubt, Holders of Allowed Priority Tax Claims will receive interest on such Allowed Priority Tax Claims after the Effective Date in accordance with sections 511 and 1129(a)(9)(C) of the Bankruptcy Code. Each Holder of an Allowed Priority Tax Claim shall initially be paid from Cash in the Segregated Account to the extent there are funds in such account.

*C. Professional Compensation*

*1. Final Fee Applications and Payment of Professional Fee Claims*

All final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Effective Date shall be Filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior Bankruptcy Court orders. The Liquidating Trust (or the authorized signatories to the Professional Fee Escrow Account, after consultation with the Liquidating Trust) shall pay the amount of the Allowed Professional Fee Claims owing to the Professionals in Cash to such Professionals from funds held in the Professional Fee Escrow Account within two (2) Business Days or as soon thereafter as reasonably practicable after such Professional Fee Claims are allowed by entry of an order of the Bankruptcy Court. To the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Expense Claim for any such deficiency, and the Debtor, the Post-Effective Date Debtor or the Liquidating Trustee, as applicable, shall pay the full unpaid amount of such Allowed Administrative Expense Claim in Cash.

## 2. Professional Fee Escrow Account

Following the Confirmation Date, and no later than the Effective Date, the Debtor shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount. The Professional Fee Escrow Account shall be maintained in trust solely for the Professionals and for no other Entities until all Professional Fee Claims Allowed by the Bankruptcy Court have been irrevocably paid in full to the Professionals pursuant to one or more Final Orders of the Bankruptcy Court. No Liens, claims, or interests shall encumber the Professional Fee Escrow Account or Cash held in the Professional Fee Escrow Account in any way. Funds held in the Professional Fee Escrow Account shall not be considered property of the Estate, the Debtor, the Post-Effective Date Debtor, or the Liquidating Trust.

When all Allowed amounts owing to the Professionals have been irrevocably paid in full pursuant to one or more Final Orders of the Bankruptcy Court, any amount remaining in the Professional Fee Escrow Account shall promptly be paid to the Liquidating Trust, without any further action or order of the Bankruptcy Court.

## 3. Professional Fee Reserve Amount

Professionals shall reasonably estimate their unpaid Professional Fee Claims incurred in rendering services to the Debtor or the Creditors' Committee before and as of the Effective Date and shall deliver such estimate to the Debtor no later than five (5) days before the anticipated Effective Date; *provided, however*, that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of any Professional's final request for payment of Professional Fee Claims and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtor, after consultation with the Creditors' Committee, may estimate the unpaid and unbilled fees and expenses of such Professional. The total amount estimated pursuant to this section shall comprise the Professional Fee Reserve Amount.

## 4. Post-Effective Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Effective Date, the Liquidating Trustee shall, in the ordinary course of business and without any further notice to, or action, order, or approval of, the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by professionals providing services to the Post-Effective Date Debtor or the Liquidating Trustee, as applicable, including the fees and expenses of any of the Debtor's Professionals or the Creditor's Committee's Professionals incurred in addressing or responding to any discovery, trial preparation, or trial in either the CS Adversary Proceeding or any other any action, suit, proceeding, or audit in connection with, relating to, or in any manner arising from, to a Disputed Claim. From and after the Effective Date, any requirement that professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after the Effective Date shall terminate.

## D. Statutory Fees

All U.S. Trustee Fees due and payable and any interest thereon pursuant to section 3717 of Title 31 of the United States Code prior to the Effective Date shall be paid by the Debtor on the Effective Date. After the Effective Date, the Debtor, the Post-Effective Date Debtor, and the Liquidating Trust shall be jointly and severally liable to pay any and all U.S. Trustee Fees when due and payable. The Debtor shall file all reports due prior to the Effective Date when they become due in the form and manner prescribed by U.S. Trustee. After the Effective Date, the Liquidating Trustee, for and on behalf of the Post-Effective Date Debtor and Liquidating Trust, shall file with the Bankruptcy Court any and all quarterly reports

when they become due in the form and manner prescribed by U.S. Trustee. Each and every one of the Debtor, the Post-Effective Date Debtor, or the Liquidating Trust shall remain obligated to pay U.S. Trustee Fees to the U.S. Trustee until the earliest of the Debtor's case being closed, dismissed, or converted to a case under Chapter 7 of the Bankruptcy Code. Notwithstanding anything in the Plan to the contrary, the U.S. Trustee shall not be required to file any proof of claim for quarterly fees and any interest thereon. All such U.S. Trustee Fees shall initially be paid from Cash in the Segregated Account to the extent there are funds in such account.

### **ARTICLE III. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

#### *A. Classification of Claims and Interests*

Claims and Interests, except for Administrative Expense Claims and Priority Tax Claims, are classified in the Classes set forth in this Article III. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. Except as otherwise provided in the Plan, a Claim or Interest also is classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and has not been paid, released, or otherwise satisfied before the Effective Date.

The classification of Claims and Interests for the Plan is as follows.

Class	Claims and Interests	Status	Voting Rights
Class 1	CS Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 2	Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 3	WARN Act Class Settlement Claim	Impaired	Entitled to Vote
Class 4	CS Deficiency/ Unsecured Claim	Impaired	Entitled to Vote
Class 5	General Unsecured Claims	Impaired	Entitled to Vote
Class 6	Klausner Group Unsecured Claims	Impaired	Entitled to Vote
Class 7	Subordinated Claims	Impaired	Entitled to Vote
Class 8	Interests	Impaired	Not Entitled to Vote (Deemed to Reject)

#### *B. Treatment of Claims and Interests*

Each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in full and final satisfaction and compromise of, and in exchange for, such



Holder's Allowed Claim or Allowed Interest, except to the extent that different treatment is agreed to by the Debtor or Liquidating Trustee, as applicable, and the Holder of such Allowed Claim or Allowed Interest. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest shall receive such treatment on the later of the Effective Date, in the ordinary course of business as and when due, and the date such Holder's Claim or Interest becomes an Allowed Claim or Allowed Interest, or as soon as reasonably practicable thereafter. As discussed below, each Holder of an Allowed Unsecured Claim shall receive its Pro Rata Share of the Net Distribution Proceeds in accordance with the treatment provided for such Class described below.

1. Class 1 – CS Secured Claims

- a. *Classification:* Class 1 consists of the CS Secured Claims.
- b. *Treatment:* Each Holder of an Allowed CS Secured Claim shall receive on account of such Claim at the Liquidating Trustee's exclusive election, except to the extent that any Holder of an Allowed CS Secured Claim agrees to less favorable treatment therefor, either: (i) Cash equal to the amount of such Allowed CS Secured Claim; (ii) the property that serves as security for such Allowed CS Secured Claim; or (iii) such other treatment that shall render such Allowed CS Secured Claims Unimpaired pursuant to section 1124 of the Bankruptcy Code (which may include Reinstatement).
- c. *Voting:* Class 1 is Unimpaired. Holders of CS Secured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

2. Class 2 – Priority Claims

- a. *Classification:* Class 2 consists of Priority Claims.
- b. *Treatment:* Each Holder of an Allowed Priority Claim shall receive on account thereof payment of the full amount of such Allowed Priority Claim in Cash or otherwise receive treatment consistent with the provisions of section 1129(a) of the Bankruptcy Code, except to the extent the Holder of an Allowed Priority Claim agrees to less favorable treatment.
- c. *Voting:* Class 2 is Unimpaired. Holders of Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Claims in Class 2 are not entitled to vote to accept or reject the Plan.

3. Class 3 – WARN Act Class Settlement Claims

- a. *Classification:* Class 3 consists of all of the Allowed WARN Act Class Settlement Claims of the WARN Act Class Claimants.

- 18

6. Class 6 – Klausner Group Unsecured Claims

- a. *Classification:* Class 6 consists of Klausner Group Unsecured Claims.
- b. *Treatment:* Each Holder of an Allowed Klausner Group Unsecured Claim shall receive its Pro Rata Share of an amount equal to the Net Distribution Proceeds. For the avoidance of doubt, each Holder of an Allowed Klausner Group Unsecured Claim shall receive its Pro Rata Share of the Net Distribution Proceeds along with other Holders of Allowed Unsecured Claims.
- c. *Voting:* Class 6 is Impaired. Holders of Allowed Klausner Group Unsecured Claims are entitled to vote to accept or reject the Plan.

7. Class 7 – Subordinated Claims

- a. *Classification:* Class 7 consists of all Subordinated Claims.
- b. *Treatment:* Each Holder of an Allowed Subordinated Claim will receive its Pro Rata Share of an amount equal to the Net Distribution Proceeds remaining after satisfaction in full of all Allowed Claims in all senior classes (*i.e.*, Classes 1, 2, 3, 4, 5 and 6).
- c. *Voting:* Class 7 is Impaired. Holders of Allowed Subordinated Claims are entitled to vote to accept or reject the Plan.

8. Class 8 – Interests

- a. *Classification:* Class 8 consists of all Interests in the Debtor.
- b. *Treatment:* All Interests shall be canceled and extinguished and shall be of no further force or effect. No Holder of Interests shall receive or retain any property under the Plan on account of such Interest.
- c. *Voting:* Class 8 is Impaired. Holders of Interests in the Debtor are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Therefore, Holders of Interests in Class 8 are not entitled to vote to accept or reject the Plan.

C. *Special Provision Governing Unimpaired Claims*

Except as otherwise specifically provided in the Plan, nothing under the Plan shall affect the Debtor's, Post-Effective Date Debtor's or the Liquidating Trust's rights in respect of any Unimpaired Claim, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

*D. Confirmation Pursuant to Section 1129(a)(10) of the Bankruptcy Code*

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims, determined without including any acceptance of the Plan by any Insider. If any Impaired Class of Claims entitled to vote shall not accept the Plan by the statutory majority required under section 1126(c) of the Bankruptcy Code, the Proponents reserve the right to modify the Plan in accordance with Article XI hereof, including but not limited to the treatment applicable to any Class of Claims to render such Class of Claims Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

*E. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code (“Cram Down”)*

With respect to any Impaired Class that does not accept the Plan or is deemed to have rejected the Plan pursuant to section 1126(f) of the Bankruptcy Code, the Debtor intends to request that the Bankruptcy Court “cram down” any such Class(es) and confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.

*F. Elimination of Vacant Classes*

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

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

If a Class of Claims or Interests is eligible to vote and no Holder of an Allowed Claim or Allowed Interest in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by such Class.

*H. Subordinated Claims and Interests*

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and their respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtor/Post-Effective Date Debtor or Liquidating Trust, as applicable, reserves the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

**ARTICLE IV.  
MEANS FOR IMPLEMENTATION OF THE PLAN**

*A. Cancellation of Notes, Instruments, Certificates, and Other Documents*

On the Effective Date, except as otherwise specifically provided for in the Plan, the obligations of the Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, directly or indirectly evidencing or creating any indebtedness or obligation of or ownership

interest or equity in the Debtor or any warrants, options, or other securities exercisable or exchangeable for, or convertible into, debt, equity, ownership, or profits interests in the Debtor giving rise to any Claim or Interest shall be canceled and deemed surrendered as to the Debtor and shall not have any continuing obligations thereunder.

*B. Exemption from Certain Taxes and Fees*

To the maximum extent permitted pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfers under a plan confirmed under section 1129 of the Bankruptcy Code, may not be taxed under any law imposing a stamp tax or similar tax.

*C. Effectuation of the Plan*

The following provisions shall govern the effectuation of the Plan:

1. Establishment of the Segregated Account

Except as otherwise provided in the Plan, on or before the Effective Date, the Debtor shall establish and fund the Segregated Account with the remaining Sale Proceeds, which funds, subject to the terms of the Plan, shall be held in the Segregated Account by the Liquidating Trustee pending a determination of the rights of the Debtor/Post-Effective Date Debtor, Liquidating Trust and Carolina Sawmills with respect to (i) the Net Sale Proceeds and (ii) any other Debtor assets remaining after the sale of the Sale Assets that would have been subject to the CS Liens and Claims as of the Petition Date. The Liquidating Trustee is authorized and directed to pay the CS Carved Out Amounts from the funds in the Segregated Account.

2. Sources of Consideration for Plan Distributions

The Liquidating Trustee will pay all Allowed CS Carved Out Amounts and any other distributions pursuant to the Plan initially from funds in the Segregated Account and thereafter from any other Liquidating Trust Assets and the earnings thereon and proceeds thereof. The Liquidating Trustee, on behalf of the Liquidating Trust, shall distribute such Cash in accordance with the provisions of the Plan and the Liquidating Trust Agreement, including: (a) to the Holders of Allowed Administrative Expense Claims and Allowed Priority Tax Claims; (b) to Holders of Allowed Priority Claims; and (c) to Holders of Allowed Class 3 Warn Act Settlement Claims.

3. Liquidating Trust & Vesting of Assets

On the Effective Date, the Debtor and the Liquidating Trustee shall enter into the Liquidating Trust Agreement. Additionally, on the Effective Date, the Debtor shall irrevocably transfer and assign, and shall be deemed to have transferred and assigned, to the Liquidating Trust all right, title, and interest in and to the Liquidating Trust Assets in accordance with the Plan including without limitation, all Cash in the Debtor's possession, custody or control, free and clear of all Liens, Claims, charges, or other encumbrances except for rights to such distributions provided to Holders of Allowed Claims and Allowed Interests as provided in the Plan. In his, her, or its capacity as Liquidating Trustee, the Liquidating Trustee shall accept all Liquidating Trust Assets on behalf of the beneficiaries thereof and be authorized to obtain, seek the turnover, prosecute, liquidate, and collect all of the Liquidating Trust Assets not in his, her, or its possession. The Liquidating Trust will be deemed created and effective without any further action by the Bankruptcy Court or any Person as of the Effective Date. For the avoidance of doubt, if the CS Adversary Proceeding is still pending as of the Effective Date, the Liquidating Trust Assets shall not

include the funds deposited into the Segregated Account pending further order of the Bankruptcy Court at the conclusion of CS Adversary Proceeding.

4. Dissolution and Board of Directors

On the Effective Date, the Liquidating Trustee shall be appointed for the purpose of conducting the Wind-Down and shall succeed to such powers as would have been applicable to the Debtor's officers, directors, and shareholders, and the Debtor shall be authorized to be (and, upon the conclusion of the Wind-Down (subject to Article VII.O), shall be) dissolved by the Liquidating Trustee. The Liquidating Trustee shall act for the Debtor in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, articles of incorporation or amendment by-laws, and related documents, as applicable, are deemed amended pursuant to the Plan to permit and authorize the same). From and after the Effective Date, the Liquidating Trustee shall be the sole representative of and shall act for the post-Effective Date Debtor and the Estate.

Upon a certification to be Filed with the Bankruptcy Court by the Liquidating Trustee of all distributions having been made and completion of all its duties under the Plan and entry of a final decree closing the last of the Chapter 11 Case, the Liquidating Trust shall be deemed to be dissolved without any further action by the Liquidating Trustee, including the filing of any documents with the secretary of state for the state in which the Debtor is formed or any other jurisdiction. Notwithstanding the foregoing, the Liquidating Trustee shall retain the authority to take all necessary actions to dissolve the Debtor in, and withdraw the Debtor from, applicable states and provinces to the extent required by applicable law.

5. Corporate Action

Upon the Effective Date, all actions contemplated under the Plan, regardless of whether taken before, on, or after the Effective Date, shall be deemed authorized and approved in all respects. All matters provided for in the Plan or deemed necessary or desirable by the Debtor before, on, or after the Effective Date involving the corporate structure of the Debtor, the Post-Effective Date Debtor or the Liquidating Trust, and any corporate action required by the Debtor, the Post-Effective Date Debtor or the Liquidating Trust in connection with the Plan or corporate structure of the Debtor or Liquidating Trust, shall be deemed to have occurred and shall be in effect on the Effective Date, without any requirement of further action by the security holders, directors, managers, or officers of the Debtor or the Liquidating Trust. Before, on, or after the Effective Date, the appropriate officers of the Debtor (including the Chief Restructuring Officer) or the Liquidating Trust, as applicable, shall be authorized to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Liquidating Trust. The authorizations and approvals contemplated by this Article IV.D shall be effective notwithstanding any requirements under any non-bankruptcy law.

**ARTICLE V.  
TREATMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES**

A. *Rejection of Executory Contracts and Unexpired Leases*

On the Effective Date, except as otherwise provided in the Plan or otherwise agreed to by the Debtor and the counterparty to an Executory Contract or Unexpired Lease, all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected in the Chapter 11 Case shall be deemed rejected, effective as of the Effective Date, in accordance with the provisions and requirements

of sections 365 and 1123 of the Bankruptcy Code, other than: (1) those that have been previously assumed or rejected by a Final Order, or approved or authorized by the Bankruptcy Court as part of a Professional's retention, employment, or engagement; and (2) to the extent they may be executory, the D&O Liability Insurance Policies (which shall be treated in accordance with the applicable provisions of Articles V and VI of the Plan regardless of whether they may be executory), the latter of which shall vest or re-vest, as applicable, in the Liquidating Trust and be fully enforceable by the Liquidating Trust and any insured in accordance with its terms, except as such terms may have been modified by any order of the Bankruptcy Court authorizing and providing for its assumption under applicable bankruptcy or other federal law or as otherwise agreed by the Debtor.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the rejection of such Executory Contracts or Unexpired Leases, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, except as otherwise provided in the Plan or the Confirmation Order. Unless otherwise indicated or agreed by the Debtor and the applicable contract counterparties, the rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date.

*B. Claims Based on Rejection of Executory Contracts or Unexpired Leases*

Proofs of Claims with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be Filed with the Bankruptcy Court within thirty (30) days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against the Debtor, the Debtor's Estate, the Post-Effective Date Debtor, the Liquidating Trust, or the property for any of the foregoing without the need for any objection by the Debtor, the Post-Effective Date Debtor or the Liquidating Trust, as applicable, or further notice to, or action, order, or approval of, the Bankruptcy Court or any other Entity. Any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary.** Claims arising from the rejection of the Debtor's Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.B.5 hereof.

*C. Indemnification Obligations*

All indemnification obligations that either (i) arose after the Petition Date for the current and former directors, officers, managers, employees, attorneys, accountants, investment bankers, financial advisors, agents, and other professionals of the Debtor, as applicable or (ii) arose prior to the Petition Date with respect to the Debtor's Professionals, Robert Prusak (the Debtor's Chief Restructuring Officer), or Daniel T. Motulsky (the Debtor's independent director), as applicable, (each of the Persons or Entities in the foregoing clauses, an "Indemnification Claimant") shall be assumed by the Liquidating Trust and shall remain in full force and effect after the Effective Date, without the need for filing any Proof of Claim or request for payment of an Administrative Expense Claim. All of the foregoing parties shall be entitled to advancement for any indemnity obligations, including the right to seek approval from the Bankruptcy Court, after notice and a hearing, for the withholding or sequestration of funds necessary to provide for the future payment of potential indemnification obligations. Nothing in this section is intended to enlarge or reduce the rights of any party having or claiming rights of indemnification, nor any party disputing any such rights or claims. Notwithstanding anything to the contrary herein, after the Effective Date, each Indemnification Claimant shall retain all rights, including to assert any and all rights of setoff, against the Post-Effective Date Debtor and the Liquidating Trust that such Indemnification Claimant had against the Debtor immediately prior to the Effective Date.

*D. Director and Officer Liability Insurance*

In accordance with Article VII.H of the Plan, upon the Effective Date, the Liquidating Trust shall be deemed to succeed to all of the Debtor's rights and benefits under all D&O Liability Insurance Policies with respect to the Debtor's present and former directors, managers, officers, and employees, and coverage for defense and indemnity under any of the D&O Liability Insurance Policies shall remain available to all individuals and entities covered thereby, including those within the definition of "Insured Person" in any of the D&O Liability Insurance Policies, subject in all respects to the terms and conditions of the D&O Liability Insurance Policies. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtor's assumption of each of the unexpired D&O Liability Insurance Policies. From and after the Effective Date, neither the Liquidating Trustee nor the Liquidating Trust shall take any action to alter or modify in any way the D&O Liability Insurance Policies with respect to coverage for any claims insured thereunder. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the foregoing succession by the Liquidating Trust to the Debtor's rights and benefits under each of the D&O Liability Insurance Policies. Nothing in this Section V.D or this Plan will limit the rights of any other Insured Persons to coverage under the D&O Liability Insurance Policies.

**ARTICLE VI.  
PROVISIONS GOVERNING DISTRIBUTIONS**

*A. Timing and Calculation of Amounts to Be Distributed*

Unless otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or, if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed, or as soon as reasonably practicable thereafter), each Holder (or such Holder's affiliate) of an Allowed Claim or Allowed Interest shall receive the full amount of the distributions that the Plan provides for Allowed Claims and Interests in each applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VIII hereof. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

*B. Liquidating Trustee*

Distributions under the Plan shall be made by the Liquidating Trustee or any Entity or Entities selected by the Debtor or the Liquidating Trust to make or facilitate distributions contemplated under the Plan.

*C. Delivery of Distributions and Undeliverable or Unclaimed Distributions*

1. Record Date for Distribution

On the Distribution Record Date, the Claims Register shall be closed, and the Liquidating Trust shall instead be authorized and entitled to recognize only those Holders listed on the Claims Register as of the close of business on the Distribution Record Date.



## 2. Delivery of Distributions

Except as otherwise provided in the Plan or in the WARN Act Class Settlement Agreement, distributions to Holders of Allowed Claims shall be made to Holders of record as of the Distribution Record Date by the Liquidating Trustee: (a) to the signatory set forth on any Proof of Claim Filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no Proof of Claim is Filed or if the Debtor has been notified in writing of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Liquidating Trustee after the date of any related Proof of Claim; (c) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Liquidating Trust has not received a written notice of a change of address; or (d) on any counsel that has appeared in the Chapter 11 Case on such Holder's behalf. Subject to this Article VI.C, distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment, or like legal process, so that each Holder of an Allowed Claim shall have and receive the benefit of the distributions in the manner set forth in the Plan. The Debtor, the Post-Effective Date Debtor, the Liquidating Trustee, and/or the Liquidating Trust, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan except for gross negligence, willful misconduct or actual fraud.

## 3. Distribution

The Net Sale Proceeds in the Segregated Account shall first be used to satisfy (a) all Allowed Administrative Expense Claims, including all Allowed Professional Fee Claims, (b) all Allowed Priority Claims, including all Allowed Priority Tax Claims and Allowed WARN Act Class Settlement Claims, (c) all U.S. Trustee Fees due and payable and any interest thereon pursuant to section 3717 of Title 31 of the United States Code, and (d) all post-Effective Date fees and expenses incurred in connection with implementation of the Plan in an amount not to exceed \$225,000.00. To the extent there are any funds in the Segregated Account after satisfaction of the foregoing Claims, fees, and expenses, any funds in the Segregated Account shall be allocated and paid in the following priority (in each case on a Pro Rata basis): *first*, on account of all Secured Claims; *second* on account of all Allowed Unsecured Claims, including any Allowed CS Deficiency/Unsecured Claims, Allowed General Unsecured Claims, and Allowed Klausner Group Unsecured Claims; and *third*, on account of all Allowed Subordinated Claims.

## 4. Minimum Distributions

Holders of Allowed Claims entitled to distributions of \$50 (whether Cash or otherwise) or less shall not receive distributions. Each such Claim shall be discharged and its Holder shall be forever barred pursuant to Article IX hereof from asserting that Claim against the Debtor, Post-Effective Date Debtor or the Liquidating Trust, as applicable, or its property; *provided, however*, that distributions that would otherwise be made to such Holder shall carry over until the next date of a distribution to such Holders (on account of a Disputed Claim or otherwise) until the cumulative amount of Allowed Claims held by such Holder is more than \$50, at which time (if such occurs) such cumulative amount shall be paid to such Holder.

## 5. Undeliverable Distributions and Unclaimed Property

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 Liquidating Trustee 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 under section 347(b) of the Bankruptcy Code at the expiration of six (6) months from the Effective Date, except as may be provided otherwise in the WARN Act Class Settlement Agreement. After such date, all unclaimed

property or interests in property shall revert to the Liquidating Trust, without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal 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 discharged and forever barred, except as may be provided otherwise in the WARN Act Class Settlement Agreement.

*D. Manner of Payment*

Unless otherwise set forth herein, all distributions of Cash to the Holders of Allowed Claims under the Plan shall be made by the Liquidating Trustee. At the option of the Liquidating Trustee, any Cash payment to be made under the Plan may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

*E. Compliance with Tax and Other Legal Requirements*

In connection with the Plan and the WARN Act Class Settlement Agreement, to the extent applicable, the Liquidating Trustee and the Liquidating Trust shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Any taxes withheld and deposited with the appropriate Governmental Unit shall be treated as if distributed to the applicable Holder for purposes of determining the distributions to which such Holder is entitled to receive. Notwithstanding any provision in the Plan to the contrary, the Liquidating Trustee and the Liquidating Trust shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including: (1) liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, (2) withholding distributions pending receipt of information necessary to facilitate such distributions, (3) establishing any other mechanisms she, he or it believes are reasonable and appropriate, and (4) obtaining, if such information is not already in the possession of the Liquidating Trustee or the Liquidating Trust, (a) in the case of a U.S. Holder, a properly executed Internal Revenue Service Form W-9, and (b) in the case of a non-U.S. Holder, a properly executed applicable Internal Revenue Service Form W-8 and any other forms required by any applicable law (or in each of the cases of clauses (a) and (b) above, such Holder otherwise establishes eligibility for an exemption). The Liquidating Trustee and the Liquidating Trust reserve the right, but are not required, to allocate to the applicable Holders all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

*F. Allocations*

Distributions in respect of an Allowed Claim shall be allocated first to the principal amount of such Claim (as determined for federal income tax purposes) and then, to the extent the consideration distributed with respect to such Claim exceeds the principal amount of such Claim, to accrued but unpaid interest as Allowed herein.

*G. No Post-petition Interest on Claims*

Unless otherwise specifically provided for in an order of the Bankruptcy Court, the Plan, or the Confirmation Order or required by applicable bankruptcy law, post-petition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any such Claim.

## *H. Setoffs and Recoupment*

The Debtor, the Post-Effective Date Debtor or the Liquidating Trust, as applicable, may, but shall not be required to, set off against or recoup any payments or distributions to be made pursuant to the Plan in respect of any Claims of any nature whatsoever that the Debtor, Post-Effective Date Debtor or the Liquidating Trust may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, Post-Effective Date Debtor, the Liquidating Trust, or their successors of any such Claim it may have against the Holder of such Claim.

## *I. Claims Paid or Payable by Third Parties*

### *1. Claims Paid by Third Parties*

To the extent that the Holder of an Allowed Claim receives payment in full on account of such Claim from a party that is not the Debtor, the Post-Effective Date Debtor or the Liquidating Trust, such Claim shall be Disallowed without an objection having to be Filed and without any further notice to, or action, order, or approval of, the Bankruptcy Court; provided, that the Debtor, Post-Effective Date Debtor, or the Liquidating Trust as applicable shall file notice of satisfaction or other pleading evidencing such satisfaction and serve the same on the affected claimant. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not the Debtor, the Post-Effective Date Debtor or the Liquidating Trust on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the Debtor, the Post-Effective Date Debtor or Liquidating Trust, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

### *2. Claims Payable by Third Parties*

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to the Debtor's insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtor's insurers agrees to pay in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction or otherwise settled), then immediately upon such insurers' agreement, the applicable portion of such Claim shall be expunged without a Claims objection having to be Filed and without any further notice to, or action, order, or approval of the Bankruptcy Court; provided, that the Debtor, Post-Effective Date Debtor, or Plan Administrator as applicable shall file notice of satisfaction or other pleading evidencing such satisfaction and serve the same on the affected claimant.

### *3. Applicability of Insurance Policies*

Except as otherwise provided in the Plan, payments to Holders of Claims by the Debtor's insurance carriers shall be in accordance with the provisions of any applicable insurance policy. Notwithstanding anything herein to the contrary, nothing shall constitute or be deemed a release, settlement, satisfaction, compromise, or waiver of any Cause of Action that the Debtor or any other Entity may hold against any other Entity, including insurers under any policies of insurance, including the D&O Liability Insurance Policies, or applicable indemnity, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

#### 4. Provisions Regarding Vesting of Insurance Policies in Liquidating Trust

Notwithstanding anything to the contrary in the Plan Documents, the Confirmation Order, any bar date notice or claim objection, any other document related to any of the foregoing or any other prior order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening, grants an injunction, discharge or release, or requires a party to opt out of any releases), the Liquidating Trust shall succeed to all of the Debtor's rights and obligations under the D&O Liability Insurance Policies, which policies shall be enforceable by and against the Liquidating Trust.

### **ARTICLE VII. THE LIQUIDATING TRUST**

#### *A. The Liquidating Trust*

The Liquidating Trust shall be formed on the Effective Date and shall continue in existence for the benefit of the Liquidating Trust beneficiaries. The powers, authority, responsibilities, and duties of the Liquidating Trust and the Liquidating Trustee are set forth in and shall be governed by the Plan and the Liquidating Trust Agreement. The Liquidating Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, without limitation, any and all provisions necessary to ensure the continued treatment of the Liquidating Trust as a grantor trust and the beneficiaries of the Liquidating Trust as the grantors and owners thereof for federal income tax purposes. The Liquidating Trust Agreement may provide powers, duties, and authorities in addition to those explicitly stated herein, but only to the extent that such powers, duties, and authorities do not affect the status of the Liquidating Trust as a "liquidating trust" for United States federal income tax purposes.

On the Effective Date, the Debtor and the Liquidating Trustee shall execute the Liquidating Trust Agreement and shall take all other steps necessary to establish the Liquidating Trust pursuant to the Liquidating Trust Agreement and the Plan.

#### *B. Purpose of the Liquidating Trust*

The Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the sole purpose of liquidating and administering the Liquidating Trust Assets and making distributions on account thereof as provided for under the Plan in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating Trust is intended to qualify as a liquidating trust pursuant to Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business. The Liquidating Trust shall not be deemed a successor in interest of the Debtor for any purpose other than as specifically set forth herein or in the Liquidating Trust Agreement. Pursuant to such purpose, the Liquidating Trust shall engage in (1) resolving Disputed Claims, (2) prosecuting Causes of Action, (3) pursuing any and all Liquidating Trust Assets, (4) making distributions on account of Allowed Claims as provided in the Liquidating Trust Agreement and in the Plan, (5) maximizing recovery of the Liquidating Trust Assets for the benefit of the Liquidating Trust beneficiaries, (6) distributing the proceeds of the Liquidating Trust Assets to the Liquidating Trust beneficiaries in accordance with the Plan and the Liquidating Trust Agreement, (7) maintaining and funding the Segregated Account, (8) filing appropriate tax returns for the Liquidating Trust, and (9) all other matters not expressly set forth herein, as may be reasonably necessary, in the opinion of the Liquidating Trustee, to effectuate the Plan and the terms of the Liquidating Trust Agreement. As of the Effective Date, the Liquidating Trust, by and through the Liquidation Trustee, shall be authorized to act on behalf of the Debtor, the Post-Effective Date Debtor and, to the extent necessary, deemed to be substituted as the party-in-lieu of the Debtor/Post-Effective Date Debtor in all matters, including (a) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, in connection with, relating to, or in any manner arising from the Liquidating Trust and/or Liquidating Trust

Assets, (b) any and all tax or regulatory filings, relating to the Liquidating Trust, and (c) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court in connection with, relating to, or in any manner arising from the Liquidating Trust and/or Liquidating Trust Assets, in each case without the need or requirement for the Liquidating Trust to file motions or substitutions of parties or counsel in each such matter.

*C. Liquidating Trust Assets*

On the Effective Date, and in accordance with sections 1123 and 1141 of the Bankruptcy Code and pursuant to the terms of the Plan, all title and interest in all of the Liquidating Trust Assets, as well as the rights and powers of the Debtor in such Liquidating Trust Assets, shall automatically vest, transfer and be assigned in and to the Liquidating Trust, free and clear of all Claims and Interests, except as otherwise provided by Court order, for the benefit of the Liquidating Trust beneficiaries. Upon the transfer and assignment of the Liquidating Trust Assets, the Debtor shall have no interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust. Upon delivery of the Liquidating Trust Assets to the Liquidating Trust, the Debtor and its predecessors, successors and assigns, shall be discharged and released from all liability with respect to the delivery of such distributions and shall have no reversionary or further interest in or with respect to the Liquidating Trust Assets or the Liquidating Trust. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Liquidating Trust Assets to the Liquidating Trust shall not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax, pursuant to section 1146(a) of the Bankruptcy Code. The Liquidating Trustee shall agree to accept and hold the Liquidating Trust Assets in the Liquidating Trust for the benefit of the beneficiaries of the Liquidating Trust, subject to the terms of the Plan and the Liquidating Trust Agreement.

The Debtor, the Liquidating Trustee, the Liquidating Trust beneficiaries, and any party under the control of such parties will execute any documents or other instruments and shall take all other steps as reasonably necessary to cause title to the Liquidating Trust Assets to be transferred to the Liquidating Trust.

*D. The Liquidating Trustee*

The Liquidating Trustee shall be a Person or Entity mutually acceptable to the Debtor and the Creditors' Committee, whose appointment shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. Following appointment, the Liquidating Trustee shall act in accordance with the Plan and Liquidating Trust Agreement, and in such capacity shall have the same powers as the board of directors, managers and/or officers of the Debtor (and all bylaws, articles of incorporation, and related corporate documents are deemed amended by the Plan to permit and authorize the same). The Liquidating Trustee may be removed at any time by order of the Bankruptcy Court, after notice and a hearing and upon a showing of cause. In the event of resignation or removal, death or incapacity of the Liquidating Trustee, the Bankruptcy Court shall designate another Person or Entity to serve as Liquidating Trustee. Thereupon, the successor Liquidating Trustee, without any further act or need for an order of the Bankruptcy Court, shall become fully vested with all of the rights, powers, duties, and obligations of the predecessor; *provided, however*, that the Liquidating Trustee shall be deemed removed on the date the Chapter 11 Case is closed, and no successor thereto shall be designated. All documented and reasonable fees and expenses incurred by the Liquidating Trustee and its professionals (which the Liquidating Trustee may retain in accordance with Article VII.M hereof) following the Effective Date shall initially be paid from funds in the Segregated Account attributable to the CS Carve Out Amount allocated for post-Effective Date fees and expenses incurred in connection with implementation of the

Plan and, thereafter, from the other Liquidating Trust Assets as set forth in the Liquidating Trust Agreement.

*E. Beneficiaries of the Liquidating Trust*

The holders of Allowed General Unsecured Claims shall be the beneficiaries of the Liquidating Trust. Such beneficiaries shall be bound by the Liquidating Trust Agreement. The interests of the beneficiaries in the Liquidating Trust shall be uncertificated and nontransferable except upon death of the interest holder or by operation of law.

*F. Vesting and Transfer of Liquidating Trust Assets to the Liquidating Trust*

Pursuant to section 1141(b) of the Bankruptcy Code, the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Liens, Claims, and Interests, except as otherwise specifically provided in the Plan or in the Confirmation Order; *provided, however*, that the Liquidating Trustee may abandon or otherwise not accept any non-Cash Liquidating Trust Assets that the Liquidating Trustee believes, in good faith, have no value or are burdensome to the Liquidating Trust. Any non-Cash Liquidating Trust Assets that the Liquidating Trustee so abandons or otherwise does not accept shall not be property of the Liquidating Trust.

*G. Liquidating Trust Expenses*

Subject to the provisions of the Liquidating Trust Agreement, all costs, expenses, and obligations incurred by the Liquidating Trustee in administering the Plan, the Liquidating Trust, or in any manner connected, incidental, or related thereto, that results in distributions from the Liquidating Trust shall be charged against the Liquidating Trust Assets remaining in the hands of the Liquidating Trustee. Such costs, expenses, and obligations shall be paid in accordance with the Liquidating Trust Agreement, which shall provide for an initial distribution to the Segregated Account to fund a prompt distribution to Holders of Allowed General Unsecured Claims and any other similarly situated creditors in accordance with Article III.B hereof.

The Liquidating Trust Expenses shall initially be paid from funds in the Segregated Account attributable to the CS Carve Out Amount allocated for post-Effective Date fees and expenses incurred in connection with implementation of the Plan and, thereafter, from the other Liquidating Trust Assets as set forth in the Liquidating Trust Agreement.

*H. Role of the Liquidating Trustee*

The Liquidating Trustee shall be the exclusive trustee of the Liquidating Trust and the Liquidating Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3) as well as the representative of the Estate appointed pursuant to section 1123(b)(3) of the Bankruptcy Code regarding all Liquidating Trust Assets. The powers, rights, and responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and shall include, without limitation, the authority and responsibility to: (1) receive, manage, invest, supervise, and protect the Liquidating Trust Assets, including through the creation of reserves as provided for under the Plan; (2) retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals (which may include Professionals retained during the Chapter 11 Case), and consultants to advise and assist in the administration, prosecution, and distribution of Liquidating Trust Assets; (3) calculate and implement distributions of Liquidating Trust Assets; (4) investigate, prosecute, compromise, and settle, in accordance with the specific terms of the Liquidating Trust Agreement, Causes of Action vested in the Liquidating Trust; and (5) address and resolve issues involving objections, reconciliation, and allowance

of Claims in accordance with the Plan. The Liquidating Trust is the successor to the Debtor and the Estate.

On the Effective Date, the Liquidating Trustee shall: (a) take possession of all books, records, and files of the Debtor and the Estate and (b) provide for the retention and storage of such books, records, and files until such time as the Liquidating Trust determines, in accordance with the Liquidating Trust Agreement and applicable law and regulation, that retention of same is no longer necessary or required.

The Liquidating Trustee may, but shall not be required to, invest Cash (including any earnings thereon or proceeds therefrom) as permitted by section 345 of the Bankruptcy Code or in other prudent investments; *provided, however*, that such investments are permitted to be made by a liquidating trust within the meaning of Treasury Regulation § 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings, or other controlling authorities.

The Liquidating Trustee shall have the right to object to Claims.

The Liquidating Trustee shall administer the Liquidating Trust's tax obligations, including (w) filing tax returns as a grantor trust pursuant to Treasury Regulation § 1.671-4(a) including, to the extent applicable, for any disputed claims reserve pursuant to Treasury Regulations § 1.468B-9; (x) paying the Liquidating Trust's tax obligations; (y) requesting, if necessary, an expedited determination of any unpaid tax liability of the Liquidating Trust for all taxable periods of the Liquidating Trust through the dissolution of the Liquidating Trust, as determined under section 505(b) of the Bankruptcy Code and applicable tax laws; and (z) representing the interest and account of the Liquidating Trust before any taxing authority in all matters including, without limitation, any action, suit, proceeding or audit. The Liquidating Trust also shall annually (for tax years in which distributions from the Liquidating Trust are made) send to each known beneficiary a separate statement setting forth the beneficiary's share of items of income, gain, loss, deduction, or credit and all such holders shall report such items on their federal income tax returns; *provided, however*, that no such statement need be sent to any Class that is not expected to receive any distribution from the Liquidating Trust. The Liquidating Trust's taxable income, gain, loss, deduction, or credit will be allocated to the Liquidating Trust's beneficiaries in accordance with their relative beneficial interests in the Liquidating Trust. As soon as practicable after the Effective Date, the Liquidating Trustee shall make a good faith valuation of assets of the Liquidating Trust, and such valuation shall be used consistently by all parties for all federal income tax purposes. The Liquidating Trustee also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any governmental unit for taxing purposes. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

The Liquidating Trust shall be responsible for payments of all Allowed tax obligations of the Debtor, and any taxes imposed on the Liquidating Trust or the Liquidating Trust Assets.

Notwithstanding anything in the Plan or Liquidating Trust Agreement to the contrary, the Liquidating Trustee shall always act consistently with, and not contrary to, the purpose of the Liquidating Trust as set forth in Article VII.B of the Plan. The Liquidating Trustee shall have fiduciary duties to the Liquidating Trust beneficiaries consistent with the fiduciary duties that a member of an official committee appointed pursuant to section 1102 of the Bankruptcy Code has to the creditor constituents represented by such committee and shall exercise his, her, or its responsibilities accordingly; *provided, however*, that the Liquidating Trustee shall not owe fiduciary obligations to any defendants or potential defendants of Causes of Action in their capacities as such, it being the intent of such fiduciary duties to ensure that the Liquidating Trustee's obligations are to maximize the value of the Liquidating Trust Assets, including the Causes of Action.

*I. Prosecution and Resolution of Causes of Action*

From and after the Effective Date, prosecution and settlement of all Causes of Action, including without limitation, the CS Adversary Proceeding if such proceeding has not been resolved prior to the Effective Date, transferred and assigned to the Liquidating Trust shall be the primary responsibility of the Liquidating Trust and the Liquidating Trustee pursuant to the Plan and the Confirmation Order. From and after the Effective Date, the Liquidating Trust and Liquidating Trustee shall have exclusive rights, powers, and interests of the Debtor and the Debtor's Estate to pursue, settle, or abandon such Causes of Action as the sole representative of the Debtor and, the Debtor's Estate pursuant to section 1123(b)(3) of the Bankruptcy Code. Proceeds recovered from all Causes of Action will be deposited into the Segregated Account and will be used or distributed by the Liquidating Trustee in accordance with the provisions of the Plan and Liquidating Trust Agreement. All Causes of Action that are not expressly released or waived under the Plan are reserved and preserved, transferred to and vest in the Liquidating Trust and Liquidating Trustee in accordance with the Plan. No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtor or the Liquidating Trustee will not pursue any and all available Causes of Action against such Person. The Liquidating Trustee expressly reserves all Causes of Action, except for any Causes of Action against any Person that are expressly released or waived under the Plan. Therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of confirmation or consummation of the Plan. To the extent released in the Plan, no claims or Causes of Action against the Released Parties shall be transferred to the Liquidating Trust, the Liquidating Trustee shall not have standing to pursue such claims or Causes of Action, and all such claims and Causes of Action shall be released pursuant to the Plan.

Settlement by the Liquidating Trustee of any Cause of Action transferred and assigned to the Liquidating Trust shall only require: (1) approval of the Liquidating Trustee in his, her, or its discretion in consultation with counsel to Carolina Sawmills if the amount claimed by the Liquidating Trust against a Person is less than two hundred fifty thousand dollars (\$250,000); and (2) approval of the Liquidating Trustee in his, her, or its discretion and approval of the Bankruptcy Court, upon notice and a hearing, if the amount claimed by the Liquidating Trust against a Person is unliquidated or equals or exceeds two hundred fifty thousand dollars (\$250,000); *provided, however*, the Liquidating Trustee shall not be required to nor shall he, she or it consult with counsel to Carolina Sawmills in connection with any Claims or Causes of Action against Carolina Sawmills, including without limitation, the CS Adversary Proceeding.

*J. Federal Income Tax Treatment of the Liquidating Trust for the Liquidating Trust Assets*

Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), for all United States federal income tax purposes, all parties (including, without limitation, the Debtor, the Liquidating Trustee and the Liquidating Trust beneficiaries) shall treat the transfer of Liquidating Trust Assets to the Liquidating Trust as (1) a transfer of Liquidating Trust Assets (subject to any obligations relating to those assets) directly to Liquidating Trust beneficiaries (other than to the extent Liquidating Trust Assets are allocable to Disputed Claims), followed by (2) the transfer by such beneficiaries to the Liquidating Trust of Liquidating Trust Assets in exchange for Liquidating Trust Interests. Accordingly, except in the event of contrary definitive guidance, Liquidating Trust beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of Liquidating Trust Assets (other than such Liquidating



Trust Assets as are allocable to Disputed Claims). The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes.

Allocations of Liquidating Trust taxable income (other than taxable income allocable to any assets allocable to, or retained on account of, Disputed Claims) among Liquidating Trust beneficiaries shall be determined by reference to the manner in which an amount of Cash representing such taxable income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all its assets (valued at their tax book value, other than assets allocable to Disputed Claims) to the holders of Liquidating Trust interests, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of Liquidating Trust Assets for purpose of this paragraph shall equal its fair market value on the date Liquidating Trust Assets are transferred to the Liquidating Trust, adjusted in accordance with tax accounting principles prescribed by the Tax Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by such Liquidating Trustee), the Liquidating Trustee (a) may timely elect to treat any Liquidating Trust Assets allocable to Disputed Claims as a “disputed ownership fund” governed by Treas. Reg. § 1.468B-9, and (b) to the extent permitted by applicable law, shall report consistently for state and local income tax purposes. If a “disputed ownership fund” election is made, all parties (including the Liquidating Trustee and Liquidating Trust beneficiaries) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

The Liquidating Trust shall be responsible for payment, initially from funds in the Segregated Account attributable to the CS Carve Out Amount allocated for post-Effective Date fees and expenses incurred in connection with implementation of the Plan and, thereafter, from any other Liquidating Trust Assets, of any taxes imposed on the Liquidating Trust (including any Cash reserved for future payment of Disputed Claims in accordance with Article VIII.D of the Plan) or the Liquidating Trust Assets.

#### *K. Indemnification*

Subject to the Bankruptcy Code, the Bankruptcy Rules and any prior orders of the Bankruptcy Court, the Liquidating Trust shall indemnify the Indemnified Persons for, and shall reimburse them for, or hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including, without limitation, the reasonable fees and expenses of their respective professionals) incurred without gross negligence, willful misconduct, or actual fraud on the part of the Indemnified Persons (which gross negligence, willful misconduct, or actual fraud, if any, must be determined by Final Order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the Indemnified Persons in connection with the acceptance, administration, exercise, or performance of their duties under the Plan or the Liquidating Trust Agreement, as applicable, without the need for filing any Proof of Claim or requests for payment of an Administrative Expense Claim. An act or omission taken with the approval of the Bankruptcy Court will conclusively be deemed not to constitute gross negligence, willful misconduct, or actual fraud. The Indemnified Persons shall be entitled to advancement for any indemnity obligations, including the right to seek approval from the Bankruptcy Court, after notice and a hearing, for the withholding or sequestration of funds necessary to provide for the future payment of potential indemnification obligations of the Indemnified Persons.

*L. Term of the Liquidating Trust*

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (1) all Disputed Claims have been resolved, (2) all of the Liquidating Trust Assets have been liquidated or abandoned, (3) all duties and obligations of the Liquidating Trustee under the Liquidating Trust Agreement and the Plan have been fulfilled, (4) all distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made, and (5) the Debtor's Chapter 11 Case has been closed; *provided, however*, that in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that an extension is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets and/or distributions in accordance with the Plan.

*M. Retention of Professionals by the Liquidating Trust*

The Liquidating Trustee may, in connection with the performance of his, her, or its functions, in the Liquidating Trustee's sole and absolute discretion, retain, consult with, and compensate attorneys, accountants, advisors, or agents to assist in his, her, or its duties on such terms (including on a contingency or hourly basis) as he, she, or it deems reasonable and appropriate without Bankruptcy Court approval. The Liquidating Trustee may assert the reasonable reliance on the advice of counsel as a defense to any claim asserted against the Liquidating Trustee. Notwithstanding such authority, the Liquidating Trustee shall be under no obligation to consult with any such attorneys, accountants, advisors, or agents, and his, her, or its determination not to do so shall not result in the imposition of liability on the Liquidating Trustee or his, her, or its members unless such determination is based on willful misconduct, gross negligence, or actual fraud.

*N. Conflicts Between the Liquidating Trust Agreement and the Plan*

In the event of any inconsistencies or conflict between the Liquidating Trust Agreement and the Plan, the terms and provisions of the Plan shall control.

*O. Wind Down*

The Liquidating Trustee, for and on behalf of the Post-Effective Date Debtor, shall have the power and authority to take any action necessary to wind down and dissolve the Debtor, without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of the Debtor.

As soon as practicable on or after the Effective Date, but in no event later than the closing of the Chapter 11 Case, the Liquidating Trustee shall solely be responsible for the following: (1) to the extent applicable, file a certificate of dissolution or equivalent document, together with all other necessary corporate and company documents, to effect the dissolution of the Debtor under the applicable laws of its state of incorporation or formation; (2) to the extent applicable, complete and file any final or otherwise required federal, state, and local tax returns and pay any taxes required to be paid for the Debtor, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of the Debtor or the Estate for any tax incurred during the administration of the Debtor's Chapter 11 Case, as determined under applicable tax laws, and represent the interests and account of the Debtor or the Estate before any taxing authority in all matters, including, without limitation, any action, suit, proceeding, or audit; and (3) take such other actions and/or undertake administrative functions as the Liquidating Trustee and Post-Effective Date Debtor may reasonably determine to be necessary or desirable to carry out the purposes of the Plan. Any certificate of

dissolution or equivalent document may be executed by the Liquidating Trustee without need for any additional action or approval by any Person or Entity. From and after the Effective Date, except with respect to the Liquidating Trust as set forth herein, the Liquidating Trustee, for and on behalf of the Post-Effective Date Debtor, (a) for all purposes shall be deemed to have withdrawn the Debtor's/Post-Effective Date Debtor's business operations (if any) from any state in which the Debtor was previously conducting, or is registered or licensed to conduct, its business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, (b) shall be deemed to have canceled pursuant to the Plan all Interests, and (c) 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. Notwithstanding the Debtor's dissolution, the Debtor/Post-Effective Date Debtor shall be deemed to remain intact solely with respect to the preparation, filing, review, and resolution of applications for Professional Fee Claims.

The filing of the final monthly report (for the month in which the Effective Date occurs) shall be the responsibility of the Debtor, and the filing of subsequent quarterly reports shall be the responsibility of the Liquidating Trustee except to the extent quarterly reporting is required by any other post-Effective Date entity.

For the avoidance of doubt, all reasonable expenses incurred by the Liquidating Trustee, for and on behalf of the Post-Effective Date Debtor, in connection with the Wind Down shall be deemed Liquidating Trust Expenses and shall initially be paid from funds in the Segregated Account attributable to the CS Carve Out Amount allocated for post-Effective Date fees and expenses incurred in connection with implementation of the Plan and, thereafter, from any other Liquidating Trust Assets.

## **ARTICLE VIII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS**

### *A. Allowance of Claims*

After the Effective Date, the Liquidating Trust shall have and retain any and all rights and defenses the Debtor had with respect to any Claim immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order) in the Chapter 11 Case allowing such Claim. For the avoidance of doubt, pursuant to Local Rule 3002-1(a), the government shall not be required to file any proof of claim or application for the allowance of any claims covered by section 503(b)(1)(B), (C), or (D) of the Bankruptcy Code.

### *B. Claims Administration Responsibilities*

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Liquidating Trustee shall have the sole authority to File and prosecute objections to Claims on behalf of the Liquidating Trust, and the Liquidating Trustee shall have the sole authority, on behalf of the Liquidating Trust, to: (1) settle, compromise, withdraw, litigate to judgment, or otherwise resolve objections to any and all Claims, regardless of whether such Claims are in a Class or otherwise; (2) settle, compromise, or resolve any Disputed Claim without any further notice to, or action, order, or approval of, the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to, or action, order, or approval of, the Bankruptcy Court; *provided, however*, that nothing

herein shall preclude the U.S. Trustee or other parties with requisite standing from objecting to any Claim. On and after the Effective Date, the Liquidating Trustee shall use commercially reasonable efforts to resolve Claims and advance the claims resolution process through estimation or otherwise.

*C. Estimation of Claims*

Before, on, or after the Effective Date, the Debtor or the Liquidating Trustee, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claim, including during the litigation of any objection to any Claim or during the pendency of any appeal relating to such objection. Notwithstanding any provision in the Plan to the contrary, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim, such estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions and discharge) and may be used as evidence in any supplemental proceedings. The Debtor or the Liquidating Trustee, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before seven (7) days after the date on which such Claim is estimated. The foregoing Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

*D. Disputed Claims*

On or after the Effective Date, the Liquidating Trustee shall retain funds for potential payment of Disputed Claims in the event such Disputed Claims, or the disputed portion thereof, is Allowed, in an amount or amounts as reasonably determined by the Liquidating Trustee consistent with the Proof of Claim Filed by the applicable Holder of such Disputed Claim and the proposed distributions for such Claims as set forth in Article III hereof.

*E. Adjustment to Claims Without Objection*

Any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtor, the Post-Effective Date Debtor, or the Liquidating Trustee, as applicable, upon Filing a notice of satisfaction with the Bankruptcy Court. However, if the Holder of such Claim Files a timely objection to such notice of satisfaction, the status of the Claim will be determined by the Bankruptcy Court.

*F. Time to File Objections to Claims*

Any objections to Claims shall be Filed on or before the Claims Objection Deadline. If the Debtor or the Liquidating Trustee, as applicable, files a motion to extend the Claims Objection Deadline, the Claims Objection Deadline shall be automatically extended until the Bankruptcy Court acts on such motion, without the necessity for the entry of a bridge order.

*G. Disallowance of Claims*

Pursuant to section 502(d) of the Bankruptcy Code, any Claims held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall not be deemed Allowed. Holders of such Claims may not receive any distributions on account of such Claims until such time as (1) such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that Entity have been turned over or paid to the Debtor, Post-Effective Date Debtor, or the Liquidating Trustee, as applicable, or (2) such Claims are Allowed by a Final Order of the Bankruptcy Court. All Proofs of Claim Filed on account of an indemnification obligation shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to, or action, order, or approval of, the Bankruptcy Court.

**Except as otherwise provided herein or as agreed to by the Debtor, the Post-Effective Date Debtor, or the Liquidating Trustee, as applicable, any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtor, the Post-Effective Date Debtor, or the Liquidating Trustee and without further notice to any party or action, approval, or order of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims. A Proof of Claim Filed after the Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order Allowing such late-Filed Claim.**

*H. Amendments to Claims*

On or after the applicable Bar Date, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, and any such new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further notice to, or action, order, or approval of, the Bankruptcy Court to the maximum extent provided by applicable law.

*I. No Distributions Pending Allowance*

If an objection to a Claim or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim, unless otherwise determined by the Liquidating Trustee on behalf of the Liquidating Trust.

*J. Distributions After Allowance*

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Trustee shall provide to the Holder of such Claim the distribution to which such Holder is entitled under the Plan as of the Effective Date, less any previous distributions (if any) that were made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law or as otherwise provided herein.

**ARTICLE IX.**  
**RELEASE, INJUNCTION, EXCULPATION AND RELATED**  
**PROVISIONS**

*A. Term of Injunctions or Stays*

Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to section 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect through the Effective Date and shall continue in effect for the maximum time permitted by section 362 of the Bankruptcy Code. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

The Debtor shall not receive a “discharge” in violation of section 1141(d)(3) of the Bankruptcy Code; *provided, however*, that no Person or Entity may assert any Claim, seek or receive any payment from, or seek recourse against, the Debtor, the Post-Effective Date Debtor, the Estate, the Liquidating Trust, the Liquidating Trustee and/or any of its or their respective successors, assigns and/or property, except as expressly provided in the Plan.

*B. Release of Liens*

Except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Liquidating Trust and its successors and assigns, in each case without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtor or the Liquidating Trust, as applicable.

*C. Release by the Debtor*

**Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, except for claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence, each Released Party is deemed released and discharged by the Debtor, the Post-Effective Date Debtor, the Estate and the Liquidating Trust from any and all Causes of Action that the Debtor, the Post-Effective Date Debtor, the Estate or the Liquidating Trust has or would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or that any Holder of any Claim or Interest could have asserted on behalf of the Debtor, including Causes of Action in connection with, relating to, or in any manner arising from, in whole or in part:**

- (a) **the Debtor, the Debtor’s operations and restructuring efforts, and the formulation, preparation, dissemination, negotiation, or filing of the Plan Documents;**
- (b) **any Plan Document, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the**

**Disclosure Statement or the Plan;**

- (c) the Chapter 11 Case, including without limitation, the management, administration and implementation thereof, the Plan, the Disclosure Statement, the WARN Act Class Settlement Agreement, any postpetition financing documents, the filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan or the distribution of property under the Plan or any other related agreement; or
- (d) the business or contractual arrangements between the Debtor and any Released Party, and any other act or omission, transaction, agreement, event, or other occurrence in connection with, relating to, or in any manner arising from any of the foregoing.

Notwithstanding anything to the contrary in the foregoing, these releases do not release (a) any post-Effective Date obligations of any Entity under the Plan, any Plan Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or (b) any of the Debtor's current and former directors, officers and managers (other than Daniel T. Motulsky, the Debtor's independent director, or Robert Prusak, the Debtor's Chief Restructuring Officer) for acts or omissions prior to the Petition Date.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the releases set forth above, which includes by reference each of the related provisions and definitions contained herein, *and further*, shall constitute the Bankruptcy Court's finding that the releases set forth above are: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good-faith settlement and compromise of the claims released by the releases set forth above; (c) in the best interests of the Debtor and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after reasonable investigation by the Debtor and after notice and opportunity for hearing; and (f) a bar to the Debtor, the Post-Effective Date Debtor, the Estate or the Liquidating Trustee for or on behalf of the Liquidating Trust asserting any claim released by the releases set forth above against any of the Released Parties.

*D. Release by Holders of Claims or Interests*

1. As of the Effective Date, except for claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence, each Releasing Party is deemed to have released the Released Parties from any and all Causes of Action, including any derivative claims asserted on behalf of the Debtor, that such Entity has or would have been legally entitled to assert (whether individually or collectively), including Causes of Action in connection with, relating to, or in any manner arising from, in whole or in part:

- (a) the Debtor, the Debtor's operations and restructuring efforts, and the formulation, preparation, dissemination, negotiation, or filing of the Plan Documents;
- (b) any Plan Document, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan;

- (c) the Chapter 11 Case, including without limitation, the filing, management, administration and implementation thereof, the Plan, the Disclosure Statement, the WARN Act Class Settlement Agreement, any postpetition financing documents, the filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan or the distribution of property under the Plan or any other related agreement; or
- (d) the business or contractual arrangements between the Debtor and any Released Party, and any other act or omission, transaction, agreement, event, or other occurrence in connection with, relating to, or in any manner arising from any of the foregoing.

2. Notwithstanding anything to the contrary in the foregoing, these releases do not release (a) any post-Effective Date obligations of any Entity under the Plan, any Plan Document, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or (b) any of the Debtor's current and former directors, officers and managers (other than Daniel T. Motulsky, the Debtor's independent director, or Robert Prusak, the Debtor's Chief Restructuring Officer) for acts or omissions prior to the Petition Date, or (c) any claims a Releasing Party may directly have against a Released Party under (a) or (b) of this section D.2 of Article IX.

For the avoidance of doubt, nothing in the Plan, the Plan Supplement, or the Confirmation Order shall preclude the Liquidating Trust, Liquidating Trustee, or other successors of the Debtor, the Post-Effective Date Debtor and the Estate, from seeking or obtaining any recovery from the D&O Liability Insurance Policies or other available insurance, subject to the provisions of any such insurance policies and applicable law.

#### *E. Exculpation*

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur and each Exculpated Party is hereby released and exculpated from any Cause of Action or claim for any act or omission occurring from the Petition Date through the Effective Date in connection with, relating to, or in any manner arising from, the Chapter 11 Case, including without limitation, the management, administration and implementation thereof, the Disclosure Statement, the Plan, the WARN Act Class Settlement Agreement, any postpetition financing documents, or any Plan Document, contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan, the Chapter 11 Case or its filing, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities. The Exculpated Parties have, and upon closing of the Chapter 11 Case or the Effective Date shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. For the avoidance of doubt,



**no Exculpated Party shall be exculpated for any act or omission that occurred prior to the Petition Date.**

*F. Injunction*

**Except with respect to the obligations arising under the Plan or the Confirmation Order, and except as otherwise expressly provided in the Plan or the Confirmation Order, all Entities that held, hold, or may hold Claims or Interests that have been released or exculpated pursuant to the Plan, are permanently enjoined from and after the Effective Date from taking any of the following actions against, as applicable, the Debtor, the Post-Effective Date Debtor or the Liquidating Trust, or the Exculpated Parties or Released Parties: (1) commencing or continuing in any manner any action, suit, proceeding or audit of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of, in connection with, or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right in a document Filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve, any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action, suit, proceeding or audit of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan, or subject to exculpation under the Plan. For the avoidance of doubt and notwithstanding anything to the contrary in the Plan, the Debtor is not receiving a discharge under section 524(a) of the Bankruptcy Code and the injunction set forth herein shall, with respect to the Debtor, terminate upon the later of (a) distribution of all of the Debtor's property under the Plan, and (b) the closing of the Chapter 11 Case.**

*G. Protection Against Discriminatory Treatment*

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Liquidating Trust or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to or discriminate with respect to such a grant against the Liquidating Trust, or another Entity with whom the Liquidating Trust has been associated, solely because the Debtor has been a debtor under chapter 11 of the Bankruptcy Code, may have been insolvent before the commencement of the Chapter 11 Case (or during the Chapter 11 Case), or have not paid a debt that is dischargeable in the Chapter 11 Case.

*H. Setoffs*

In no event shall any Holder of a Claim be entitled to set off against such Claim any claim, right, or Cause of Action of the Debtor or the Liquidating Trust, as applicable, unless such Holder actually has provided notice of such setoff in writing to the Debtor on or before the Confirmation Date, which notice may be provided in a timely filed Proof of Claim.

*I. Subordination Rights*

Any distributions under the Plan shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

**ARTICLE X.  
CONDITIONS PRECEDENT TO CONFIRMATION AND  
CONSUMMATION OF THE PLAN**

*A. Conditions Precedent to Confirmation*

Unless waived pursuant to the provisions of this Article X, it shall be a condition to Confirmation that the Confirmation Order has been entered by the Bankruptcy Court and shall provide that:

- (1) the form of Confirmation Order is reasonably acceptable to the Proponents;
- (2) the Debtor is authorized to take all actions necessary or appropriate to enter into, implement and consummate the contracts, instruments, releases, leases, and other agreements or documents to be executed and/or delivered in connection with the Plan; and
- (3) the provisions of the Confirmation Order are non-severable and mutually dependent.

*B. Conditions Precedent to the Effective Date*

It shall be a condition to Consummation of the Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of this Article X):

- (1) the Confirmation Order shall have been duly entered in form and substance reasonably acceptable to the Proponents and shall not have been subject to any reversal, stay, modification, or vacatur;
- (2) all actions, documents, authorizations, consents, regulatory approvals, rulings, or agreements necessary to implement the Plan shall have been obtained, effected, or executed;
- (3) all Allowed Professional Fee Claims approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such Allowed Professional Fee Claims after the Effective Date shall have been placed in the Professional Fee Escrow Account pending approval of the Professional Fee Claims by the Bankruptcy Court;
- (4) the Liquidating Trustee has accepted her, his, or its engagement in writing and executed the Liquidating Trust Agreement;
- (5) the Segregated Account shall have been formed and funded in accordance with this Plan; and

- (6) either (i) the CS Adversary Proceeding has been fully and finally resolved such that the amount and extent of any CS Deficiency/Unsecured Claim, any CS Liens and Claims, and any CS Secured Claims have been determined; (ii) with the express consent and agreement of Carolina Sawmills, the Creditor's Committee, the proposed Liquidating Trustee, and the Debtor, Carolina Sawmills has agreed to allow the Liquidating Trustee and its advisors to be paid all actual and necessary fees of the Liquidating Trust (or such amount as agreed to as being sufficient by the Debtor, Carolina Sawmills and the Liquidating Trust) as additional CS Carved Out Amounts from the Segregated Account so as to permit the Liquidating Trust to litigate, settle, or otherwise resolve the CS Adversary Proceeding from and after the Effective Date; or (iii) as otherwise agreed to by the Creditors' Committee, the Debtor, and the proposed Liquidating Trustee.

*C. Waiver of Conditions*

The conditions to the Confirmation and the Effective Date of the Plan set forth in this Article X (other than X.B.6) may be waived by the Debtor, after consultation with the Creditors' Committee, without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

*D. Substantial Consummation*

"Substantial Consummation" of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

*E. Effect of Nonoccurrence of Conditions to the Effective Date*

If the Effective Date does not occur by the earlier of (1) sixty (60) days after all of the conditions precedent to the Effective Date set forth in Article X have been satisfied (or waived pursuant to the provisions of Article X), or (2) January 31, 2023 (or, for cause, such later date as may established by the Bankruptcy Court), the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims or Interests; (2) prejudice in any manner the rights of the Debtor, any Holders of a Claim or Interest, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtor, any Holders, or any other Entity in any respect.

**ARTICLE XI.  
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE  
PLAN**

*A. Modification and Amendments*

Subject to the limitations contained in the Plan, the Debtor reserves the right to modify the Plan, including, but not limited to, by changing the treatment applicable to any Class of Claims. The Debtor further reserves the right to seek Confirmation of a modified Plan consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtor or the Liquidating Trust, as applicable, expressly reserves their right to alter, amend, or modify materially the Plan, one or more times, after Confirmation and before the Effective Date, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile

any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

*B. Effect of Confirmation on Modifications*

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

*C. Revocation or Withdrawal of the Plan*

The Debtor reserves the right to revoke or withdraw the Plan before the Effective Date. If the Debtor revokes or withdraws the Plan, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtor or any other Entity, including the Holders of Claims; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor or any other Entity.

**ARTICLE XII.  
RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Case and all matters in connection with, relating to, or in any manner arising from the Chapter 11 Case and the Plan to the fullest lawful extent, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim, including the resolution of any request for payment of any Administrative Expense Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims;
2. decide and resolve all matters in connection with, relating to, or in any manner arising from to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;
3. resolve any matters in connection with, relating to, or in any manner arising from: (a) the assumption or rejection of any Executory Contract or Unexpired Lease and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, or any other matter related to such Executory Contract or Unexpired Lease; and (b) any dispute regarding whether a contract or lease is or was executory or expired;
4. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;
5. adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtor that may be pending on the Effective Date;

6. adjudicate, decide, or resolve any and all matters in connection with, relating to, or in any manner arising from Causes of Action, including without limitation, the CS Adversary Proceeding;
7. adjudicate, decide, or resolve any and all matters in connection with, relating to, or in any manner arising from sections 1141 and 1145 of the Bankruptcy Code;
8. adjudicate, decide, or resolve any and all matters in connection with, relating to, or in any manner arising from the WARN Act Class Settlement Agreement;
9. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;
10. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;
11. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
12. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
13. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, discharges, releases, injunctions, exculpations, and other provisions contained in Article IX hereof and enter such orders as may be necessary or appropriate to implement or enforce such releases, injunctions, and other provisions;
14. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI hereof;
15. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
16. determine any other matters that may be connected to, relate to, or in any manner arise from the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement;
17. adjudicate any and all disputes in connection with, relating to, or in any manner arising from to distributions under the Plan or any transactions contemplated therein;
18. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;
19. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;
20. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

21. hear and determine all disputes involving the existence, nature, or scope of the release provisions set forth in the Plan, including any dispute in connection with, relating to, or in any manner arising from to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;

22. enforce all orders previously entered by the Bankruptcy Court in the Chapter 11 Case;

23. hear any other matter as to which the Bankruptcy Court has jurisdiction;

24. enter an order closing the Chapter 11 Case; and

25. enforce the injunction, release, and exculpation provisions provided in Article IX hereof.

### **ARTICLE XIII. MISCELLANEOUS PROVISIONS**

#### **A. *Immediate Binding Effect***

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, on the Effective Date, the terms of the Plan, the final versions of the documents contained in the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Liquidating Trust, any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Plan, each Entity acquiring property under the Plan or the Confirmation Order, and any and all non-Debtor counterparties to Executory Contracts and Unexpired Leases with the Debtor. All Claims and debts shall be fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

#### **B. *Additional Documents***

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

#### **C. *Dissolution of the Creditors' Committee***

On the Effective Date, the Creditors' Committee shall dissolve automatically and the members thereof shall be released and discharged from all rights, duties, responsibilities, and liabilities in connection with, relating to, or in any manner arising from, the Chapter 11 Case and under the Bankruptcy Code, except for the limited purpose of prosecuting requests for payment of Professional Fee Claims for services and reimbursement of expenses incurred prior to the Effective Date by the Creditors' Committee and its Professionals. After the Effective Date, the Liquidating Trust shall no longer be responsible for paying any fees or expenses incurred by the members of or advisors to the Creditors' Committee after the Effective Date.

*D. Reservation of Rights*

Before the Effective Date, neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor or the Liquidating Trust with respect to any Claims or Interests.

*E. Successors and Assigns*

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

*F. Service of Documents*

All notices, requests, and demands to or upon the Debtor or the Liquidating Trust to be effective shall be in writing (including by facsimile transmission), with an electronic copy delivered to the recipients listed email address, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtor, to:

Klausner Lumber Two LLC  
c/o Asgaard Capital, LLC  
107 Millcreek Corners, Suite B  
Brandon, MS, 39047  
Attn.: Robert Prusak, CRO  
Telephone: (203) 722-3448  
Email: [rprusak@asgaardcapital.com](mailto:rprusak@asgaardcapital.com)  
With a copy to Charles Reardon at [creardon@asgaardcapital.com](mailto:creardon@asgaardcapital.com)

And with copies to:

Westerman Ball Ederer Miller Zucker & Sharfstein, LLP  
1201 RXR Plaza  
Uniondale, NY 11556  
Attn.: Thomas A. Draghi  
Telephone: (516) 622-9200  
Facsimile: (516) 622-9212  
Email: [tdraghi@westermanllp.com](mailto:tdraghi@westermanllp.com)  
Attn.: William C. Heuer  
Email: [wheuer@westermanllp.com](mailto:wheuer@westermanllp.com)  
- and -

Morris, Nichols, Arsht & Tunnell LLP  
1201 North Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, DE 19899  
Attn.: Eric Schwartz

Telephone: (302) 658-9200  
Facsimile: (302) 658-3989  
Email: [eschwartz@morrisnichols.com](mailto:eschwartz@morrisnichols.com)  
Attn.: Daniel B. Butz  
Email: [dbutz@morrisnichols.com](mailto:dbutz@morrisnichols.com)

If to the Liquidating Trustee:

Allen D. Wilen  
Eisner Advisory Group LLC  
111 Wood Avenue South  
Iselin, NJ 08830  
Telephone: (732) 243-7386  
Facsimile: (732) 951-7486  
Email: [allen.wilen@eisneramper.com](mailto:allen.wilen@eisneramper.com)

with copies to Counsel to the Liquidating Trustee:

Armstrong Teasdale LLP  
300 Delaware Avenue, Suite 210  
Wilmington, Delaware 19801  
Telephone: (302) 824-7089  
Attn.: Eric M. Suttty  
Email: [esuttty@atllp.com](mailto:esuttty@atllp.com)  
Attn.: Jonathan M. Stemerman  
Email: [jstemerman@atllp.com](mailto:jstemerman@atllp.com)

After the Effective Date, the Liquidating Trustee shall have the authority to send a notice to parties in interest providing that, to continue to receive documents pursuant to Bankruptcy Rule 2002, such party must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Entities or parties in interest receiving documents pursuant to Bankruptcy Rule 2002 to (1) those Entities who have Filed such renewed requests; (2) Entities whose rights are affected by such documents; and (3) the U.S. Trustee.

*G. Entire Agreement*

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

*H. Exhibits*

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available for free at <https://www.donlinrecano.com/Clients/klt/Index> or for a fee via PACER at: <https://www.pacer.gov>.

*I. Non-severability of Plan Provisions*

If, before Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be



invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtor's or the Liquidating Trust's consent, as applicable; and (3) non-severable and mutually dependent.

*J. Votes Solicited in Good Faith*

Upon entry of the Confirmation Order, the Debtor shall be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and, pursuant to section 1125(e) of the Bankruptcy Code, the Debtor and its respective current and former Affiliates, and such Affiliates' partners, subsidiaries, predecessors, current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly, but excluding Holders of Interests), members, officers, principals, employees, agents, managed accounts or funds, advisors, attorneys, accountants, investment bankers, consultants, contractors, representatives, management companies, fund advisors, and other professionals, together with their respective successors and assigns, shall be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Plan, and, therefore, neither any of such parties, individuals, Entities, nor the Liquidating Trust, as applicable, shall have any liability for the violation of any applicable law (including the Securities Act), rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan.

*K. Waiver or Estoppel*

Each Holder of a Claim or Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured, or not subordinated by virtue of an agreement made with the Debtor or its counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed before the Confirmation Date.

Dated: January 14, 2022

Klausner Lumber Two LLC

/s/ Robert Prusak

By: Robert Prusak

Title: Chief Restructuring Officer

Official Committee of Unsecured Creditors

/s/ Eric M. Suttty

By: Eric M. Suttty

Title: Counsel

**EXHIBIT B**

**LIQUIDATION ANALYSIS**

## **LIQUIDATION ANALYSIS**

The Debtor believes that the Plan satisfies section 1129(a)(7) of the Bankruptcy Code and that each Holder of an Impaired Claim or Interest will receive value under the Plan on the Effective Date that is not less than the value such Holder would receive if the Debtor liquidated under chapter 7 of the Bankruptcy Code. This liquidation analysis and the conclusions set forth herein represent the Debtor's best judgment regarding the results of such a liquidation. This liquidation analysis was prepared for the sole purpose of assisting the Bankruptcy Court and Holders of Impaired Claims in making this determination and should not be used for any other purpose. Nothing contained in this liquidation analysis is intended as or constitutes a concession or admission for any purpose other than the presentation of a hypothetical chapter 7 liquidation analysis for purposes of meeting the requirements of section 1129(a)(7) of the Bankruptcy Code. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan.

The liquidation analysis reflects the estimated cash proceeds, net of liquidation-related costs, that would be realized if the Debtor liquidated on a combined basis under chapter 7 of the Bankruptcy Code. Also reflected is an analysis of estimated cash proceeds available under the Debtor's Plan for purposes of comparison. A number of estimates and assumptions underlie the analysis that, while considered reasonable, are inherently subject to significant uncertainties and contingencies beyond the control of the Debtor, management and their advisors. Independent accountants have not examined or reviewed the liquidation analysis. THERE CAN BE NO ASSURANCE THAT THE VALUES REFLECTED IN THE LIQUIDATION ANALYSIS WOULD BE REALIZED IF THE DEBTOR WAS, IN FACT, TO LIQUIDATE UNDER CHAPTER 7.

### **LIQUIDATION ANALYSIS (continued)**

<b>Scenarios</b>	<b>Chapter 11</b>	<b>Chapter 7</b>
<b>Gross Proceeds from the Sale to Binderholz</b>	<b>\$86,687,500</b>	<b>\$86,687,500</b>
<b>Less: County Deferred Obligation</b>	<b>\$3,287,500</b>	<b>\$3,287,500</b>
<b>Gross Cash Proceeds from the Sale to Binderholz</b>	<b>\$83,400,000</b>	<b>\$83,400,000</b>
<b>Less: Payments to Third Parties in Connection with the Closing<sup>1</sup></b>	<b>\$12,916,979</b>	<b>\$12,916,979</b>
<b>Plus: Cash on Hand at the Petition Date</b>	<b>\$217,382</b>	<b>\$217,382</b>
<b>Plus: Other Cash Receipts<sup>2</sup></b>	<b>\$5,864,791</b>	<b>\$5,864,791</b>
<b>Cash Available Before Admin Expenses and Creditors (Priority, Secured, Unsecured)</b>	<b>\$76,565,194</b>	<b>\$76,565,194</b>
Total Administrative Expenses incurred from 6/10/2020 to 1/31/2021 (the month the sale to Binderholz closed) and paid by 12/1/2021 (Other Administrative Expenses paid by 1/31/2021) <sup>3</sup>	\$16,929,910	\$16,929,910
Total Administrative Expenses incurred and paid from 2/1/2021 through 12/1/2021 <sup>4</sup>	\$3,974,684	\$3,974,684

1 Includes \$12,916,979 in payments for real estate closing costs for taxes & other charges, stalking horse break-up fee and expense reimbursement, DIP payoff, and amounts due to Halifax County under the County Settlement.

2 Includes DIP proceeds, miscellaneous asset sales, TSA income, and other miscellaneous income.

3 Includes Transaction Fees totaling \$8,765,727 and Monthly Professional Fees totaling \$6,789,809 that were incurred from 6/10/2020 (petition date) through 1/31/2021 (the month the sale to Binderholz closed) and paid by 12/1/2021, plus Other Administrative Expenses totaling \$1,374,375 (including ~\$537,187 in adequate protection payments to Carolina Sawmills' lawyers; if Carolina Sawmills' claims are deemed unsecured, this amount will be applied against any distributions awarded to CS, whereas if their claims are deemed subordinated, this amount would be reimbursed to the estate and the amount of cash available would increase respectively in both scenarios) that were paid from 6/10/2020 through 1/31/2021.

4 Includes Monthly Professional Fees of \$3,217,988 and Other Administrative Expenses of \$756,696 that were incurred and paid from 2/1/2021 through 12/1/2021.

### **LIQUIDATION ANALYSIS (continued)**

<b>Total Cash Available For Admin Expenses and Creditors as of 12/1/2021</b>	<b>\$55,660,600</b>	<b>\$55,660,600</b>
Budgeted Liquidating Trustee Fees in a Chapter 11 Case	\$225,000 <sup>5</sup>	\$0
Estimated Chapter 7 Trustee Fees	\$0	\$1,579,385 <sup>6</sup>
Estimated Incurred but Unpaid (as of 12/1/21) plus Budgeted Administrative Claims through assumed Effective Date (8/1/2022) <sup>7</sup>	\$4,816,551	\$4,150,367 <sup>8</sup>
Estimated Wind-Down Expenses & Litigation Reserve from assumed Effective Date (8/1/2022) through End of Case (Excluding Liquidating Trustee & Chapter 7 Trustee Fees)	\$2,494,733	\$2,210,200 <sup>9</sup>
Total Estimated Incremental Due Diligence & Litigation Costs in Chapter 7	\$0	\$1,094,720 <sup>10</sup>
<b>Estimated Cash Available for Distribution to Creditors on the Assumed Effective Date (8/1/2022)</b>	<b>\$48,124,316</b>	<b>\$46,625,927<sup>11</sup></b>

5 Chapter 11 estimate includes the up to \$225k carved-out amount agreed to by Carolina Sawmills for use by the Liquidating Trustee.

6 Includes estimated fees of the Chapter 7 trustee allowable under § 326 of the Bankruptcy Code.

7 Estimated burn rate (as it relates to the Debtor's professionals) includes fees incurred in the performance of ordinary course work. This estimated burn rate does not include litigation and related costs that may be incurred by the Debtor's professionals.

8 Estimated Administrative Claims are reduced by likely avoided budgeted administrative expenses and fees (including any remaining transaction fees) in the case of Chapter 7.

9 Estimated Wind-Down Expenses are reduced by avoided UST Fees in the case of Chapter 7.

10 The Debtor tried to conservatively estimate incremental expenses in a Chapter 7 case. This amount was calculated by the Debtor assuming that new professionals would require an additional 11 total team-weeks (assumes a team of three people and nine-hour person-days) to get up to speed on the case and perform the tasks. The amount also includes an estimate for a financial advisor in the Chapter 7 case. If the wind down period extends, or becomes particularly litigious, or involves forensic accounting, these expenses could be materially larger.

11 Assumes the waterfall structure for distributions shown in the recovery analysis table for Chapter 11 are the same in Chapter 7. As a result, increased proceeds directly translates to increased recovery to creditors, assuming all else is equal.