

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	
	§	Chapter 11
	§	
TOMMY'S FORT WORTH, LLC., <i>et al.</i> , ¹	§	Case No. 24-90000 (ELM)
	§	
Debtors.	§	(Jointly Administered)
	§	

**DISCLOSURE STATEMENT
REGARDING TRUSTEE'S JOINT CHAPTER 11 PLAN**

GRAY REED

Jason S. Brookner (TX Bar No. 24033684)
Aaron M. Kaufman (TX Bar No. 24060067)
Lydia R. Webb (Texas Bar No. 24083758)
Emily F. Shanks (TX Bar No. 24110350)
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
akaufman@grayreed.com
lwebb@grayreed.com
eshanks@grayreed.com

*Counsel to Mark E. Andrews,
Chapter 11 Trustee*

Dated: March 28, 2025

THIS IS NOT A SOLICITATION OF AN ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO BUY OR SELL ANY SECURITIES.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Tommy's Fort Worth, LLC (3473); Tommy's Holding Company, LLC (2662); Tommy's Grand Rapids, LLC (9224); Tommy's Castaic, LLC (7501); Tommy's Lewisville, LLC (4750); High Country Watersports, LLC (6160); Walloon Lake Village Marina, LLC (0277); MKB Florida Holdings, LLC (5698); Tommy's Detroit, LLC (5242); Tommy's California Fresno, LLC (8597); Tommy's Phoenix, LLC (3036); Tommy's Las Vegas, LLC (7721); Tommy's Chattanooga, LLC (0839); Tommy's California Ventura, LLC (5149); Tommy's Rancho Cordova, LLC (1070); Tommy's Stockton, LLC (1338); and Tommy's Knoxville, LLC (8052).

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN AS A DESCRIPTION OF THE PLAN AND THE CHAPTER 11 CASES, AND NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE LEGAL EFFECT OF THE PLAN ON HOLDERS OF CLAIMS OR INTERESTS. CERTAIN INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS, BY ITS NATURE, FORWARD LOOKING, AND CONTAINS ESTIMATES, FORECASTS AND ASSUMPTIONS WHICH MAY PROVE TO BE MATERIALLY DIFFERENT FROM ACTUAL RESULTS.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED. NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THE PLAN SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE THE DATE OF THIS DISCLOSURE STATEMENT OR THE DATE ON WHICH THE MATERIALS RELIED UPON IN PREPARATION OF THIS DISCLOSURE STATEMENT WERE COMPILED.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT OR INDEPENDENT VERIFICATION. THE INFORMATION CONTAINED HEREIN AND THE RECORDS KEPT BY THE DEBTORS ARE NOT WARRANTED OR REPRESENTED TO BE WITHOUT INACCURACY.

NO REPRESENTATIONS OR ASSURANCES CONCERNING THE DEBTORS OR THE PLAN ARE AUTHORIZED BY THE TRUSTEE OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO, INCORPORATED BY REFERENCE OR REFERRED TO HEREIN. ANY REPRESENTATIONS OR INDUCEMENTS MADE BY ANY PERSON OTHER THAN THOSE CONTAINED HEREIN SHOULD NOT BE RELIED UPON. ANY SUCH ADDITIONAL REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO COUNSEL TO THE TRUSTEE.

THE SECURITIES AND EXCHANGE COMMISSION HAS NEITHER APPROVED NOR DISAPPROVED THIS DISCLOSURE STATEMENT, NOR HAS IT PASSED UPON THE ADEQUACY OR ACCURACY OF THE STATEMENTS CONTAINED HEREIN.

TABLE OF CONTENTS

	<u>Page</u>
I. General Information	1
A. Summary of the Plan.....	1
B. Purpose of this Disclosure Statement.....	2
C. General Information Concerning Chapter 11	2
D. General Information Concerning Treatment of Claims and Equity Interests	3
E. Classes Impaired under a Plan	3
F. Voting	4
G. Confirmation and Consummation	4
1. Acceptance of the Plan	4
2. Confirmation Without Acceptance by All Impaired Classes	5
3. Best Interests Test.....	5
II. Background and Events Leading Up to Chapter 11.....	6
A. About the Debtors	6
B. The Debtors' Corporate History and Structure	6
C. Prepetition Capital Structure	7
1. Prepetition Floor Plan Loans	7
2. Subordinated Floor Plan Loans.....	7
3. Prepetition Liens of Various Creditors	7
D. Circumstances Leading to the Commencement of the Chapter 11 Cases	8
1. Post COVID-19 Sales Decline.....	8
2. Deteriorating Business Relationships	8
III. The Chapter 11 Cases	9
A. Post-Filing Activities	9
1. First Day Motions and Cash Collateral Order	9
2. Retention of Professionals	10
3. Liquidation Procedures.....	10
4. Lease Assumption and Rejection Procedures	10
5. Customer Claims Administration	11
6. Sale of Dealership Assets	11
7. Malibu Boats' Settlement	12
B. Bar Date	13
C. Claims Against the Debtors	13
1. In General	13
2. Administrative Claims (other than Professional Fee Claims).....	14
3. Professional Fee Claims.....	14
4. U.S. Trustee Fees	14
5. Priority Tax Claims.....	14
IV. The Plan	15
A. Summary of Key Plan Provisions	15
B. Treatment of Classes of Claims and Equity Interests.....	16
1. Class 1 — Priority Non-Tax Claims.....	16
2. Class 2 — Prepetition Lender's Secured Claims	17
3. Class 3 – Other Secured Claims.....	17
4. Class 4 – Customer Constructive Trust Claims	18
5. Class 5 – General Unsecured Claims.....	19
6. Class 6 – Contribution Claims	19
7. Class 7 – Intercompany Claims	19
8. Class 8 – Equity Interests.....	19
C. Release, Exculpation, and Injunction Provisions	20

1.	Exculpatory Provisions	20
2.	Releases by the Trustee.....	20
3.	Third-Party Releases.....	21
4.	Injunction and Gate Keeping	23
V.	Risk Factors	24
A.	Bankruptcy Law Considerations	24
1.	The Trustee Will Consider All Available Alternatives If the Plan Transactions Are Not Implemented, and Such Alternatives May Result in Lower Recoveries for Holders of Claims Against the Debtors	24
2.	Risks Related to Confirmation and Consummation of the Plan.....	25
B.	Risks Related to Recoveries Under the Plan	27
C.	Miscellaneous Risk Factors and Disclaimers.....	27
1.	The Financial Information Is Based on the Debtors’ Books and Records.	27
2.	No Legal or Tax Advice Is Provided by This Disclosure Statement	27
3.	No Admissions Made	28
4.	Failure to Identify Litigation Claims or Projected Objections.....	28
5.	Information Provided by the Debtors and Relied Upon by Trustee’s Advisors.....	28
6.	No Representations Outside This Disclosure Statement Are Authorized.....	28
7.	No Duty to Update.....	28
VI.	Certain U.S. Federal Tax Consequences of the Plan.....	29
A.	Introduction.....	29
B.	Certain U.S. Federal Income Tax Consequences to the Debtor	30
1.	General Tax Consequences to Debtors	30
2.	Certain Federal Income Tax Issues Related to the Creditor Trust	31
C.	Withholding and Information Reporting	33
VII.	Conclusion and Recommendation.....	33

SCHEDULES AND EXHIBITS

Schedule 1 Liquidation Analysis

Exhibit A Trustee's Joint Chapter 11 Plan

THE PLAN IS PROPOSED BY THE TRUSTEE WITH THE SUPPORT OF THE COMMITTEE AND M&T BANK. THE TRUSTEE AND THE COMMITTEE STRONGLY URGE HOLDERS OF CLAIMS ENTITLED TO VOTE TO VOTE TO ACCEPT THE PLAN.

I. General Information¹

A. Summary of the Plan

Mark E. Andrews, the chapter 11 trustee appointed in the chapter 11 cases of Tommy's Fort Worth, LLC and its affiliates, is proposing a chapter 11 plan, which is attached to this Disclosure Statement as **Exhibit A**.

The plan proposes to pay unsecured creditors through a liquidating trust called the "Creditor Trust." The key feature of the Plan includes a proposed settlement with M&T Bank, the Debtors' primary Prepetition Lender. Under the settlement, M&T Bank will contribute approximately \$2,960,000 of its Cash Collateral (in addition to Cash Collateral previously used with M&T Bank's consent during the course of the chapter 11 cases).

The Contributed Cash Collateral will be funded into the following Plan Reserves:

- \$500,000 to be funded into an Administrative Claims Reserve;
- \$1,750,000 to be funded into a Priority Claims Reserve;
- \$360,000 to be funded into a Customer Constructive Claims Reserve; and
- \$350,000 to be funded into a Creditor Trust Reserve.

These Plan Reserves will allow for payment of outstanding administrative expenses, professional fee claims, priority tax and non-tax claims, customer claim settlements, and pro rata distributions to other general unsecured non-priority creditors.

In exchange for additional cash contribution, M&T Bank (the Prepetition Lender) shall receive in partial satisfaction of the Allowed Prepetition Lender's Secured Claims all Cash held by the Debtors or the Trustee on the Effective Date, except as necessary to fund the Plan Reserves as set forth above, and M&T Bank will further receive releases from the Trustee and all creditors and parties in interest who do not affirmatively "opt out" of the proposed settlement. In addition, on the Effective Date, the Trustee or Creditor Trustee (as applicable) shall assign to the Prepetition Lender the Assigned Causes of Action, which are defined to be Retained Causes of Action against the Borisch Parties (as that term is defined in the Plan). All Other Retained Causes of Action will be assigned to the Creditor Trust for pursuit by the Creditor Trustee after the Effective Date.

To be clear, claims and causes of action against insiders and affiliates such as Matthew A. Borisch and his related companies are not released under this Plan. Rather, such claims and causes

¹ All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

of action are expressly reserved as Retained Causes of Action under the Plan and will be Assigned Causes of Action assigned to the Prepetition Lender M&T Bank. The proceeds of such litigation, if any, shall be the sole property of the Prepetition Lender.

B. Purpose of this Disclosure Statement

This Disclosure Statement has been prepared by the Trustee to provide detail about the Plan to enable holders of Claims and Equity Interests who are entitled to vote on the Plan to make an informed judgment about the Plan. Confirmation of the Plan pursuant to chapter 11 of the Bankruptcy Code depends, in part, upon the receipt of a sufficient number of votes in favor of the Plan. Only holders of Claims in Classes 2, 4, 5, and 6 are entitled to vote to accept or reject the Plan. Holders of Claims in Classes 1 and 3 are unimpaired and are conclusively deemed to accept the Plan. Holders of Claims in Classes 7 and 8 are impaired and are conclusively deemed to reject the Plan.

All creditors and parties in interest will receive an “opt out” form. This form may be used to opt out of the proposed releases under the Plan. More information about this process is provided in Section IV.C.3 below.

On [●], 2025, after notice and a hearing, the Bankruptcy Court entered the Solicitation Procedures Order pursuant to section 1125 of the Bankruptcy Code, approving this Disclosure Statement as containing “adequate information.” “Adequate information” is information of a kind, and in sufficient detail, to enable a person to make an informed judgment about the Plan. The Bankruptcy Court will consider final approval of the Plan at the Confirmation Hearing on [●], 2025, at [●:●● a.m./p.m.] prevailing central time.

C. General Information Concerning Chapter 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code, pursuant to which a debtor in possession attempts to reorganize, or liquidate, its business for the benefit of itself, its creditors, and equity interest holders.

The commencement of a chapter 11 case creates an estate, comprised of all legal and equitable interests of the debtor in property as of the date the petition is filed, wherever located and by whomever held. Sections 1101, 1107, and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and remain in possession of its property as a “debtor in possession” unless the bankruptcy court orders the appointment of a trustee.

In this case, the Bankruptcy Court appointed Mark E. Andrews as the Trustee.

The filing of a chapter 11 petition also triggers the automatic stay provisions of the Bankruptcy Code. Section 362(a) of the Bankruptcy Code provides for, among other things, an automatic stay of all attempts to collect prepetition debts against the debtor or to otherwise interfere with the debtor’s property or business. Except as otherwise ordered by the bankruptcy court, the automatic stay remains in full force and effect until the time a plan is confirmed.

The formulation of a plan of reorganization or liquidation is the principal purpose of a chapter 11 case. A plan sets forth the means for satisfying the claims against and equity interests

in the debtor. Under Bankruptcy Code § 1106(a)(5), a trustee must either file a plan to the court “as soon as practicable,” file a report on why the trustee will not file a plan, recommend conversion of the case under a different Bankruptcy Code chapter, or dismiss the case.

D. General Information Concerning Treatment of Claims and Equity Interests

A chapter 11 plan may provide for anything from a complex restructuring of a debtor’s business and its related obligations to a simple liquidation of a debtor’s assets. After a chapter 11 plan has been filed, certain holders of claims against or equity interests in a debtor are permitted to vote to accept or reject the plan.

Section 1123 of the Bankruptcy Code provides that a plan of reorganization must classify the claims of a debtor’s creditors and equity interest holders. In compliance therewith, the Plan divides claims and equity interests into classes and sets forth the treatment for each class. In accordance with section 1123(a) of the Bankruptcy Code, Administrative Claims have not been classified in the Plan. A debtor is also required, under section 1122 of the Bankruptcy Code, to classify substantially similar claims and equity interests together. The Trustee believes that the Plan has classified all Claims and Equity Interests in compliance with the provisions of Bankruptcy Code section 1122.

The table below summarizes the classification, description, and treatment of Claims and Equity Interests under the Plan. This information is provided for illustrative purposes only and is qualified in its entirety by reference to the provisions of the Plan. For a more detailed description of the treatment of Claims and Equity Interests under the Plan and the sources of satisfaction for Claims and Equity Interests, see Section IV.B of this Disclosure Statement.

Class	Designation	Impairment	Entitled to Vote
1	Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
2	<i>Prepetition Lender’s Secured Claims</i>	<i>Impaired</i>	<i>Yes</i>
3	Other Secured Claims	Unimpaired	No (deemed to accept)
4	<i>Customer Constructive Trust Claims</i>	<i>Impaired</i>	<i>Yes</i>
5	<i>General Unsecured Claims</i>	<i>Impaired</i>	<i>Yes</i>
6	<i>Contribution Claims</i>	<i>Impaired</i>	<i>Yes</i>
7	Intercompany Claims	Impaired	No (deemed to reject)
8	Equity Interests	Impaired	No (deemed to reject)

E. Classes Impaired under a Plan

Only classes of impaired claims or equity interests may vote to accept or reject a plan. A class is “impaired” if the legal, equitable, or contractual rights relating to the claims or equity interests in that class are modified by the plan. Modification for purposes of determining impairment, however, does not include curing defaults or reinstating maturity. Classes of claims or equity interests that are not “impaired” under a plan of reorganization, and each member of such

class, are conclusively deemed to have accepted the plan and thus are not entitled to vote. Similarly, classes of claims or equity interests that will neither receive nor retain any property under a plan are deemed to have rejected the plan and are thus not entitled to vote.

As set forth in section 1124 of the Bankruptcy Code, a class of claims or interests is impaired under a plan of reorganization unless, with respect to such class, the plan: (1) leaves unaltered the legal, equitable, and contractual rights of the holder of such claim or interest; or (2) notwithstanding any contractual provision or applicable law that entitles the holder of a claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default: (a) cures any such default that occurred before or after the commencement of the case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured; (b) reinstates the maturity of such claim or interest as it existed before such default; (c) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance on such contractual provision or such applicable law; (d) if the claim or interest arises from a failure to perform a non-monetary obligation (other than a default from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A)), compensates the holder (other than the debtor or an insider) for any actual pecuniary loss incurred by the holder as a result of such failure; and (e) does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest.

F. Voting

All holders of Claims in Classes 1 and 3 are unimpaired, as they will be paid in full or, if applicable, entitled to retain their collateral. As a result, all holders of Claims in Classes 1 and 3 are conclusively deemed to have accepted the Plan. The holders of Claims in Classes 2, 4, 5, and 6 are impaired and are entitled to vote to accept or reject the Plan. The holders of Claims and Equity Interests in Classes 7 and 8 are impaired, will receive nothing under the Plan, and are conclusively deemed to reject the Plan and are therefore not entitled to vote to accept or reject the Plan.

A Ballot casting a vote on the Plan may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such Ballot was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

G. Confirmation and Consummation

There are two methods by which a plan may be confirmed: (i) the “acceptance” method, pursuant to which all impaired classes of claims and interests have voted in the requisite amounts to accept the plan and the plan otherwise complies with section 1129(a) of the Bankruptcy Code; and (ii) the “cram-down” method under section 1129(b) of the Bankruptcy Code, which is available even if classes of claims vote against the Plan.

1. Acceptance of the Plan

A plan is accepted by an impaired class of claims if the holders of at least two-thirds ($\frac{2}{3}$) in amount and more than one-half ($\frac{1}{2}$) in number of the allowed claims in such class actually voting vote to accept the plan. A plan is accepted by an impaired class of equity interests if holders of at

least two-thirds ($\frac{2}{3}$) in amount of allowed equity interests in such class actually voting vote to accept the plan.

BALLOTS THAT ARE SIGNED BUT THAT DO NOT EXPRESSLY INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN OR INDICATE BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN, WILL BE DISREGARDED.

In addition to this class voting requirement, section 1129 of the Bankruptcy Code requires that a plan be accepted by each holder of a claim or equity interest in an impaired class entitled to vote or that the plan otherwise be found by the bankruptcy court to be in the best interests of each holder of a claim or equity interest in such class (*see* discussion of “Best Interests Test” below).

2. Confirmation Without Acceptance by All Impaired Classes

Under section 1129 of the Bankruptcy Code, the Trustee may seek confirmation of the Plan notwithstanding the “deemed rejection” of the Plan by a class of Claims.

A plan may be confirmed notwithstanding its rejection by one or more classes of claims or equity interests if, in addition to satisfying the applicable requirements of section 1129(a) of the Bankruptcy Code, the plan (1) is “fair and equitable” with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan and (2) does not “discriminate unfairly.”

A plan is “fair and equitable” under the Bankruptcy Code with respect to a dissenting class of unsecured claims if, with respect to such dissenting class either (a) the plan provides that each holder of a claim of such class receive or retain property of a value equal to the allowed amount of such claim, or (b) no holders of junior claims or equity interests receive or retain any property under the plan on account of such junior claims or interests.

This fair and equitable standard, also known as the “absolute priority rule,” requires, among other things, that unless a dissenting unsecured class of claims or equity interests receives full compensation for its allowed claims or allowed interests, no holder of claims or interests in any junior class may receive or retain any property under the plan on account of such claims or interests. The Trustee believes that the requirements for non-consensual confirmation will be met and the Plan will be confirmed despite its rejection by impaired dissenting Classes of Claims.

The requirement that a plan not “discriminate unfairly” means, among other things, that a dissenting class must be treated substantially equally with respect to other classes of equal rank. The Trustee believes that the Plan meets this requirement with respect to the Classes of Claims that are deemed to reject the Plan because classes of equal rank are treated equally under the Plan.

3. Best Interests Test

Notwithstanding acceptance of the Plan by each impaired Class, in order for the Plan to be confirmed, the Bankruptcy Court must determine that the Plan is in the best interests of each holder of a Claim or Equity Interest in an impaired Class who has not voted to accept the Plan. Accordingly, if an impaired Class does not unanimously accept the Plan or is deemed to reject the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides for each

holder of a Claim or Equity Interest in such Class to receive or retain on account of such Claim or Equity Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount each such holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date.

In these Chapter 11 Cases, the Trustee has been liquidating the Debtors' assets and will continue to liquidate their remaining non-operating assets through the Plan. As a result, and by implication, constituents will receive under the Plan at least what they would otherwise receive if these Chapter 11 Cases were converted to a chapter 7 liquidation. To demonstrate compliance with the best interests test, the Trustee, with the assistance of his financial advisors, prepared the liquidation analysis attached hereto as **Schedule 1**. The liquidation analysis shows that the value of the distributions to holders of Allowed Claims under the Plan would be the same or greater than the value received under a hypothetical chapter 7 liquidation. Accordingly, the Trustee believes that the Plan is in the best interests of creditors.

II. Background and Events Leading Up to Chapter 11²

A. About the Debtors

At the time of the bankruptcy filing, the Debtors claimed to be the world's largest dealer of ski & wake boats. The Debtors offered a wide range of services with fourteen dealerships and five on-water rental programs across Texas, Colorado, Michigan, Arizona, California, Florida, Nevada, and Tennessee.

The Debtors generated revenue from four primary revenue streams: (1) boat sales, (2) service and repair, (3) pro shop sales, and (4) waterfront rental and fueling. Boat sales were the backbone of the Debtors' business, making up around 84% of its annual revenue. These sales consisted primarily of luxury watercraft from brands like Tahoe, Malibu, and Axis. The Debtors' inventory at the time of the bankruptcy filing included at least \$68 million of new luxury watercraft, totaling 658 units. The Debtors also maintained a service and repair department that they claim accounted for 12% of their gross income. The Debtors claim that their pro shop and waterfront locations comprised the remaining 5% of the Debtors' revenue.

B. The Debtors' Corporate History and Structure

The Debtors are comprised of seventeen (17) limited liability companies that are either wholly owned by Matthew Borisch or the Matthew Allen Borisch Trust. The Trustee believes that Matthew Borisch owns, directly or indirectly, each of the Debtors in these Chapter 11 Cases.

² The descriptions below are derived from the *Declaration of Monica S. Blacker, in Support of First Day Motions* [Docket No. 23], the *Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, and (II) Authorizing Continuation of Existing Deposit Practices* [Docket No. 13], and the Trustee's *Motion for Entry of an Order (I) Authorizing and Approving the Settlement by and Between the Trustee and Malibu Boats; and (II) Granting Related Relief* [Docket No. 486].

C. Prepetition Capital Structure

1. Prepetition Floor Plan Loans

The Debtors entered into a prepetition floor plan financing arrangement with M&T Bank on May 18, 2023 to support their business operations (the “Floor Plan Loans”). The Floor Plan Loans provided the Debtors with up to \$110 million in floor plan financing and a revolving credit line of up to \$5 million, resulting in a total aggregate loan capacity of \$115 million.

As of the Petition Date, the Debtors owed approximately \$105.7 million in outstanding obligations under the prepetition Floor Plan Loans. This substantial liability represented by far the largest portion of the Debtors’ prepetition debt and underscored the financial challenges that ultimately led to the commencement of these Chapter 11 Cases.

2. Subordinated Floor Plan Loans

The Debtors also entered into a subordinated floor plan loan agreement with the Mercantile Bank of Michigan (“Mercantile”) on July 28, 2021 (the “Subordinated Floor Plan Loan”). This agreement provided the Debtors with \$7,294,048.29 in secured funding. The loan was subordinate to the senior floor plan loans extended by M&T Bank, as outlined in a subordination letter agreement dated May 18, 2023 (the “Subordination Letter”). Under the terms of the Subordination Letter, Mercantile agreed to subordinate its liens and security interests in the collateral to the senior claims of M&T Bank. As of the Petition Date, the Debtors owed approximately \$4.7 million in outstanding obligations under the Subordinated Floor Plan Loan. Because M&T Bank is undersecured, and because the Trustee has liquidated the marine financed inventory and other business assets serving as its collateral, Mercantile is classified and will be treated for purposes of the Plan as a Class 5 General Unsecured Claim under the Plan.

3. Prepetition Liens of Various Creditors

The Debtors’ prepetition secured obligations included liens held by various creditors on specific categories of collateral.

Marine Equipment and Boat Inventory Liens

Volvo Penta of the Americas, LLC (“Volvo”) and Malibu Boats—two of the Debtors’ key suppliers—held purchase money security interests in marine inventory and related products provided to the Debtors. Volvo’s liens covered marine equipment, parts, and accessories with outstanding amounts below \$3,000 as of the Petition Date. Similarly, Malibu Boats’ liens secured unpaid inventory sold to the Debtors.

As of the Petition Date, the Debtors claim that they paid Malibu Boats and Volvo for all inventory delivered to the Debtors. While Malibu Boats disputes this claim, the discrepancy is resolved by the Malibu Settlement discussed further below.

Specific Operational Equipment Liens

Various lenders held liens on operational equipment leased or sold to the Debtors for business purposes. These creditors included Team Finance Group, Inc., Deere & Company, Toyota Industries Commercial Finance, Inc., and others, with collateral encompassing forklifts, tractors, and marine accessories. As of the Petition Date, the Debtors estimated the aggregate outstanding debt owed to these equipment lenders to be approximately \$78,000.

On information and belief, the Trustee has surrendered all collateral and/or paid the outstanding balances due to the foregoing suppliers. As a result, operational equipment lenders with outstanding claims are classified and will be treated for purposes of the Plan as Class 5 General Unsecured Claims under the Plan.

D. Circumstances Leading to the Commencement of the Chapter 11 Cases

1. Post COVID-19 Sales Decline

During the COVID-19 pandemic, the demand for recreational powerboats in the domestic retail market surged to levels not seen in decades, as customers turned to boating for outdoor, socially distanced recreation. In response to this sudden increase in demand, the Debtors expanded their locations from five dealerships to fifteen.

However, retail activity in the recreational powerboat market began to decline in the second half of 2021. This downturn was largely attributed to inventory shortages resulting from strong sales during the pandemic and supply chain disruptions that affected production levels. Throughout 2022, retail registration activity continued to decline, but at a slower year-over-year rate compared to the latter half of 2021. By 2023, industry demand had dropped to just 50% of the levels seen in 2021.

2. Deteriorating Business Relationships

The Debtors' business requires two critical relationships—(1) a boat manufacturer and (2) a floor plan lender. The boat manufacturer creates the boats that the Debtors sell, and the floor plan lender provides a loan for the Debtors to purchase the manufactured boats. In the years leading up to the filing of these Chapter 11 Cases, the Debtors struggled to maintain both of these relationships.

Roughly one year before the bankruptcy filing, on May 18, 2023, the Debtors expanded their floor plan with a loan from M&T Bank, which provided the Debtors approximately \$110 million in credit to purchase boats from Malibu Boats for their dealerships nationwide. However, the Debtors struggled to remain in compliance with their Floor Plan Loans. Within months of closing on the Floor Plan Loans, M&T Bank notified the Debtors that they had sold collateral and collected the sale proceeds without remitting the proceeds required under the Floor Plan Loans—also known as “sales out of trust” or “SOT.” The Debtors were able to cure these SOT issues over the course of 2023, but the ongoing audits by M&T Bank presented problems for the Debtors in negotiating new dealership agreements with their primary manufacturer, Malibu Boats.

On February 27, 2024, M&T Bank notified the Debtors that they were in default. Subsequently, Malibu Boats confirmed with the Debtors that it would not renew dealership agreements for the upcoming model years and terminated the Debtors' multi-year dealership agreements for their Texas locations. On March 29, 2024, M&T Bank informed the Debtors of its intent to exercise remedies due to the ongoing defaults and demanded full repayment of the Floor Plan Loans.

On April 1, 2024, M&T Bank commenced a collection and receivership action against the Debtors in the State of Michigan. The Debtors ultimately agreed to the appointment of a receiver, who attempted to operate the Debtors' business for a short time until Mr. Borisch prompted the Debtors to file for bankruptcy.

On April 10, 2024, Mr. Borisch caused the Debtors to file a verified complaint against Malibu Boats in the U.S. District Court for the Eastern District of Tennessee.³ The Debtors alleged that Malibu Boats misled them with false promises, prompting them to expand their floor plan with M&T Bank and obtain additional boats, leading to unnecessary and untenable expenses. This financial strain, coupled with Malibu Boats' failure to provide promised incentives, caused the Debtors to default on their Floor Plan Loans with M&T Bank and ultimately halt their operations. The Trustee subsequently dismissed this lawsuit without prejudice, entered into a Court-approved mediation with Malibu Boats, and obtained Bankruptcy Court approval of a settlement with Malibu Boats. More information regarding this settlement is discussed in Section III.A.7 below.

III. The Chapter 11 Cases

The Debtors commenced these Chapter 11 Cases on May 20, 2024. The Chapter 11 Cases are pending before the Honorable Edward L. Morris in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division. The United States Trustee formed the Official Committee of Unsecured Creditors on June 24, 2024, as set forth in the *Appointment of the Official Unsecured Creditors' Committee* [Docket No. 197]. The members of the Committee are: (1) ACME Marine; (2) Kent Water Sports Holdings, LLC; (3) Square One Distribution; and (4) Store Capital.

A. Post-Filing Activities

1. First Day Motions and Cash Collateral Order

The Debtors filed a number of first day motions on and after the Petition Date. A complete list of such first day matters can be found on the website managed by Omni, the Debtor's claims and noticing agent. See <https://cases.omniagentsolutions.com/home?clientId=3705>. Such relief included motions to pay prepetition debts, consolidate creditors, maintain cash management systems, and similar typical relief.

In addition to these motions, the Debtors also obtained entry of several interim cash collateral orders,⁴ which, among other things, authorized the Debtors to (i) use cash collateral of M&T Bank, (ii) grant adequate protection to M&T Bank with respect to any postpetition diminution in the value of the potential interests in certain prepetition collateral, and (iii) provide

³ *Tommy's Castaic, LLC et al. v. Malibu Boats, Inc. et al.*, Case No. 3:24-CV-00166-KAC-JEM.

⁴ See Docket Nos. 52, 76, and 95.

replacement liens to M&T Bank. The Trustee negotiated the terms of a final cash collateral order,⁵ which authorized the Trustee to use cash collateral throughout the remainder of these Chapter 11 Cases.

2. Retention of Professionals

At the beginning of these Chapter 11 Cases, the Bankruptcy Court authorized the retention of Gutnicki LLP as the Debtors' bankruptcy counsel, Omni Agent Solutions, Inc., as the Debtors' claims agent, and Force Ten Partners, LLC as the Debtors' financial advisor.⁶

The Bankruptcy Court appointed Mark E. Andrews as Trustee to manage the Debtors' Estates.⁷ After appointment of the Trustee, Gutnicki LLP and Force Ten Partners LLC ceased to be employed by the Debtors' estates. Mark E. Andrews, as the Trustee, retained the services of Gray Reed, as counsel; Lain Faulkner & Co. PC, as accountant; and Trinity River Advisors, LLC, as financial advisor.⁸ Other professionals were also retained in these Chapter 11 Cases including Reed Smith LLP, as counsel to the Committee.⁹

3. Liquidation Procedures

On August 9, 2024, the Bankruptcy Court entered an order allowing the Trustee to liquidate inventory, furniture, fixtures, and equipment associated with the Debtors' dealerships (the "Final Liquidation Order").¹⁰ Specifically, the Final Liquidation Order allowed the Trustee to: (1) enter into a liquidation consulting agreement with Gordon Brothers Retail Partners, LLC; (2) follow liquidation procedures that allowed the Trustee to liquidate the Debtors' inventory of boats while also providing incentive payments for non-insider employees; (3) allow the sale of inventory, merchandise and related furniture, fixtures and equipment, free and clear of all liens, claims, and encumbrances; and (4) waive compliance with applicable state restrictions such as licenses, waiting periods, time limits, advertising restrictions, and other procedures for dealership liquidations. Pursuant to the Final Liquidation Order, the Trustee sold substantially all of the inventory, furniture, fixtures, and equipment associated with the Debtors' dealerships to various consumers and entities. The liquidation provided well over \$50 million in value for the Debtors' Estates.

4. Lease Assumption and Rejection Procedures

On August 9, 2024, the Court entered an order approving certain procedures that streamlined the process for assuming or rejecting leases and notifying affected landlords and stakeholders, ensuring compliance with section 365 of the Bankruptcy Code (the "Lease Procedures Order").¹¹ Pursuant to the Lease Procedures Order, the Trustee rejected certain unexpired leases deemed unprofitable or unnecessary to the Debtors' Estates. Additionally, the Trustee was authorized to assume key leases essential to the Debtors' operations, subject to curing

⁵ See Docket No. 272. See also Docket No. 353.

⁶ See Docket Nos. 44, 372, and 492.

⁷ See Docket Nos. 173, 174, and 178.

⁸ See Docket Nos. 178, 302, 365, and 512.

⁹ See Docket No. 384.

¹⁰ See Docket No. 364.

¹¹ See Docket No. 469.

outstanding defaults and providing adequate assurance of future performance. Through the Lease Procedures Order, the Bankruptcy Court also approved the abandonment of personal property located at rejected premises, including assets determined to be burdensome or of inconsequential value to the Estates. The Trustee rejected seven commercial leases and a consignment agreement.¹²

5. Customer Claims Administration

On September 16, 2024, the Court entered an order approving certain procedures to address, administer, and pay certain prepetition customer obligations in an effort to avoid more significant repercussions to certain of the Debtors' customers (the "Customer Claims Procedures Order").¹³ Pursuant to the Customer Claims Procedures Order, the Trustee was authorized to administer, honor, or otherwise certain claims of the Debtors' customers or prepetition obligations to or for the benefit of customers in the Trustee's sound business judgment. Such claims ranged in complexity and amount and generally fell in the following customer claim categories: (a) return of customer deposits up to \$10,000.00; (b) payment of title and registration fees; and (c) payment for collective but unremitted taxes and warranty products.

Through such procedures, the Trustee has paid out, directly or indirectly, approximately \$392,000 to resolve 112 customers' claims, representing approximately \$670,000 in scheduled, asserted, or otherwise assertable customer claims. These resolutions resulted from direct customer payments, or indirect payments of sales taxes or registrations. Other large payments resulted from indirect lien payoffs as trade-in or consignment boats were sold during the liquidation process.

6. Sale of Dealership Assets

(a) Walloon Lake Property

On August 28, 2024, the Court approved the sale of certain of the Debtors' assets at the Walloon Lake Pro-Shop and Service Center location to a third-party buyer JLB Property Holdings, LLC (the "Walloon Sale Order").¹⁴ The Court authorized the sale free and clear of liens, claims and encumbrances for the total purchase price of \$1,239,613.80, comprised of: (a) \$136,700.00 for non-watercraft pro-shop inventory and related equipment; (b) \$267,892.77 for service center inventory, parts, and related equipment; (c) \$1,011,240.98 for twenty-one (21) rental boats; and (d) less a credit of \$176,219.95, representing post-petition rents for five (5) months since the Petition Date. As part of the Court's order, the Court authorized the Trustee's rejection of certain leases set forth on Schedule 2 to the Walloon Sale Order.

(b) Clermont Property

On September 16, 2024, the Court approved the sale of certain of the Debtors' assets located at the Debtors' dealership in Clermont, Florida (the "Clermont Property") to the buyer AWS Real Estate Holdings, LLC, which acquired both the underlying real estate and related fixtures of the Clermont Property.¹⁵ The Court authorized the sale free and clear of liens, claim

¹² See Docket Nos. 538, 603, 668, 669, and 670.

¹³ See Docket No. 468.

¹⁴ See Docket No. 421.

¹⁵ See Docket No. 446.

and encumbrances for the purchase price of \$2,250,000.00 for the following assets: (a) all furniture, fixtures and equipment at the Clermont Property; (b) non-watercraft pro-shop inventory and related equipment at the Clermont Property; (c) service center parts, inventory, supplies, tools and related equipment at the Clermont Property; (d) customer data and boat purchase history solely related to sales at the Clermont Property; and (e) goodwill and general intangibles associated with the Debtors' business at the Clermont Property.

(c) Lewisville Property

Pursuant to the Lease Procedures Order and the Final Liquidation Order, the Trustee ran a competitive auction process for the Debtors' Lewisville lease and associated personal property, service parts, and pro-shop inventory. Effective as of November 30, 2024, the Trustee assumed and assigned the Lewisville Lease to Cross Creek Holdings, LLC dba Texas Malibu.¹⁶ After payment of cure costs, the Lewisville transaction netted \$836,647.07 to the Debtors' Estates.

7. Malibu Boats' Settlement

The Trustee also sought and obtained approval of a settlement with Malibu Boats that resolved significant disputes and provided substantial benefits to the Debtors' Estates.¹⁷ Following an extensive investigation and a mediation process facilitated by a retired federal judge, the Trustee negotiated the Malibu Settlement Agreement under which Malibu Boats agreed to pay \$3.5 million and withdraw a nearly \$10 million unsecured claim filed against the Debtors. In addition, Malibu Boats had the option to assume the Knoxville dealership lease (contingent on negotiating terms with the landlord), pay cure costs, and purchase inventory and equipment at that location.¹⁸

The settlement stems from disputes between the Debtors and Malibu Boats arising from alleged breached dealership agreements, alleged unpaid incentives, and claims of misrepresentation, among other issues. The Trustee carefully considered the merits of potential claims against Malibu Boats, potential defenses, and the costs associated with pursuing litigation. While the Trustee identified colorable claims, the complexity of the issues, Malibu Boats' anticipated counterclaims, and the likelihood of substantial litigation expenses made settlement a more favorable option for the Estates and their creditors.

Key stakeholders, including the Committee and M&T Bank, actively participated in and supported the Malibu Settlement Agreement. The settlement ensures significant recoveries for the Estates, reduces the general unsecured claims pool by \$10 million, and avoids the delay and uncertainty of continued disputes. After an evidentiary hearing, and agreements reached with Matthew Borisch, who objected to the settlement, the Bankruptcy Court approved the Malibu Settlement Agreement. As of the date of this Disclosure Statement, the Malibu Settlement has not yet taken effect, but may become effective once the Bankruptcy Court rules on a related motion that the Bankruptcy Court took under advisement. The Trustee or Creditor Trustee, as applicable, will file a notice of the effective date of the Malibu Settlement once the remaining conditions have been met and Malibu Boats has funded the \$3.5 million settlement approved by the Bankruptcy

¹⁶ See Docket No. 608.

¹⁷ See Docket No. 602.

¹⁸ Ultimately, Malibu Boats declined this option. Accordingly, the Trustee sold the remaining non-marine inventory, abandoned the FF&E, and rejected the Knoxville dealership lease.

Court. As discussed further herein, the Trustee's receipt of the Malibu Settlement is a condition precedent to the Effective Date of the Plan. For the Malibu Settlement to become effective, the Trustee has sought an affirmative ruling from the Bankruptcy Court, which matter remains under advisement as of the filing of this Disclosure Statement.

B. Bar Date

The Bar Date for all creditors, other than Governmental Units, to file proofs of claim against the Debtors was September 30, 2024. The Bar Date for Governmental Units was November 18, 2024. Any references in the Plan or Disclosure Statement to any Claims or Equity Interests shall not constitute an admission of the existence, nature, extent, or enforceability thereof.

Notices of the Bar Date were served on all known creditors and interested parties on or about May 31, 2024.¹⁹ Under the circumstances, the Trustee believes he has complied with applicable due process requirements for providing notice to all known creditors in these Chapter 11 Cases.

C. Claims Against the Debtors.

1. In General

The Trustee proposes to pay all Administrative Claims, including Professional Fee Claims, and Priority Tax Claims in full pursuant to Article II of the Plan. A summary of classified Claims are as follows:²⁰

Class	Designation	Estimated Amounts	Estimated Recovery
1	Priority Non-Tax Claims	\$75,000	100%
2	Prepetition Lender's Secured Claims	\$105 million	50%
3	Other Secured Claims	Unknown	100%
4	Customer Constructive Trust Claims	\$1.6 million	~45%
5	General Unsecured Claims	\$80-\$90 million	~1%
6	Contribution Claims	Unknown	0%
7	Intercompany Claims	Unknown	0%
8	Equity Interests	Unknown	0%

Treatment of these Claims under the Plan are described in Article IV herein. Administrative Claims, Professional Fee Claims, and Priority Tax Claims are not classified for purposes of voting or receiving distributions under the Plan. Instead, all such Claims shall be treated separately as unclassified claims on the terms set forth below and in Article II of the Plan.

¹⁹ See Docket No. 165.

²⁰ See Liquidation Analysis, attached hereto as **Schedule 1**. The Trustee has not engaged in a comprehensive review or reconciliation of the proofs of claims filed in the Chapter 11 Cases, and therefore these estimates are subject to change after a full reconciliation process. For purposes of this illustration, the Trustee assumes all deficiency claims arising from claims filed as secured claims (other than claims that constitute Customer Constructive Trust Claims) will be classified and treated under Class 5 as General Unsecured Claims.

2. Administrative Claims (other than Professional Fee Claims)

Allowed Administrative Claims must be filed on or before the Administrative Claim Bar Date (which is June 5, 2025). The Trustee expects to have paid most, if not all, Administrative Claims in the ordinary course of business before the Effective Date. To the extent there remain any outstanding Allowed Administrative Claims that are undisputed, holders of Allowed Administrative Claims will receive Cash from the Administrative Claim Reserve in an amount equal to the Allowed amount of such Administrative Claim on (or as soon as reasonably practicable after) the later of (A) the Effective Date, or (B) the date of entry of an order by the Bankruptcy Court allowing such Administrative Claim. Any surplus of funds in the Administrative Claims Reserve after payment of all Allowed Administrative Claims, shall be allocated to the Customer Constructive Trust Claims Reserve for distribution pursuant to section IV.D.3 of this Plan.

3. Professional Fee Claims

Professional Fee Claims shall be paid from the Professional Fee Reserve. To the extent there are insufficient funds on hand in the Professional Fee Reserve to pay all Professional Fee Claims in full, the Trustee or Creditor Trustee (as applicable) shall supplement the Professional Fee Reserve from Administrative Claims Reserve as necessary to pay all Allowed Professional Fee Claims in full. Any surplus of funds in the Professional Fee Reserve after payment of all Allowed Professional Fee Claims, shall be remitted by the Creditor Trustee to the Prepetition Lender on account of its Secured Claim.

4. U.S. Trustee Fees

All U.S. Trustee Fees that arise before the Effective Date shall be paid from the Debtors' available Cash on or before the Effective Date or when such amounts are due in the ordinary course. All such fees that arise after the Effective Date but before the closing of the Chapter 11 Cases shall be paid by the Creditor Trust. U.S. Trustee Fees will not be assessed against the initial transfer or transfers from the Trustee to the Creditor Trustee. U.S. Trustee Fees will be assessed upon any disbursement of Creditor Trust Assets, until the case is closed, dismissed or converted.

5. Priority Tax Claims

The Trustee is aware of approximately \$5.5 million in potentially outstanding prepetition tax claims that might qualify as Priority Tax Claims, subject to final review and reconciliation by the Trustee and his advisors. Except to the extent that a holder of an Allowed Priority Tax Claim has agreed or agrees to a different treatment of such Claim, each holder of an Allowed Priority Tax Claim shall receive on (or as soon as reasonably practicable after) the Effective Date, at the Trustee's or Creditor Trustee's option (as applicable): (i) Cash in an amount equal to the Allowed amount of such Claim, or (ii) regular installment payments of Cash having a total value, as of the Effective Date, equal to the Allowed amount of the Claim, and paid over a period ending not later than five (5) years after the Petition Date; or (iii) Pro Rata Cash payments to the extent of available funds in the Priority Claims Reserve in a manner not less favorable than the treatment provided to Class 5 General Unsecured Claims under this Plan. To the extent interest is required to be paid on any Priority Tax Claim, the rate of such interest shall be the rate determined under applicable nonbankruptcy law, as set forth in section 511 of the Bankruptcy Code. To the extent there are insufficient funds on hand in the Priority Claims Reserve to pay all Allowed Priority Tax Claims

in full, the Trustee or Creditor Trustee (as applicable) shall supplement the Priority Claims Reserve from proceeds of Other Retained Causes of Action as necessary to pay any remaining Allowed Priority Tax Claims in full.

IV. The Plan

Section IV of this Disclosure Statement only provides a summary of the key terms, structure, classification, treatment, and implementation of the Plan. **Although the statements contained in this Disclosure Statement include summaries of the provisions of the Plan and in documents referred to therein, this Disclosure Statement does not purport to be a complete statement of all related terms and provisions and should not be relied upon for a comprehensive discussion of the Plan.** Instead, the inclusion herein is qualified in its entirety by the terms and provisions of the Plan, the Plan Supplement, and any attachments to the Plan. The Plan itself, in addition to the Plan Supplement and any attachments to the Plan will control in all respects. To the extent there are any inconsistencies between this Section IV and the Plan, the Plan Supplement and any attachments to the Plan, the Plan, Plan Supplement and the attachments to the Plan, as applicable, shall govern.

A. Summary of Key Plan Provisions

Article	Plan Pages	Summary
I	1–7	Definitions and Rules of Interpretation and Construction. This article contains the definitions used throughout the Plan, as well as conventions for computing time and determining the governing law that will apply to various provisions in the Plan.
II	8–9	Treatment of Unclassified Claim - Administrative and Priority Claims. This article details the treatment for certain Priority and Administrative Claims, such as state and federal taxes, and compensation of bankruptcy professionals. These types of claims are afforded higher payment priority under the Bankruptcy Code and, thus, the Trustee must ensure that they are paid or otherwise dealt with before the Plan can provide payments to other claims.
III	10	Classification of Claims and Equity Interests. This article summarizes the different categories of claims. Creditors who disagree with the classification may seek an order from the Bankruptcy Court allowing Claims for voting purposes.
IV	10–12	Treatment of Claims and Equity Interests. This article details the treatments for each class of Claims. A more detailed description of the Plan treatment is set forth immediately below in Article IV.B of this Disclosure Statement.
V	12–13	Impairment; Acceptance or Rejection of the Plan; Effect of Rejection by One or More Classes. This article explains which classes are entitled to accept or reject the Plan.

Article	Plan Pages	Summary
VI	13–20	Means of Implementation. This article contains the various provisions that are critical to the implementation of the Plan, such as the limited substantive consolidation for distribution purposes.
VII	20–22	Distributions. This article sets forth the procedures for distributions under the Plan.
VIII	22–23	Procedures for Resolving and Treating Disputed Claims. This article sets forth the procedures for resolving and treating Disputed Claims.
IX	23–24	Conditions Precedent. This article lists the various conditions precedent to the Effective Date of the Plan. As set forth in section IX.C any of these conditions may be waived.
X	24–27	Effect of Consummation. This article details the effect confirmation and consummation of the Plan will have on creditors. As summarized further in Section IV.C of this Disclosure Statement, section X of the Plan contains Releases by the Trustee (Plan section X.C) and Third-Party Releases (Plan section X.D). This article also includes Exculpations (Plan section XI.B) and injunctions (Plan section XI.D).
XI	28	Retention of Jurisdiction. All plans contain provisions regarding the items over which the Bankruptcy Court retains jurisdiction after confirmation and the Effective Date. Article XI of the Plan enumerates a list of matters over which the Bankruptcy Court shall retain jurisdiction to decide, should they become issues in the future.
XII	29–30	Miscellaneous Provisions. This article contains various miscellaneous provisions, such as where to send notice and how to find the Plan Supplement and other documents.

B. Treatment of Classes of Claims and Equity Interests

The classification and treatment of Allowed Claims and Equity Interests is specified below.

1. *Class 1 — Priority Non-Tax Claims*

The Trustee or the Creditor Trustee, as applicable, may object to any Priority Non-Tax Claims on or before the Objection Deadline, unless such deadline is extended by an order of the Bankruptcy Court or agreement with the holder of the applicable Priority Non-Tax Claim. Except to the extent that a holder of an Allowed Priority Non-Tax Claim against a Debtor agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Claim, payment in full in Cash from the Priority Claim Reserve on (or as soon as reasonably practicable after) the later of (A) the Effective Date or (B) the date that entry of an order by the Bankruptcy Court allowing such Priority Non-Tax Claim becomes a Final Order. To the extent there are insufficient funds on hand in the Priority Claims Reserve to pay all Allowed Priority Non-Tax Claims in full,

the Trustee or Creditor Trustee (as applicable) shall supplement the Priority Claims Reserve with proceeds of Other Retained Causes of Action, as necessary to pay any remaining Allowed Priority Non-Tax Claims in full.

Class 1 is unimpaired and deemed to accept the Plan. The Trustee will not solicit votes from holders of Class 1 Priority Non-Tax Claims.

2. Class 2 — Prepetition Lender's Secured Claims

On the Effective Date, the Trustee or Creditor Trustee (as applicable) shall pay to the Prepetition Lender, in partial satisfaction of the Allowed Prepetition Lender's Secured Claims, all Cash held by the Debtors or the Trustee (including, without limitation, the Malibu Settlement Payment), except as necessary to fund the Plan Reserves. In the event that the Malibu Settlement Payment is received after the Effective Date, the Creditor Trustee shall promptly remit such funds to the Prepetition Lender. After the Effective Date, the Creditor Trustee shall promptly remit to the Prepetition Lender, in partial satisfaction of its Allowed Prepetition Lender's Secured Claim, any additional Cash receipts obtained after the Effective Date from consummated sales of inventory, refunds of unearned insurance premiums resulting from cancelled or terminated insurance policies, merchant card receipts remitted from WorldPay, LLC or other merchant card vendors, or any other sources that are not Creditor Trust Assets. In addition, on the Effective Date, the Trustee or Creditor Trustee (as applicable) shall assign to the Prepetition Lender the Assigned Causes of Action. Any remaining balances of the Prepetition Lender's Secured Claims, after such payments, shall be treated as a deficiency General Unsecured Claim in Class 5.

Class 2 is impaired and entitled to vote on the Plan. The Trustee will solicit votes from holders of Class 2 Prepetition Lender's Secured Claims.

3. Class 3 – Other Secured Claims

Except to the extent a holder of an Allowed Other Secured Claim agrees to a different treatment, each holder of an Allowed Other Secured Claim shall at the option of the Trustee or Creditor Trustee (as applicable), upon consultation with the Committee, receive either of the following treatments on the Effective Date or as soon as reasonably practicable thereafter: (i) payment in full, in Cash; (ii) the collateral securing such Allowed Other Secured Claim; or (iii) such other treatment that renders such Allowed Other Secured Claim unimpaired in accordance with section 1124 of the Bankruptcy Code.

As discussed above, the Trustee believes he has liquidated all or substantially all assets that might have served as collateral for Other Secured Claims. The only Claims classified in this Class 3 will be the holders of Other Secured Claims whose collateral remains in the Trustee's possession or control. All other claims filed as Secured Claims will be classified and treated for purposes of the Plan as Class 5 General Unsecured Claims.

Class 3 is unimpaired under the Plan and the holders of Claims in Class 3 are therefore deemed to accept the Plan. The Trustee will not solicit votes from holders of Class 3 Other Secured Claims.

4. Class 4 – Customer Constructive Trust Claims

On or before the first Business Day that is 45 days after the Customer Constructive Trust Claims Objection Deadline, each holder of an Allowed Customer Constructive Trust Claim that is a Consenting Creditor shall receive from the Customer Constructive Trust Claims Reserve, in full satisfaction of such Claim against the Estates and in exchange for the Third-Party Releases, payment from the Creditor Trustee in Cash in the amount of 45% of the Allowed Customer Constructive Trust Claim.

To the extent there are insufficient funds on hand in the Customer Constructive Trust Claims Reserve to pay 45% of all Allowed Customer Constructive Trust Claims, the Creditor Trustee shall supplement the Customer Constructive Trust Claims Reserve with proceeds of Other Retained Causes of Action as necessary to pay 45% of any remaining Allowed Customer Constructive Trust Claims.

All holders of Customer Constructive Trust Claims that accept this treatment and do not opt out of the Third-Party Releases will be entitled to receive an estimated 45% settlement payments from the Customer Constructive Trust Claims Reserve.

While the claims register indicates an outstanding balance of approximately \$1.6 million in asserted Claims that would be classified as Customer Constructive Trust Claims, as discussed above in Section III.A.5, the Trustee believes a substantial portion of such Claims have been paid or otherwise resolved pursuant to the Customer Claims Procedures Order. The Trustee or Creditor Trustee, as applicable, will complete the expedited reconciliation process following confirmation of the Plan to allow for the expedited payment of the remaining Customer Constructive Trust Claims, consistent with this provision of the Plan.

Any holder of a Customer Constructive Trust Claim that opts out of the Third-Party Releases: (i) will not receive any payments from the Constructive Trust Claims Reserve; (ii) will retain all rights and defenses to pursue all remedies against the Released Parties; and (iii) will be treated as a Class 5 General Unsecured Creditor.

For more information on the Third-Party Releases, please review Section IV.C.3 below.

For the avoidance of doubt, the term “Released Parties” does not include Matthew A. Borisch or any of his affiliates or related companies.

Class 4 Claim holders are impaired under the Plan. The Trustee will solicit votes from holders of Class 4 General Unsecured Claims.

5. Class 5 – General Unsecured Claims

Except to the extent that a holder of an Allowed General Unsecured Claim against a Debtor agrees to less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive a Creditor Trust Interest. Distributions to holders of Allowed General Unsecured Claims who receive a Creditor Trust Interest shall be on a Pro Rata basis with all other Allowed General Unsecured Claims, as set forth in the Creditor Trust Agreement. Notwithstanding the foregoing, solely for purposes of any distribution made from the portion of the Contributed Cash Collateral funded into the Creditor Trust Reserve, the Prepetition Lender's Allowed General Unsecured Claim shall be subordinated to the holders of all other Allowed General Unsecured Claims.

Class 5 Claim holders are impaired under the Plan. The Trustee will solicit votes from holders of Class 5 Claims.

6. Class 6 – Contribution Claims

Except to the extent that a holder of a Contribution Claim against a Debtor agrees to less favorable treatment, each holder of a Contribution Claim that is liable with a Debtor on any other Allowed Claim shall be treated in accordance with section 509 of the Bankruptcy Code, including the subordination of any distributions on account of such Contribution Claim in accordance therewith. A holder of a Contribution Claim that is liable with a Debtor on any Allowed Claim (each, an "Underlying Claim") and that pays such Underlying Claim in full, shall, to the extent provided by section 509 of the Bankruptcy Code, be subrogated to the rights of the holder of such Underlying Claim under and for purposes of the Plan, and such subrogated Claim shall be treated under the applicable Class of such Underlying Claim, in accordance with the Plan. Any payment of an Underlying Claim by a holder of a Contribution Claim shall be presumed to be solely on account of such holder's own liability on account of such Underlying Claim and shall not be deemed to be a payment of the Underlying Claim in full within the meaning of section 509(c) of the Bankruptcy Code until so agreed by the Creditor Trustee or otherwise determined by the Bankruptcy Court.

Holders of Contribution Claims are impaired under the Plan and are entitled to vote on the Plan. The Trustee will solicit votes from holders of Class 6 Claims.

7. Class 7 – Intercompany Claims

On the Effective Date, all Intercompany Claims by and against the Debtors shall be settled, cancelled, released, and discharged without payment or distribution of any Cash or other property. Holders of Intercompany Claims are conclusively deemed to have rejected the Plan and are not entitled to vote. Class 7 Claim holders are impaired and will neither receive nor retain any property under the Plan on account of such Claims. As such, holders of Class 7 Intercompany Claims are deemed to reject the Plan and will not receive ballots.

8. Class 8 – Equity Interests

On the Effective Date, all Equity Interests in each Debtor shall be cancelled, extinguished, and of no further force or effect. Holders of Equity Interests shall neither retain nor receive any property under the Plan on account of such Equity Interests. Holders of Equity Interests are conclusively deemed to have rejected the Plan and are not entitled to vote.

C. Release, Exculpation, and Injunction Provisions

Article X of the Plan provides for standard trustee releases, exculpations, and injunctions to ensure the enforceability of the Plan and prior orders of the Bankruptcy Court. The Plan also contains third-party releases.

The Trustee believe that the trustee releases, third-party releases, exculpations, and injunctions set forth in the Plan are appropriate and in accordance with applicable law because, among other things, the releases are narrowly tailored to the Chapter 11 Cases, consistent with applicable law, and justified by the settlements negotiated under the Plan.

The Trustee further believe that such releases, exculpations, and injunctions are a necessary part of the Plan. The Trustee will be prepared to meet its burden to establish the basis for the releases, exculpations, and injunctions for each of the relevant parties and each Exculpated Party as part of confirmation of the Plan.

1. Exculpatory Provisions

The Exculpated Parties under the Plan are limited to: (1) the Trustee, (2) the members of the Committee.

Section X.B of the Plan proposes to exculpate the Exculpated Parties from liabilities arising from any acts or omissions occurring during the Chapter 11 Cases. Specifically, section X.B of the Plan provides as follows:

Upon the Effective Date, to the fullest extent permissible under applicable law, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from, any liability to any holder of a Claim or Equity Interest, or any other party in interest, for any claim or cause of action arising from, relating to, or connected with the administration of the Chapter 11 Cases, the Disclosure Statement, the preparation of the Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the occurrence of the Effective Date, or the administration of the Plan or property to be distributed under the Plan, except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence. The Exculpated Parties shall be deemed to have participated in good faith in connection with the above and entitled to the protection of section 1125(e) of the Bankruptcy Code. Each Exculpated Party shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

2. Releases by the Trustee

Section X.C of the Plan provides for releases of certain claims and Causes of Action the Trustee or the Estates may hold against third parties, including derivative claims. Other Retained Causes of Action will be transferred to the Creditor Trust. Any Cause of Action that is not enumerated as an Other Retained Cause of Action will be released on the Effective Date of the Plan.

For the avoidance of doubt, nothing in the Plan shall be deemed to release claims against Matthew A. Borisch or his related entities. Any and all such claims will be expressly reserved as Retained Causes of Action and transferred to the Creditor Trust for further review, prosecution, and, if necessary, litigation.

3. Third-Party Releases

Section X.D of the Plan propose releases of claims by third parties. Specifically, the key Plan definitions are as follows:

Released Parties means collectively the following, in each case in its capacity as such with each being a “Released Party”: (a) the Trustee; (b) each Debtor; (c) the Committee and its members; (d) the Creditor Trustee; and (e) M&T Bank and its current and former officers, directors, managers, attorneys and other professional advisors; *provided, however*, that the Borisch Parties shall not be “Released Parties.”

Releasing Parties means collectively the following, in each case in its capacity as such with each being a “Releasing Party”: (a) the Debtor; (b) the Trustee; (c) the Committee; (d) the Creditor Trustee; and (e) Consenting Creditors.

Consenting Creditors means collectively the following, in each case in its capacity as such with each being a “*Consenting Creditor*”: (a) all holders of Claims or Equity Interests that vote to accept or are deemed to accept the Plan and who do not check the box on the applicable Ballot to affirmatively opt out of the Third-Party Releases; and (b) all holders of Claims or Equity Interests that abstain from voting on the Plan, vote to reject the Plan, or are deemed to reject the Plan and who do not (i) check the box on the applicable Ballot to affirmatively opt out of the Third-Party Releases or (ii) object to the Plan in respect of the Third-Party Releases.

Third-Party Releases means those releases provided under section X.D hereof.

Section X.D of the Plan provides:

Except as otherwise expressly set forth in the Plan or the Confirmation Order, and in exchange for other good and valuable consideration, the adequacy of which is hereby confirmed, each of the Releasing Parties shall be deemed to have expressly, conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each Released Party, to the fullest extent permissible under applicable law, from any and all claims, causes of action, interests, damages, remedies, demands, rights, actions (including Avoidance Actions), suits, debts, sums of money, obligations, judgments, liabilities, accounts, defenses, offsets, counterclaims, crossclaims, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, now existing or hereafter arising, contingent or non-contingent, liquidated or unliquidated, choate or inchoate, secured or unsecured, assertable, directly or derivatively (including any Causes of Action asserted or assertable on behalf of the Debtors, the Trustee, the Creditor Trust, or the Estates, as applicable), matured or

unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise, arising from, relating to, or connected with the Debtors (or any predecessor entity) or the Chapter 11 Cases or affecting property of the Debtors' Estates, the Plan or the administration and implementation of the Plan, or based upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date.

The Released Parties shall be deemed to have expressly, conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each Consenting Creditor to the fullest extent permissible under applicable law, from any and all claims, causes of action, interests, damages, remedies, demands, rights, actions (including Avoidance Actions), suits, debts, sums of money, obligations, judgments, liabilities, accounts, defenses, offsets, counterclaims, crossclaims, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, now existing or hereafter arising, contingent or non-contingent, liquidated or unliquidated, choate or inchoate, secured or unsecured, assertable, directly or derivatively, matured or unmaturred, suspected or unsuspected, in contract, tort, law, equity, or otherwise, arising from, relating to, or connected with, the Debtors (or any predecessor entity) or the Chapter 11 Cases or affecting property of the Debtors' Estates, the Plan or the administration and implementation of the Plan, or based upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date.

Notwithstanding anything contained herein to the contrary, the foregoing releases do not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, or (ii) the rights of holders of Allowed Claims to receive Distributions under the Plan.

Each of the Releasing Parties knowingly grants the Third-Party Releases notwithstanding that each Releasing Party may hereafter discover facts in addition to, or different from, those which either such Releasing Party now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and each Releasing Party expressly waives any and all rights that such Releasing Party may have under any statute or common law principle which would limit the effect of the Third-Party Release to those claims actually known or suspected to exist as of the Effective Date. In connection with their agreement to the foregoing Third-Party Releases, the Releasing Parties knowingly and voluntarily waive and relinquish any and all provisions, rights, and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, which governs or limits a person's release of unknown claims, comparable or equivalent to California Civil Code § 1542, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

4. Injunction and Gate Keeping

Sections X.E and X.F of the Plan propose to permanently enjoin persons from pursuing Claims or Causes of Action that are released, exculpated, or otherwise dealt with under the Plan. Any Claims or Causes of Action that a Person may wish to assert against Exculpated Parties must be the subject of a motion for authority to pursue such claim, and filed before the Bankruptcy Court to determine whether such claim or cause of action was released under the Plan.

Specifically, section X.E of the Plan provides as follows:

Upon the Effective Date, and except as otherwise expressly provided in this Plan, all Persons who have held, hold, or may hold Claims against or Equity Interests in any Debtor are permanently enjoined, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or Equity Interest against the Estates, or other entity released, discharged, or exculpated hereunder, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against any of the Debtors' Estates with respect to any such Claim or Equity Interest, (iii) creating, perfecting, or enforcing any encumbrance of any kind against any of the Debtors, or against the property or interests in property of any of the Debtors, as applicable with respect to any such Claim or Equity Interest, (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from any of the Debtors' Estates, or against the property or interests in property of any of the Debtors' Estates with respect to any such Claim or Equity Interest, or (v) pursuing any Claim released or exculpated under the Plan.

Each holder of a Claim or Equity Interest shall be bound by the injunction provisions set forth in this section. The Trustee, the Released Parties, or the Exculpated Parties shall be entitled to seek sanctions by motion for contempt or other appropriate proceeding for any violations of the Confirmation Order or this Plan, including the Exculpation, Injunction and Stay, and Gate Keeping provisions set forth in this Plan.

Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect at least until the Effective Date.

Moreover, section X.F of the Plan contains the following gatekeeping provision:

No Person or Entity may commence or pursue a claim or cause of action of any kind against any Exculpated Party or any Professional Person that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a claim or cause of action subject to sections X.B, X.C, X.D, and X.E in this Plan, including any claim or cause of action that was asserted or assertable on behalf of the Debtors, including any derivative, alter ego, successor liability, or similar claims and Causes of Action based on general harm to the Debtors, holders of Claims and Equity Interests, or any other party in interest, or a theory of lack of separation

between the Debtors and an Exculpated Party or Professional Person, without the Bankruptcy Court (i) first determining, upon motion that attaches a copy of the proposed complaint or petition, and after notice and a hearing, that such claim or cause of action represents a direct (as opposed to derivative) and colorable claim of any kind and (ii) specifically authorizing such Person to bring such claim or cause of action against the any Exculpated Party or Professional Person. At the hearing on such motion, the Bankruptcy Court shall have sole and exclusive jurisdiction to assess whether the proposed complaint or petition satisfies the applicable Federal Rules of Civil Procedure (or other applicable rules of procedure) and to determine whether such claim or cause of action represents a colorable claim of any kind. For the avoidance of doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any claims or Causes of Action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court reserves jurisdiction to adjudicate any such claims to the maximum extent provided by applicable law.

V. Risk Factors

BEFORE TAKING ANY ACTION WITH RESPECT TO THE PLAN, HOLDERS OF CLAIMS AGAINST THE DEBTORS WHO ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT, THE PLAN, AND THE PLAN SUPPLEMENT AND THE OTHER DOCUMENTS REFERRED TO, OR INCORPORATED BY REFERENCE INTO THIS DISCLOSURE STATEMENT, INCLUDING OTHER DOCUMENTS FILED WITH THE BANKRUPTCY COURT IN THE CHAPTER 11 CASES. THE RISK FACTORS SET FORTH BELOW SHOULD NOT BE REGARDED AS THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTORS' RESTRUCTURING AND CONSUMMATION OF THE PLAN.

A. Bankruptcy Law Considerations

1. The Trustee Will Consider All Available Alternatives If the Plan Transactions Are Not Implemented, and Such Alternatives May Result in Lower Recoveries for Holders of Claims Against the Debtors.

If the Plan is not confirmed and implemented, the Trustee will consider all available alternatives, including an alternative chapter 11 plan, conversion to chapter 7, or a structured dismissal. The terms of any alternative may be less favorable to holders of Claims against the Debtors than the terms of the Plan as described in this Disclosure Statement.

Any material delay in the confirmation of the Plan, the Chapter 11 Cases, or the threat of rejection of the Plan by the Bankruptcy Court, would add substantial expense and uncertainty to the process, without providing for any greater recoveries than what is already proposed in the Plan.

2. Risks Related to Confirmation and Consummation of the Plan.

(a) Conditions Precedent to Confirmation May Not Occur.

As more fully set forth in Article IX of the Plan, confirmation of the Plan and the occurrence of the Effective Date are each subject to a number of conditions precedent. If each condition precedent to confirmation is not met or waived, the Plan may not be confirmed. Moreover, if each condition precedent to the Effective Date, such as the receipt of the Malibu Settlement, is not met or waived, the Effective Date may not take place. In this case, the Malibu Settlement requires an affirmative ruling from the Bankruptcy Court before it can go effective, and the Bankruptcy Court has not yet ruled on this matter as of the filing of the Disclosure Statement. In the event that the Plan is not confirmed or does not become effective, the Chapter 11 Cases may convert to a case under chapter 7 of the Bankruptcy Code or be dismissed.

(b) Parties in Interest May Object to the Plan's Classification of Claims and Equity Interests.

Section 1122 of the Bankruptcy Code provides that a plan may place a Claim or an Equity Interest in a particular Class only if such Claim or Equity Interest is substantially similar to the other Claims or Equity Interests in such Class. The Trustee believes the classification of Claims and Equity Interests under the Plan complies with the requirements of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion, and the Trustee may need to modify the Plan. Such modification could require a resolicitation of votes on the Plan. The Plan may not be confirmed if the Bankruptcy Court determines that the Plan's classifications of Claims and Equity Interests is not appropriate.

(c) The Voting Requirements May Not Be Satisfied.

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Trustee intends to seek, as promptly as practicable thereafter, confirmation of the Plan. In the event that sufficient votes are not received, the Trustee may need to seek to confirm an alternative chapter 11 plan or transaction. There can be no assurance that the terms of any such alternative chapter 11 plan or other transaction would be similar or as favorable to the holders of Allowed Claims as those proposed in the Plan. The Trustee does not believe that any such transaction exists or is likely to exist that would be more beneficial than the Plan.

(d) The Trustee May Not Be Able to Secure Confirmation.

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the Bankruptcy Court that: (i) the plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting Classes; (ii) the plan is not likely to be followed by a liquidation or a need for further financial reorganization unless liquidation or reorganization is contemplated by the plan; and (iii) the value of distributions to non-accepting holders of Claims and Equity Interests within a particular Class under the plan will not be less than the value of distributions such holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting holder of an Allowed Claim might challenge whether the voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that the voting results are appropriate, the Bankruptcy Court can decline to confirm the Plan if it finds that any of the statutory requirements for confirmation have not been met. If the Plan is not confirmed, it is unclear what distributions, if any, holders of Allowed Claims would receive with respect to their Allowed Claims.

Subject to the limitations contained in the Plan, the Trustee reserves the right to modify the Plan and seek confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Any modifications could result in a less favorable treatment of any Class than the treatment currently provided in the Plan, such as a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution whatsoever under the Plan.

(e) Releases, Injunctions, and Exculpations Provisions May Not Be Approved.

Article X of the Plan provides for certain releases, injunctions, and exculpations. The releases, injunctions, and exculpations provided in the Plan are subject to objection by parties in interest and, therefore, may not be approved. If the releases are not approved, certain parties may withdraw their support for the Plan. The releases by the Trustee and the exculpation provided to the Exculpated Parties are necessary to the success of the Plan because the Exculpated Parties have made significant contributions to the Trustee's proposed exit from chapter 11 with the expectation of receiving the full benefit of the Plan's release and exculpation provisions. The Third-Party Releases are necessary to the success of the Plan because the Released Parties have made significant monetary contributions to the Trustee's proposed exit from chapter 11 and to satisfy certain Allowed Claims pursuant to the Plan with the expectation of receiving Third-Party Releases. The Plan's release and exculpation provisions are inextricable components of Plan.

(f) The Trustee May Not Be Able to Pursue Nonconsensual Confirmation Over Certain Impaired Non-Accepting Classes.

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, the Bankruptcy Court may nevertheless confirm a plan at the proponent's request if at least one impaired class (as defined under section 1124 of the Bankruptcy Code) has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and as to each impaired class that has not accepted the plan, the Bankruptcy Court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired class(es). The Trustee believes that the Plan satisfies these requirements, and the Trustee may request such nonconsensual confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion. In addition, the pursuit of nonconsensual confirmation or Consummation of the Plan may result in, among other things, increased professional fees.

(g) The Chapter 11 Cases May Be Converted.

If the Bankruptcy Court finds that it would be in the best interest of creditors and/or the debtor in a chapter 11 case, the Bankruptcy Court may convert the bankruptcy cases to cases under chapter 7 of the Bankruptcy Code. In such event, one or more chapter 7 trustees would be appointed, or elected, to liquidate the Debtors' remaining assets for distribution in accordance with the priorities established by the Bankruptcy Code. The Trustee believes that liquidation under chapter 7 would reduce distributions being made to creditors than those provided for in the Plan because significant additional administrative expenses would result from the appointment of a chapter 7 trustee.

(h) The Chapter 11 Case May Be Dismissed.

If the Bankruptcy Court finds that the Trustee has incurred substantial or continuing loss or diminution to the Estates and lacks the ability to effectuate substantial consummation of a confirmed plan, or otherwise determines that cause exists, the Bankruptcy Court may dismiss the Chapter 11 Cases. In such event, the Trustee would be unable to confirm the Plan, which may ultimately result in significantly decreased distributions than those provided for in the Plan.

(i) Risk of Non-Occurrence of the Plan Effective Date.

Although the Trustee believes the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing or as to whether the Effective Date will, in fact, occur. As more fully set forth in Article IX of the Plan, the Effective Date is subject to a number of conditions precedent. If such conditions precedent are not satisfied or waived, the Effective Date will not take place.

B. Risks Related to Recoveries Under the Plan

The estimated recoveries for distributions under the Plan or Creditor Trust are based on numerous assumptions (the realization of many of which will be beyond the control of the Trustee), including: (a) the successful confirmation of the Plan; (b) an assumed date for the occurrence of the Effective Date; and (c) the final amount of Administrative Claims and Priority Claims, respectively.

C. Miscellaneous Risk Factors and Disclaimers

1. The Financial Information Is Based on the Debtors' Books and Records.

In preparing this Disclosure Statement, the Trustee relied on financial data derived from the Debtors' books and records. While the Trustee believes that such financial information fairly reflects the Debtors' financial condition, the Trustee is unable to warrant or represent that the financial information contained in this Disclosure Statement (or any information in any of the exhibits to this Disclosure Statement) is without inaccuracies.

2. No Legal or Tax Advice Is Provided by This Disclosure Statement.

This Disclosure Statement is not legal advice to any Person. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each reader should consult its

own legal and financial advisor(s) with regard to any legal, tax, and other matters concerning its Claim. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote to accept or reject the Plan or whether to object to confirmation.

3. No Admissions Made.

The information and statements contained in this Disclosure Statement will neither (a) constitute an admission of any fact or liability by any Entity (including the Debtors) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, holders of Allowed Claims or Equity Interests, or any other parties in interest.

4. Failure to Identify Litigation Claims or Projected Objections.

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim is, or is not, identified in this Disclosure Statement. Subject to the release provisions of the Plan, the Creditor Trustee may seek to investigate, file, and prosecute Causes of Action.

5. Information Provided by the Debtors and Relied Upon by Trustee's Advisors.

The Trustee and his professionals have relied upon information provided to them in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Trustee have performed certain due diligence in connection with the preparation of this Disclosure Statement and the exhibits to this Disclosure Statement, they have not independently verified the information contained in this Disclosure Statement or the information in the exhibits to this Disclosure Statement.

6. No Representations Outside This Disclosure Statement Are Authorized.

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, should not be relied upon by you in arriving at your decision. Those who are entitled to vote to accept or reject the Plan should promptly report unauthorized representations or inducements to counsel to the Trustee and the Office of the United States Trustee for the Northern District of Texas.

7. No Duty to Update

The statements contained in this Disclosure Statement are made by the Trustee as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Trustee has no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

VI. Certain U.S. Federal Tax Consequences of the Plan

A. Introduction

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtors and certain holders of Claims. This summary is based on the Internal Revenue Code of 1986, as amended (the “Tax Code”), the U.S. Treasury regulations promulgated thereunder (the “Treasury Regulations”), judicial decisions and published administrative rules and pronouncements of the Internal Revenue Service (the “IRS”), all as in effect on the date hereof (collectively, “Applicable Tax Law”). Changes in the rules or new interpretations of the rules may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below. The Trustee has not requested, and will not request, any ruling or determination from the IRS or any other taxing authority with respect to the tax consequences discussed herein, and the discussion below is not binding upon the IRS or the courts. Additionally, no legal opinions have been requested or obtained from counsel with respect to any of the tax aspects of the Plan, and no such opinion shall be requested or obtained. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This summary does not address non-U.S., state, or local tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to a Claim or Equity Interest holder in light of such holder’s individual circumstances or to a holder that may be subject to special tax rules (such as Persons who are related to a Debtor within the meaning of the Tax Code, Persons subject to the alternative minimum tax or the “Medicare” tax on net investment income, or the base erosion and anti-abuse tax, non-U.S. taxpayers, broker-dealers, banks, mutual funds, insurance companies, individual retirement or other tax-deferred accounts, persons required to report income on an applicable financial statement, financial institutions, small business investment companies, persons holding Claims or Equity Interests as part of a straddle, hedge, constructive sale, conversion transaction, or other integrated transaction, regulated investment companies, tax exempt organizations, pass-through entities, beneficial owners of pass-through entities, subchapter S corporations, persons using a mark-to-market method of accounting, holders of Claims who are themselves in bankruptcy, U.S. holders whose functional currency is not the U.S. dollar, U.S. expatriates, and passive foreign investment companies). Further, this summary assumes that each holder holds only Claims in a single Class and holds each Claim only as a “capital asset” (within the meaning of section 1221 of the Tax Code). This summary also assumes that the various debt and other arrangements to which the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form. This summary does not discuss differences in tax consequences to holders of Claims that act or receive consideration in a capacity other than any other holder of a Claim of the same Class or Classes, and the tax consequences for such holders may differ materially from those described below. This summary does not address the U.S. federal income tax consequences to (1) holders that have Claims that are Unimpaired or otherwise entitled to payment in full in Cash under the Plan (Classes 1 and 3), or (2) holders that are deemed to reject the Plan (Classes 5 and 6).

For purposes of this discussion, a “U.S. holder” is a holder of a Claim that is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other Entity treated as a corporation for U.S. federal income tax purposes) created

or organized under the laws of the United States, any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (4) a trust (a) if a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more United States persons have authority to control all substantial decisions of the trust or (b) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person (within the meaning of section 7701(a)(30) of the Tax Code). For purposes of this discussion, a "non-U.S. holder" is any holder of a Claim that is not a U.S. holder other than any partnership (or other Entity treated as a partnership or other pass-through Entity for U.S. federal income tax purposes).

If a partnership (or other Entity treated as a partnership or other pass-through Entity for U.S. federal income tax purposes) is a holder of a Claim, the tax treatment of a partner (or other beneficial owner) generally will depend upon the status of the partner (or other beneficial owner) and the activities of the Entity. Partners (or other beneficial owners) of partnerships (or other pass-through entities) that are holders of Claims should consult their respective tax advisors regarding the U.S. federal income tax consequences of the Plan.

THE FOLLOWING SUMMARY IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM OR INTEREST. EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN, AND OTHER TAX CONSEQUENCES OF THE PLAN AND DISCLOSURE STATEMENT.

B. Certain U.S. Federal Income Tax Consequences to the Debtors and Creditor Trust.

1. General Tax Consequences to Debtors.

In general, absent an exception, a debtor will realize and recognize cancellation of debt income ("CODI"), for U.S. federal income tax purposes, upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of CODI incurred is generally the amount by which the indebtedness discharged exceeds the value of any consideration given in exchange therefor. Certain statutory or judicial exceptions may apply to limit the amount of CODI incurred for U.S. federal income tax purposes.

Under section 108 of the Tax Code, a debtor is not required to include CODI in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as a consequence of such exclusion, a debtor must reduce its tax attributes by the amount of CODI that it excluded from gross income pursuant to the rule discussed in the preceding sentence. Such reduction in tax attributes occurs only after the tax for the year of the debt discharge has been determined. In general, tax attributes will be reduced in the following order: (a) net operating losses ("NOLs") and NOL carryforwards; (b) general business credit carryovers; (c) minimum tax credit carryovers; (d) capital loss carryovers; (e) tax basis in assets (but not below the amount of liabilities to which the debtor remains subject); (f) passive activity loss and credit carryovers; and (g) foreign tax credit carryovers. Alternatively, a debtor with CODI may elect first to reduce the basis of its depreciable assets pursuant to section 108(b)(5) of the Tax Code. Any excess CODI over the amount of

available tax attributes is not subject to U.S. federal income tax and has no other U.S. federal income tax impact.

In the case of entities taxed for U.S. federal income tax purposes as partnerships, many provisions of section 108 of the Tax Code are applied at the partner level, including the gain exclusion and tax attribute reduction rules generally described above. As a result of the transactions contemplated by the Plan, the Debtors may realize CODI. The exact amount of any CODI that will be realized by each Debtor, and the amount of any tax attributes required to be reduced, cannot be known with certainty at this time.

In some cases, the IRS will treat the amount of liabilities from which a debtor is discharged as amount realized from a sale or disposition of property instead of CODI. In such cases a Debtor may recognize gain for the difference between the amount of liabilities discharged plus the fair market value of other consideration received in excess of the Debtor's adjusted tax basis in the property transferred. The exact amount of any sale proceeds or treatment thereof cannot be known with certainty at this time.

2. Certain Federal Income Tax Issues Related to the Creditor Trust

The Creditor Trust is intended to qualify as a liquidating trust for federal income tax purposes. In general, a liquidating trust is not a separate taxable entity but rather is treated for federal income tax purposes as a "grantor" trust (i.e., a pass-through entity). The IRS, in Revenue Procedure 94-45, 1994-28 I.R.B. 124, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Creditor Trust has been structured with the intention of complying with such general criteria. Pursuant to the Plan and Creditor Trust Agreement, and in conformity with Revenue Procedure 94-45, *supra*, all parties (including the Creditor Trustee and the holders of beneficial interests in the Creditor Trust) are required to treat for federal income tax purposes, the Creditor Trust as a grantor trust of which the holders of Allowed Class 4 Consumer Constructive Trust Claims and Class 5 General Unsecured Claims are the owners and grantors. While the following discussion assumes that the Creditor Trust would be so treated for federal income tax purposes, no ruling has been requested from the IRS concerning the tax status of the Creditor Trust as a grantor trust. Accordingly, there can be no assurance that the IRS would not take a contrary position to the classification of the Creditor Trust as a grantor trust. If the IRS were to challenge successfully such classification, the federal income tax consequences to the Creditor Trust and the beneficiaries thereof could materially vary from those discussed herein.

In general, each creditor who is a beneficiary of the Creditor Trust will recognize gain or loss in an amount equal to the difference between (i) the "amount realized" by such beneficiary in satisfaction of its Allowed Class 4 Consumer Constructive Trust Claims and Class 5 General Unsecured Claims, and (ii) such beneficiary's adjusted tax basis in such Claim. The "amount realized" by a beneficiary will equal the sum of cash and the aggregate fair market value of the property received by such party pursuant to the Plan (such as a beneficiary's undivided beneficial interest in the assets transferred to the Creditor Trust). Where gain or loss is recognized by a beneficiary in respect of its Allowed Class 4 Consumer Constructive Trust Claims and Class 5 General Unsecured Claims, the character of such gain or loss (*i.e.*, long-term or short-term capital, or ordinary income) will be determined by a number of factors including the tax status of the party,

whether the Claim constituted a capital asset in the hands of the party and how long it had been held, whether the Claim was originally issued at a discount or acquired at a market discount and whether and to what extent the party had previously claimed a bad debt deduction in respect of the Claim.

For all federal income tax purposes, all parties (including the Creditor Trustee and the holders of beneficial interests in the Creditor Trust) will treat the transfer of assets to the Creditor Trust, in accordance with the terms of the Plan and Creditor Trust Agreement, as a transfer of those assets directly to the holders of the applicable Allowed Class 4 Consumer Constructive Trust Claims and Class 5 General Unsecured Claims followed by the transfer of such assets by such holders to the Creditor Trust. Consistent therewith, all parties will treat the Creditor Trust as a grantor trust of which such holders are to be owners and grantors. Thus, such holders (and any subsequent holders of interests in the Creditor Trust) will be treated as the direct owners of an undivided beneficial interest in the assets of the Creditor Trust for all federal income tax purposes. Accordingly, each holder of a beneficial interest in the Creditor Trust will be required to report on its federal income tax return(s) the holder's allocable share of all income, gain, loss, deduction or credit recognized or incurred by the Creditor Trust.

The Creditor Trust's taxable income will be allocated to the beneficiaries in accordance with each such beneficiary's pro rata share. The character of items of income, deduction and credit to any holder and the ability of such holder to benefit from any deductions or losses may depend on the particular situation of such holder. The federal income tax reporting obligation of a holder of a beneficial interest in the Creditor Trust is not dependent upon the Creditor Trust distributing any cash or other proceeds. Therefore, a holder of a beneficial interest in the Creditor Trust may incur a federal income tax liability regardless of the fact that the Creditor Trust has not made, or will not make, any concurrent or subsequent distributions to the holder. After the Effective Date, generally any amount that a creditor receives as a distribution from the Liquidating Trust in respect of its beneficial interest in the Creditor Trust should not be included, for federal income tax purposes, in the party's amount realized in respect of its Allowed Class 4 Consumer Constructive Trust Claims and Class 5 General Unsecured Claims but should be separately treated as a distribution received in respect of such party's beneficial interest in the Creditor Trust. If a holder incurs a federal tax liability but does not receive distributions commensurate with the taxable income allocated to it in respect of its beneficial interests in the Creditor Trust it holds, the holder may be allowed a subsequent or offsetting loss.

The Creditor Trustee shall file income tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this section. The Creditor Trustee shall annually send to each record holder of a beneficial interest a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns. The Creditor Trust's taxable income, gain, loss, deduction, or credit will be allocated among the beneficial holders of a Creditor Trust interest in accordance with each holder's relative beneficial Creditor Trust interest.

Events subsequent to the date of this Disclosure Statement, such as the enactment of additional tax legislation, could also change the federal income tax consequences of the Plan and

the transactions contemplated thereunder. Additionally, all federal income tax issues related to the Creditor Trust are not described herein and beneficiaries are urged to consult their own tax advisors regarding their holding of Creditor Trust interests.

C. Withholding and Information Reporting

Generally, information reporting requirements will apply to all payments or distributions under the Plan, unless the recipient is exempt, such as a corporation. Additionally, a holder may be subject to backup withholding at applicable rates, unless the holder (i) is a corporation or other person exempt from backup withholding and, when required, demonstrates this or (ii) is a United States Person (as defined by section 7701(a)(30) of the Tax Code) that provides a correct taxpayer identification number (“TIN”) on Internal Revenue Service Form W-9 (or a suitable substitute form) and provides the other information and makes the representations required by such form and complies with the other requirements of the backup withholding rules. A holder may become subject to backup withholding if, among other things, the holder (i) fails to properly report interest and dividends for U.S. federal income tax purposes or (ii) in certain circumstances, fails to certify, under penalty of perjury, that it has furnished a correct TIN. A holder that does not provide a correct TIN also may be subject to penalties imposed by the IRS.

Backup withholding is not an additional tax. The U.S. federal income tax liability of a person subject to backup withholding is reduced by the amount of tax withheld as backup withholding. If backup withholding results in an overpayment of U.S. federal income tax, the holder may obtain a refund of the overpayment by properly and timely filing a claim for refund with the IRS.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR CLAIM HOLDER IN LIGHT OF SUCH CLAIM HOLDER’S CIRCUMSTANCES AND INCOME TAX SITUATION. HOLDERS OF ALLOWED CLAIMS AND EQUITY INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES OF THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

VII. Conclusion and Recommendation

For all of the reasons set forth in this Disclosure Statement, the Trustee believes confirmation and consummation of the Plan is preferable to other available alternatives. Consequently, the Trustee urges all holders of Claims who are entitled to vote to **ACCEPT** the Plan, and to duly complete and return their Ballots in accordance with the instructions on the Ballots. The Voting Deadline is 5:00 p.m. prevailing Central Time on **June 5, 2025**. To be counted, your Ballot must be fully completed, executed and actually received by the Claims Agent by the Voting Deadline.

Dated: March 28, 2025
Dallas, Texas

Tommy's Fort Worth, LLC
Tommy's Lewisville, LLC
High Country Watersports, LLC
Tommy's Grand Rapids, LLC
MKB Florida Holdings, LLC
Tommy's California Fresno, LLC
Tommy's Stockton, LLC
Tommy's California Ventura, LLC
Tommy's Castaic, LLC
Tommy's Knoxville, LLC
Tommy's Chattanooga, LLC
Tommy's Rancho Cordova, LLC
Tommy's Detroit, LLC
Walloon Lake Village Marina, LLC
Tommy's Las Vegas, LLC
Tommy's Phoenix, LLC
Tommy's Holding Company, LLC

By: /s/ Mark E. Andrews

Mark E. Andrews
Trustee

Schedule 1

Liquidation Analysis

Liquidation Analysis¹

As a condition to confirmation, section 1129(a)(7) of the Bankruptcy Code requires the Bankruptcy Court to find that each person in an impaired class of creditors or interest holders (*i.e.*, Class 2 and Classes 4 through 8 under the Plan) has either accepted the Plan or will receive or retain, on the Effective Date of the Plan, property on account of such claim or interest in an amount not less than the claimant or interest holder would receive in a hypothetical chapter 7 liquidation.

Below is a hypothetical liquidation analysis (the “Liquidation Analysis”), illustrating what creditors would likely receive were the Debtors’ chapter 11 cases converted to a chapter 7 liquidation on the Effective Date of the Plan.

This Liquidation Analysis compares recoveries under the Plan to hypothetical creditor recoveries were the Debtors’ assets to be disposed of under the direction of one or more chapter 7 trustees, without the benefit of the orderly liquidation and wind-down of the Debtors’ estates, which is the foundation of the Plan.

On the whole, as illustrated in this Liquidation Analysis, without an orderly wind-down of the Debtors’ estates, distributions would be delayed and administrative costs could be higher, reducing the net distributable proceeds available to creditors than what is being proposed under the Plan. For this reason, the Trustee believes that the Prepetition Lender, as the primary beneficiary of distributions proposed under the Plan, will achieve higher recoveries under the Plan than if these Chapter 11 Cases were converted and the Debtors’ remaining assets liquidated through chapter 7. Similarly, the Trustee believes that unsecured creditors will achieve higher recoveries under the Plan because (i) the Plan establishes a separate class and treatment for the holders of Customer Constructive Trust Claims that do not opt out of the Plan’s Third-Party Releases wherein such holders will receive Cash in the amount of 45% of the Allowed Customer Constructive Trust Claim and (ii) the establishment of the Creditor Trust vested with the Creditor Trust Reserve and Other Retained Causes of Action provides for a potential recovery for holders of Allowed General Unsecured Claims. Under a chapter 7 scenario, the chapter 7 trustee(s) will not be able to make cash distributions to junior lien holders or general unsecured creditors. As such, all creditors and interest holders shall receive the same or better treatment under the Plan than they would receive under a hypothetical liquidation under chapter 7.

I. Limitations and Key Assumptions Underlying the Hypothetical Liquidation

THE LIQUIDATION ANALYSIS PRESENTED HEREIN HAS BEEN PREPARED SOLELY FOR THE PURPOSES DESCRIBED ABOVE AND MAY NOT BE USED FOR ANY OTHER PURPOSE.

This Liquidation Analysis was prepared by the Trustee and his financial advisors and counsel. The Liquidation Analysis contains numerous estimates based upon a review of the Debtors’ records and other documentation. The claims that could be asserted and allowed in a

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or Disclosure Statement to which this Liquidation Analysis is attached.

chapter 7 liquidation, including unpaid chapter 11 administrative claims (including professional fees allowed prior to the Conversion Date (defined below)), and additional post-Conversion Date administrative claims that will be incurred by one or more chapter 7 trustees and the trustees' new professionals have been estimated.

Because the final amounts of the chapter 11 administrative claims are not known at the time of the filing of this Liquidation Analysis, the assumptions utilized in developing this Liquidation Analysis are inherently subject to uncertainties and contingencies, many of which are beyond the control of the Trustee or the hypothetical chapter 7 trustee(s) at the present time. For example, in a hypothetical chapter 7 liquidation, it is unknown whether the chapter 7 trustee(s) will attempt to make interim distributions to the Prepetition Lender and, if so, in what amounts. It is also unknown whether the chapter 7 trustee(s) will attempt to pursue chapter 5 avoidance actions, and, if so, how and how much the chapter 7 trustee(s) would compensate professionals for pursuing such Causes of Action. Accordingly, there can be no assurance that the values assumed in the Liquidation Analysis will be realized if the Debtors' remaining assets were actually liquidated under chapter 7 of the Bankruptcy Code. In addition, any liquidation would take place in the future, at which time circumstances may exist which cannot presently be predicted.

The Trustee recognizes that there are other potential liquidation alternatives that are not presented in the Liquidation Analysis, including alternatives that would give rise to further reduced and delayed creditor recoveries.

THE TRUSTEE RESERVES THE RIGHT TO SUPPLEMENT, MODIFY, OR ADJUST ANY PART OF THIS LIQUIDATION ANALYSIS, INCLUDING A CHANGE TO THE UNDERLYING ASSUMPTIONS AND ANALYSIS.

General Assumptions

The following general assumptions were considered by the Trustee and his advisors as assumptions that would be applicable in any hypothetical chapter 7 liquidation.

1. Timing Considerations of Chapter 7 Case

The Liquidation Analysis assumes that, under the Plan, on the Effective Date, the Plan Reserves will be funded, a distribution will be made to the Prepetition Lender, and the Debtors' remaining assets will be transferred to the Creditor Trust. For purposes of comparison, the Trustee assumes that a hypothetical chapter 7 liquidation would commence on or around the same date as the Plan Effective Date, which is likely to occur on or before June 30, 2025 (the "Conversion Date"). Both timelines assume that the Trustee has fully liquidated the Debtors' dealership assets and inventory, leaving only Cash and the Retained Causes of Action to be administered as of the Conversion Date.

2. Professionals Involved in the Chapter 7 Case

As part of the hypothetical conversion to chapter 7, the Trustee assumes one or more chapter 7 trustees would choose to retain certain professionals to provide expertise and

assistance in the Debtors' liquidation(s). The Liquidation Analysis assumes that the chapter 7 trustee(s) would replace the Trustee's existing professionals with new professionals who do not have the same level of background knowledge as the Trustee's existing professionals. Since these cases are not substantively consolidated, it is possible the U.S. Trustee may appoint multiple chapter 7 trustees, and each chapter 7 trustee may have conflicting or competing claims against one another and other third parties.

It is possible that the chapter 7 trustee(s) would retain the same accountants and financial advisory professionals to assist in preparation of final tax returns to avoid duplication of effort and expense but that is not a certainty.

3. Trustee Fees for Chapter 7 Administration

Under section 326(a) of the Bankruptcy Code, the Bankruptcy Court may allow reasonable compensation for the chapter 7 trustee's services not to exceed three percent (3%) of the moneys disbursed or turned over in the case by the chapter 7 trustee(s) to parties in interest in excess of \$1 million, excluding the Debtors, but including holders of secured claims. Because the Trustee projects a distribution will be made to the Prepetition Lender under a hypothetical chapter 7 liquidation, the Trustee assumes that the Bankruptcy Court would allow the hypothetical chapter 7 trustee(s) to receive their statutory fees for making the projected distribution.

4. Basis of Presentation

The hypothetical Liquidation Analysis is based on financial statements prepared during the course of the Chapter 11 Cases, with certain adjustments to reflect anticipated activity through the Conversion Date.

II. Consummation of the Plan Will Provide Greater Value to Creditors than a Chapter 7 Liquidation

Because distributions to creditors in a hypothetical chapter 7 liquidation, as reflected in the Liquidation Analysis, will be the same or lower relative to the forecasted recoveries under the Plan, the Trustee believes that consummation of the Joint Plan will provide greater value to such holders than would a liquidation under chapter 7 of the Bankruptcy Code.

Tommy's Fort Worth, LLC

Case #: 24-90000

LIQUIDATION ANALYSIS

Effective Date: 30-Jun-25

\$ in Thousands	Notes	Book Value	HYPOTHETICAL CHAPTER 7		PLAN	
			Proceeds (\$)		Proceeds (\$)	
			Low	High	Low	High
Cash & Equivalents		10,679	10,679	10,679	10,679	10,679
Accounts Receivable		-	-	-	-	-
Prepaid Expenses		468	70	154	70	154
Inventory						
Miscellaneous Boat Brands (Add all other brands)		-	-	-	-	-
Inventory - Miscellaneous		-	-	-	-	-
Inventory Reserve - Service		-	-	-	-	-
Total Inventory		-	-	-	-	-
Other Current Assets						
Worldpay		277	-	277	-	277
Total Other Current Assets	A	277	-	277	-	277
Total Current Assets		11,424	10,749	11,110	10,749	11,110
Total Fixed Assets		26	-	-	-	-
Net Proceeds from Causes of Action	B	-	-	4,000	-	4,000
Total Assets (excluding depreciation)		11,450	10,749	15,110	10,749	15,110
Administrative Expenses & Liquidation Costs						
Chapter 11 Administrative Claims	C		(1,000)	(1,687)	(2,522)	(2,901)
Chapter 7 Trustee Fees	D		(322)	(453)		
Chapter 7 Professional Fees	E		(2,522)	(4,036)		
Other Administrative Expenses	F				-	-
US Trustee Fees	G				(120)	(250)
Total Liquidation Costs			(3,845)	(6,177)	(2,642)	(3,151)
Funds Available to Distribute to Creditors			6,903.99	8,933.38	8,106.46	11,959.28

<i>\$ in Thousands</i>	Notes	Estimated Allowed Claim	Estimated Recovery				Estimated Recovery			
			Low		High		Low		High	
			\$	%	\$	%	\$	%	\$	%
			Priority & Secured Creditors							
Unclassified - Priority Tax Claims	H	5,500	-	0%	-	0%	1,726	31%	2,220	40%
Class 1 Priority Non-Tax Claims	I	75	0	0%	0	0%	24	31%	30	40%
Class 2 Prepetition Lender's Secured Claims	J	105,687	56,324	53%	58,354	55%	55,067	52%	58,060	55%
Class 3 Other Secured Claims	K	175	0	100%	0	100%	0	100%	0	100%
Class 4 Customer Constructive Trust Claims	L	1,600	0	0%	0	0%	360	23%	720	45%
Total		113,037	56,324	50%	58,354	52%	57,177	51%	61,030	54%

Funds Available to Distribute to Unsecured Claims	-	-	350.00	350.00
--	---	---	--------	--------

Unsecured Creditors

Class 5 General Unsecured Claims	M	90,000	0	0%	0	0%	350	1%	350	1%
Class 6 Contribution Claims	N	Unknown	0	0%	0	0%	0	0%	0	0%
Class 7 Intercompany Claims	O	Unknown	0	0%	0	0%	0	0%	0	0%
Class 8 Equity Interests	P	Unknown	0	0%	0	0%	0	0%	0	0%
Total		90,000	0	0%	0	0%	350	1%	350	1%

III. Notes to Liquidation Analysis

Assets

A. Total Current Assets

Cash & Equivalents. The Cash shown in this analysis is as of March 21, 2025.

Prepaid Expenses. Potential recoveries from this line represent refunds from prepaid insurance premiums. The Trustee estimates that recoveries on these prepaid expenses will be between \$70,000 and \$154,000 but could vary.

WorldPay. On March 14, 2025, the Trustee commenced a turnover action against WorldPay LLC to recover funds held by WorldPay as a result of the Debtors closing deposit accounts linked to WorldPay's point of sale systems. The Trustee expects to recover approximately \$277,000 from this action.

B. Net Proceeds from Causes of Action

Potential recoveries in this line represent potential recoveries on Causes of Action owned by the Estates and not otherwise released under the Plan or prior orders of the Bankruptcy Court. Pursuant to the Cash Collateral Order, the Prepetition Lender's Adequate Protection Collateral (as defined in the Cash Collateral Order) does not include proceeds of unencumbered prepetition commercial tort claims asserted or assertable by the Debtors or the proceeds of Avoidance Actions (collectively, the "Unencumbered Collateral"). The Trustee believes that the Retained Causes of Action are Unencumbered Collateral. The Plan proposes to assign the Assigned Causes of Action to the Prepetition Lender as partial satisfaction of the Prepetition Lender's Secured Claims. The Plan proposes to assign the Other Retained Causes of Action to the Creditor Trust. In a hypothetical chapter 7 scenario, a trustee may pursue these Causes of Action for the estate. The Causes of Action are speculative in nature and difficult to assign a specific value. In a hypothetical chapter 7 liquidation, it is unclear how any claims against Malibu would be resolved among the chapter 7 estates. For purposes of this analysis, the Trustee assumes the recoveries would be considerably less than under the Plan, since new professionals unfamiliar with the cases would be hired, there would be hurdles to obtaining unanimity among the chapter 7 estates, and the settlement process may become unwieldy. Thus, the Trustee estimates net recoveries (after costs of litigation and collection expenses) on Causes of Action could range between \$0 and \$4 million for purposes of this Liquidation Analysis.

C. Chapter 11 Administrative Claims

This presentation assumes that most (if not all) Allowed Administrative Claims (other than Professional Fees) have been paid prior to the Effective Date. The Plan proposes to establish an Administrative Claims Reserve, which will be funded with the

greater of: (1) of \$500,000, and (2) the aggregate amount of Administrative Claims properly filed before the Administrative Claim Bar Date. To the extent these payments are less than the \$500,000 estimate, the amount of Cash & Equivalents will be increased accordingly, as agreed to among the Trustee, Prepetition Lender, and the Committee.

The ranges for Professional Fees presented in the Liquidation Analysis are comprised of estimates of amounts incurred and unpaid to date, plus further amounts anticipated to be incurred through the Effective Date, according to the most recently filed Cash Collateral budget. Professional Fees will be paid from the Professional Fee Reserve, as supplemented by any surplus amounts left in the Administrative Claims Reserve, pursuant to Section II.B.3 of the Plan. The Trustee expects these budgeted amounts to be more than sufficient to pay all allowed Professional Fees.

The chapter 7 scenario assumes no such reserves, but as otherwise reflected in the Liquidation Analysis and as explained further in subsequent Notes below, the ultimate costs of the chapter 11 case cannot be avoided by converting to chapter 7. In chapter 7, chapter 11 administrative claims are junior to chapter 7 administrative claims, but the Prepetition Lender's Secured Claim is subject to the Carve Out under the Cash Collateral Order. As a result, all chapter 11 Administrative Claims (including Professional Fees) must be paid or otherwise reserved for before the chapter 7 trustee(s) can make distributions to the Prepetition Lender. The amounts included in the hypothetical chapter 7 scenario reflect the current accrued but unpaid chapter 11 professional fees.

D. Chapter 7 Trustee Fees

The Liquidation Analysis assumes hypothetical chapter 7 trustee fees would be as set forth in section 326(a) of the Bankruptcy Code. The Trustee assumes that chapter 7 trustee fees will be approximately 3% of the Cash & Equivalents that will be available to the hypothetical chapter 7 trustee(s). The expense is likely to be at least as much as, and potentially more than, the projected statutory U.S. Trustee Fees and chapter 11 trustee fees that would be payable under the Plan.

E. Chapter 7 Professional Fees

In addition to the Chapter 7 Trustee Fees described in General Assumption No. 2 and Note D above, the chapter 7 trustee(s) will need to retain financial advisors, attorneys, accountants, and other professionals to perform much of the same work the Trustee's professionals have already completed or will complete shortly after the Effective Date. In the Liquidation Analysis, chapter 7 Professional Fees are estimated to be the same as, or more likely greater than, the Post-Confirmation Wind Down Costs (see Note F below) because the chapter 7 trustee(s) would be required to complete the same wind down tasks that the Trustee or the Creditor Trustee intends to do under the Plan. This line does not include potential contingency fees or other litigation costs that the chapter 7 trustee(s) might incur to pursue Causes of Action.

F. Other Administrative Expenses – Post-Confirmation Wind Down Costs

There will be expenses associated with winding down the Estates after confirmation of the Plan. The Trustee expects such costs to be relatively *de minimis* and such amounts are already included in previous lines. As such, the analysis does not specify any amounts in this Line F.

G. U.S. Trustee Fees

These fees represent the statutory fees payable to the U.S. Trustee in the chapter 11 scenario. No U.S. Trustee fees will be required in the chapter 7 liquidation scenario. Instead, the chapter 7 trustee(s) will be entitled to a fee of up to 3% for all distributions made from the estate, as set forth in Note D above.

H. Unclassified – Priority Tax Claims

The Trustee is aware of approximately \$5.5 million in outstanding tax claims entitled to priority, administrative, and potentially secured treatment under the Bankruptcy Code, subject to final review and reconciliation by the Trustee and his advisors. The applicable Bar Date for such Priority Tax Claims was November 18, 2024. The Trustee will include \$1,750,000 in the Priority Claim Reserve for the payment of Priority Tax Claims. To the extent there are insufficient funds on hand in the Priority Claims Reserve to pay all Allowed Priority Tax Claims in full, the Trustee or Creditor Trustee (as applicable) shall supplement the Priority Claims Reserve with proceeds of Other Retained Causes of Action, as necessary to ensure that all Priority Tax Claims receive the recovery required under the Plan and/or the Bankruptcy Code. To the extent all or a portion of the Priority Claim Reserve is not used for payment of all Allowed Priority Tax Claims and Allowed Priority Non-Tax Claims, the unused portion of such reserve will be allocated to the Creditor Trust. In a chapter 7 scenario, any Priority Tax Claims may not be entitled to a recovery absent the Prepetition Lender's consent or the chapter 7 trustee's recovery of proceeds from speculative litigation, which may take years and/or prove unsuccessful.

I. Class 1 – Priority Non-Tax Claims

This category includes proofs of claim filed as "priority claims." The Trustee has conducted an initial review of proofs of claim filed in these Chapter 11 Cases and is aware of approximately \$75,000 in asserted Priority Non-Tax Claims. The Trustee or the Creditor Trustee (as applicable) will review any such Claims to determine if they are objectionable and may update this Liquidation Analysis as necessary. The Plan proposes to pay Priority Non-Tax Claims in full from the Priority Claims Reserve. In a chapter 7 scenario, any Priority Non-Tax Claims may not be entitled to a recovery absent the Prepetition Lender's consent or the chapter 7 trustee's recovery of proceeds from speculative litigation, which may take years or prove unsuccessful.

J. Class 2 – Prepetition Lender’s Secured Claims

This category includes the Prepetition Lender’s remaining Secured Claims. Under the Cash Collateral Order, such Claims were Allowed in the amount of \$105,687,454.00. Under the Liquidation Procedures Order and the Budget, the Trustee has paid approximately \$49.4 million toward this amount as of March 21, 2025, leaving an unpaid balance of approximately \$56.3 million. Under the Plan, the Trustee expects to be able to pay an additional \$5.6 million to \$8.6 million to the Prepetition Lender on the Effective Date. This assumes that the Plan Reserves are funded from Contributed Cash Collateral, and that the Malibu Settlement Payment has been funded. The remaining balances of the Prepetition Lender’s Secured Claims, after such payments, shall be treated in Class 5 as a General Unsecured Claim. Under a hypothetical chapter 7 liquidation, the Trustee expects the additional payments to the Prepetition Lender to be similar in amount, but it is unclear when the chapter 7 trustee(s) will make such distributions to the Prepetition Lender.

K. Class 3 – Other Secured Claims

This category includes proofs of claims filed as “secured claims.” The Trustee has conducted an initial review of proofs of claim filed in these Chapter 11 Cases and is aware of approximately \$175,000 in asserted Other Secured Claims. The Trustee or the Creditor Trustee (as applicable) will review any such Claims to determine if they are objectionable and may update this Liquidation Analysis as necessary. To the extent the Debtors still possess any equipment or collateral securing such Other Secured Creditors, the Trustee proposes to convey such Collateral back to such creditors, which is effectively the same treatment that these creditors would receive in a hypothetical chapter 7 scenario where the chapter 7 trustee(s) would be likely to abandon any encumbered collateral with little or no value to the Estates. Under both scenarios, holders of Other Secured Claims would not be entitled to receive cash distributions from the Estates. Accordingly, no cash distributions are reflected in the Liquidation Analysis for either scenario.

L. Class 4 – Customer Constructive Trust Claims

This category includes claims determined by the Trustee to be asserted by customers based the Debtors’ prepetition failure to remit proceeds from the sale of the customer’s boat, whether such boat was traded into the Debtors for a new boat, maintained by the Debtors under a consignment arrangement, or otherwise sold to the Debtors before the Petition Date. The Trustee has conducted an initial review of proofs of claim filed in these Chapter 11 Cases and is aware of approximately \$1.5 million in asserted Customer Constructive Trust Claims. Under the Plan, the Trustee will establish a reserve for these claims using \$360,000 of the Prepetition Lender’s Cash Collateral. Doing so will allow holders of Customer Constructive Trust Claims that do not opt out of the Plan’s Third-Party Releases to receive Cash in the amount of up to 45% of the Allowed Customer Constructive Trust Claim. Holders of Customer Constructive Trust Claims that opt out of the Plan’s Third-Party Releases will (i) retain all rights and defenses to pursue all remedies against third parties and (ii) be treated as a Class 5 General Unsecured Creditor. Under the Plan, such Claims will be paid on or before the first Business Day that is 45 days after the Customer Constructive Trust Claims

Objection Deadline. To the extent there are insufficient funds on hand in the Customer Constructive Trust Claims Reserve to pay 45% of all Allowed Customer Constructive Trust Claims, the Creditor Trustee shall supplement the Customer Constructive Trust Claims Reserve with proceeds of Other Retained Causes of Action as necessary to pay 45% of any remaining Allowed Customer Constructive Trust Claims. If the Plan is not confirmed, and the case is converted to chapter 7, no special reserve will be established for payment of such Claims. Accordingly, no distributions are projected for Customer Constructive Trust Claims under a hypothetical chapter 7 liquidation. Rather, such creditors will receive pro rata distributions with all other General Unsecured Claims, as illustrated in Line M (and discussed below).

M. Class 5 – General Unsecured Claims

As reflected in the Liquidation Analysis, the Trustee does not project any funds will be available for distribution to unsecured creditors following distributions to Classes 1 through 4. Rather, the Debtors' remaining assets will become Creditor Trust Assets, and holders of General Unsecured Claims will receive a Creditor Trust Interest. The Trustee is unable to predict the present value of Creditor Trust Interests. The primary source of recovery for the Creditor Trust will be from prosecution of Other Retained Causes of Action, which are too speculative for the Trustee to value at this time. No distributions are projected under a hypothetical chapter 7 liquidation. The Liquidation Analysis presents the same 1% recovery for both the high and low scenarios under the Plan for two primary reasons. First, the Prepetition Lender has agreed to subordinate its Class 5 General Unsecured Claim to allow the Creditor Trustee to make an initial distribution to other creditors in the Class from the \$350,000 Creditor Trust Reserve. Any further distributions will be paid pro rata with the Prepetition Lender's deficiency claim, which may substantially dilute distributions to other creditors in this class. Second, any additional distributions to Class 5 would come from net proceeds of Other Retained Causes of Action but may have to be used to pay higher priority claims, such as Priority Tax Claims and Class 1 Priority Non-Tax Claims. Thus, while it is conceivable that Class 5 General Unsecured Claims may receive more than the projected 1% distribution, it is not likely to be significantly more.

N. Class 6 – Contribution Claims

As set forth in the Plan, these claims will receive the same treatment as provided under section 509 of the Bankruptcy Code, which provides for such claims to be subrogated to the claims that are paid, but subordinated until such claims are paid in full. No distributions are projected under either scenario.

O. Class 7 – Intercompany Claims

As reflected in the Liquidation Analysis, the Trustee does not expect to have any unencumbered cash or assets with which to make distributions to Intercompany Claim holders. No distributions are projected under either scenario.

P. Class 8 – Equity Interests

As reflected in the Liquidation Analysis, the Trustee does not expect to have any unencumbered cash or assets with which to make distributions to holders of Equity Interests. No distributions are projected under either scenario.

Exhibit A

Joint Chapter 11 Plan

Jason S. Brookner (Texas Bar No. 24033684)
Aaron M. Kaufman (Texas Bar No. 24060067)
Lydia R. Webb (Texas Bar No. 24083758)
Emily F. Shanks (Texas Bar No. 24110350)

GRAY REED

1601 Elm Street, Suite 4600
Dallas, TX 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
akaufman@grayreed.com
lwebb@grayreed.com
eshanks@grayreed.com

*Counsel to Mark E. Andrews,
Chapter 11 Trustee*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	
	§	Chapter 11
	§	
TOMMY’S FORT WORTH, LLC., <i>et al.</i> , ¹	§	Case No. 24-90000 (ELM)
	§	
Debtors.	§	(Jointly Administered)
	§	

TRUSTEE’S JOINT CHAPTER 11 PLAN

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Tommy’s Fort Worth, LLC (3473); Tommy’s Holding Company, LLC (2662); Tommy’s Grand Rapids, LLC (9224); Tommy’s Castaic, LLC (7501); Tommy’s Lewisville, LLC (4750); High Country Watersports, LLC (6160); Walloon Lake Village Marina, LLC (0277); MKB Florida Holdings, LLC (5698); Tommy’s Detroit, LLC (5242); Tommy’s California Fresno, LLC (8597); Tommy’s Phoenix, LLC (3036); Tommy’s Las Vegas, LLC (7721); Tommy’s Chattanooga, LLC (0839); Tommy’s California Ventura, LLC (5149); Tommy’s Rancho Cordova, LLC (1070); Tommy’s Stockton, LLC (1338); and Tommy’s Knoxville, LLC (8052).

TABLE OF CONTENTS

ARTICLE I DEFINITIONS AND INTERPRETATION AND CONSTRUCTION	1
A. Definitions.....	1
B. Rules of Interpretation and Construction.	7
ARTICLE II TREATMENT OF UNCLASSIFIED CLAIMS	8
A. Administrative Claims.	8
B. Professional Fee Claims.	9
C. U.S. Trustee Fees.	9
D. Priority Tax Claims.	9
ARTICLE III CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS.....	10
ARTICLE IV TREATMENT OF CLAIMS AND EQUITY INTERESTS.....	10
A. Class 1 – Priority Non-Tax Claims.	10
B. Class 2 – Prepetition Lender’s Secured Claims.	11
C. Class 3 – Other Secured Claims.	11
D. Class 4 – Customer Constructive Trust Claims.....	11
E. Class 5 – General Unsecured Claims.	12
F. Class 6 – Contribution Claims	12
G. Class 7 – Intercompany Claims.....	12
H. Class 8 – Equity Interests.....	12
ARTICLE V IMPAIRMENT; ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE CLASSES.....	12
A. Classes Entitled to Vote.	12
B. Class Acceptance Requirement.....	13
C. Cramdown.....	13
D. Elimination of Classes.....	13
ARTICLE VI MEANS OF IMPLEMENTATION.....	13
A. Limited Substantive Consolidation.	13
B. The Creditor Trust.....	13
C. Discharge of the Chapter 11 Trustee and Cessation of Fee and Expense Payments.	18
D. Dissolution of Committee and Cessation of Fee and Expense Payments.....	18
E. Issuance of Creditor Trust Interests.....	18
F. Section 1145 Exemption.	18
G. Cancellation of Existing Securities.	19
H. Corporate Action.....	19
I. Directors, and Executive Officers.	19
J. Retained Causes of Action.	19
K. Effectuating Documents; Further Transactions.....	20

L.	Exemption from Certain Transfer Taxes.....	20
ARTICLE VII DISTRIBUTIONS.....		20
A.	Date of Distributions.....	20
B.	Sources of Cash for Plan Distributions.....	20
C.	Distributions.....	20
D.	Record Date for Distributions.....	21
E.	Delivery of Distributions; Unclaimed Property.....	21
F.	Means of Payment.....	21
G.	Distributions After Effective Date.....	21
H.	Withholding and Reporting Requirements.....	21
I.	No Postpetition Interest.....	22
J.	Time Bar to Payments.....	22
K.	De Minimis Distributions.....	22
ARTICLE VIII PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS.....		22
A.	Objections to Claims.....	22
B.	Estimation of Claims.....	22
C.	No Distributions Pending Allowance.....	23
D.	Distributions After Allowance.....	23
E.	Disallowance of Late Filed Claims.....	23
ARTICLE IX CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS OF THE PLAN		23
A.	Conditions to Confirmation of Plan.....	23
B.	Conditions to Effective Date of Plan.....	23
C.	Waiver of Conditions Precedent.....	24
D.	Effect of Failure of Conditions.....	24
E.	Reservation of Rights.....	24
ARTICLE X EFFECT OF CONSUMMATION		24
A.	Vesting of Assets.....	24
B.	Exculpation.....	25
C.	Releases by the Trustee.....	25
D.	Third-Party Releases.....	25
E.	Injunction and Stay.....	26
F.	Gate Keeping.....	26
G.	Setoffs and Recoupment.....	27
H.	Rejection of Contracts and Leases.....	27
I.	Compromise of Controversies.....	27
ARTICLE XI RETENTION OF JURISDICTION		28

ARTICLE XII MISCELLANEOUS.....	29
A. Filing of Additional Documents.....	29
B. Schedules, Exhibits, and Plan Supplement Incorporated.	29
C. Amendment or Modification of the Plan.....	29
D. Inconsistency.....	29
E. Expedited Tax Determination.	29
F. Binding Effect.	29
G. Severability.	29
H. No Payment of Attorneys’ Fees.	30
I. Notices.	30
J. Governing Law.....	30

Mark E. Andrews, chapter 11 Trustee for the Debtors in these Chapter 11 Cases, hereby proposes the following *Joint Chapter 11 Plan* pursuant to section 1121(a) of the Bankruptcy Code.

ARTICLE I
DEFINITIONS AND INTERPRETATION AND CONSTRUCTION

A. Definitions.

For the purpose of this Plan, the following terms shall have the respective meanings set forth below:

1. ***Administrative Claim*** means any right to payment constituting a cost or expense of administration of the Chapter 11 Cases pursuant to sections 503(b) or 507 of the Bankruptcy Code.
2. ***Administrative Claim Bar Date*** means the deadline to file all Administrative Claims, as established pursuant to the Solicitation Procedures Order.
3. ***Administrative Claims Reserve*** means the Plan Reserve established on or before the Effective Date by the Trustee from the Contributed Cash Collateral for the sole purpose of paying Allowed Administrative Claims pursuant to section II.A hereof, in the amount of \$500,000, unless a different amount has been fixed by stipulation of the Committee, the Trustee and the Prepetition Lender; or, if the Committee, the Trustee, and the Prepetition Lender cannot agree, by the Bankruptcy Court.
4. ***Allowed*** means any Claim (i) for which a proof of claim has been filed and as to which no objection has been made on or before the Objection Deadline or such other applicable period fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, (ii) which appears in the Debtors' Schedules and is not listed as contingent, liquidated or disputed, (iii) which is allowed by Final Order of the Bankruptcy Court, or (iv) which is expressly allowed under this Plan.
5. ***Assets*** means property of the Debtors' Estates and proceeds thereof.
6. ***Assigned Causes of Action*** means all of the Retained Causes of Action scheduled in the Plan Supplement as being assigned to the Prepetition Lender pursuant to section IV.B hereof, as more specifically enumerated in a Plan Supplement, including, without limitation, all Avoidance Actions against any of the Borisch Parties and any other Causes of Action against any of the Borisch Parties, and, to the extent applicable, any subsequent transferee thereof.
7. ***Avoidance Actions*** means any and all avoidance, recovery, subordination or other claims, causes of action, or remedies that have been or may be asserted by or on behalf of the Debtors or their Estates under the Bankruptcy Code or applicable non-bankruptcy law, including claims, causes of action, or remedies under sections 502, 510, 542, 544, 545, 547 through 553 of the Bankruptcy Code, or under similar or related local, state, federal, foreign law, or common law.
8. ***Ballot*** means the form of ballot approved by the Bankruptcy Court pursuant to the Solicitation Procedures Order and provided to holders of Claims to indicate their votes to accept or reject the Plan and to make an election with respect to the Third-Party Releases provided under section X.D hereof.
9. ***Bankruptcy Code*** means title 11 of the United States Code, as amended from time to time.
10. ***Bankruptcy Court*** means the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, or any other court of the United States having jurisdiction over the Chapter 11 Cases.
11. ***Bankruptcy Rules*** means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended and in effect from time to time.

12. **Bar Date** means the last date to file proofs of claim against the Debtors, which was September 30, 2024 for all creditors except Governmental Units, and November 18, 2024 for Governmental Units.

13. **Borisch Parties** means Matthew A. Borisch, Kara A. Borisch, Jonathan L. Borisch, MKB Holdings, LLC a/k/a Simplified Investments, The Matthew Allen Borisch Trust, The Kara Ann Borisch Trust, Walloon Lake Facilities, LLC, Walloon Lake Holdings, JLB Restaurant Holdings LLC, MKB Restaurant Holdings, LLC, Hotel Walloon, Gen3 Defense & Aerospace LLC, Expedited Travel LLC, JLB Property Holdings LLC, Legacy Water Sports and Marina and Steadfast Marine, and each of their respective current and former officers, directors, employees, managers, attorneys, professional advisors, and agents.

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

15. **Cash** means legal tender of the United States of America.

16. **Cash Collateral Order** means that certain *Final Order (I) Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to the Prepetition Secured Lender; and (III) Granting Related Relief* [Docket No. 272].

17. **Causes of Action** means any claims, causes of action, interests, damages, remedies, demands, rights, actions (including Avoidance Actions), suits, debts, sums of money, obligations, judgments, liabilities, accounts, defenses, offsets, counterclaims, crossclaims, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, now existing or hereafter arising, contingent or non-contingent, liquidated or unliquidated, choate or inchoate, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise, owned by or otherwise accruing to the Debtors and their Estates, whether arising before, on, or after the Petition Date.

18. **Chapter 11 Cases** means the above-captioned jointly administered chapter 11 cases of the Debtors.

19. **Chapter 11 Trustee** or **Trustee** means the trustee appointed in these Chapter 11 Cases pursuant to sections 1104 of the Bankruptcy Code, and with all the rights, powers, and duties enumerated in sections 1106–1108 of the Bankruptcy Code.

20. **Claim** means a claim against a Debtor within the meaning of section 101(5) of the Bankruptcy Code.

21. **Class** means any group of Claims or Equity Interests classified by this Plan pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

22. **Collateral** means any interest in property of the Debtors subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge or other encumbrance is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable non-bankruptcy law.

23. **Committee** means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases by the Office of the United States Trustee, as the same may be reconstituted from time to time.

24. **Confirmation Date** means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket.

25. **Confirmation Hearing** means the hearing conducted by the Bankruptcy Court pursuant to sections 1128(a) and 1129 of the Bankruptcy Code to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

26. **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

27. **Consenting Creditors** means collectively the following, in each case in its capacity as such with each being a “*Consenting Creditor*”: (a) all holders of Claims or Equity Interests that vote to accept or are deemed to accept the Plan and who do not check the box on the applicable Ballot to affirmatively opt out of the Third-Party Releases; and (b) all holders of Claims or Equity Interests that abstain from voting on the Plan, vote to reject the Plan, or are deemed to reject the Plan and who do not (i) check the box on the applicable Ballot to affirmatively opt out of the Third-Party Releases or (ii) object to the Plan in respect of the Third-Party Releases.

28. **Contributed Cash Collateral** means the portion of the Prepetition Lender’s cash collateral that the Prepetition Lender has consented to allocate to the applicable Plan Reserves.

29. **Contribution Claim** means any Claim for contribution or reimbursement by a Person that is liable with a Debtor on a Claim held by another creditor (including, for the avoidance of doubt, indemnification claims against a Debtor) of any kind or nature whatsoever, whether arising under or pursuant to any type of bylaws, organizational, formation or governance documents or agreements, board resolutions, management or indemnification agreements, guaranty agreement, employment or other services contracts, at law, in equity or otherwise.

30. **Customer Constructive Trust Claims** means Claims determined by the Trustee to be asserted by customers based the Debtors’ prepetition failure to remit proceeds from the sale of the customer’s boat, whether such boat was traded into the Debtors for a new boat, maintained by the Debtors under a consignment arrangement, or otherwise sold to the Debtors before the Petition Date.

31. **Customer Constructive Claims Objection Deadline** means the first Business Day that is 45 days after the Effective Date.

32. **Customer Constructive Trust Claims Reserve** means the Plan Reserve established on or before the Effective Date by the Trustee from the Contributed Cash Collateral for the sole purpose of making settlement payments to Consenting Creditor holders of Customer Constructive Trust Claims pursuant to section IV.D hereof in the initial amount of \$360,000, unless a different amount has been fixed by stipulation of the Committee, the Trustee and the Prepetition Lender; or, if the Committee, the Trustee, and the Prepetition Lender cannot agree, by the Bankruptcy Court.

33. **Creditor Trust** means that certain trust that will come into existence on the Effective Date of the Plan, which shall be formed pursuant to, and governed by, the provisions of the Plan and the Creditor Trust Agreement.

34. **Creditor Trust Reserve** means the Plan Reserve established on or before the Effective Date by the Trustee in the amount of \$350,000 from the Contributed Cash Collateral for purposes of (i) satisfying, in whole or in part, the obligations of the Creditor Trust, including the Creditor Trust Expenses and (ii) making distributions to holders of Creditor Trust Interests in accordance with the Creditor Trust Agreement and section IV.E of the Plan.

35. **Creditor Trust Agreement** means the agreement governing the Creditor Trust dated as of the Effective Date, which shall be in form and substance acceptable to the Committee and substantially in the form included in the Plan Supplement.

36. **Creditor Trust Assets** means (i) all Other Retained Causes of Action, except as the same may be dismissed, settled or released prior to the Effective Date or otherwise pursuant to the Plan; (ii) the Creditor Trust Reserve and any residual portions of the Plan Reserves, consistent with the terms of the Plan; (iii) all insurance policies of the Debtors and the applicable Policy Proceeds, but specifically excluding any refunds from any insurance policies cancelled or otherwise terminated before the end of the policy term; (iv) all tax assets and tax attributes of the Debtors; (v) any other property of the Estates not otherwise distributed pursuant to the terms of this Plan, including all rights, interests, and privileges of the Debtors; and (vi) all proceeds of the foregoing.

37. **Creditor Trust Expenses** means the reasonable and necessary costs and expenses of the Creditor Trust, including, without limitation, the compensation to and reimbursement of expenses to the Creditor Trustee and the reasonable and necessary fees, costs, and expenses of all professionals retained by the Creditor Trustee in connection with the performance of the Creditor Trustee’s duties under this Plan and the Creditor Trust Agreement.

38. **Creditor Trust Indemnified Parties** means the Creditor Trustee and its consultants, agents, attorneys, accountants, financial advisors, estates, employees, officers, directors, principals, professionals, and other representatives, each in their respective capacity as such, and any of such Person's successors and assigns.

39. **Creditor Trust Interest** means a non-transferable beneficial interest in the Creditor Trust.

40. **Creditor Trustee** means the trustee of the Creditor Trust, who shall be Mark E. Andrews, or such other individual to be designated by the Trustee and approved by the Committee, who shall not unreasonably withhold such approval, and who shall be identified in the Plan Supplement.

41. **Debtor** means any one of the Debtors, as the context may require.

42. **Debtors** means, collectively, Tommy's Fort Worth, LLC; Tommy's Holding Company, LLC; Tommy's Grand Rapids, LLC; Tommy's Castaic, LLC; Tommy's Lewisville, LLC; High Country Watersports, LLC; Walloon Lake Village Marina, LLC; MKB Florida Holdings, LLC; Tommy's Detroit, LLC; Tommy's California Fresno, LLC; Tommy's Phoenix, LLC; Tommy's Las Vegas, LLC; Tommy's Chattanooga, LLC; Tommy's California Ventura, LLC; Tommy's Rancho Cordova, LLC; Tommy's Stockton, LLC; and Tommy's Knoxville, LLC.

43. **Disallowed** means any Claim, or portion thereof, that is not an Allowed Claim or a Disputed Claim.

44. **Disclosure Statement** means that certain disclosure statement relating to the Plan, including all exhibits and schedules thereto, as the same may be amended, supplemented, or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to sections 1125 and 1126 of the Bankruptcy Code.

45. **Disputed** means, when used with respect to a Claim, such Claim, as the case may be (a) to the extent neither Allowed nor Disallowed under the Plan or a Final Order nor deemed Allowed under section 502, 503, or 1111 of the Bankruptcy Code, or (b) with respect to which the Creditor Trust or any party in interest have made a timely objection (as a contested matter, adversary proceeding, or otherwise) or request for estimation prior to the Objection Deadline in accordance with the Plan or the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order as of the Effective Date.

46. **Disputed Claims Reserve** has the meaning ascribed in section VI.B.14(ii)(C) hereof.

47. **Distribution Date** means the date, occurring on or as soon as practicable after the Effective Date, on which the Trustee or the Creditor Trust, as applicable, first makes distributions to holders of Allowed Claims as provided in the Plan.

48. **Distribution Record Date** means the record date for purposes of receiving distributions under the Plan on account of Allowed Claims, which shall be the Confirmation Date.

49. **Effective Date** means the first Business Day on which all the conditions precedent to the effectiveness of the Plan specified in section IX.B hereof shall have been satisfied or waived as provided in section IX.C hereof; *provided, however*, that if a stay, injunction or similar prohibition of the Confirmation Order is in effect, the Effective Date shall be the first Business Day after such stay, injunction, or similar prohibition is no longer in effect.

50. **Equity Interest** means any "equity security" of the Debtors, as that term is defined in section 101(16) of the Bankruptcy Code.

51. **Estates** means the estates of the Debtors as created under section 541 of the Bankruptcy Code.

52. **Exculpated Parties** means, in each case solely in their capacity as such: the Trustee and the members of the Committee. For the avoidance of doubt, the Exculpated Parties do not include the Debtors or any current or former officer, director, or employee of the Debtors.

53. **Final Decree** means the decree contemplated by Bankruptcy Rule 3022.

54. **Final Order** means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court and has not been reversed, vacated, or stayed and as to which (a) the time to appeal, petition for *certiorari*, or move for a stay, new trial, reargument, or rehearing has expired and as to which no appeal, petition for *certiorari* or other proceedings for a stay, new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of *certiorari*, stay, new trial, reargument or rehearing thereof has been sought, (i) such order or judgment shall have been affirmed by the highest court to which such order was appealed, *certiorari* shall have been denied or a stay, new trial, reargument or rehearing shall have been denied or resulted in no modification of such order and (ii) the time to take any further appeal, petition for *certiorari*, or move for a stay, new trial, reargument or rehearing shall have expired; *provided, however*, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or under Rule 60 of the Federal Rules of Civil Procedure, or Bankruptcy Rule 9024 has been or may be filed with respect to such order or judgment.

55. **General Unsecured Claim** means any Claim against a Debtor that is not an Administrative Claim, a Priority Tax Claim, a Priority Non-Tax Claim, a Customer Constructive Trust Claim, the Prepetition Lender’s Secured Claim, a Professional Fee Claim, an Other Secured Claim, an Intercompany Claim, or an Equity Interest.

56. **Governmental Unit** has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

57. **Insider** means any Person who is an “insider” as such term is defined in section 101(31) of the Bankruptcy Code, or who may otherwise be determined to be an “insider” under section 101(31) of the Bankruptcy Code by a court of competent jurisdiction.

58. **Intercompany Claim** means a claim held by one Debtor against another Debtor.

59. **Local Rules** means the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas, as the same may be amended or modified from time to time.

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

61. **Malibu Boats** means, collectively, Malibu Boats, Inc. and Malibu Boats, LLC.

62. **Malibu Settlement Agreement** means that Settlement Agreement dated October 7, 2024, as may be amended from time to time, and approved by the Bankruptcy Court pursuant to the *Order Approving Motion for Entry of an Order (I) Authorizing and Approving the Settlement Agreement Between the Trustee and Malibu Boats and (II) Granting Related Relief* [Docket No. 602] entered on November 20, 2024.

63. **Malibu Settlement Payment** means the \$3,500,000.00 payable by Malibu Boats to the Trustee pursuant to the Malibu Settlement Agreement. Notwithstanding anything to the contrary in the Plan, Disclosure Statement or elsewhere, the Malibu Settlement Payment shall be deemed the Collateral of the Prepetition Lender.

64. **Objection Deadline** means the later of (a) one hundred eighty (180) days after the Effective Date or (b) such later date as may be ordered by the Bankruptcy Court upon motion filed prior to the expiration of such one hundred eighty (180) day period.

65. **Other Retained Causes of Action** means all Retained Causes of Action owned by the Debtors or their respective Estates on the Effective Date, other than the Assigned Causes of Action.

66. **Other Secured Claim** means a Secured Claim that is not a Prepetition Lender’s Secured Claim.

67. **Petition Date** means May 20, 2024.

68. **Person** means an individual, partnership, corporation, limited liability company, cooperative, trust, unincorporated organization, association, joint venture, government or agency or political subdivision thereof, or any other form of legal entity.

69. **Plan** means this Joint Chapter 11 Plan, as the same may be amended, supplemented, or otherwise modified from time to time, including any exhibits and schedules hereto.

70. **Plan Reserves** means the separately accounted funds to be utilized in accordance with the provisions of the Plan, including: (a) the Administrative Claims Reserve; (b) the Priority Claims Reserve; (c) the Customer Constructive Trust Claims Reserve; (d) the Creditor Trust Reserve; and (e) any such other reserves that the Creditor Trustee determines is reasonable and necessary to aid the administration of the Plan.

71. **Plan Supplement** means the compilation of documents and forms of documents, schedules and exhibits, to be filed in one or more parts or volumes, no later than seven (7) days prior to the Confirmation Hearing, as amended, supplemented or otherwise modified from time to time, containing, without limitation any documents necessary for the execution and implementation of the Plan.

72. **Policy Proceeds** means the proceeds of the Debtors' insurance policies that constitute property of the Debtors' Estates.

73. **Prepetition Lender** means M&T Bank.

74. **Prepetition Lender's Secured Claims** means the Secured Claims held by the Prepetition Lender.

75. **Priority Claims Reserve** means the Plan Reserve established on or before the Effective Date by the Trustee from the Contributed Cash Collateral for the sole purpose of paying Allowed Priority Non-Tax Claims and Allowed Priority Tax Claims pursuant to section II.D and section IV.A hereof respectively, in the amount of \$1,750,000 unless a different amount has been fixed by stipulation of the Committee, the Trustee and the Prepetition Lender; or, if the Committee, the Trustee, and the Prepetition Lender cannot agree, by the Bankruptcy Court.

76. **Priority Non-Tax Claim** means any Claim that is entitled to priority in payment pursuant to sections 507(a)(4) or (5) of the Bankruptcy Code and that is not an Administrative Claim or a Priority Tax Claim.

77. **Priority Tax Claim** means any Claim of a Governmental Unit of the kind entitled to priority in payment as specified in section 507(a)(8) of the Bankruptcy Code.

78. **Pro Rata** means the proportion that the amount of an Allowed Claim or Allowed Equity Interest in a particular Class bears to the aggregate amount of all Allowed Claims or Allowed Equity Interests in such Class.

79. **Professional Fee Claim** means any Claim by a Professional Person under sections 330, 331 or 503 of the Bankruptcy Code for allowance of compensation and/or reimbursement of expenses in the Chapter 11 Cases.

80. **Professional Fee Reserve** means the funds budgeted for Professional Persons under the budgets approved pursuant to the Cash Collateral Order and shall include the funds maintained in the Funded Reserve Account, as that term is defined in the Cash Collateral Order, which funds shall be used for the sole purpose of paying Allowed Professional Fee Claims pursuant to section II.B hereof.

81. **Professional Person** means any Person retained in the Chapter 11 Cases or to be compensated by the Debtors pursuant to sections 327, 328, 330, 331, 503(b), or 1103 of the Bankruptcy Code.

82. **Rejection Damages Bar Date** means the first Business Day that is thirty (30) days after the Effective Date.

83. **Released Parties** means collectively the following, in each case in its capacity as such with each being a "Released Party": (a) the Trustee; (b) each Debtor; (c) the Committee and its members; (d) the Creditor

Trustee; [and (e) M&T Bank and its current and former officers, directors, managers, attorneys and other professional advisors]; *provided, however*, that the Borisch Parties shall not be “Released Parties.”

84. **Releasing Parties** means collectively the following, in each case in its capacity as such with each being a “Releasing Party”: (a) the Debtor; (b) the Trustee; (c) the Committee; (d) the Creditor Trustee; and (e) Consenting Creditors.

85. **Retained Causes of Action** means Causes of Action scheduled in the Plan Supplement as “retained” including (but not limited to) all of the Debtors’ Causes of Action as more specifically enumerated in a Plan Supplement, including, but not limited to, Avoidance Actions, which, as of the Effective Date have not been sold, transferred, settled, waived, or released pursuant to the Plan, upon order of the Bankruptcy Court or otherwise, all of which shall be reserved, retained, assigned, and transferred to the Creditor Trust. For the avoidance of doubt, the Debtors’ Causes of Action against the Borisch Parties and, to the extent applicable, any subsequent transferees thereof, shall be Retained Causes of Action.

86. **Schedules** means, collectively, Schedules A through J and the Statement of Financial Affairs, as filed by each Debtor in the Chapter 11 Cases, as the same may be amended from time to time.

87. **Secured Claim** means a Claim secured by a Lien that is valid, perfected and enforceable, and not avoidable, upon property in which a Debtor has an interest, to the extent of the value, as of the Effective Date, of such interest or Lien as determined by a Final Order of the Bankruptcy Court pursuant to section 506 of the Bankruptcy Code, or as otherwise agreed to in writing by the Debtor in question and the holder of such Claim. To the extent a Claim exceeds the value of the Collateral securing such Claim, such deficiency shall constitute a General Unsecured Claim.

88. **Solicitation Procedures Order** means the Bankruptcy Court’s *Order (I) Approving the Disclosure Statement, (II) Scheduling a Confirmation Hearing to Consider Confirmation of the Trustee’s Plan, (III) Approving the Solicitation Procedures and Dates, Deadlines, and Notices Related Thereto, and (IV) Granting Related Relief.*

89. **Third-Party Releases** means those releases provided under section X.D hereof.

90. **Underlying Claim** has the meaning ascribed in section IV.F hereof.

91. **U.S. Trustee** means the Office of the United States Trustee.

92. **U.S. Trustee Fees** means all fees payable under section 1930 of title 28 of the United States Code.

B. Rules of Interpretation and Construction.

1. Interpretation.

Unless otherwise specified herein, all section, article, and exhibit references in the Plan are to the respective section in, article of, and exhibit to, the Plan, as the same may be amended, waived, or modified from time to time. All headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions of the Plan.

2. Construction and Application of Bankruptcy Code Definitions.

Unless otherwise defined herein, words and terms defined in section 101 of the Bankruptcy Code shall have the same meanings when used in the Plan. Words or terms used but not defined herein shall have the meanings ascribed to such terms or words, if any, in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Plan.

3. Other Terms.

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

4. Time.

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

ARTICLE II
TREATMENT OF UNCLASSIFIED CLAIMS

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

A. Administrative Claims.

All Administrative Claims against the Debtors, other than Professional Fee Claims, shall be treated as follows:

1. Time for Filing.

All holders of Administrative Claims shall file with the Bankruptcy Court a request for payment of such Claims on or before the Administrative Claim Bar Date. Any such request must be served on the Trustee, his counsel, the Committee, its counsel, and the Creditor Trust and its counsel, and must, at a minimum, set forth (i) the name of the holder of the Administrative Claim; (ii) the amount of the Administrative Claim; and (iii) the legal and factual bases for the Administrative Claim. A failure to file any such request in a timely fashion will result in the Administrative Claim in question being discharged and its holder forever barred from asserting such Administrative Claim against the Debtors or any other Person.

2. Objection and Allowance.

An Administrative Claim, other than a Professional Fee Claim, for which a request for payment has been properly and timely filed, if necessary, shall become an Allowed Administrative Claim unless an objection is filed by the first Business Day that is thirty (30) days after the Administrative Claim Bar Date, or such later date as may be ordered by the Bankruptcy Court upon motion. If an objection is timely filed, the Administrative Claim in question shall become an Allowed Administrative Claim only to the extent so Allowed by Final Order of the Bankruptcy Court.

3. Payment.

Except to the extent that a holder of an Allowed Administrative Claim, other than a Professional Fee Claim, agrees to a different treatment of such Claim, each holder of an Allowed Administrative Claim shall receive, on account of and in full satisfaction of such Claim, Cash from the Administrative Claims Reserve in an amount equal to the amount of such Allowed Administrative Claim on (or as soon as reasonably practicable after) the later of (A) the Effective Date or (B) the date that entry of an order by the Bankruptcy Court allowing such Administrative Claim becomes a Final Order. Any surplus of funds in the Administrative Claims Reserve after payment of all Allowed Administrative Claims shall be allocated to the Customer Constructive Trust Claims Reserve for distribution pursuant to section IV.D.3 of this Plan.

B. Professional Fee Claims.***1. Time for Filing.***

Every Professional Person holding a Professional Fee Claim that has not previously been the subject of a final fee application and accompanying Bankruptcy Court order approving the same shall file a final application for payment of fees and reimbursement of expenses no later than the first Business Day that is thirty (30) days after the Effective Date. Any such final fee application shall conform to and comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

2. Objections and Allowance.

The last date to object to any Professional Fee Claim shall be the first Business Day that is twenty-four (24) days after such Professional Fee Claim has been filed with the Bankruptcy Court. All Professional Fee Claims shall be set for hearing on the same day, as the Bankruptcy Court's calendar permits, after consultation with counsel to the Trustee, Creditor Trustee (as applicable) and the Committee (as applicable).

3. Payment.

Professional Fee Claims shall be paid from the Professional Fee Reserve. To the extent there are insufficient funds on hand in the Professional Fee Reserve to pay all Professional Fee Claims in full, the Trustee or Creditor Trustee (as applicable) shall supplement the Professional Fee Reserve from the Administrative Claims Reserve as necessary to pay all Allowed Professional Fee Claims in full. Any surplus of funds in the Professional Fee Reserve after payment of all Allowed Professional Fee Claims shall be remitted by the Creditor Trustee to the Prepetition Lender on account of its Secured Claim.

C. U.S. Trustee Fees.

All U.S. Trustee Fees that arise before the Effective Date shall be paid from the Debtors' available Cash on or before the Effective Date or when such amounts are due in the ordinary course. All such fees that arise after the Effective Date but before the closing of the Chapter 11 Cases shall be paid by the Creditor Trust. U.S. Trustee Fees will not be assessed against the initial transfer or transfers from the Trustee to the Creditor Trustee. U.S. Trustee Fees will be assessed upon any disbursement of Creditor Trust Assets, until the case is closed, dismissed or converted.

D. Priority Tax Claims.***1. Time for Filing***

Holders of Priority Tax Claims shall file such Priority Tax Claims on or before the applicable Bar Date. Nothing in this Plan shall alter or extend such Bar Date.

2. Objection and Allowance.

A Priority Tax Claim shall become an Allowed Priority Tax unless an objection is filed by the Objection Deadline. If an objection is timely filed, the Priority Tax Claim in question shall become an Allowed Priority Tax Claim only to the extent so Allowed by Final Order of the Bankruptcy Court.

3. Payment

Except to the extent that a holder of an Allowed Priority Tax Claim has agreed or agrees to a different treatment of such Claim, each holder of an Allowed Priority Tax Claim shall receive on (or as soon as reasonably practicable after) the Effective Date, at the Trustee's or Creditor Trustee's option (as applicable): (i) Cash in an amount equal to the Allowed amount of such Claim, or (ii) regular installment payments of Cash having a total value, as of the Effective Date, equal to the Allowed amount of the Claim, and paid over a period ending not later than five (5) years after the Petition Date; or (iii) Pro Rata Cash payments to the extent of available funds in the Priority Claims

Reserve in a manner not less favorable than the treatment provided to Class 5 General Unsecured Claims under this Plan. To the extent interest is required to be paid on any Priority Tax Claim, the rate of such interest shall be the rate determined under applicable nonbankruptcy law, as set forth in section 511 of the Bankruptcy Code. To the extent there are insufficient funds on hand in the Priority Claims Reserve to pay all Allowed Priority Tax Claims in full, the Trustee or Creditor Trustee (as applicable) shall supplement the Priority Claims Reserve from proceeds of Other Retained Causes of Action as necessary to pay any remaining Allowed Priority Tax Claims in full.

4. Retention of Liens and Setoff

To the extent the holder of an Allowed Priority Tax Claim has a Lien on a Debtor's property, such Lien shall remain in place until such Allowed Priority Tax Claim has been paid in full.

ARTICLE III
CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

All Claims against, and Equity Interests in, the Debtors are classified for all purposes, including voting, confirmation, and distribution, as follows:

Class	Designation	Impairment	Entitled to Vote
1	Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
2	<i>Prepetition Lender's Secured Claims</i>	<i>Impaired</i>	<i>Yes</i>
3	Other Secured Claims	Unimpaired	No (deemed to accept)
4	<i>Customer Constructive Trust Claims</i>	<i>Impaired</i>	<i>Yes</i>
5	<i>General Unsecured Claims</i>	<i>Impaired</i>	<i>Yes</i>
6	<i>Contribution Claims</i>	<i>Impaired</i>	<i>Yes</i>
7	Intercompany Claims	Impaired	No (deemed to reject)
8	Equity Interests	Impaired	No (deemed to reject)

Administrative Claims, Professional Fee Claims, and Priority Tax Claims are not classified for purposes of voting or receiving distributions under the Plan, pursuant to section 1123(a)(1) of the Bankruptcy Code. Instead, all such Claims shall be treated separately as unclassified claims on the terms previously set forth in Article II of this Plan.

ARTICLE IV
TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. *Class 1 – Priority Non-Tax Claims.*

The Trustee or the Creditor Trustee, as applicable, may object to any Priority Non-Tax Claims on or before the Objection Deadline, unless such deadline is extended by an order of the Bankruptcy Court or agreement with the holder of the applicable Priority Non-Tax Claim. Except to the extent that a holder of an Allowed Priority Non-Tax Claim against a Debtor agrees to a less favorable treatment, each such holder shall receive, in full satisfaction of such Claim, payment in full in Cash from the Priority Claim Reserve on (or as soon as reasonably practicable after) the later of (A) the Effective Date or (B) the date that entry of an order by the Bankruptcy Court allowing such Priority Non-Tax Claim becomes a Final Order. To the extent there are insufficient funds on hand in the Priority Claims Reserve to pay all Allowed Priority Non-Tax Claims in full, the Trustee or Creditor Trustee (as applicable) shall supplement the Priority Claims Reserve with proceeds of Other Retained Causes of Action, as necessary to pay any remaining Allowed Priority Tax Claims in full.

B. Class 2 – Prepetition Lender’s Secured Claims.

On the Effective Date, the Trustee or Creditor Trustee (as applicable) shall pay to the Prepetition Lender, in partial satisfaction of the Allowed Prepetition Lender’s Secured Claims, all Cash held by the Debtors or the Trustee (including, without limitation, the Malibu Settlement Payment), except as necessary to fund the Plan Reserves. In the event that the Malibu Settlement Payment is received after the Effective Date, the Creditor Trustee shall promptly remit such funds to the Prepetition Lender. After the Effective Date, the Creditor Trustee shall promptly remit to the Prepetition Lender, in partial satisfaction of its Allowed Prepetition Lender’s Secured Claim, any additional Cash receipts obtained after the Effective Date from consummated sales of inventory, refunds of unearned insurance premiums resulting from cancelled or terminated insurance policies, merchant card receipts remitted from WorldPay, LLC or other merchant card vendors, or any other sources that are not Creditor Trust Assets. In addition, on the Effective Date, the Trustee or Creditor Trustee (as applicable) shall assign to the Prepetition Lender the Assigned Causes of Action. Any remaining balances of the Prepetition Lender’s Secured Claims, after such payments, shall be treated as a deficiency General Unsecured Claim in Class 5 and section IV.E hereof.

C. Class 3 – Other Secured Claims.

Except to the extent a holder of an Allowed Other Secured Claim agrees to a different treatment, each holder of an Allowed Other Secured Claim shall at the option of the Trustee or Creditor Trustee (as applicable), upon consultation with the Committee, receive either of the following treatments on the Effective Date or as soon as reasonably practicable thereafter: (i) payment in full, in Cash; (ii) the collateral securing such Allowed Other Secured Claim; or (iii) such other treatment that renders such Allowed Other Secured Claim unimpaired in accordance with section 1124 of the Bankruptcy Code.

D. Class 4 – Customer Constructive Trust Claims.***1. Consenting Creditors / Right to Opt Out***

All holders of Customer Constructive Trust Claims that do not opt out of the Third-Party Releases will be Consenting Creditors entitled to receive expedited settlement payments from the Customer Constructive Trust Claims Reserve. Any holder of a Customer Constructive Trust Claim that opts out of the Third-Party Releases will (i) retain all rights and defenses to pursue all remedies against third parties and (ii) be treated as a Class 5 General Unsecured Creditor.

2. Expedited Claim Review

The Trustee or Creditor Trustee (as applicable) shall conduct an expedited review of all Customer Constructive Trust Claims held by Consenting Creditors and must file objections, if any, to Disputed Customer Constructive Trust Claims no later than the Customer Constructive Claims Objection Deadline. The Creditor Trustee shall use good faith best efforts to resolve any Disputed Customer Constructive Trust Claims prior to making distributions to the Allowed Customer Constructive Trust Claims pursuant to the following subsection.

3. Settlement Payment

On or before the first Business Day that is 45 days after the Customer Constructive Trust Claims Objection Deadline, each holder of an Allowed Customer Constructive Trust Claim that is a Consenting Creditor shall receive from the Customer Constructive Trust Claims Reserve, in full satisfaction of such Claim against the Estates and in exchange for the Third-Party Releases, payment from the Creditor Trustee in Cash in the amount of 45% of the Allowed Customer Constructive Trust Claim.

To the extent there are insufficient funds on hand in the Customer Constructive Trust Claims Reserve to pay 45% of all Allowed Customer Constructive Trust Claims, the Creditor Trustee shall supplement the Customer

Constructive Trust Claims Reserve with proceeds of Other Retained Causes of Action as necessary to pay 45% of any remaining Allowed Customer Constructive Trust Claims.

E. Class 5 – General Unsecured Claims.

Except to the extent that a holder of an Allowed General Unsecured Claim against a Debtor agrees to less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive a Creditor Trust Interest. Distributions to holders of Allowed General Unsecured Claims who receive a Creditor Trust Interest shall be on a Pro Rata basis with all other Allowed General Unsecured Claims, as set forth in the Creditor Trust Agreement. Notwithstanding the foregoing, solely for purposes of any distribution made from the portion of the Contributed Cash Collateral funded into the Creditor Trust Reserve, the Prepetition Lender's Allowed General Unsecured Claim shall be subordinated to the holders of all other Allowed General Unsecured Claims.

F. Class 6 – Contribution Claims

Except to the extent that a holder of a Contribution Claim against a Debtor agrees to less favorable treatment, each holder of a Contribution Claim that is liable with a Debtor on any other Allowed Claim shall be treated in accordance with section 509 of the Bankruptcy Code, including the subordination of any distributions on account of such Contribution Claim in accordance therewith. A holder of a Contribution Claim that is liable with a Debtor on any Allowed Claim (each, an "Underlying Claim") and that pays such Underlying Claim in full, shall, to the extent provided by section 509 of the Bankruptcy Code, be subrogated to the rights of the holder of such Underlying Claim under and for purposes of the Plan, and such subrogated Claim shall be treated under the applicable Class of such Underlying Claim, in accordance with the Plan. Any payment of an Underlying Claim by a holder of a Contribution Claim shall be presumed to be solely on account of such holder's own liability on account of such Underlying Claim and shall not be deemed to be a payment of the Underlying Claim in full within the meaning of section 509(c) of the Bankruptcy Code until so agreed by the Creditor Trustee or otherwise determined by the Bankruptcy Court.

G. Class 7 – Intercompany Claims

On the Effective Date, all Intercompany Claims by and against the Debtors shall be settled, cancelled, released, and discharged without payment or distribution of any Cash or other property. Holders of Intercompany Claims are conclusively deemed to have rejected the Plan and are not entitled to vote.

H. Class 8 – Equity Interests

On the Effective Date, all Equity Interests in each Debtor shall be cancelled, extinguished, and of no further force or effect. Holders of Equity Interests shall neither retain nor receive any property under the Plan on account of such Equity Interests. Holders of Equity Interests are conclusively deemed to have rejected the Plan and are not entitled to vote.

ARTICLE V
IMPAIRMENT; ACCEPTANCE OR REJECTION OF THE PLAN;
EFFECT OF REJECTION BY ONE OR MORE CLASSES

A. Classes Entitled to Vote.

The holders of Claims in Classes 1 and 3 are unimpaired and are conclusively deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan. The holders of Claims in Classes 2, 4, 5, and 6 are impaired and are entitled to vote to accept or reject the Plan. The holders of Claims in Classes 7 and 8 are impaired and are conclusively deemed to reject the Plan and are therefore not entitled to vote to accept or reject the Plan.

B. Class Acceptance Requirement.

A Class of impaired Claims entitled to vote on the Plan shall have accepted the Plan if the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of Claims in such Class who have voted on the Plan have voted to accept the Plan.

C. Cramdown.

To the extent that any Class is impaired under the Plan and such Class fails to accept the Plan in accordance with section 1126(c) or (d) of the Bankruptcy Code, the Debtors hereby request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code.

D. Elimination of Classes.

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

ARTICLE VI
MEANS OF IMPLEMENTATION

A. Limited Substantive Consolidation.

The Plan provides for potential recoveries on account of Allowed Claims in Classes 1, 2, 3, 4, 5 and 6 regardless of the Debtor entity against which such Allowed Claims are asserted. The Debtors shall not be consolidated for any other purpose. To the extent necessary, the Plan shall serve as a motion seeking, and entry of the Confirmation Order shall constitute, the approval, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, effective as of the Effective Date, of the limited consolidation for voting and distribution on account of Allowed Claims in Classes 1, 2, 3, 4, 5, and 6.

For the avoidance of doubt, the limited consolidation described in this section shall not affect the legal and corporate structures of the Debtors. In addition, such consolidation shall not constitute a waiver of the mutuality requirement for setoff under section 553 of the Bankruptcy Code.

B. The Creditor Trust.

1. Establishment of the Creditor Trust.

The Creditor Trust shall be established for the benefit of the holders of Allowed General Unsecured Claims. This section sets forth the general terms of the Creditor Trust and certain of the rights, duties, and obligations of the Creditor Trustee. In the event of any conflict between the terms of this section and the terms of the Creditor Trust Agreement, the terms of the Creditor Trust Agreement shall govern.

2. The Creditor Trustee.

The Creditor Trustee shall be selected by the Trustee with the approval of the Committee, with such approval not to be unreasonably withheld, subject only to Bankruptcy Court approval at the Confirmation Hearing. The Creditor Trust, acting by and through the Creditor Trustee, shall be a representative of the estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code. The Creditor Trustee may prosecute, settle, liquidate, and otherwise administer the Creditor Trust Assets on behalf of the Creditor Trust, without the need for Bankruptcy Court approval or any other notice or approval, except as set forth in the Creditor Trust Agreement, and shall also be responsible for

objecting to Claims. The Creditor Trust and the Creditor Trustee shall be exempt from giving any bond or other security in any jurisdiction.

3. Execution of Creditor Trust Agreement.

On the Effective Date, the Creditor Trust Agreement shall be executed, and all other necessary steps shall be taken to establish the Creditor Trust and the beneficial interests therein. The form of the Creditor Trust Agreement and related ancillary documents shall be mutually acceptable to the Trustee and the Committee, subject only to Bankruptcy Court approval at the Confirmation Hearing.

4. Purpose of the Creditor Trust.

The Creditor Trust shall be established for the purpose of administering the terms of this Plan, including the liquidation and distribution of the Creditor Trust Assets and all proceeds thereof pursuant to the terms of this Plan and the Confirmation Order. The Creditor Trust, through the Creditor Trustee, shall not continue or engage in the conduct of a trade or business. The Creditor Trust, through the Creditor Trustee, shall (i) collect and reduce the Creditor Trust Assets to Cash, (ii) prosecute, settle and otherwise administer the Other Retained Causes of Action, (iii) make distributions in accordance with the Plan and Creditor Trust Agreement, and (iv) take all such actions as are reasonably necessary to accomplish the purpose hereof, as more fully provided in the Creditor Trust Agreement.

5. Creditor Trust Assets.

The Creditor Trust shall consist of the Creditor Trust Assets. On the Effective Date, the Trustee, on behalf of the Debtors, shall, and shall be deemed to, irrevocably grant, assign, transfer, and convey to the Creditor Trust all rights, title, and interests in and to all of the Creditor Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Creditor Trust Assets shall automatically vest in the Creditor Trust, free and clear of all Liens, Claims, and encumbrances. The Creditor Trust, acting by and through the Creditor Trustee, may abandon or otherwise not accept any Creditor Trust Assets that the Creditor Trust believes, in good faith, to have no value to, or will be unduly burdensome to, the Creditor Trust. Any Creditor Trust Assets that the Creditor Trust so abandons or otherwise does not accept shall not be property of the Creditor Trust.

6. Governance and Powers and Duties of the Creditor Trust.

The Creditor Trust shall be governed by the Creditor Trustee in accordance with the Creditor Trust Agreement and consistent with the Plan. The Creditor Trustee shall have the power and authority to perform the acts described in the Creditor Trust Agreement. The powers, rights, and responsibilities of the Creditor Trustee shall be specified in the Creditor Trust Agreement and shall include, among other things, the authority, power, and responsibility to cause the Creditor Trust to: (a) receive, manage, invest, supervise, and protect Creditor Trust Assets; (b) pay taxes or other obligations incurred by the Creditor Trust and issue to employees or other Persons, and/or file with the appropriate Governmental Units, applicable tax and wage returns and forms; (c) retain and compensate, without further order of the Bankruptcy Court, the services of employees, independent contractors, professionals, and consultants to advise and assist in the administration, prosecution and distribution of Creditor Trust Assets; (d) calculate and implement Distributions of Creditor Trust Assets; (e) investigate, prosecute, compromise, and settle, in accordance with the specific terms of the Creditor Trust Agreement and without further order of the Bankruptcy Court, except as otherwise provided therein, Other Retained Causes of Action; (f) resolve issues involving Claims in accordance with the Plan, including the power to object to, or settle, resolve, or compromise objections or disputes with respect to, Claims, and to subordinate and recharacterize Claims by objection, motion, or adversary proceeding; (g) undertake all administrative functions of the Chapter 11 Cases, including the payment of statutory fees and the ultimate closing of the Chapter 11 Cases; and (h) take action pursuant to such other powers as may be vested in or

assumed by the Creditor Trustee pursuant to this Plan, the Creditor Trust Agreement, Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of this Plan.

7. Books and Records.

The Creditor Trust shall: (a) take possession of all copies of books, records, and files of the Debtors and the Estates that were not sold and transferred in connection with a sale; and (b) provide for the retention and storage of such books, records, and files until such time as the Creditor Trust determines, in accordance with the Creditor Trust Agreement, that retention of same is no longer necessary or beneficial to the Creditor Trust.

8. Cash.

The Creditor Trustee may invest Creditor Trust Assets only in Cash, money market funds, and Government securities (as defined in section 2(a)(16) of the Investment Company Act of 1940, as amended); *provided, however*, that such investments are investments permitted to be made by a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable Internal Revenue Service guidelines, rulings, or other controlling authorities.

9. Costs and Expenses of the Creditor Trustee.

The costs and expenses of the Creditor Trust and/or the Creditor Trustee, including the fees and expenses of retained professionals, shall be paid only out of the Creditor Trust Assets. All such costs and expenses must be satisfied or reserved for in full before distributions may be made to holders of Allowed Claims.

10. Compensation of the Trustee.

The Creditor Trustee shall be entitled to reasonable compensation paid exclusively from the Creditor Trust Assets as more fully set forth in the Creditor Trust Agreement.

11. Retention of Professionals by the Creditor Trust.

The Creditor Trust, acting by and through the Creditor Trustee, may retain and reasonably compensate counsel and other professionals out of the Creditor Trust Assets to assist in its duties on such terms as the Creditor Trust deems appropriate without Bankruptcy Court approval. The Creditor Trust may retain any professional who represented parties in interest (including the Trustee or the Committee) in the Chapter 11 Cases.

12. Distribution of Creditor Trust Assets.

The Creditor Trust shall distribute Cash in accordance with the Plan and the Creditor Trust Agreement.

The Creditor Trust shall not make any distributions to holders of Disputed Claims unless and until such Claims are Allowed. The Creditor Trust shall ensure that sufficient funds are reserved, as determined by the Creditor Trustee in his sole discretion, to pay Disputed Claims upon Allowance. The Creditor Trust shall be permitted to reserve and satisfy amounts that (i) are reasonably necessary to meet contingent liabilities and to maintain the value of the Creditor Trust Assets, (ii) are necessary to pay reasonable expenses (including, but not limited to, any taxes imposed on the Creditor Trust or in respect of the Creditor Trust Assets), and (iii) are required to satisfy other liabilities incurred by the Creditor Trust in accordance with this Plan or the Creditor Trust Agreement.

13. Creditor Trust Certificates.

Beneficial interests in the Creditor Trust shall not be represented by certificates, receipts, or in any other form or manner, except as maintained on the books and records of the Creditor Trust by the Creditor Trustee, as set forth in the Creditor Trust Agreement.

14. Federal Income Tax Treatment of the Creditor Trust.

i. *Creditor Trust Assets Treated as Owned by General Unsecured Creditors.* For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Creditor Trustee, and the holders of beneficial interests in the Creditor Trust) shall treat the transfer of the Creditor Trust Assets to the Creditor Trust for the benefit of the beneficiaries thereof, whether Allowed on or after the Effective Date, as (A) a transfer of the Creditor Trust Assets directly to the holders in satisfaction of General Unsecured Claims, followed by (B) the transfer by such holders to the Creditor Trust of the Creditor Trust Assets in exchange for, beneficial interests in the Creditor Trust. Accordingly, the holders of such General Unsecured Claims shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the Creditor Trust Assets.

ii. *Tax Reporting.*

A) The Creditor Trust, acting by and through the Creditor Trustee shall file income tax returns for the Creditor Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this section. To the extent required, or if desired by the Creditor Trust, the Creditor Trust shall annually send to each record holder of a beneficial interest a separate statement setting forth the holder's share of items of income, gain, loss, deduction, or credit and will instruct all such holders to report such items on their federal income tax returns or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns. The Creditor Trust's taxable income, gain, loss, deduction, or credit will be allocated among the beneficial holders of Creditor Trust Interests in accordance with each holder's relative beneficial Creditor Trust Interest.

B) The Creditor Trust, acting by and through the Creditor Trustee, may, in its sole discretion, determine the best way to report for United States tax purposes with respect to any Creditor Trust Assets allocable to, or retained on account of, Disputed Claims (the "Disputed Claims Reserve"), including, but not limited to, filing a tax election to treat the Disputed Claims Reserve as a disputed ownership fund ("DOF") or other separate entity within the meaning of Treasury Regulation section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Creditor Trust (and, to the extent permitted by applicable law, report consistently with the foregoing for United States federal, state, and local income tax purposes) (the "DOF Election"). If a DOF Election is made, the Creditor Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF or other separate entity, including, but not limited to, the filing of a separate federal tax return for the DOF or other separate entity and the payment of federal and/or state income tax due.

C) The Creditor Trust shall be responsible for payments, out of the Creditor Trust Assets, of any taxes imposed on the Creditor Trust or the Creditor Trust Assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (ii) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Trustee as a result of the resolutions of such Disputed Claims.

D) The Creditor Trust may request an expedited determination of taxes of the Creditor Trust, including the Disputed Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Creditor Trust for all taxable periods through the dissolution of the Creditor Trust.

15. Dissolution.

The Creditor Trust shall be dissolved and the Creditor Trustee shall be discharged no later than the fifth (5th) anniversary of the Effective Date; *provided, however*, that, the Bankruptcy Court, upon motion by a party in interest, including the Creditor Trust, may extend the term of the Creditor Trust if it is necessary to the liquidation and/or distribution of the Creditor Trust Assets, without prejudice to further extensions, so long as Bankruptcy Court approval of such extension is obtained in conformity with IRS Revenue Procedure 94-45, 1994-2 C.B. 684; *provided, however*, that in no event shall the term of the Creditor Trust extend past the tenth (10th) anniversary of the Effective Date; *provided further* that neither the Creditor Trust Agreement nor the continued existence of the Creditor Trust shall prevent the Trustee from closing the Chapter 11 Cases pursuant to section 350 of the Bankruptcy Code and obtaining a Final Decree pursuant to Bankruptcy Rule 3022. The Creditor Trust may be terminated earlier than its scheduled termination if (i) the Bankruptcy Court has entered a Final Order closing all of or the last of the Chapter 11 Cases pursuant to section 350(a) of the Bankruptcy Code and (ii) the Creditor Trustee has administered all Creditor Trust Assets and performed all other duties required by the Plan, the Confirmation Order, the Creditor Trust Agreement and the Creditor Trust. The Creditor Trustee shall not unduly prolong the duration of the Creditor Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Creditor Trust Assets and to effect the Distribution of the Creditor Trust Assets in accordance with the terms hereof and terminate the Creditor Trust as soon as practicable. Prior to and upon termination of the Creditor Trust, the Creditor Trust Assets will be distributed to the beneficiaries of Creditor Trust, pursuant to the provisions set forth in the Trust Agreement.

If at any time the Creditor Trustee determines that the expense of administering the Creditor Trust is likely to exceed the value of the Creditor Trust Assets, the Creditor Trustee shall have the authority to (i) distribute to the beneficiaries of the Creditor Trust any Cash balance remaining in excess of necessary costs to pay outstanding expenses of the Creditor Trust, including any fees and expenses of the Creditor Trustee and his/her professionals, (ii) donate any Creditor Trust Assets remaining in the Creditor Trust to a non-religious charitable organization exempt from federal income tax under section 501(c)(3) of the Tax Code that is unrelated to the Debtors and any Insider of the Debtors and (iii) dissolve the Creditor Trust.

16. Preservation of Privileges

The actions taken by the Debtors, the Trustee, or the Committee shall not be (or be deemed to be) a waiver of any privilege, including any attorney-client privilege or work-product privilege attaching to any document or communications (whether written or oral). Notwithstanding the Trustee or the Committee providing any privileged information to the Creditor Trust, Creditor Trustee, or any party or person associated with the Creditor Trust, such privileged information shall be without waiver of any privilege of the Trustee or the Committee, including any attorney-client privilege or work-product privilege. The transfer to and vesting in the Creditor Trust of the Creditor Trust Assets on the Effective Date shall not effect a waiver of any privilege of the Debtors, the Trustee, or the Committee, and upon such transfer, the Creditor Trust, acting by and through the Creditor Trustee, shall hold all rights with respect to such privileges, including the right to waive such privileges in its discretion.

17. Indemnification of Creditor Trustee.

The Creditor Trust shall indemnify the Creditor Trust Indemnified Parties for, and shall hold them harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost, or expense (including the reasonable fees and expenses of their respective professionals) incurred without fraud, gross negligence or willful misconduct on the part of the Creditor Trust Indemnified Parties (which fraud, gross negligence or willful misconduct, if any, must be determined by a Final Order of a court of competent jurisdiction) for any action taken, suffered, or omitted to be taken by the Creditor Trust Indemnified Parties in connection with the acceptance, administration, exercise, and performance of their duties under the Plan, Confirmation Order, or the Creditor Trust Agreement, as applicable. An act or omission taken with the approval of the Bankruptcy Court, and not inconsistent therewith, will be conclusively deemed not to constitute fraud, gross negligence or willful misconduct. In addition, the Creditor Trust shall, to the fullest extent permitted by law, indemnify and hold harmless the Creditor Trust Indemnified Parties, from and against and with respect to any and all liabilities, losses, damages, claims, costs, and expenses, including attorneys' fees arising out of or due to their actions or omissions, or consequences of such actions or omissions, with respect to the Creditor Trust or the implementation or administration of the Plan, if the Creditor Trust Indemnified Party acted in good faith and in a manner reasonably believed to be in, or not opposed to, the best interest of the Creditor Trust.

To the extent the Creditor Trust indemnifies and holds harmless any Creditor Trust Indemnified Parties as provided above, the legal fees and related costs incurred by counsel to the Creditor Trust in monitoring or participating in the defense of such claims giving rise to the right of indemnification shall be paid as costs and expenses of the Creditor Trust. The costs and expenses incurred in enforcing the right of indemnification in this section shall be paid by the Creditor Trust. This provision shall survive the termination of the Creditor Trust or Creditor Trust Agreement, and the death, dissolution, liquidation, resignation, replacement, or removal of the Creditor Trustee.

C. Discharge of the Chapter 11 Trustee and Cessation of Fee and Expense Payments.

On the Effective Date, the Trustee and the Trustee's Professional Persons (solely in their capacity as such) shall be discharged and released from all their duties relating to the Chapter 11 Cases, except with respect to (a) any applications for Professional Fee Claims or expense reimbursements for the Trustee and his Professional Persons, including preparing same, objecting to same, defending same and attending any hearing with respect to same; and (b) any motions or other actions seeking enforcement or implementation of (i) the Plan or (ii) the Confirmation Order. Neither the Debtors nor the Creditor Trust shall be responsible for paying any fees or expenses incurred by the Trustee after the Effective Date *except* if incurred in furtherance of the functions of the Trustee set forth in (a) or (b) of this paragraph, subject to the rights of parties in interest to object thereto.

D. Dissolution of Committee and Cessation of Fee and Expense Payments.

The Committee shall be dissolved on the Effective Date and the members of the Committee (solely in their capacities as such) and the Committee's Professional Persons (solely in their capacity as such) shall be released from all their duties relating to the Chapter 11 Cases, except with respect to (a) any applications for Professional Fee Claims or expense reimbursements for members of the Committee, including preparing same, objecting to same, defending same and attending any hearing with respect to same; and (b) any motions or other actions seeking enforcement or implementation of (i) the Plan or (ii) the Confirmation Order. Neither the Debtors nor the Creditor Trust shall be responsible for paying any fees or expenses incurred by the Committee (or any other committee that may be appointed in these Chapter 11 Cases) after the Effective Date *except* if incurred in furtherance of the functions of the Committee set forth in (a) or (b) of this paragraph, subject to the rights of parties in interest to object thereto.

E. Issuance of Creditor Trust Interests.

All of the Creditor Trust Interests issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. On the Distribution Date, the Creditor Trust shall issue the Creditor Trust Interests for distribution pursuant to the provisions hereof and the Creditor Trust Agreement. All Creditor Trust Interests to be issued shall be deemed issued as of the Effective Date regardless of the date on which they are actually distributed. For the avoidance of doubt, ownership of a Creditor Trust Interest will not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except the book entry system.

The Creditor Trust Interests shall be non-transferable and non-assignable during the term of the Creditor Trust Agreement except by operation of law. An assignment by operation of law shall not be effective until appropriate notification and proof thereof is submitted to the Creditor Trust, and the Creditor Trust may continue to pay all amounts to or for the benefit of the assigning Creditor Trust beneficiaries until receipt of proper notification and proof of assignment by operation of law. The Creditor Trust may rely upon such proof without the requirement of any further investigation.

F. Section 1145 Exemption.

Section 1145 of the Bankruptcy Code shall be applicable to the issuance of the Creditor Trust Interests, if any. To the maximum extent permitted by section 1145 of the Bankruptcy Code and applicable non-bankruptcy law, if appropriate, the Creditor Trust Interests, issued pursuant to the Plan and their transfer will be exempt from

registration under the Securities Act and all rules and regulations promulgated thereunder, and any and all applicable state and local laws, rules, and regulations.

G. *Cancellation of Existing Securities.*

On the Effective Date, except as otherwise provided for herein or any other document incorporated in the Plan, all Equity Interests and any other certificate, security, share, note, bond, indenture, purchase right, option, warrant, certificates of designation or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Equity Interest, to the extent not already cancelled, shall be deemed cancelled and of no further force or effect, without the requirement for any further action on the part of the Bankruptcy Court or any other Person.

H. *Corporate Action.*

Upon the Effective Date, all actions contemplated under the Plan shall be deemed authorized and approved in all respects. All matters provided for in the Plan involving the corporate structure of the Debtors, and any corporate action required by or in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Trustee, any Equity Interest holders, or directors or officers of the Debtors. The authorizations and approvals contemplated by this section shall be effective notwithstanding any requirements under non-bankruptcy law.

I. *Directors, and Executive Officers.*

On the Effective Date, the term of each member of each Debtor's current board of directors or board of managers shall automatically expire. From and after the Effective Date, the Creditor Trustee may exercise all power and authority that may be exercised by any officer, director or manager of, or holder of an Equity Interest in, the Debtors, with like effect as if authorized, exercised and taken by unanimous consent of such officers, directors, managers or holders of Equity Interests, *provided*, that the Creditor Trustee shall have no duties other than as expressly set forth in the Confirmation Order, the Plan, and the Creditor Trust Agreement.

J. *Retained Causes of Action.*

Except as otherwise provided in this Plan, an agreement or document entered into in connection with the Plan, or in a Final Order of the Bankruptcy Court, pursuant to sections 363(b) and 1123(b)(3) of the Bankruptcy Code, the Trustee reserves and, as of the Effective Date, grant, release, assign, transfer, and convey to: (i) the Prepetition Lender the Assigned Causes of Action, and (ii) to the Creditor Trust the Other Retained Causes of Action.

The Prepetition Lender shall be the exclusive representative of the estates pursuant to section 1123(b)(3) of the Bankruptcy Code on account of such Assigned Causes of Action. On and after the Effective Date, the Prepetition Lender, for itself in partial satisfaction of its Allowed Prepetition Lender's Secured Claim, may pursue Assigned Causes of Action. Any and all recoveries and proceeds from any Assigned Causes of Action shall be the sole property of Prepetition Lender, in partial satisfaction of its Allowed Prepetition Lender's Secured Claim and in consideration for the value provided by the Prepetition Lender under this Plan.

The Creditor Trust, acting by and through the Creditor Trustee, shall be the exclusive representative of the estates pursuant to section 1123(b)(3) of the Bankruptcy Code on account of the Other Retained Causes of Action. On and after the Effective Date, the Creditor Trustee, on behalf of the Creditor Trust, may pursue Other Retained Causes of Action for the benefit of the holders of Creditor Trust Interests.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Retained Cause of Action against it as any indication that the Prepetition Lender or the Creditor Trustee, as applicable, will not pursue any and all available Retained Causes of Action. Unless any Retained Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order of the Bankruptcy Court, the Trustee expressly reserves all Retained Causes of Action for later adjudication by the Prepetition Lender or the Creditor Trust, as applicable, and, therefore no preclusion doctrine,

including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Retained Causes of Action upon, after, or as a consequence of Plan confirmation or occurrence of the Effective Date.

K. Effectuating Documents; Further Transactions.

On and after the Effective Date, the Creditor Trust, acting by and through the Creditor Trustee, is authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

L. Exemption from Certain Transfer Taxes.

Pursuant to section 1146(a) of the Bankruptcy Code, the following will not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, sales or use tax, mortgage tax, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment: (a) the creation of any mortgage, deed of trust, lien or other security interest under or pursuant to this Plan; (b) the release or assignment of liens; (c) the transfer of any assets of the Debtors' Estates to the Creditor Trust; or (d) the making or delivery of any deed or other instrument of transfer under, in furtherance of, in connection with or pursuant to this Plan, including any restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments executed in connection with any of the foregoing.

ARTICLE VII
DISTRIBUTIONS

A. Date of Distributions.

Distributions under the Plan shall be made as set forth herein. In the event that any payment or act under this 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 shall be completed on the next succeeding Business Day but shall be deemed to have been completed as of the required date.

B. Sources of Cash for Plan Distributions.

Except as otherwise provided herein or in the Confirmation Order, all Cash required for the payments to be made under this Plan shall come from the Creditor Trust Assets.

C. Distributions.

All distributions under the Plan shall be made by the Trustee, his designee, or by the Creditor Trustee. Neither the Trustee, his designee, the Creditor Trust, nor the Creditor Trustee shall be required to post any bond, surety or other security for the performance of its duties hereunder unless otherwise ordered by the Bankruptcy Court.

D. Record Date for Distributions.

At the close of business on the Distribution Record Date, the transfer ledgers or registers for Claims against the Debtors shall be closed, and there shall be no further changes in the record holders of such Claims. Neither the Trustee nor the Creditor Trust shall have any obligation to recognize any transfer of any of the foregoing occurring after the Distribution Record Date and shall be entitled instead to recognize for all purposes hereunder, including to effect distributions hereunder, only those record holders stated on the transfer ledgers or registers maintained by the Trustee as of the close of business on the Distribution Record Date. All distributions to holders of Allowed Claims under the Plan shall be made to the holder of the Allowed Claim as of the Distribution Record Date.

E. Delivery of Distributions; Unclaimed Property.

Subject to Bankruptcy Rule 9010, all distributions under the Plan shall be made at the address of each holder of an Allowed Claim (1) at the address set forth in the underlying proof of claim, if filed, (2) at the address set forth on the Debtors' Schedules, if no proof of claim is filed, or (3) pursuant to a written change of address filed with the Bankruptcy Court and delivered to the Creditor Trust. If any distribution to the holder of an Allowed Claim is returned as undeliverable, no further distributions to such holder shall be made unless and until the Trustee or the Creditor Trust, as applicable, are notified of such holder's then-current address, at which time all missed distributions shall be made to such holder without interest. All such distributions, as well as any distributions by check or other means that have not been negotiated shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of sixty (60) days after the date of the distribution in question. After such 60th day, and notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary (i) all unclaimed property or interest in property in respect of the distribution in question shall revert to the Creditor Trust, and (ii) the Claim of any holder with respect to such unclaimed property or interest in property shall be discharged and forever barred.

F. Means of Payment.

All distributions made pursuant to the Plan shall be in Cash.

G. Distributions After Effective Date.

Distributions made after the Effective Date to holders of Disputed Claims that are not Allowed as of the Effective Date, shall be deemed to have been made on the Effective Date. After the initial distribution, the Creditor Trust, by and through the Creditor Trustee shall make additional interim distributions to holders of Allowed Claims at such time as the Creditor Trust may deem appropriate, in accordance with the terms of this Plan.

H. Withholding and Reporting Requirements.

Any party issuing any instrument or making any distribution under the Plan shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements. Notwithstanding the above, each holder of an Allowed Claim that is entitled to receive a distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any applicable tax obligations, including income, withholding and other tax obligations, on account of such distribution. Any party issuing any instrument or making any distribution under the Plan to any holder of any Allowed Claim has the right, but not the obligation, to not issue such instrument or make a distribution until such holder has made arrangements satisfactory to such issuing or disbursing party for payment of any such tax obligations.

The Creditor Trust shall be authorized to require each holder of a Claim to provide it with an executed Form W-9, Form W-8, or any other tax form, documentation or certification as may be requested by the Creditor Trust as a condition precedent to being sent a distribution under the Plan. If a holder of a Claim does not provide the Trust with an executed Form W-9, Form W-8 or other requested tax form within ninety (90) days after the date of the initial request, the Creditor Trust may, in its sole discretion: (1) make such distribution under the Plan net of applicable withholding; (2) reserve such distribution under the Plan, in which case (i) such holder shall be deemed to have

forfeited the right to receive any current, reserved or future distribution under the Plan, (ii) any such distribution under the Plan shall revert to the Creditor Trust for all purposes, including but not limited to, for distribution to other Allowed Claims, and (iii) the Claim of the holder originally entitled to such distribution under the Plan shall be irrevocably waived and forever barred without further order of the Bankruptcy Court, all notwithstanding any federal, state or provincial escheat, unclaimed or abandoned property law to the contrary; or (3) establish any other mechanisms it believes are reasonable and appropriate. The Creditor Trust reserves the right to allocate and distribute all distributions under the Plan in compliance with all applicable wage garnishments, alimony, child support and other spousal awards, Liens and similar encumbrances.

I. No Postpetition Interest.

Unless otherwise specifically provided for in the Plan or in the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claim, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date.

J. Time Bar to Payments.

Checks issued under the Plan shall be null and void if not negotiated within sixty (60) days after the date of issuance. Requests for reissuance of any check shall be made in writing directly to the Creditor Trust by the Person to whom such check was originally issued. Any request for re-issuance of a voided check must be made on or before the end of the 60-day period referenced in this section. After such 60-day period, if no request for re-issuance of a voided check was timely made, such amounts shall constitute unclaimed property and be treated in accordance with section VII.E of this Plan, and all Claims in respect of such void checks shall be discharged and forever barred.

K. De Minimis Distributions.

Neither the Trustee nor the Creditor Trust shall have any obligation to make a distribution that is less than Fifty Dollars (\$50) in Cash. If an interim distribution to the holder of an Allowed Claim is less than \$50, such distribution shall be held for future distributions. If the final distribution to any holder of an Allowed Claim is less than \$50, such amount shall become and constitute unclaimed property and be treated in accordance with section VII.E of the Plan.

ARTICLE VIII
PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

A. Objections to Claims.

Except insofar as a Claim is Allowed under the Plan or pursuant to Final Order of the Bankruptcy Court, the Trustee, the Creditor Trust, and any other party in interest with standing, shall be entitled to object to Claims. Any objections to Claims shall be served and filed by the Objection Deadline. Any Claim to which an objection is timely filed shall be a Disputed Claim.

B. Estimation of Claims.

Before or after the Effective Date, the Trustee or the Creditor Trustee, as applicable, may at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any such Claim or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the claims register maintained in these Chapter 11 Cases, 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. If the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of

distributions), and the Creditor Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

C. *No Distributions Pending Allowance.*

If a timely objection is made with respect to any Claim, no payment or distribution under the Plan shall be made on account of such Claim unless and until such Disputed Claim becomes Allowed.

D. *Distributions After Allowance.*

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) 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 Trustee or the Creditor Trustee, as applicable, shall provide to the holder of such Claim the distribution (if any) to which such holder is entitled under this Plan as of the Effective Date, without any interest.

E. *Disallowance of Late Filed Claims.*

Unless otherwise provided in a Final Order of the Bankruptcy Court, any Claim for which a proof of claim is filed after the applicable Bar Date shall be deemed Disallowed. The holder of a Claim that is Disallowed pursuant to this section shall not receive any distribution on account of such Claim, and neither the Trustee nor the Creditor Trust shall need to take any affirmative action for such Claim to be deemed Disallowed.

ARTICLE IX
CONDITIONS PRECEDENT TO CONFIRMATION AND
EFFECTIVENESS OF THE PLAN

A. *Conditions to Confirmation of Plan.*

Confirmation of the Plan shall not occur, and the Confirmation Order shall not be entered, until each of the following conditions precedent have been satisfied or waived:

- (i) An order, finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered; and
- (ii) The Confirmation Order shall be in a form and substance reasonably satisfactory to the Trustee, the Committee, and the Prepetition Lender.

B. *Conditions to Effective Date of Plan.*

The Effective Date of the Plan shall not occur until each of the following conditions precedent have been satisfied or waived:

- (i) The clerk of the Bankruptcy Court shall have entered the Confirmation Order in the Chapter 11 Cases and there shall not be a stay or injunction (or similar prohibition) in effect with respect thereto;
- (ii) The Confirmation Order shall have become a Final Order;
- (iii) The Creditor Trust Agreement has been fully executed, the Creditor Trust shall have been formed, and the Creditor Trust Assets have been transferred to the Creditor Trust;
- (iv) Substantially all Administrative Claims have been Allowed and the Administrative Claims Reserve has been funded in accordance with the terms hereof;

- (v) All conditions precedent to the effectiveness of the Malibu Settlement Agreement, as set forth therein, shall have been satisfied or waived by Malibu Boats or the Trustee, as applicable, and the Trustee shall have received the Malibu Settlement Payment; and
- (vi) All other actions and all agreements, instruments or other documents necessary to implement the terms and provisions of the Plan shall have been executed and delivered by the parties thereto, and, in each case, all conditions to their effectiveness shall have been satisfied or waived as provided therein.

Within two (2) Business Days of the Effective Date, the Trustee shall file a notice of the occurrence of the Effective Date and serve the same on all creditors and parties in interest.

C. *Waiver of Conditions Precedent.*

Any of the foregoing conditions (with the exception of the conditions set forth in sections IX.A(i), IX.B(i), and IX.B(iii) hereof) may be waived by agreement of the Trustee, the Prepetition Lender, and the Committee without notice to or order of the Bankruptcy Court. The failure to satisfy or waive any condition may be asserted by the Trustee, the Prepetition Lender, and the Committee regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by the Trustee, the Prepetition Lender, or the Committee). The failure of the Trustee, the Prepetition Lender, and the Committee to exercise any of the foregoing rights shall not be deemed a waiver of any other rights and each such right will be deemed an on-going right that may be asserted at any time.

D. *Effect of Failure of Conditions.*

If the foregoing conditions have not been satisfied or waived in the manner provided in sections IX.A, IX.B, or IX.C hereof, then (i) the Confirmation Order shall be of no further force or effect; (ii) no distributions under the Plan or Creditor Trust shall be made; (iii) the Trustee and all holders of Claims against and Equity Interests in the Debtors shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; (iv) all of the Debtors' obligations with respect to Claims and Equity Interests shall remain unaffected by the Plan; (v) nothing contained in this Plan shall be deemed to constitute a waiver or release of any Claims by or against the Debtors or any other Person or to prejudice in any manner the rights of the Trustee or any Person in any further proceedings involving the Debtors; and (vi) this Plan shall be deemed withdrawn. Upon such occurrence, the Trustee shall file a written notification with the Bankruptcy Court and serve it on the parties appearing on the master service list maintained in the Chapter 11 Cases.

E. *Reservation of Rights.*

The Plan shall have no force or effect unless and until the Effective Date occurs. Prior to the Effective Date, none of the filing of the Plan, any statement or provision contained in the Plan, or action taken by the Trustee with respect to the Plan shall be, or shall be deemed to be, an admission or waiver of any rights of the Trustee, the Creditor Trustee, or any other party with respect to any Claims or Equity Interests or any other matter.

ARTICLE X
EFFECT OF CONSUMMATION

A. *Vesting of Assets.*

Upon the Confirmation Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, the Creditor Trust Assets shall vest in the Creditor Trust, free and clear of all Claims, Liens, encumbrances, charges, and other interests, except as otherwise provided in this Plan.

B. Exculpation.

Upon the Effective Date, to the fullest extent permissible under applicable law, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from, any liability to any holder of a Claim or Equity Interest, or any other party in interest, for any claim or cause of action arising from, relating to, or connected with the administration of the Chapter 11 Cases, the Disclosure Statement, the preparation of the Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the occurrence of the Effective Date, or the administration of the Plan or property to be distributed under the Plan, except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence. The Exculpated Parties shall be deemed to have participated in good faith in connection with the above and entitled to the protection of section 1125(e) of the Bankruptcy Code. Each Exculpated Party shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

C. Releases by the Trustee.

On the Effective Date, unless expressly preserved by the Plan, the Trustee, on behalf of each and all Debtors, shall fully and forever release, acquit, discharge, and dismiss any and all claims, obligations, suits, judgments, damages, rights, remedies, Causes of Action, and liabilities of any nature, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, matured or unmatured, contingent or non-contingent, existing or hereafter arising, in law, equity, or otherwise, including any Avoidance Actions or other applicable law which they have or may have against any of the Released Parties. Notwithstanding anything contained herein to the contrary, the foregoing release does not release any obligations of any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.

D. Third-Party Releases.

Except as otherwise expressly set forth in the Plan or the Confirmation Order, and in exchange for other good and valuable consideration, the adequacy of which is hereby confirmed, each of the Releasing Parties shall be deemed to have expressly, conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each Released Party, to the fullest extent permissible under applicable law, from any and all claims, causes of action, interests, damages, remedies, demands, rights, actions (including Avoidance Actions), suits, debts, sums of money, obligations, judgments, liabilities, accounts, defenses, offsets, counterclaims, crossclaims, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, now existing or hereafter arising, contingent or non-contingent, liquidated or unliquidated, choate or inchoate, secured or unsecured, assertable, directly or derivatively (including any Causes of Action asserted or assertable on behalf of the Debtors, the Trustee, the Creditor Trust, or the Estates, as applicable), matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise, arising from, relating to, or connected with the Debtors (or any predecessor entity) or the Chapter 11 Cases or affecting property of the Debtors' Estates, the Plan or the administration and implementation of the Plan, or based upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date.

The Released Parties shall be deemed to have expressly, conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each Consenting Creditor to the fullest extent permissible under applicable law, from any and all claims, causes of action, interests, damages, remedies, demands, rights, actions (including Avoidance Actions), suits, debts, sums of money, obligations, judgments, liabilities, accounts, defenses, offsets, counterclaims, crossclaims, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, now existing or hereafter arising, contingent or non-contingent, liquidated or unliquidated, choate or inchoate, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise, arising from, relating to, or connected with, the Debtors (or any predecessor entity) or the Chapter 11 Cases or affecting property of the Debtors' Estates, the Plan or the administration and implementation of the Plan, or based upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date.

Notwithstanding anything contained herein to the contrary, the foregoing releases do not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, or (ii) the rights of holders of Allowed Claims to receive Distributions under the Plan.

Each of the Releasing Parties knowingly grants the Third-Party Releases notwithstanding that each Releasing Party may hereafter discover facts in addition to, or different from, those which either such Releasing Party now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and each Releasing Party expressly waives any and all rights that such Releasing Party may have under any statute or common law principle which would limit the effect of the Third-Party Release to those claims actually known or suspected to exist as of the Effective Date. In connection with their agreement to the foregoing Third-Party Releases, the Releasing Parties knowingly and voluntarily waive and relinquish any and all provisions, rights, and benefits conferred by any law of the United States or any state or territory of the United States, or principle of common law, which governs or limits a person's release of unknown claims, comparable or equivalent to California Civil Code § 1542, which provides: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

E. Injunction and Stay.

Upon the Effective Date, and except as otherwise expressly provided in this Plan, all Persons who have held, hold, or may hold Claims against or Equity Interests in any Debtor are permanently enjoined, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or Equity Interest against the Estates, or other entity released, discharged, or exculpated hereunder, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against any of the Debtors' Estates with respect to any such Claim or Equity Interest, (iii) creating, perfecting, or enforcing any encumbrance of any kind against any of the Debtors, or against the property or interests in property of any of the Debtors, as applicable with respect to any such Claim or Equity Interest, (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from any of the Debtors' Estates, or against the property or interests in property of any of the Debtors' Estates with respect to any such Claim or Equity Interest, or (v) pursuing any Claim released or exculpated under the Plan.

Each holder of a Claim or Equity Interest shall be bound by the injunction provisions set forth in this section. The Trustee, the Released Parties, or the Exculpated Parties shall be entitled to seek sanctions by motion for contempt or other appropriate proceeding for any violations of the Confirmation Order or this Plan, including the Exculpation, Injunction and Stay, and Gate Keeping provisions set forth in this Plan.

Unless otherwise provided, all injunctions or stays arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect at least until the Effective Date.

F. Gate Keeping.

No Person or Entity may commence or pursue a claim or cause of action of any kind against any Exculpated Party or any Professional Person that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a claim or cause of action subject to sections X.B, X.C, X.D, and X.E hereof, including any claim or cause of action that was asserted or assertable on behalf of the Debtors, including any derivative, alter ego, successor liability, or similar claims and Causes of Action based on general harm to the Debtors, holders of Claims and Equity Interests, or any other party in interest, or a theory of lack of separation between the Debtors and an Exculpated Party or Professional Person, without the Bankruptcy Court (i) first determining, upon motion that attaches a copy of the proposed complaint or petition, and after notice and a hearing, that such claim or cause of action represents a direct (as opposed to derivative) and colorable claim of any kind and (ii) specifically authorizing such Person to bring such claim or cause of action against the any Exculpated Party or Professional Person. At the hearing on such motion, the Bankruptcy Court shall have sole and exclusive jurisdiction to assess whether the proposed complaint or petition satisfies

the applicable Federal Rules of Civil Procedure (or other applicable rules of procedure) and to determine whether such claim or cause of action represents a colorable claim of any kind. For the avoidance of doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any claims or Causes of Action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court reserves jurisdiction to adjudicate any such claims to the maximum extent provided by applicable law.

G. Setoffs and Recoupment.

The Trustee or the Creditor Trust, as appropriate, may, but shall not be required to, setoff against or recoup from any Claim any rights to payment that any of the Debtors may have against the holder of such Claim. Neither the failure of the Trustee or the Creditor Trust to setoff or recoup, nor the Allowance of any Claim, shall constitute a waiver or release by the Trustee or the Creditor Trust, as appropriate, of any right to payment, or right of setoff or recoupment.

H. Rejection of Contracts and Leases.

Except as otherwise provided herein, or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, as of the Effective Date, each Debtor shall be deemed to have rejected each executory contract and unexpired lease to which it is a party, unless such contract or lease (i) was previously assumed, assumed and assigned, or rejected by the Debtors or the Trustee, (ii) previously expired or terminated pursuant to its own terms, or (iii) is the subject of a motion to assume, assume and assign, or reject filed by the Trustee on or before the Effective Date. The Confirmation Order shall constitute an order of the Bankruptcy Court pursuant to sections 365 and 1123(b) of the Bankruptcy Code approving the contract and lease rejections described above, as of the Effective Date. The rejections set forth in this section shall include rejecting any obligations of the Debtors pursuant to their corporate charters, by-laws, limited liability company agreements, or other organizational documents and agreements to indemnify any officers or directors of the Debtors for any prepetition actions or failures to act.

A holder of a Claim arising from the rejection of an executory contract or unexpired lease that was not previously rejected pursuant to prior order of the Bankruptcy Code shall have until the Rejection Damages Bar Date to file a Claim. The Trustee or the Creditor Trust, as applicable, must file objections, if any, to any such Claims on or before the later of: (A) the first Business Day that is thirty (30) days after the Rejection Damages Bar Date, or (B) the Objection Deadline. A holder of an Allowed Claim arising from the rejection of an executory contract or unexpired lease shall have a Class 5 General Unsecured Claim. Notwithstanding anything to the contrary contained herein, neither this Plan nor entry of the Confirmation Order shall reject, discharge, impair or otherwise modify (a) any insurance policies maintained by the Debtors as of the Confirmation Date or (b) any obligations owed to the Debtors or any other parties, including any additional insureds, by non-Debtor parties to any insurance policies maintained by the Debtors or the Trustee as of the Confirmation Date. For the avoidance of doubt, the Trustee reserves all rights, claims, offsets, setoffs, defenses, counterclaims and all other interests relating to any and all of their insurance policies.

Unless otherwise specified, each executory contract and unexpired lease shall include any and all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease.

I. Compromise of Controversies.

In consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims and controversies resolved under the Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019.

ARTICLE XI
RETENTION OF JURISDICTION

The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, or related to, the Debtors' Chapter 11 Cases and the Plan pursuant to, and for the purposes of, sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (i) To hear and determine pending applications for the assumption, assignment, or rejection of executory contracts or unexpired leases and the allowance of Claims resulting therefrom;
- (ii) To determine any and all adversary proceedings, applications, and contested matters in the Chapter 11 Cases and grant or deny any application involving the Debtors that may be pending on the Effective Date or that are retained and preserved herein;
- (iii) To ensure that distributions to holders of Allowed Claims are effected as provided in the Plan;
- (iv) To hear and determine any timely objections to Administrative Claims or to proofs of Claim, including any objections to the classification of any Claim, and to allow or disallow any Disputed Claim, in whole or in part;
- (v) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (vi) To take any action and issue such orders, after the occurrence of the Effective Date, as may be necessary to construe, enforce, implement, execute, and consummate the Plan or any prior order of the Bankruptcy, or to maintain the integrity of the Plan, the Malibu Settlement Agreement, or any prior order entered by the Bankruptcy Court during these Chapter 11 Cases;
- (vii) To consider any amendments to or modifications of the Plan, or to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order;
- (viii) To hear and determine all requests for payment of Professional Fee Claims;
- (ix) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, the Creditor Trust Agreement, the documents that are ancillary to and aid in effectuating the Plan or any agreement, instrument, or other document governing or relating to any of the foregoing;
- (x) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code (including the expedited determination of taxes under section 505(b) of the Bankruptcy Code);
- (xi) To adjudicate, decide, or resolve any and all
- (xii) To hear any other matter not inconsistent with the Bankruptcy Code;
- (xiii) To hear and determine all disputes involving the existence, scope, and nature of the exculpations and releases granted hereunder, including the matters set forth in section X.E hereof;
- (xiv) To issue injunctions and effect any other actions that may be necessary or desirable to restrain interference by any entity with the consummation or implementation of the Plan;
- (xv) To hear and determine all requests to extend the Objection Deadline, the term of the Creditor Trust, or any other deadlines established by the Plan; and

(xvi) To enter a Final Decree(s) closing the Chapter 11 Cases.

The Bankruptcy Court's jurisdiction to adjudicate, decide, or resolve any and all matters related to the Retained Causes of Action shall be non-exclusive.

ARTICLE XII **MISCELLANEOUS**

A. Filing of Additional Documents.

The Trustee or the Creditor Trust may file such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

B. Schedules, Exhibits, and Plan Supplement Incorporated.

All exhibits and schedules to the Plan, if any, and the documents contained in the Plan Supplement, if any, are incorporated into and are a part of the Plan as if fully set forth herein.

C. Amendment or Modification of the Plan.

Subject to section 1127 of the Bankruptcy Code and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, alterations, amendments or modifications of the Plan may be proposed in writing by the Trustee at any time prior to or after the entry of the Confirmation Order. Holders of Claims and Equity Interests that have accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, or modified; *provided, however*, that any holders of Claims and Equity Interests who were deemed to accept the Plan because such Claims and Equity Interests were unimpaired shall continue to be deemed to accept the Plan only if, after giving effect to such amendment or modification, such Claims and Equity Interests continue to be unimpaired.

D. Inconsistency.

In the event of any inconsistency among the Plan, the Disclosure Statement, and any exhibit or schedule to the Disclosure Statement or the Plan, the provisions of the Plan shall govern. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall govern.

E. Expedited Tax Determination.

The Trustee or the Creditor Trust may request an expedited determination of taxes under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Debtors for any and all taxable periods ending after the Petition Date through, and including, the Effective Date.

F. Binding Effect.

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim against, or Equity Interest in, the Debtors and such holder's respective successors and assigns, whether or not the Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

G. Severability.

If the Bankruptcy Court determines that any provision of this Plan is unenforceable either on its face or as applied to any Claim or Equity Interest, the Trustee may modify this Plan in accordance with section XII.C hereof so that such provision shall not be applicable to the holder of any Claim or Equity Interest. Any determination of unenforceability shall not (i) limit or affect the enforceability and operative effect of any other provisions of this Plan;

or (ii) require the resolicitation of any acceptance or rejection of this Plan unless otherwise ordered by the Bankruptcy Court.

H. No Payment of Attorneys' Fees.

Except for Professional Fee Claims, no attorneys' fees shall be paid by the Debtors with respect to any Claim or Equity Interest unless otherwise specified in this Plan or a Final Order of the Bankruptcy Court.

I. Notices.

All notices, requests, and demands to or upon the Trustee to be effective shall be in writing (including by facsimile transmission) 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:

GRAY REED

1601 Elm Street, Suite 4600
Dallas, TX 75201
Attn: Aaron M. Kaufman and Lydia R. Webb
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: akaufman@grayreed.com
lwebb@grayreed.com

With a copy to the Committee:

REED SMITH

2800 N. Harwood St., Suite 1500
Dallas, TX 75201
Attn: Keith M. Aurzada, Michael P. Cooley, and Dylan T.F. Ross
Telephone: (469) 680-4200
Facsimile: (469) 680-4299
Email: kaurzada@reedsmith.com
mpcooley@reedsmith.com
dylan.ross@reedsmith.com

J. Governing Law.

Except to the extent that the Bankruptcy Code or other federal law is applicable, or to the extent an exhibit to the Plan provides otherwise (in which case the governing law specified therein shall be applicable to such exhibit), the rights, duties and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without giving effect to the principles of conflict of laws that would require application of the laws of another jurisdiction.

Dated: March 25, 2025
Fort Worth, Texas

[Remainder of page intentionally left blank.]

Mark E. Andrews, Chapter 11 Trustee

By: /s/ Mark E. Andrews

Mark E. Andrews,
Chapter 11 Trustee for the Debtors

GRAY REED

Jason S. Brookner (TX Bar No. 24033684)
Aaron M. Kaufman (Texas Bar No. 24060067)
Lydia R. Webb (Texas Bar No. 24083758)
Emily F. Shanks (Texas Bar No. 24110350)
1601 Elm Street, Suite 4600
Dallas, TX 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
akaufman@grayreed.com
lwebb@grayreed.com
eshanks@grayreed.com

*Counsel to Mark E. Andrews,
Chapter 11 Trustee*