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

In re:

EYE CARE LEADERS PORTFOLIO
HOLDINGS, LLC, *et al.*,¹

Debtors.

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Chapter 11

Case No. 24-80001(MVL)

(Jointly Administered)

[CORRECTED] DEBTORS' FIRST AMENDED JOINT CHAPTER 11 PLAN

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors' federal tax identification number are as follows: ECL PH Services Group LLC (6746); Eye Care Leaders Portfolio Holdings, LLC (0576); Alta Billing Holdings, LLC (4944); Alta Billing, LLC (4823); Canta Health, LLC (7791); DJRTC, LLC (N/A); ECL Group, LLC (9195); ECL Holdings, LLC (8888); Eye Care Leaders Holdings, LLC (1701); iMedicWare, Inc. (6251); IMW EMR, LLC (6421); IMW Holdings, LLC (3980); Insight Software, LLC (8321); Integrity EMR Holdings, LLC (3877); Integrity EMR, LLC (3716); IO Practiceware, Inc. (4507); IOPW Holdings, LLC (0461); IOPW, LLC (N/A); Keymed Holdings, LLC (0301); Keymed, LLC (9379); MD Office, LLC (9075); MDO Group Holdings, LLC (0435); MDX, LLC (5074); Medflow Holdings, LLC (7716); Medflow, Inc. (N/A); MNI Holdings, LLC (7633); MRX Holdings, LLC (N/A); My Vision Express, Inc. (N/A); Penn Medical Informatics Systems, LLC (4584); PI Software Holdings, LLC (N/A); PI Software, LLC (N/A); PMX, LLC (N/A); Revenue Health Solutions, LLC (7025); RHS Holdings, LLC (N/A); The Hoehne Group – Software Division, Inc. (7788). The Debtors' principal offices are located at 555 S. Mangum Street, Suite 100, Durham, NC 27701.

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The Debtors in these Chapter 11 Cases hereby propose the following *Joint First Amended 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, which shall be the first Business Day that is at least thirty (30) days after the Effective Date.
3. **Adversary Proceeding** means the adversary proceeding styled *Alta Billing, LLC v. Academy Association Inc.*, Adv. No. 24-08002 (Bankr. N.D. Tex. March 10, 2024).
4. **Affiliate** has the meaning ascribed in section 101(2) of the Bankruptcy Code.
5. **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.
6. **APA** means that certain Asset Purchase Agreement by and among Colorado Bankers Life Insurance Company, as the purchaser, and the Debtors, as the sellers, dated May 12, 2024, as amended or supplemented.
7. **Assets** means property of the Debtors' Estates and proceeds thereof.
8. **Avoidance Actions** means any and all 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.
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, Dallas 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 May 28, 2024 for all creditors except Governmental Units, and July 15, 2024 for Governmental Units.
13. **Business Day** means any day other than a Saturday, Sunday, or "legal holiday" as defined in Bankruptcy Rule 9006(a).
14. **Cash** means legal tender of the United States of America.

15. **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.

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

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

18. **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.

19. **Class Action Settlement** means the final settlement in the consolidated class action lawsuit captioned *Farley v. Eye Care Leaders Holdings, LLC*, 1:22-cv-00468 (June 21, 2022), pending in the United States District Court for the Middle District of North Carolina, arising from several data security incidents in 2021.

20. **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.

21. **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.

22. **Conditional Approval Order** means the Bankruptcy Court's *Order (I) Conditionally Approving the Disclosure Statement, (II) Scheduling a Combined Confirmation Hearing to Consider Final Approval of the Disclosure Statement and Confirmation of the Debtors' Plan, (III) Approving the Solicitation Procedures and Dates, Deadlines, and Notices Related Thereto, and (IV) Granting Related Relief*.

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

24. **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.

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

26. **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.

27. **Creditor Trust Agreement** means the agreement governing the Creditor Trust dated as of the Effective Date, substantially in the form included in the Plan Supplement.

28. **Creditor Trust Assets** means (i) all Retained Causes of Action owned by the Debtors or their respective Estates on the Effective Date, except as the same may be dismissed, settled or released pursuant to the Plan; (ii) all of the Debtors' Cash, including but not limited to (a) Sale proceeds after satisfying payments pursuant to the Plan, and (b) proceeds of the DIP Facility; (iii) all insurance policies of the Debtors and the applicable Policy Proceeds, including but not limited to proceeds relating to employee theft or misconduct, but not including (A) insurance proceeds from the Debtors' cyber insurance policies allocated to the Class Action Settlement and (B) all rights of the Purchaser to insurance policies as set forth in the APA; (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.

29. **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.

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

31. **Creditor Trustee** means the trustee of the Creditor Trust, who shall be chosen by the Committee with the approval of the Debtors, with such approval not to be unreasonably withheld, and who shall be identified in the Plan Supplement.

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

33. **Debtors** means, collectively, ECL PH Services Group LLC, Eye Care Leaders Portfolio Holdings, LLC, Alta Billing Holdings, LLC, Alta Billing, LLC, Canta Health, LLC, DJRTC, LLC, ECL Group, LLC, ECL Holdings, LLC, Eye Care Leaders Holdings, LLC, iMedicWare, Inc., IMW EMR, LLC, IMW Holdings, LLC, Insight Software, LLC, Integrity EMR Holdings, LLC, Integrity EMR, LLC, IO Practiceware, Inc., IOPW Holdings, LLC, IOPW, LLC, Keymed Holdings, LLC, Keymed, LLC, MD Office, LLC, MDO Group Holdings, LLC, MDX, LLC, Medflow Holdings, LLC, Medflow, Inc., MNI Holdings, LLC, MRX Holdings, LLC, My Vision Express, Inc., Penn Medical Informatics Systems, LLC, PI Software Holdings, LLC, PI Software, LLC, PMX, LLC, Revenue Health Solutions, LLC, RHS Holdings, LLC, and The Hoehne Group – Software Division, Inc., the above-captioned debtors and debtors in possession.

34. **DIP Credit Agreement** means that certain Superpriority Secured Debtor in Possession Loan and Security Agreement (as amended or modified from time to time) dated as of March 6, 2024, by and among the Debtors jointly as borrowers and Colorado Bankers Life Insurance Company as lender.

35. **DIP Facility** means collectively the "DIP Obligations" and the "Replacement DIP Lender Reimbursements" as defined in and approved by the DIP Order.

36. **DIP Facility Claim** means the claim of the DIP Lender under and pursuant to the DIP Order and DIP Credit Agreement.

37. **DIP Lender** means the lender referenced in the DIP Credit Agreement.

38. **DIP Order** means that certain *Final Order (I) Authorizing the Debtors to (A) Obtain Replacement Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* [Docket No. 177].

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

40. **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.

41. **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.

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

43. ***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.

44. ***Effective Date*** means the first Business Day on which all the conditions precedent to the effectiveness of the Plan specified in section X.B hereof shall have been satisfied or waived as provided in section X.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.

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

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

47. ***Exculpated Parties*** means, in each case solely in their capacity as such: (1) the Debtors, (2) the Debtors’ officers and directors as of (A) the Petition Date or (B) immediately before the closing of the Sale, and (3) the members of the Committee. For the avoidance of doubt, the Exculpated Parties do not include any of the Lindberg Parties.

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

49. ***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.

50. ***General Unsecured Claim*** means any Claim against a Debtor that is not an Administrative Claim, a DIP Facility Claim, a Priority Tax Claim, a Priority Non-Tax Claim, the Purported Prepetition Lenders’ Secured Claim, a Professional Fee Claim, an Other Secured Claim, an Intercompany Claim, or an Equity Interest.

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

52. ***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.

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

54. ***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.

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

56. **Net Sale Proceeds** means the gross proceeds of the Sale less: (a) any amounts necessary to satisfy the DIP Facility Claim; (b) all Professional Fee Claims that were (1) incurred prior to, and were unpaid as of, the Sale closing and (2) incurred after the Sale closing; (c) U.S. Trustee Fees; and (d) any amounts payable as part of the Sale to third parties (such as any breakup fees, expense reimbursements, success fees or exit fees).

57. **Lindberg Parties** means Greg Lindberg, Charles Herwig, and Robert Gaddy.

58. **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 prior to the expiration of such one hundred eighty (180) day period, upon motion.

59. **Other Secured Claim** means a Secured Claim that is not a Purported Prepetition Lenders' Secured Claim.

60. **Petition Date** means January 16, 2024.

61. **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.

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

63. **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.

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

65. **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.

66. **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.

67. **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.

68. **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.

69. **Professional Fee Reserve** has the meaning ascribed to such term in the DIP Order.

70. **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.

71. **Purchaser** means the buyer referenced in the APA.

72. **Purported Prepetition Lenders** means the lenders who are parties to those certain alleged "term loans" as set forth in Exhibit C to the Disclosure Statement and as set forth in the Adversary Proceeding.

73. **Purported Prepetition Lenders' Secured Claims** means the alleged Claims held by the Purported Prepetition Lenders, which are Disputed.

74. ***Retained Causes of Action*** means all of the Debtors' Causes of Action, 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.

75. ***Sale*** means the transaction or transactions contemplated under the APA and approved by the Bankruptcy Court pursuant to the Sale Order.

76. ***Sale Order*** means that certain Order (A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens and Liabilities, (B) Authorizing the Debtors to Assume and Assign Executory Contracts and Unexpired Leases in Connection with the Sale, and (C) Granting Related Relief [Docket No. 479].

77. ***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.

78. ***Secured Claim*** means a Claim, other than the Purported Prepetition Lenders' Secured Claims, 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.

79. ***Trust Claims Reserve*** is defined in section VI.B.14(ii)(C) hereof.

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

81. ***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
ADMINISTRATIVE AND PRIORITY 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.

A. DIP Facility Claim.

The DIP Facility Claim shall be satisfied in full upon the closing of the Sale. To the extent the DIP Facility Claim has not been satisfied in full upon the Effective Date of the Plan or if the Sale does not close, the DIP Facility Claim shall be paid in full, in Cash, on the Effective Date, unless otherwise agreed to by the DIP Lender.

B. Administrative Claims.

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

1. Time for Filing.

All holders of Administrative Claims, other than the holders of a DIP Facility Claim, 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 Debtors, their 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 DIP Facility Claim or a Professional Fee Claim, for which a request for payment has been properly filed shall become an Allowed Administrative Claim unless an objection is filed by the date that is thirty (30) days after a request for payment of such Administrative Claim is filed in accordance with the Plan, 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 DIP Facility Claim or 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 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 that entry of an order by the Bankruptcy Court allowing such Administrative Claim becomes a Final Order.

C. 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 Administrative Claim Bar 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 final fee application shall be the twenty-fourth (24th) day after such fee application has been filed with the Bankruptcy Court. All final fee applications shall be set for hearing on the same day, as the Bankruptcy Court's calendar permits, after consultation with counsel to the Debtors and the Committee.

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 Fees in full, such Professional Fees shall be paid in Cash by the Creditor Trust Pro Rata to the extent of available funds.

D. U.S. Trustee Fees.

All U.S. Trustee Fees shall be paid on or before the Effective Date. 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, *provided, however*, that the Creditor Trust shall not be required to pay U.S. Trustee Fees on account of disbursement of Creditor Trust Assets on which U.S. Trustee Fees were already paid in connection with their transfer to the Creditor Trust.

E. Priority Tax Claims.

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 Debtors' option: (i) Cash in an amount equal to the Allowed amount of such Claim, or (ii) regular installment payments of Cash (a) having a total value, as of the Effective Date, equal to the Allowed amount of the Claim, (b) over a period ending not later than five (5) years after the Petition Date and (c) in a manner not less favorable than the most favored nonpriority Allowed General Unsecured Claims provided for by the Plan (other than Cash payments made to a class of creditors under section 1122(b) of the Bankruptcy Code).

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 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.

The Debtors have the right to setoff against or recoup from any Priority Tax Claim any right to payment that any of the Debtors may have against the holder of a Priority Tax Claim due to levies assessed against the Debtors or otherwise.

ARTICLE III
CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

All Claims against, and Equity Interests in, the Debtors, other than the Claims set forth in Article II, 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)

Class	Designation	Impairment	Entitled to Vote
2	Purported Prepetition Lenders' Secured Claims	Impaired	No ²
3	Other Secured Claims	Unimpaired	No (deemed to accept)
4	General Unsecured Claims	Impaired	Yes
5	Intercompany Claims	Impaired	No (deemed to reject)
6	Equity Interests	Impaired	No (deemed to reject)

Administrative 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 Debtors may object to any Priority Non-Tax Claims on or before thirty (30) days after the Effective Date, 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 on (or as soon as reasonably practicable after) the later of (A) the Effective Date or (B) the date that such Priority Non-Tax Claim becomes Allowed.

B. Class 2 – Purported Prepetition Lenders' Secured Claims.

Unless otherwise agreed by the Purported Prepetition Lenders and the Creditor Trust, the Purported Prepetition Lenders' Secured Claim shall receive one or more of the following treatments, which depends upon the outcome of the Adversary Proceeding:

- i. A contingent beneficial interest in the Creditor Trust which shall vest upon entry of a Final Order in the Adversary Proceeding determining that the Purported Prepetition Lenders have valid and allowed Secured Claims, in which case the Purported Prepetition Lenders will be paid in full in Cash from the Creditor Trust in an amount equal to the value of the collateral securing the claims, with any deficiency claims treated as General Unsecured Claims in Class 4 herein; or
- ii. A contingent beneficial interest in the Creditor Trust which shall vest upon entry of a Final Order in the Adversary Proceeding determining that the Purported Prepetition Lenders have valid and allowed General Unsecured Claims, in which case the claims of the Purported Prepetition Lenders shall be treated as General Unsecured Claims in Class 4; or
- iii. A contingent beneficial interest in the Creditor Trust which shall not vest until (A) entry of a Final Order in the Adversary Proceeding subordinating the Purported Prepetition Lenders' Secured Claims to those holders of General Unsecured Claims, and (B) the Creditor Trust has filed a certification with the

² As a result of the pendency of the Adversary Proceeding, the Purported Prepetition Lenders' Secured Claims are Disputed and therefore the holders of such Claims are not eligible to vote pursuant to section 1126(a) of the Bankruptcy Code.

Bankruptcy Court stating that all holders of General Unsecured Claims in Class 4 have been paid in full from the Creditor Trust.

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 Debtors, 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 – General Unsecured Claims.

Except to the extent that a holder of an Allowed General Unsecured Claim against a Debtor agrees to a different treatment, each holder of an Allowed General Unsecured Claim shall receive a Creditor Trust Interest and thereafter receive Cash distributions from the Creditor Trust. Distributions to holders of Allowed General Unsecured Claims who receive an interest in the Creditor Trust shall be on a Pro Rata basis with all other Allowed General Unsecured Claims, as set forth in the Creditor Trust Agreement.

E. Class 5 – 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.

F. Class 6 – 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 Class 2 are impaired and are not entitled to vote to accept or reject the Plan as holders of Disputed Claims. The holders of Claims in Class 4 are impaired and are entitled to vote to accept or reject the Plan. The holders of Claims in Classes 5 and 6 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 not included in 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, and 4 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, and 4.

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 and, solely to the extent that the Purported Prepetition Lenders' contingent beneficial interest in the Creditor Trust becomes non-contingent in accordance with section IV.B.ii of this Plan, for the benefit of the holders of Purported Prepetition Lenders' Secured 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 Committee with the approval of the Debtors, 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 Debtors 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 sole purpose of liquidating and distributing the Creditor Trust Assets and all proceeds thereof to the holders of beneficial interests in the Creditor Trust, with no objective to 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 Retained Causes of Action, (iii) make distributions to the beneficiaries of the Creditor Trust 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 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, except with respect to Sale proceeds to the extent that any valid prepetition liens attach to such proceeds. For purposes of the previous sentence, total Cash at the Effective Date less Net Sale Proceeds shall be deemed remaining proceeds of the DIP Facility and shall be deemed not to be Sale proceeds, and not subject to any Liens, Claims or 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, 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 the 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.

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 Debtors or the Committee) in the Chapter 11 Cases.

12. Distribution of Creditor Trust Assets.

The Creditor Trust shall distribute Cash to the Creditor Trust beneficiaries 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 Trust in its 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 (and, if applicable, Purported Prepetition Lenders' Secured 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 (and, if applicable, Purported Prepetition Lenders' Secured 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 a Creditor Trust Interest 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 "Trust Claims Reserve"), including, but not limited to, filing a tax election to treat the Trust 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 Trust Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Trust 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 Trust 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 Debtors 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 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 Debtors 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 Debtors 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 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. *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. The Debtors shall not 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.

D. *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.

E. *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.

F. *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.

G. *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 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.

H. 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.

I. 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 (including, but not limited to, the Sale Order or the DIP Order), pursuant to sections 363(b) and 1123(b)(3) of the Bankruptcy Code, the Debtors reserve and, as of the Effective Date, grant, release, assign, transfer, and convey to the Creditor Trust the Retained Causes of Action. 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 such Retained Causes of Action. On and after the Effective Date, the Creditor Trustee, on behalf of the Creditor Trust, may pursue 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 Creditor Trustee 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 Debtors expressly reserve all Retained Causes of Action for later adjudication by the Creditor Trust, 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.

J. 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.

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 Debtors, their designee, or by the Creditor Trustee. Neither the Debtors, their 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 Debtors 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 Debtors 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 Debtors 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 120-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 Debtors 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 Debtors, 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. 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 Interest becomes Allowed.

C. 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 Debtors 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.

D. 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 Debtors nor the Creditor Trust shall need to take any affirmative action for such Claim to be deemed Disallowed.

ARTICLE IX
**TREATMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES**

A. 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, (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 Debtors 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.

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 as of the Confirmation Date. For

the avoidance of doubt, the Debtors reserve all rights, claims, offsets, setoffs, defenses, counterclaims and all other interests relating to any and all of their insurance policies.

B. Inclusiveness.

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.

ARTICLE X
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 Debtors and the Committee.

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 Sale has closed;
- (iv) 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, and
- (v) 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 five (5) Business Days of the Effective Date, the Debtors 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 X.A(i), X.B(i), and X.B(iv)) may be waived by agreement of the Debtors 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 Debtors 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 Debtors or the Committee). The failure of the Debtors 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 X.A, X.B, or X.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 Debtors 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 Debtors or any Person in any further proceedings involving the Debtors; and (vi) this Plan shall be deemed withdrawn. Upon such occurrence, the Debtors 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 Debtors with respect to the Plan shall be, or shall be deemed to be, an admission or waiver of any rights of any of the Debtors or any other party with respect to any Claims or Equity Interests or any other matter.

ARTICLE XI
EFFECT OF CONSUMMATION

A. Revesting 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 Debtors.

On the Effective Date, unless expressly preserved by the Plan, the 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 Exculpated Parties, and each of their Professional Persons.

D. 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 Debtors, 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, or against the property or interests in property of any of the Debtors 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 Debtors 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 Debtors' 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.

E. 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 XI.B, XI.C, and XI.D 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.

F. Setoffs and Recoupment.

The Debtors 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 Debtors to setoff or recoup, nor the Allowance of any Claim, shall constitute a waiver or release by any of the Debtors or the Creditor Trust, as appropriate, of any right to payment, or right of setoff or recoupment.

G. 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 XII
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 by the Debtors 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 Sale, 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 hear any other matter not inconsistent with the Bankruptcy Code;
- (xii) 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 XI.E hereof;
- (xiii) 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;
- (xiv) 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
- (xv) 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 XIII
MISCELLANEOUS

A. Filing of Additional Documents.

The Debtors 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 Debtors 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 Debtors 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 Debtors 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 Debtors 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: Jason S. Brookner, Amber M. Carson, and Emily

F. Shanks

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com,

acarson@grayreed.com

eshanks@grayreed.com

With a copy to the Committee:

EVERSHEDS SUTHERLAND

999 Peachtree Street, NE

Atlanta, GA 30309

Attn: Todd C. Meyers

Telephone: (404)868-6645

Email: ToddMeyers@eversheds-sutherland.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: August 21, 2024

Dallas, Texas

[Remainder of page intentionally left blank.]

EyeCare Leaders Portfolio Holdings, LLC

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

EyeCare Leaders Holdings, LLC

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

MDX, LLC

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

Medflow Holdings, LLC

By: MDX, LLC, its sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

DJRTC, LLC

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

Medflow, Inc.

By: DJRTC, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

KeyMed Holdings, LLC

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

KeyMed, LLC

By: KeyMed Holdings, LLC, its sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

Alta Billing Holdings, LLC

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

Alta Billing, LLC

By: Alta Billing Holdings, LLC, its sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings,
LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible
Person

MDO Group Holdings, LLC

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole
member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible
Person

MD Office, LLC

By: MDO Group Holdings, LLC, its sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings,
LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible
Person

PMX, LLC

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole
member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible
Person

Penn Medical Informatics Systems, LLC

By: PMX, LLC, its sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings,
LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and
Responsible Person

IOPW Holdings, LLC

By: Penn Medical Informatics Systems, LLC, its sole member

By: PMX, LLC, its sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole
member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible
Person

IOPW, LLC

By: IOPW Holdings, LLC, its sole member

By: Penn Medical Informatics Systems, LLC, its sole member

By: PMX, LLC, its sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings,
LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and
Responsible Person

IO Practiceware, Inc.

By: IOPW Holdings, LLC, its sole member

By: Penn Medical Informatics Systems, LLC, its sole member

By: PMX, LLC, it's sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings,
LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and
Responsible Person

Integrity EMR Holdings, LLC

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole
member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible
Person

Integrity EMR, LLC

By: Integrity EMR Holdings, LLC, its sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings,
LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and
Responsible Person

IMW Holdings, LLC

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

IMW EMR, LLC

By: IMW Holdings, LLC, its sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

iMedicWare, Inc.

By: IMW EMR, LLC, its sole member

By: IMW Holdings, LLC, its sole member

By: EyeCare Leaders Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

Canta Health, LLC

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

ECL Holdings, LLC

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

ECL Group, LLC

By: ECL Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
Mark Shapiro
Authorized Signatory and Responsible Person

RHS Holdings, LLC

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

By: /s/ Mark Shapiro
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Revenue Health Solutions, LLC

By: RHS Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

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MNI Holdings, LLC

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

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Insight Software, LLC

By: MNI Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

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My Vision Express, Inc.

By: Insight Software, LLC, its sole member

By: MNI Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

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MRX Holdings, LLC

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

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The HOEHNE Group – Software Division, Inc.

By: MRX Holdings, LLC, its sole member

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

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PI Software Holdings, LLC

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

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PI Software, LLC

By: PI Software Holdings, LLC, its sole member

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ECL PH Services Group, LLC

By: EyeCare Leaders Portfolio Holdings, LLC, its sole member

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and Debtors in Possession*