

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

In re:

DERMTECH, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11378 (JTD)

(Jointly Administered)

**DISCLOSURE STATEMENT FOR THE FIRST AMENDED JOINT CHAPTER 11
PLAN OF DERMTECH, INC. AND DERMTECH OPERATIONS, INC.**

ANYONE RECEIVING THE DISCLOSURE STATEMENT MAY BE DEEMED TO HAVE CONSENTED TO THE RELEASE OF VALUABLE CAUSES OF ACTION AS SET FORTH IN SECTION 11.2 OF THE PLAN AND SECTIONS I.B AND IV.F OF THE DISCLOSURE STATEMENT. PLEASE REVIEW THESE SECTIONS CAREFULLY. IF YOU DO NOT WISH TO GRANT THESE RELEASES, YOU MUST OPT-OUT OF GRANTING THE RELEASES PURSUANT TO THE PROCEDURES SET FORTH HEREIN OR OBJECT TO THE PLAN.

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Dated: December 13, 2024

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: DermTech, Inc. (0849) and DermTech Operations, Inc. (8997). The Debtors' service address is 12340 El Camino Real, San Diego, California 92130.

VOTING AND OBJECTION DEADLINES

THE DEADLINE TO VOTE TO ACCEPT OR REJECT THE PLAN IS 5:00 P.M. (EASTERN TIME) ON JANUARY 16, 2025. TO BE COUNTED, THE VOTING AGENT MUST ACTUALLY RECEIVE YOUR BALLOT ON OR BEFORE THE VOTING DEADLINE IN THE FORM AND MANNER PROVIDED FOR IN THE DISCLOSURE STATEMENT ORDER (AS DEFINED BELOW) AND THE VOTING INSTRUCTIONS AND DESCRIBED HEREIN.

THE HEARING TO CONSIDER CONFIRMATION OF THE PLAN HAS BEEN SCHEDULED FOR JANUARY 23, 2025 AT 1:00 P.M. (EASTERN TIME). OBJECTIONS TO CONFIRMATION OF THE PLAN MUST BE FILED (I) ON OR BEFORE JANUARY 16, 2025 AT 4:00 P.M. (EASTERN TIME) AND (II) IN ACCORDANCE WITH THE DISCLOSURE STATEMENT ORDER AND THE CONFIRMATION HEARING NOTICE (AS DEFINED BELOW).

DISCLAIMER

THE DISCLOSURE STATEMENT PROVIDES INFORMATION REGARDING THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF DERMTECH, INC. AND DERMTECH OPERATIONS, INC., WHICH THE DEBTORS ARE SEEKING TO HAVE CONFIRMED BY THE BANKRUPTCY COURT. THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES TO, AND CONFIRMATION OF, THE PLAN, AND MAY NOT BE RELIED ON FOR ANY OTHER PURPOSE. APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.

THE DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, AND CERTAIN DOCUMENTS RELATING TO THE PLAN. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF, OR ARE INCONSISTENT WITH, THE PLAN, SUCH STATUTES, OR SUCH DOCUMENTS. TO THE EXTENT THERE IS ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN AND THE DISCLOSURE STATEMENT, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLASS 3 GENERAL UNSECURED CLAIMS SHOULD READ THE DISCLOSURE STATEMENT AND THE PLAN, AND THE RESPECTIVE EXHIBITS ATTACHED THERETO, IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN AND MAKING ANY ELECTIONS IN CONNECTION WITH THE PLAN WITH RESPECT TO RELEASES UNDER SECTION 11.2(b) OF THE PLAN, AS APPLICABLE.

THE STATEMENTS CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE OF THE DISCLOSURE STATEMENT UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THE DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN. ALTHOUGH THE DEBTORS HAVE MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY ANY RECOVERIES UNDER THE PLAN, THE DEBTORS DO NOT PURPORT TO PREDICT WITH ACCURACY CHANGES IN PRESENT CIRCUMSTANCES AND UNDERTAKE NO OBLIGATION TO AMEND THE DISCLOSURE STATEMENT TO REFLECT SUCH CIRCUMSTANCES.

THE DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE, AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THE DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) OR ANY FEDERAL, STATE, LOCAL, OR FOREIGN REGULATORY AGENCY, NOR HAS THE SEC OR ANY OTHER SUCH AGENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT.

THE DEBTORS MAKE STATEMENTS IN THE DISCLOSURE STATEMENT THAT MAY BE CONSIDERED FORWARD-LOOKING STATEMENTS UNDER FEDERAL SECURITIES LAWS. STATEMENTS CONCERNING THESE AND OTHER MATTERS ARE NOT GUARANTEES, REPRESENT THE DEBTORS’ ESTIMATES AND ASSUMPTIONS ONLY AS OF THE DATE SUCH STATEMENTS WERE MADE, AND INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES, AND OTHER KNOWN AND UNKNOWN FACTORS THAT COULD IMPACT THE PLAN OR DISTRIBUTIONS THEREUNDER. IN ADDITION TO STATEMENTS THAT EXPLICITLY DESCRIBE SUCH RISKS AND UNCERTAINTIES, READERS ARE URGED TO CONSIDER STATEMENTS LABELED WITH THE TERMS “BELIEVES,” “BELIEF,” “EXPECTS,” “INTENDS,” “ESTIMATES,” “ANTICIPATES,” “PLANS” OR SIMILAR TERMS TO BE UNCERTAIN AND FORWARD-LOOKING. CREDITORS AND OTHER INTERESTED PARTIES SHOULD ALSO REVIEW THE SECTION OF THE DISCLOSURE STATEMENT ENTITLED “RISK FACTORS” FOR A DISCUSSION OF CERTAIN FACTORS THAT MAY AFFECT THE PLAN AND DISTRIBUTIONS THEREUNDER.

*****THE DEBTORS BELIEVE THAT THE PLAN IS FAIR AND EQUITABLE, WILL MAXIMIZE RECOVERIES TO CREDITORS, AND IS IN THE BEST INTERESTS OF THE DEBTORS AND THEIR ESTATES. FOR THESE REASONS, THE DEBTORS URGE HOLDERS OF CLASS 3 GENERAL UNSECURED CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN TO TIMELY RETURN THEIR BALLOTS VOTING TO ACCEPT THE PLAN*****

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EXHIBITS

EXHIBIT A - Chapter 11 Plan

EXHIBIT B - Liquidation Analysis

*****THE DEBTORS ADOPT AND INCORPORATE THE EXHIBITS ATTACHED
HERETO BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN*****

I. INTRODUCTION

DermTech, Inc. and DermTech Operations, Inc. (each, a “Debtor” and collectively, the “Debtors”), as debtors and debtors in possession in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), hereby submit the disclosure statement (the “Disclosure Statement”), pursuant to sections 1125 and 1126(b) of title 11 of the United States Code, as amended (the “Bankruptcy Code”), in connection with the solicitation of votes on the *First Amended Joint Chapter 11 Plan of DermTech, Inc. and DermTech Operations, Inc.*, dated November 7, 2024 (as amended, supplemented, and modified from time to time, the “Plan”). A copy of the Plan is attached hereto as **Exhibit A** and is incorporated herein by reference.²

The purpose of the Disclosure Statement is to enable Holders of Claims that are Impaired under the Plan and entitled to vote on the Plan to make an informed decision in exercising their right to accept or reject the Plan. The Disclosure Statement sets forth certain information regarding, among other things, the Debtors’ prepetition operating and financial history, the reasons the Debtors sought protection under chapter 11 of the Bankruptcy Code, the course of the Chapter 11 Cases, and the disposition of the Debtors’ assets. The Disclosure Statement also describes, among other things, certain terms and provisions of the Plan (including the compromises and settlements provided for in the Plan), certain effects of Confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which Distributions will be made under the Plan. In addition, the Disclosure Statement discusses, among other things, the Confirmation process and the voting and election procedures that Holders of Claims entitled to vote under the Plan must follow for their votes on the Plan to be counted and their elections with respect to releases under Section 11.2(b) of the Plan, as applicable, to be effective.

The Plan is the result of significant good-faith, arm’s-length negotiation among the Debtors and the Official Committee of Unsecured Creditors appointed in these Chapter 11 Cases (the “Committee”), and the Committee supports the Plan as-proposed. Following approval of the Disclosure Statement, the Committee intends to send a letter to unsecured creditors encouraging them to vote in favor of the Plan.

A. Overview of the Chapter 11 Cases and the Plan

1. The Chapter 11 Cases

(a) *General Background*

The Debtors were a molecular diagnostic company that developed and marketed novel non-invasive genomics tests to aid in the evaluation and management of melanoma. The Debtors’ flagship product was their DermTech Melanoma Test™ (the “DMT”), a laboratory developed scalable genomics assay to clinically assess pigmented skin lesions for melanoma using non-invasive collection of patient samples using adhesive patches known as the DermTech Smart

² Unless otherwise noted, all capitalized terms used but not otherwise defined herein shall have the meanings provided to them in the Plan. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between the summary herein and the Plan, the Plan shall govern.

Sticker™ (together with the DMT and the Debtors' assays, the "Products"). In contrast to the existing standard of care of using a scalpel to biopsy suspicious lesions, the Products provided an objective, non-invasive, higher negative predictive value, and lower cost means of assessing pigmented lesions suspicious of melanoma and guiding the clinician's decision of whether to biopsy. The DMT has been demonstrated to rule out melanoma with a negative predictive value of 99%. The DMT was performed in the Debtors' molecular laboratory in San Diego, California. The Debtors also provided research laboratory services to several pharmaceutical companies which accessed the Debtors' technology on a contract basis to further clinical trials and studies related to other skin diseases and to measure the response of drugs under development.

On June 18, 2024 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

2. Chapter 11 Goals and Postpetition Sale Process

The Debtors commenced the Chapter 11 Cases with the goal of pursuing a value-maximizing sale of all or substantially all of their assets and an orderly wind-down of their estates. As described in the *Declaration of Bret Christensen, President and Chief Executive Officer of the Debtors, in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [D.I. 12] (the "First Day Declaration"), filed on the Petition Date, following approximately six (6) months of restructuring and sale efforts, the Debtors determined in consultation with TD Cowen, their investment banker, and their other advisors, that a sale process under chapter 11 of the Bankruptcy Code was the best path forward to maximize value for their estates and stakeholders.

As discussed more fully below, on July 16, 2024, the Court entered the Bidding Procedures Order, establishing the Bidding Procedures that governed the Debtors' postpetition sale process. In accordance with the Bidding Procedures Order, on August 13th and 14th, 2024 the Debtors conducted the Auction (as defined in the Bidding Procedures Order). Following the conclusion of the Auction, the Debtors filed the *Notice of Successful Bidder and Next-Highest Bidder* [D.I. 185], providing notice of the designation of DERM-JES Holdings, LLC (the "Buyer") as the Successful Bidder for the Assets (each as defined in the Bidding Procedures Order).

On August 21, 2024, the Court entered the Sale Order, approving the sale of the Assets to the Buyer. The Sale closed on August 30, 2024, generating \$1,575,000 in proceeds for the Debtors' estates.

3. General Structure of the Plan

The Plan provides for the creation of a Liquidating Trust and the appointment of a Liquidating Trustee to implement the Plan. The Liquidating Trustee shall be empowered to, among other things, administer and liquidate all Assets, object to and settle Claims and investigate and prosecute Retained Causes of Action in accordance with the Plan.

The Plan includes certain customary release, exculpation and injunction provisions, as set forth in Article XI of the Plan. Reflecting negotiations among the Debtors and the Committee, the Plan provides that certain potential claims and causes of action that would otherwise be released under the Plan are specifically preserved and shall vest in the Liquidating Trust (the “Excluded Released Party Claims”) subject to the terms of the Plan. The Excluded Released Party Claims are defined as follows: “(1) any and all Claims and Causes of Action to recover Retention Bonuses from current or former employees or officers of the Debtors; (2) any and all Avoidance Actions; (3) any and all Claims and Causes of Action against current or former directors, officers and insiders of the Debtors arising out of, connected to, or related to the facts and circumstances set forth in the Derivative Lawsuit or the Securities Lawsuit; (4) any and all Claims and Causes of Action against current or former directors and officers for breach of fiduciary duty; (5) any and all Claims and Causes of Action against consultants, auditors, or accountants for negligence, gross negligence or aiding and abetting breach of fiduciary duty; and (6) any Claims or Causes of Action set forth on the Schedule of Additional Retained Causes of Action.”

The Plan also provides for Distributions to Holders of Allowed Claims, including Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, Priority Non-Tax Claims and General Unsecured Claims.

Lastly, the Plan cancels all Interests in the Debtors, and provides for the dissolution and wind-up of the Debtors’ affairs.

4. Material Terms of the Plan

The following is an overview of certain material terms of the Plan:

- All Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Secured Claims, and Allowed Priority Non-Tax Claims will be paid or otherwise satisfied in full as required by the Bankruptcy Code and provided for in the Plan, unless otherwise agreed to by the Holders of such Claims and the Liquidating Trustee.
- Holders of Allowed General Unsecured Claims will receive their Pro Rata share of the General Unsecured Claim Distribution, unless less favorable treatment is otherwise agreed to by the Holders of such Claims and the Liquidating Trustee.
- Holders of Subordinated Claims shall not be entitled to any Distribution or recovery on account of such Claims.
- All Intercompany Claims shall be eliminated and extinguished on the Effective Date of the Plan, as set forth therein, and the Debtors’ estates will be substantively consolidated for purposes of the Plan only.
- As of the Effective Date, all Interests of any kind will be cancelled, and the Holders of Interests shall not be entitled to any Distribution or recovery on account of such Interests.

The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, their Estates, Holders of Claims, and other parties in interest, and are fair, equitable, and reasonable.

5. Summary of Treatment of Claims and Interests Under the Plan

The table below summarizes the classification and treatment of Claims and Interests under the Plan.

IN CONNECTION WITH CONSIDERING THE PROJECTED RECOVERIES FOR ALLOWED GENERAL UNSECURED CLAIMS SET FORTH IN THE DISCLOSURE STATEMENT AND THE TABLE BELOW, PLEASE CONSIDER THE FOLLOWING:

- **RECOVERIES ARE ESTIMATES ONLY, AND ACTUAL RECOVERIES MAY MATERIALLY DIFFER.**
- **RECOVERY ESTIMATES ARE BASED PRIMARILY ON THE DEBTORS' ESTIMATED DISTRIBUTIONS OF CASH AND DEPEND ON THE ALLOWANCE OR DISALLOWANCE OF CLAIMS ASSERTED AGAINST THE DEBTORS. RECOVERIES ON RETAINED CAUSES OF ACTION ARE NOT INCLUDED IN THESE RECOVERY ESTIMATES BUT COULD MATERIALLY CHANGE ACTUAL RECOVERIES TO HOLDERS OF ALLOWED CLAIMS.**

FOR A COMPLETE DESCRIPTION OF THE DEBTORS' CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS, REFERENCE SHOULD BE MADE TO THE PLAN AND THE OTHER SECTIONS OF THE DISCLOSURE STATEMENT.

<u>Class</u>	<u>Claim or Interest</u>	<u>Summary of Treatment</u>	<u>Estimated Allowed Amount of Claims</u>	<u>Projected Recovery Under Plan</u>
1	Allowed Secured Claims	Unimpaired <i>Deemed to Accept Plan</i>	\$0.00	100%
2	Allowed Priority Non-Tax Claims	Unimpaired <i>Deemed to Accept Plan</i>	\$0.00	100%

<u>Class</u>	<u>Claim or Interest</u>	<u>Summary of Treatment</u>	<u>Estimated Allowed Amount of Claims</u>	<u>Projected Recovery Under Plan</u>
3	Allowed General Unsecured Claims	Impaired <i>Entitled to Vote on Plan</i>	\$8,882,000 - \$12,350,000 ³	39% - 55%
4	Subordinated Claims	Impaired <i>Deemed to Reject Plan</i>	\$0	\$0
5	Intercompany Claims	Impaired <i>Deemed to Reject Plan</i>	\$0	\$0
6	Interests	Impaired <i>Deemed to Reject Plan</i>	\$0	\$0

*****THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF ALLOWED CLAIMS AND THUS STRONGLY RECOMMEND THAT HOLDERS OF ALLOWED GENERAL UNSECURED CLAIMS VOTE TO ACCEPT THE PLAN*****

B. Plan Voting Instructions and Procedures

1. Voting Rights

Under the Bankruptcy Code, only classes of claims or interests that are “impaired” and that are not deemed as a matter of law to have rejected a plan under section 1126 of the Bankruptcy Code are entitled to vote to accept or reject such plan. Any class that is “unimpaired” is not entitled to vote to accept or reject a plan and is conclusively presumed to have accepted such plan. As set forth in section 1124 of the Bankruptcy Code, a class is “impaired” if the legal, equitable or contractual rights attaching to the claims or equity interests of that class are modified or altered. Holders of claims or interests within an impaired class are entitled to vote to accept or reject a plan if such claims or interests are “allowed” under section 502 of the Bankruptcy Code.

³ Except as otherwise set forth in the Plan, without limitation, the estimated amount of Allowed General Unsecured Claims does not account for any additional Claims against the Debtors that have yet to be Filed as a result of the rejection of executory contracts and unexpired leases, including the rejection of any such contracts and leases pursuant to the Plan. The estimated amount of Allowed General Unsecured Claims does, however, take into account certain anticipated reductions or eliminations of Claims as part of the claims reconciliation process. Thus, the total amount of Allowed General Unsecured Claims may be materially more or less than the estimate set forth in the Plan. Nor do the estimates of recoveries to Holders of Allowed General Unsecured Claims include proceeds of recovery of Retained Causes of Action, including, without limitation, Excluded Released Party Claims, which could increase recoveries to Holders of Allowed General Unsecured Claims

Under the Bankruptcy Code, acceptance of a plan by a class of claims is determined by calculating the number and the amount of allowed claims voting to accept such plan. Acceptance by a class of claims requires more than one-half of the number of total allowed claims voting in the class to vote in favor of the plan, and at least two-thirds in dollar amount of the total allowed claims voting in the class to vote in favor of the plan; only those holders that actually vote to accept or reject the plan are counted for purposes of determining whether these thresholds are met.

Pursuant to the Plan, only Claims in Class 3 are both Impaired by, and entitled to receive a Distribution under, the Plan. Accordingly, only Holders of Allowed Claims in Class 3 as of December 12, 2024 (the “Voting Record Date”) may vote to accept or reject the Plan.

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

Pursuant to the Plan, Claims and Interests, respectively, in Classes 4, 5 and 6 are Impaired by, and not entitled to a Distribution under, the Plan. Therefore, Holders of Claims and Interests, respectively, in Classes 4, 5 and 6 are deemed to have rejected the Plan and are not entitled to vote on the Plan.

2. Solicitation Materials

The Debtors, with the approval of the Bankruptcy Court, have retained Stretto, Inc. (the “Voting Agent”) to serve as the voting agent to process and tabulate Ballots and to oversee the Plan voting and solicitation process generally. The following materials constitute the solicitation package (the “Solicitation Package”):

- The Disclosure Statement, including the Plan and any other exhibits annexed thereto;
- The Bankruptcy Court order approving the Disclosure Statement (the “Disclosure Statement Order”) (excluding exhibits);
- The Ballot and voting instructions (the “Voting Instructions”) to be used in connection with voting to accept or to reject the Plan;
- A pre-addressed, postage pre-paid return envelope; and
- The notice of, among other things, (a) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters, and (b) the deadline for filing objections to Confirmation of the Plan (the “Confirmation Hearing Notice”).

The Debtors, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Disclosure Statement, the Disclosure Statement Order, the Confirmation Hearing Notice, and the Plan will also be available at the Voting Agent’s website for the Chapter 11 Cases at <https://cases.stretto.com/DermTech>, by clicking on the tab on the top of the page titled “Plan & Solicitation.”

If you are the Holder of a Claim and believe that you are entitled to vote on the Plan, but you did not receive a Solicitation Package, or if you have any questions concerning voting procedures, you should contact the Voting Agent by submitting an inquiry via electronic mail to TeamDermTech@stretto.com or in writing to Stretto, Inc. by first class mail, hand delivery, or overnight mail to DermTech Ballot Processing, c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602.

If your Claim is subject to a pending claim objection as of December 18, 2024, and you wish to vote on the Plan in the amount and priority as reflected on your timely filed proof of claim, you must File a motion with the Bankruptcy Court on or before January 9, 2025 at 4:00 p.m. (Eastern Time), in accordance with the Disclosure Statement Order, pursuant to Bankruptcy Rule 3018(a), requesting the temporary allowance of your Claim for Plan voting purposes. Your Claim or portion thereof, as applicable, must be temporarily allowed for voting purposes by the Bankruptcy Court by the Voting Deadline, or you will not be entitled to vote to accept or reject the Plan.

THE DEBTORS, THEIR ESTATES AND, FOLLOWING THE EFFECTIVE DATE, THE LIQUIDATING TRUSTEE, AS APPLICABLE, RESERVE THE RIGHT TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM OR INTEREST FOR PLAN DISTRIBUTION PURPOSES OR OTHERWISE.

3. Plan Voting Instructions and Procedures

To ensure your vote on the Plan is counted and any Release Opt-Out is effective you must: (a) complete the Ballot in accordance with the instructions set forth therein; (b) indicate your decision either to accept or reject the Plan in the boxes indicated in the Ballot; (c) make a Release Opt-Out election, if applicable and desired; and (d) sign and submit the Ballot to the Voting Agent prior to the Voting Deadline (as defined below) either in paper form at the address provided for therein, or electronically through the website created for the Chapter 11 Cases by the Voting Agent, <https://cases.stretto.com/DermTech> (the “Online Voting Platform”).

BALLOTS SENT BY FACSIMILE OR ELECTRONIC TRANSMISSION (OTHER THAN THROUGH THE ONLINE VOTING PLATFORM) ARE NOT ALLOWED AND WILL NOT BE COUNTED.

The Bankruptcy Court has fixed December 12, 2024 as the Voting Record Date for the determination of the Holders of Claims who are entitled to (a) receive a Solicitation Package and (b) vote to accept or reject the Plan.

After carefully reviewing the Plan, the Disclosure Statement, and the detailed Voting Instructions, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan in accordance with the Voting Instructions.

The deadline to vote on the Plan is January 16, 2025 at 5:00 p.m. (Eastern Time) (the “Voting Deadline”). For your vote to be counted, your Ballot must be properly completed

in accordance with the Voting Instructions and received by the Voting Agent no later than the Voting Deadline.

Only the Holders of Allowed Claims in Class 3 as of the Voting Record Date are entitled to vote to accept or reject the Plan. Each Holder of a Claim must vote its entire Claim either to accept or reject the Plan and may not split such vote. It is important to follow the specific Voting Instructions.

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

- any Ballot that fails to clearly indicate an acceptance or rejection, or that indicates both an acceptance and a rejection, of the Plan;
- any Ballot received after the Voting Deadline, except by order of the Bankruptcy Court or if the Debtors have granted an extension of the Voting Deadline with respect to such Ballot;
- any Ballot containing a vote that the Bankruptcy Court determines was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code;
- any Ballot that is illegible or contains insufficient information to permit the identification of the Claim Holder;
- any Ballot cast by an Entity that does not hold a Claim in the Voting Class;
- any unsigned Ballot or Ballot without an original signature; and
- any Ballot submitted by fax, email, or electronic transmission (other than through the Online Voting Platform).

The Ballots permit Holders of Class 3 General Unsecured Claims that vote to accept or reject the Plan the opportunity to opt out of the releases set forth in Section 11.2(b) of the Plan by checking the appropriate box on their Ballots to elect the Release Opt-Out. In addition, Holders of Class 3 General Unsecured Claims can also opt-out of the Third-Party Release by timely filing an objection to such release.

Except as otherwise provided for in the Plan, (a) all Holders of Claims deemed to have accepted the Plan (i.e., Holders of Claims in Unimpaired Classes of Claims) that do not timely submit a Release Opt-Out or do not File an objection to the release in Section 11.2(b) by January 16, 2025; and (b) all Holders of Claims in Class 3 that (i) vote to accept or reject the Plan and do not timely submit a Release Opt-Out indicating such Holder's decision to not participate in the releases set forth in Section 11.2(b) of the Plan, or (ii) do not vote to accept or reject the Plan, and either do not timely submit a Release Opt-Out, or do not File

an objection to the releases in Section 11.2(b) of the Plan prior to January 16, 2025, are deemed to have forever released the Released Parties from any and all Claims and causes of action to the extent provided for in Section 11.2(b) of the Plan.

Except as otherwise provided in the Disclosure Statement Order: any party who has previously delivered a valid Ballot for the acceptance or rejection of the Plan may revoke such Ballot and change its vote by delivering to the Voting Agent prior to the Voting Deadline a subsequent properly completed Ballot for acceptance or rejection of the Plan; and any party who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. In the case where multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot. To be valid, a notice of withdrawal must (a) contain the description of the Claim to which it relates and the aggregate principal amount represented by such Claim; (b) be signed by the withdrawing party in the same manner as the Ballot being withdrawn; (c) contain a certification that the withdrawing party owns the Claim and possesses the right to withdraw the vote sought to be withdrawn; and (d) be actually received by the Voting Agent prior to the Voting Deadline. The Debtors' right to contest the validity of any such withdrawals of Ballots is expressly reserved.

ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM ENTITLED TO VOTE FOLLOWS THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.

If you have any questions about (a) the procedure for voting your Claim; (b) the Solicitation Package that you have received; or (c) the amount of your Claim, or if you wish to obtain, at your own expense (unless otherwise specifically required by Bankruptcy Rule 3017(d)), an additional copy of the Plan, the Disclosure Statement, or any appendices or exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement, and other documents Filed in the Chapter 11 Cases may be obtained free of charge at the Voting Agent's website at <https://cases.stretto.com/DermTech>. Documents Filed in the Chapter 11 Cases may also be examined between the hours of 8:00 a.m. and 4:00 p.m., Eastern Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, 824 North Market Street, Third Floor, Wilmington, Delaware 19801.

The Voting Agent will process and tabulate Ballots received by the Voting Agent and will file a voting report in accordance with the Disclosure Statement Order.

4. Confirmation Hearing and Deadline for Objections to Confirmation

Objections to Confirmation of the Plan must be Filed and served, in accordance with the Confirmation Hearing Notice, so that they are actually received by no later than **January 16, 2025 at 4:00 p.m. (Eastern Time)**. Unless objections to Confirmation of the Plan are timely Filed and served they may not be considered by the Bankruptcy Court. For further information, refer to Section VI of the Disclosure Statement, "Confirmation of the Plan."

II. **GENERAL HISTORICAL INFORMATION ABOUT THE DEBTOR**⁴

A. **Organizational Structure**

DermTech Operations, Inc. is a wholly-owned subsidiary of DermTech, Inc., which is a publicly traded corporation with approximately 35,253,581 shares of outstanding common stock as of the Petition Date.

B. **Prepetition Capital Structure**

1. **Secured Indebtedness**

As of the Petition Date, the Debtors had no funded secured debt (and continue to have no funded secured debt).

2. **Unsecured Indebtedness and Trade Debt**

In the ordinary course of business, the Debtors incurred unsecured indebtedness to various suppliers, trade vendors, utility providers, and service providers, among others. In addition, the Debtors incurred obligations related to a non-residential real property lease for their corporate headquarters and laboratory facilities.

3. **Equity Holders**

(a) Common Stock

Prior to the Petition Date, DermTech Inc.'s common stock was listed on the NASDAQ Capital Market under the ticker symbol "DMTK." In April, 2024, DermTech, Inc. received notice from NASDAQ that it was no longer in compliance with NASDAQ listing requirements, specifically the minimum bid price requirement, and that compliance must be regained on or prior to October 14, 2024. As of June 17, 2024, there were 35,253,581 shares of DermTech, Inc.'s common stock outstanding.

(b) At the Market Offering Programs

In November 2020, in connection with the Company's launch of an "at the market" offering program (the "Offering Program"), the Company entered into a sales agreement (the "2020 Sales Agreement") with TD Cowen. Under the 2020 Sales Agreement, the Company could offer and sell its common stock from time to time having an aggregate offering price of up to \$50 million during the term of the 2020 Sales Agreement. Through December 31, 2021, the Company issued

⁴ While the Committee supports the Plan, the Committee does not adopt, and expressly reserves all rights with respect to, all factual assertions and characterizations set forth in this Disclosure Statement, including, without limitation, the background to, and circumstances leading to, these Chapter 11 Cases, and the merits of any pending or potential litigation involving the Debtors or any of their directors, officers, other insiders or other potential targets of litigation.

an aggregate of 1,482,343 shares of common stock pursuant to the 2020 Sales Agreement. The Company next issued stock under the 2020 Sales Agreement in 2023, when it issued an aggregate of 2,038,661 shares of common stock. As of December 31, 2023, the 2020 Sales Agreement has been fully utilized and no additional shares of common stock may be sold pursuant to the 2020 Sales Agreement.

On August 8, 2022, the Company entered into a sales agreement with TD Cowen relating to the sale of shares of the Company's common stock from time to time with an aggregate offering price of up to \$75 million (the "2022 Sales Agreement"). The Company did not issue any shares of common stock pursuant to the 2022 Sales Agreement prior to the year ended December 31, 2022. During 2023, the Company issued an aggregate of 130,598 shares of common stock pursuant to the 2022 Sales Agreement. No further stock has been issued under the 2022 Sales Agreement.

(c) Publicly Traded Warrants

As of the Petition Date, the Debtors' publicly traded warrants traded on the pink slips under the ticker symbol "DMTKW." The publicly traded warrants are subject to that certain *Warrant Agreement*, dated as of June 19, 2017, between the Company and Continental Stock Transfer & Trust Company.

(d) SPAC Warrants

The Company previously issued a total of 14,936,250 SPAC warrants to purchase common stock in public offering and private placement offerings which were consummated on June 23, 2017 (the "SPAC Warrants"). Every four (4) SPAC Warrants entitle the holder to purchase one (1) whole share of common stock at an exercise price of \$23.00 per whole share. Outstanding SPAC Warrants totaled 2,815,853 as of the Petition Date.

(e) Placement Agent Warrants

In connection with several of the Debtors' financings that took place from 2015 to 2018, the Debtors engaged a registered placement agent to assist with the marketing and selling of common and preferred units and issued certain seven-year warrants to purchase one (1) share of the Debtors' common stock at a specified price. These warrants had largely expired as of the Petition Date, with the exception of warrants issued in 2018. In 2020, the Debtors issued 15,724 seven-year warrants to purchase one (1) share of common stock at an exercise price of \$9.54 per share. As of the Petition Date, outstanding placement agent warrants totaled 570.

4. Circumstances Giving Rise to the Chapter 11 Cases

Many factors affected the Debtors' performance over recent years. In response, the Debtors' management and Board of Directors took various steps to address liquidity and operational issues, including engaging in negotiations regarding a potential out of court transaction that would have avoided the need to commence the Chapter 11 Cases. Ultimately, however, after considering these options and conducting a prepetition marketing process for the sale of all of the

Debtors' assets, the Debtors determined value would be best maximized by the commencement of the Chapter 11 Cases to, among other things, consummate a sale transaction.

(a) General Conditions Affecting the Company's Liquidity

Since the Company's inception in 2015, it has never been profitable and has historically incurred substantial net losses, including net losses of \$100.9 million and \$116.7 million in 2023 and 2022, respectively. Several factors contributed to the Debtors' eventual decision to file for Chapter 11.

First, costs to scale the Company's growth outpaced its revenue streams. The Company incurred significant expenses related to the commercial growth of its business, including costs associated with scaling laboratory operations, as well as increased sales, marketing, research and administrative expenses. To address these costs, the Company sought to raise additional capital through equity offerings, debt financings, collaborations, or licensing arrangements, but none of those strategies produced sustainable capital to enable the Debtors' business to continue as a going concern.

Second, compliance with public company reporting requirements further tightened the Company's liquidity. As the Company undertook efforts to grow its business, roll out the Products, pursue new customers, and develop and commercialize additional testing products, collaborations, and relationships with key pharmaceutical and laboratory partners, it incurred significant additional expenses related to being a public company. For example, the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and other rules implemented by the SEC and NASDAQ, impose various requirements on public companies, including requiring changes in corporate governance practices that increase compliance costs associated with financial reporting and the maintenance of internal controls (among other things). In addition, under such rules and regulations, the Company and its management were required to expend considerable time and resources preparing and filing quarterly and annual reports, as well as other SEC disclosures and filings, in addition to their typical duties.

Third, the Company's lease obligations further constrained liquidity. DermTech, Inc. was party to that certain *Office Lease*, dated as of July 1, 2023 (as amended, the "Lease"), with Kilroy Realty, L.P. ("Kilroy"). As of the Petition Date, the Lease was the Debtors' only real-property related obligation. The leased premises served as the office space for the Company's leadership and employees and also housed the Debtors' highly complex molecular laboratory facilities. Prior to the Petition Date, the Debtors and their advisors engaged with Kilroy in an effort to amicably resolve outstanding issues related to the Lease for several months. On May 15, 2024, Kilroy filed a complaint against DermTech, Inc. with the Superior Court of the State of California alleging that an event of default had occurred under the Lease due to the Debtors' purported failure to pay past due rent in the amount of \$661,706.34, the approximate monthly rent due under the Lease. As of the Petition Date, the Debtors and Kilroy had not reached a resolution.

Fourth, pending securities litigation further required considerable time, expense, and attention of the Company. The Company and certain of its current and former officers and

directors are defendants in two putative class action lawsuits and one shareholder derivative suit pending in the United States District Court for the Southern District of California (the “Securities Litigation”). The plaintiffs in the Securities Litigation allege, among other things, violation of the Securities Exchange Act of 1934 for allegedly false and misleading statements regarding the Company’s business, as well as related claims for breach of fiduciary duties, unjust enrichment, gross mismanagement, abuse of control, and waste of corporate assets. Although, in the Company’s view, the Securities Litigation lacks merit, the Company expended considerable resources defending it.⁵

Fifth, the nature of the Company’s products required compliance with myriad costly and time-consuming regulations. The Company’s products and services are regulated by federal and state governmental authorities. Failure to comply with applicable laws and regulations would potentially subject the Company to repayment of amounts previously paid to it, significant civil and criminal penalties, loss of licensure, certification, or accreditation, or exclusion from participation in governmental healthcare programs. The Debtors’ laboratory was required to hold certain federal, state, and local licenses, certifications, and permits to conduct business, including compliance with the Clinical Laboratory Improvement Amendments (CLIA) of 1988 (“CLIA”) because the laboratory performed testing on human specimens for the purpose of providing information for the diagnosis, prevention, or treatment of disease. To renew their CLIA certificate, the Debtors were subject to biennial survey and inspection. The Debtors were also required to comply with state regulations related to laboratory permits in New York, California, and various other states in which the Debtors conducted business. Further, the Company was a “Covered Entity” under HIPAA because it conducted certain healthcare transactions electronically that involved the use or disclosure of individually identifiable health information, or “PHI.” As a Covered Entity, the Company was subject to audit by the United States Department of Health and Human Services and could have been investigated in connection with a privacy or data security complaint or reported breach or an audit related to HIPAA-compliance.

Sixth, the Company operated in a highly competitive market. The market for molecular diagnostics is extremely competitive. Within this market, the Company competed with new and traditional medical devices and other technologies used to assist physicians with the assessment of pigmented lesions and diagnosis of skin cancer. Although the Company was, as of the Petition Date, the only company to offer clinical dermatology professionals a non-invasive genomics test to rule out melanoma, multiple of its competitors were working on minimally invasive genomic tests for the assessment of skin diseases and several presently marketed or were developing devices and imaging tools to assess melanoma. The Company also competed with mainstream clinical diagnostic methods, used by dermatologists for many years, which focus on visual tumor tissue analysis. In recognition of such practice’s foothold in the field of dermatology, the Company expended considerable resources aimed at changing the methods or behavior of dermatologists and physicians to incorporate the DMT and the Smart Sticker™ into their practices in conjunction

⁵ On December 2, 2024, the United States District Court for the Southern District of California granted the defendants’ motion to dismiss the plaintiff’s first amended complaint in the action titled *In re DermTech Inc. Securities Lit.*, Case No. 3:23-cv-01885-DMS-JLB (S.D. Cal.) (which consolidates the cases captioned *Bagheri v. DermTech, Inc.*, No. 23-cv-1885-DMS-JLB and *Quarford v. DermTech, Inc.*, No. 23-cv-2221-DMS-JLB) (hereinafter, the “Securities Lawsuit”). The dismissal order provides the plaintiff leave to amend within 45 days of entry.

with, or in support of clinicians' decision-making to perform tissue biopsies and analysis. All of these factors made it difficult for the Company's products to gain market acceptance and the need to stay ahead of this competition drove R&D and sales and marketing costs for their Products higher and higher, with adverse effects on working capital, total assets, and stockholders' equity.

Lastly, the Company experienced uncertainty regarding payor reimbursements. General uncertainty surrounds payor reimbursement, including governmental and commercial payors, for any test incorporating new technology, such as the tests developed using the Company's technologies. As each payor generally determines for its own enrollees or insured patients whether to cover or otherwise establish a policy to reimburse tests, seeking payor approvals is a time-consuming and costly process. Payors can change, and did at times change, their policies and procedures regarding their coverage of or reimbursement for the Company's tests, even after the Company had received relevant payor approvals.

(b) *The Debtors' Prepetition Efforts to Sell or Restructure the Company*

As a result of these issues, the Board undertook a variety of initiatives to reduce spend and investigate strategic opportunities.

In early November 2023 through the end of December 2023, TD Cowen led confidential fundraising efforts which only yielded highly dilutive financing offers. In January of 2024, the Company engaged Cowen to serve as its advisor and investment banker. In connection with such retention, the Company and Cowen worked together to analyze the Company's financial and operational position, and Cowen assisted the Company in exploring strategic transactions. Following Cowen's engagement, Wilson Sonsini Goodrich & Rosati, P.C., which has provided counsel to the Company on a variety of matters since 2013, began serving as the Company's restructuring counsel. The Debtors also retained AlixPartners to serve as their financial and restructuring advisor in March of 2024.

In January 2024, Cowen began marketing the Company by conducting outreach to potential acquirers, facilitating their due diligence requests, and entering into non-disclosure agreements ("NDAs") with such potential acquirers. As of the Petition Date, 49 potentially interested purchasers had been contacted. Approximately 16 parties had executed NDAs and 12 parties had received access to a virtual data room to conduct diligence. As of the Petition Date, the Company remained in active discussions with various potential bidders.

III. THE CHAPTER 11 CASES

On June 18, 2024, the Debtors commenced the Chapter 11 Cases, which are being administered under the caption *In re DermTech, Inc., et al.*, Case No. 24-11378 (JTD). Upon commencement of the Chapter 11 Cases, the automatic stay imposed under section 362 of the Bankruptcy Code, with limited exceptions, enjoined the commencement or continuation of all collection efforts by Creditors and the enforcement of liens against the Debtors' property.

A. First Day Motions and Orders

On the Petition Date, the Debtors Filed certain “first day” motions and applications (the “First Day Motions”) with the Bankruptcy Court seeking relief to aid in the efficient administration of the Chapter 11 Cases and to facilitate the Debtors’ transition to debtor-in-possession status. The Bankruptcy Court held a hearing on the first-day motions on June 20, 2024 and entered a series of customary orders in connection therewith, including the following:

- The Debtors’ Motion for Entry of an Order (I) Directing Joint Administration of Related Chapter 11 Cases and (II) Granting Related Relief (the “Joint Administration Motion”) [D.I. 3], requesting an order directing the joint administration of the Chapter 11 Cases for procedural purposes only. On June 20, 2024, the Bankruptcy Court entered an order granting the relief requested in the Joint Administration Motion [D.I. 22].
- The Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to (A) File a Consolidated (1) Creditor Matrix and (2) Top Thirty Creditors List, and (B) Redact Certain Personal Identification Information in the Creditor Matrix and Certain Other Documents; (II) Waiving the Requirement to File a List of Equity Security Holders and Modifying Notice Requirements to Equity Security Holders; and (III) Granting Related Relief (the “Creditor Matrix Motion”) [D.I. 4], seeking, among other things, authorization to redact certain personal identification information contained in the creditor matrix and the Debtors’ top 30 creditors list. On June 20, 2024, the Bankruptcy Court entered an order granting the relief requested in the Creditor Matrix Motion [D.I. 23].
- The Debtors’ Motion for Entry of Interim and Final Orders (I)(A) Approving the Debtors’ Proposed Adequate Assurance of Payment for Future Utility Services, (B) Approving the Debtors’ Proposed Procedures for Resolving Additional Assurance Requests, and (C) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services; and (II) Granting Related Relief (the “Utility Motion”) [D.I. 5], requesting entry of an order (i) prohibiting utility companies from discontinuing, altering or refusing service to the Debtors on account of non-payment for any prepetition services, (ii) deeming the utility companies to have received adequate assurance of future payment, (iii) establishing procedures for resolving requests for additional assurance of payment, and (iv) granting related relief. On June 20, 2024, the Bankruptcy Court entered an order granting the relief requested in the Utility Motion on an interim basis [D.I. 24].
- The Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Prepetition Wages, Employee Benefits Obligations, and Other Compensation; and (B) Continue Employee Benefits Programs and Pay Related Administrative Obligations; and (II) Granting Related Relief (the “Wages Motion”) [D.I. 6], seeking entry of an order, among other things, authorizing the Debtors to honor certain prepetition obligations owed to their Employees and Independent Contractors and continue their workers’ compensation and employee benefit programs in the ordinary course of business postpetition. On June 20, 2024, the Bankruptcy Court entered an order granting the relief requested in the Wages Motion on an interim basis [D.I. 25].

- The Debtors’ *Application for Entry of an Order (I) Authorizing the Appointment of Stretto, Inc. as Claims and Noticing Agent; and (II) Granting Related Relief* [D.I. 7], authorizing the Debtors to retain Stretto, Inc. as claims and noticing agent in the Chapter 11 Cases. On June 20, 2024, the Bankruptcy Court entered an order authorizing Stretto’s retention as claims and noticing agent [D.I. 26].
- The Debtors’ *Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Continue Certain Intercompany Transactions; (II) Extending the Time to Comply with Section 345(b) of the Bankruptcy Code; and (III) Granting Related Relief* (the “Cash Management Motion”) [D.I. 8], seeking entry of an order authorizing the Debtor’s continued use of its existing cash management system and granting certain related relief. On June 20, 2024, the Bankruptcy Court entered an order granting the relief requested in the Cash Management Motion on an interim basis [D.I. 27].
- The Debtors’ *Motion for Entry of an Order (I) Authorizing Certain Procedures to Maintain the Confidentiality of Patient Information as Required by Applicable Privacy Rules; and (II) Granting Related Relief* (the “Patient Privacy Motion”) [D.I. 9], requesting that the Court establish certain procedures to ensure the confidentiality of patient information in accordance with HIPPA. On June 20, 2024, the Bankruptcy Court entered an order granting the relief requested in the Patient Privacy Motion [D.I. 28].
- The Debtors’ *Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Honor Certain Prepetition Obligations to Payors and (B) Otherwise Continue the Refund Program in the Ordinary Course of Business; and (II) Granting Related Relief* (the “Refund Motion”) [D.I. 10], requesting authority to continue the Debtors’ refund program in the ordinary course of business postpetition and to pay certain prepetition claims in connection therewith. On June 20, 2024, the Bankruptcy Court entered an order granting the relief requested in the Refund Motion on an interim basis [D.I. 29].
- The Debtors’ *Motion for Interim and Final Orders, Pursuant to Sections 105(a), 362(a)(3), and 541 of the Bankruptcy Code and Bankruptcy Rule 3001, Establishing Notice and Hearing Procedures for Trading In, or Certain Claims of Worthlessness with Respect to, Equity Securities in DermTech, Inc.* (the “NOL Motion”) [D.I. 8], requesting entry of an order establishing notice and hearing procedures that must be followed before certain transfers of, or certain claims of worthlessness for federal or state tax purposes with respect to, the Debtors’ equity securities are deemed effective. On June 20, 2024, the Bankruptcy Court entered an order granting the relief requested in the NOL Motion on an interim basis [D.I. 30].

On July 15, 2024, the Court entered orders approving the Wages Motion, the Cash Management Motion, the Refund Motion, the NOL Motion, and the Utility Motion on a final basis. See D.I. 87-91.

B. The Postpetition Sale Process

As noted above, the Debtors commenced the Chapter 11 Cases to implement a value-maximizing sale of all or substantially all of their assets. To that end, on June 21, 2024, the Debtors Filed the Bidding Procedures Motion with the Bankruptcy Court.

On July 15, 2024, the Bankruptcy Court entered the Bidding Procedures Order [D.I. 92]. The Bidding Procedures Order established the following key dates and deadlines:

<u>Date</u>	<u>Deadline/Event</u>
July 16, 2024	Bidding Procedures Hearing
One (1) Business Day after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter	Deadline for the Debtors to file and serve the Sale Notice
One (1) Business Day after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter	Deadline for Debtors to file and serve the Assumption and Assignment Notice and Cure Schedule
Five (5) Business Days after the entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter	Deadline for the Debtors to publish the Sale Notice
July 24, 2024, at 4:00 p.m. (ET)	Stalking Horse Supplement Deadline
Fourteen (14) calendar days after service of the Assumption and Assignment Notice, at 4:00 p.m. (ET)	Deadline to object to the Debtors' proposed assumption and assignment of the Assumed Contracts and related Cure Costs
August 7, 2024, at 4:00 p.m. (ET)	Deadline to object to the Sale of the Assets
August 7, 2024, at 5:00 p.m. (ET)	Bid Deadline
August 9, 2024, starting at 10:00 a.m. (ET)	Auction (if necessary)
As soon as practicable after conclusion of the Auction	Deadline to file and serve Notice of Successful Bidder(s)
At the Sale Hearing	Deadline to object to (i) conduct of the Auction and (ii) ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance
August 14, 2024 at 1:00 p.m. (ET)	Sale Hearing
On or prior to August 29, 2024	Closing

Pursuant to the Bidding Procedures Order, on July 16, 2024, the Debtors Filed and served the *Notice of Auction and Sale Hearing* (the "Sale Notice") [D.I. 103].

Also on July 17, 2024, the Debtors Filed the *Notice of (I) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Cure Amounts*

(the “Assumption and Assignment Notice”) [D.I. 114, as amended at D.I. 132], thereby providing notice of the potential assignment of assumption to the Successful Bidder of certain executory contracts and unexpired leases listed on Schedule A thereto (collectively, the “Potentially Assigned Agreements”) and the cure amounts, if any, the Debtors believed must be paid to cure any prepetition defaults under the Potentially Assigned Agreements.

Pursuant to the Bidding Procedures Order, the initial deadline to submit bids to acquire the Debtors’ assets was August 7, 2024 at 5:00 p.m. (ET). As permitted under the Bidding Procedures, in consultation with the Committee, the Debtors extended the bid deadline twice: first to August 9, 2024 at 5:00 p.m. (ET) and then again to August 10, 2024 at 5:00 p.m. (ET).

The Auction was held over two days, on August 13, 2024 and August 14, 2024, via videoconference. From the outset, the Debtors’ assets were organized in four (4) phases of bidding, three (3) of which related to designated subsets of the Assets, and one (1) pertaining to “whole company” bids. Each phase had a baseline bid and a designated bid increment assigned to it. Copies of the baseline bids for each phase of Assets were distributed to all Qualified Bidders in advance of the Auction.

The baseline bids were subject to overbid, and the Auction included multiple rounds of bidding. Additionally, certain modifications and clarifications to the terms and conditions of certain baseline bids were agreed to by various bidders and confirmed on the record at the Auction.

Following the conclusion of the Auction, the Debtors filed the *Notice of Successful Bidder and Next-Highest Bidder* [D.I. 185], thereby providing notice of the designation of DERM-JES Holdings, LLC as the Successful Bidder for the Assets. The Court entered the Sale Order on August 21, 2024, and the Sale closed on August 30, 2024. In connection with the Sale, the Debtors entered into a transition services agreement (the “TSA”) with the Buyer to facilitate the transition of the Debtors’ assets and operations under the APA. The Debtors anticipate that all services under the TSA, the cost of which are reimbursed by the Buyer pursuant to the terms thereof, will be completed during Q4 2024. The Debtors have agreed that, without the prior written consent of the Committee, they will not extend the TSA beyond the Confirmation Date.

On September 27, 2024, the Debtors filed a motion [D.I. 268] (the “Assumption and Assignment Motion”) to assume and assign to the Buyer certain private payor agreements. On October 21, 2024, the Court entered an order [D.I. 294] granting the Motion with regards to all but three responding counterparties, whose responses to the Assumption and Assignment Motion remain pending as of the date hereof.

C. Civil Investigative Demand

On July 19, 2024, the Debtors received from the U.S. Attorney’s Office for the Southern District of California (the “USAO”) a letter stating that the USAO is investigating the Debtors for potential violations of the False Claims Act, 31 U.S.C. § 3729(a), by submitting claims to Medicare for tests or test results that were not valid. The letter includes 16 interrogatories and 14 document requests (the “Requests”). The USAO later followed up with a Civil Investigative Demand (“CID”) to formalize the Requests, which primarily concern the Debtors’ lab operations. The

investigation most likely stems from a qui tam action that the Debtors believe may have been brought by a former employee. The Debtors' outside counsel has been working with the USAO to narrow the scope and breadth of the Requests and, as of the date hereof, is in the process of providing certain additional information and documentation to the USAO. While the outcome of the investigation is uncertain, the Debtors are hopeful that it can be resolved without the assertion of substantial claims against the Debtors or their estates by the USAO. As of the date hereof, the USAO has not provided a quantum of any claim that may result from the investigation. Notably, the Debtors were subject to a Clinical Laboratory Improvement Amendments ("CLIA") complaint survey conducted by federal and state government inspectors on June 26th and 27th of 2024. The survey evaluated the full scope of the Debtors' clinical laboratory operations for compliance with CLIA requirements. At the conclusion of the survey, the surveyors informed the Debtors' staff that the complaint was unsubstantiated and that they observed no deficiencies.

D. Rejection of Executory Contracts and Unexpired Leases

On August 8, 2024, the Debtors Filed the *Debtors' Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Executory Contracts Effective as of the Rejection Date and (II) Granting Related Relief* [D.I. 169] (the "First Omnibus Rejection Motion"). On August 27, 2024, the Bankruptcy Court entered an order granting the relief requested in the First Omnibus Rejection Motion [D.I. 216] and the contracts listed on Annex 1 thereto were thereby rejected effective as of August 8, 2024.

On August 21, 2024, the Debtors submitted under certification of counsel a stipulation and agreed order with their subtenant, SignalPET, LLC, providing for, among other things, the rejection of a sublease agreement between the parties. The Court entered the proposed order approving the stipulation on August 22, 2024 [D.I. 205].

On August 27, 2024, the Debtors filed the *Debtors' Motion for Entry of an Order (I) Authorizing the Rejection of a Certain Unexpired Lease of Nonresidential Real Property, Effective as of the Rejection Date; and (II) Granting Related Relief* [D.I. 214] (the "Lease Rejection Motion"), seeking the rejection of the Debtors' lease agreement for their lab and corporate headquarters (the "Lease"), and a related motion to shorten notice of the hearing thereon.

On August 29, 2024, the Debtors submitted under certification of counsel an agreed order and stipulation (the "Stipulation") with the landlord for the Lease (Kilroy), which resolved the Lease Rejection Motion. On August 30, 2024, the Court entered an order approving the Stipulation, whereby, among other things, the Lease was deemed rejected effective as of August 31, 2024 at 11:59 p.m. Pacific Daylight Time [D.I. 229]. As described in the Stipulation, the Buyer and Kilroy entered into a new lease for the premises previously occupied by the Debtors commencing on September 1, 2024.

On August 30, 2024, the Debtors Filed the *Debtors' Second Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Executory Contracts Effective as of the Rejection Date and (II) Granting Related Relief* [D.I. 225] (the "Second Omnibus Rejection Motion"). On September 18, 2024, the Bankruptcy Court entered an order granting the relief requested in the

Second Omnibus Rejection Motion [D.I. 251] and the contracts listed on Annex 1 thereto were thereby rejected effective as of August 30, 2024.

On September 27, 2024, the Debtors Filed the *Debtors' Third Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Executory Contracts Effective as of the Rejection Date and (II) Granting Related Relief* [D.I. 264] (the "Third Omnibus Rejection Motion"). On October 15, 2024, the Bankruptcy Court entered an order granting the relief requested in the Third Omnibus Rejection Motion [D.I. 280] and the contracts listed on Annex 1 thereto were thereby rejected effective as of September 30, 2024.

On October 30, 2024, the Debtors Filed the *Debtors' Fourth Omnibus Motion for Entry of an Order (I) Authorizing the Rejection of Certain Executory Contracts Effective as of the Rejection Date and (II) Granting Related Relief* [D.I. 307], which remains pending as of the date hereof.

E. Other Procedural and Administrative Motions

Subsequent to the Petition Date, the Debtors also Filed a number of customary motions and applications to retain professionals, further facilitate the efficient administration of the Chapter 11 Cases, and reduce the administrative burdens associated therewith, including:

- **Debtor Professional Retention Applications.** On June 25, 2024, the Debtors Filed applications requesting authority to retain and employ certain professionals pursuant to sections 327, 328 and 330, as applicable, of the Bankruptcy Code, including Wilson Sonsini Goodrich & Rosati, P.C., as bankruptcy counsel [D.I. 42]; TD Cowen, as investment banker [D.I. 41]; AlixPartners, LLC, as financial advisor [D.I. 47]; and Stretto, Inc., as administrative advisor [D.I. 46] (collectively, the "Debtor Professional Retention Applications"). On July 15, 2024, the Court entered orders approving the Debtor Professional Retention Applications [D.I. 95, 96, 97 & 98].
- **Interim Compensation Motion.** On June 25, 2024, the Debtors Filed the *Debtors' Motion for Entry of an Order (I) Establishing Procedures for Interim Compensation and Reimbursement of Professionals; and (II) Granting Related Relief* (the "Interim Compensation Motion") [D.I. 39], requesting that the Court establish certain customary procedures related to the approval of professional compensation during the Chapter 11 Cases. On July 15, 2024, the Court entered an order approving the Interim Compensation Motion [D.I. 93].
- **Bar Date Motion.** On June 25, 2024, the Debtors Filed the *Debtors' Motion for Entry of an Order (I) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim, Including 503(b)(9) Claims, and Approving the Form and Manner of Notice Thereof; and (II) Granting Related Relief* (the "Bar Date Motion") [D.I. 40], requesting that the Court establish certain bar dates for the filing of Proofs of Claim in the Chapter 11 Cases. On July 15, 2024, the Court entered an order approving the Bar Date Motion [D.I. 94].

Pursuant to the Bar Date Order, the Court established the following Bar Dates:

- o 5:00 p.m. (Eastern Time) on September 3, 2024, as the final date and time for each entity (including individuals, partnerships, corporations, joint ventures, and trusts), other than any governmental units, to file a proof of claim on account of a prepetition claim, including 503(b)(9) Claims (the “General Bar Date”);
 - o December 16, 2024, at 5:00 p.m. (Eastern Time), as the final date and time for each Governmental Units to file proofs of claims on account of a prepetition claims (the “Governmental Bar Date”);
 - o with respect to any scheduled Claim that is amended by the Debtors’ amendment of, or supplement to, the Schedules, the later of (a) the General Bar Date and (b) twenty-one (21) days after the date notice is given regarding any such amendment or supplement (the “Amended Schedules Bar Date”); and
 - o with respect to any claims alleged to arise from the rejection of an executory contract or unexpired lease, the later of (a) General Bar Date and (b) 5:00 p.m. (Eastern Time) on the date that is 30 days after entry of an order of the Court approving such rejection (the “Rejection Damages Bar Date” and collectively with the General Bar Date, the Governmental Bar Date, and the Amended Schedules Bar Date, the “Bar Dates”).
- **Ordinary Course Professionals Motion.** On June 28, 2024, the Debtors Filed the *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to Retain and Compensate Certain Professionals Utilized in the Ordinary Course of Business; and (II) Granting Related Relief* (the “OCP Motion”) [D.I. 50], requesting that the Court establish certain customary procedures for the retention and compensation during the Chapter 11 Cases of professionals utilized by the Debtors in the ordinary course of business. On July 15, 2024, the Court entered an order approving the OCP Motion [D.I. 99].

F. Appointment of Committee

On July 1, 2024, the U.S. Trustee appointed a committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code in the Chapter 11 Cases (the “Committee”) [D.I. 55]. The Committee is currently composed of the following members: Kilroy Realty, L.P., Zymo Research Corporation, and Skin Surgery Medical Group, Inc. On July 24, 2024, the Committee Filed applications requesting authority to retain and employ the following professionals pursuant to sections 327 and 330 of the Bankruptcy Code: Hogan Lovells US LLP and Potter Anderson & Corroon LLP, as co-counsel [D.I. 124 and 125, respectively], and Berkeley Research Group, LLC, as financial advisor [D.I. 126] (collectively, the “Committee Professional Retention Applications”). On August 9 and August 12, 2024, the Court entered orders approving the Committee Professional Retention Applications [D.I. 162, 163 and 171].

G. Schedules and SOFAs

On July 16, 2024, the Debtors filed their respective schedules of assets and liabilities and statements of financial affairs [D.I. 107, 108, 109 & 110 (as amended at D.I. 133)] (collectively, the “Schedules”).

The Debtors incorporate by reference the information contained in the Schedules, subject to all accompanying notes and disclaimers, including the descriptions of the Debtors’ assets and liabilities as of the Petition Date and of pending legal proceedings involving the Debtors.

IV. SUMMARY OF THE CHAPTER 11 PLAN

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

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

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtors under the Plan and will, upon the occurrence of the Effective Date, be binding upon all Holders of Claims against and Interests in the Debtors, the Estates, all parties receiving property under the Plan, and other parties in interest.

A. Purpose and Effect of the Plan

Among other things, Chapter 11 of the Bankruptcy Code also allows a debtor to formulate and consummate a plan of liquidation. A plan of liquidation sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of liquidation by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (a) is impaired under or has accepted the plan or (b) receives or retains any property under the plan.

The Plan provides for the liquidation of the Debtors’ remaining assets and distributions of proceeds to Holders of Allowed Claims, all as contemplated under the Plan, and for the wind-up the Debtors’ affairs. The Plan also provides for the establishment of the Liquidating Trust and appointment of the Liquidating Trustee to among other things, administer and liquidate the Debtors’ remaining assets, including Retained Causes of Action.

Under the Plan, Claims against, and Interests in, the Debtors are divided into Classes according to their relative priority and other criteria. If the Plan is confirmed and consummated, the Allowed Claims and Interests of the various Classes will be treated in accordance with the provisions in the Plan for each such Class, and the Liquidating Trustee will make Distributions to Holders of Allowed Claims as provided in the Plan. A general description of the Classes of Claims

and Interests created under the Plan, the treatment of those Classes under the Plan, and the property to be distributed under the Plan is below.

B. Liquidating Trust and Liquidating Trustee

1. Liquidating Trustee

The Liquidating Trust Agreement shall (i) be in form and substance consistent in all respects with the Plan and satisfactory to the Debtors and the Committee, and (ii) contain customary provisions for trust agreements utilized in comparable circumstances, including any and all provisions necessary to ensure continued treatment of the Liquidating Trust as a grantor trust and the Beneficiaries as the grantors and owners thereof for federal income tax purposes. All relevant parties will take all actions necessary to cause title to the Liquidating Trust Assets to be transferred to the Liquidating Trust. The powers, authority, responsibilities, and duties of the Liquidating Trust and the Liquidating Trustee are set forth in and will be governed by the Liquidating Trust Agreement, the Plan, and the Confirmation Order.

2. Purpose of the Liquidating Trust

The Liquidating Trust will be established for the primary purpose of liquidating the Liquidating Trust Assets, investigating and / or pursuing Retained Causes of Action; reconciling and objecting to Claims; and making Distributions to Beneficiaries in accordance with Treas. Reg. § 301.7701-4(d), Revenue Procedure 94-45, 1994-28 I.R.B. 124, the Plan, the Confirmation Order, and the Liquidating Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust.

3. Beneficiaries of the Liquidating Trust

The Beneficiaries of the Liquidating Trust are the Holders of Allowed General Unsecured Claims. Each Beneficiary shall have a beneficial interest in the Liquidating Trust Assets as provided for in Section 3.3.1 of the Plan.

4. Distribution of the Liquidating Trust Assets

The Liquidating Trust Assets will be distributed in accordance with the Plan, the Confirmation Order, the Bankruptcy Code, and the Liquidating Trust Agreement.

5. Transfer of Assets to the Liquidating Trust

(a) The Debtors and the Liquidating Trustee will establish the Liquidating Trust on behalf of the Beneficiaries pursuant to the Liquidating Trust Agreement, with the Beneficiaries to be treated as the grantors and deemed owners of the Liquidating Trust Assets. The Debtors will irrevocably transfer, assign, and deliver to the Liquidating Trust, on behalf of the Beneficiaries, all of their rights, title, and interests in the Liquidating Trust Assets, notwithstanding any prohibition on assignment under nonbankruptcy law. The Liquidating Trust will accept and hold the

Liquidating Trust Assets in the Liquidating Trust for the benefit of the Beneficiaries, subject to the Plan and the Liquidating Trust Agreement.

(b) On the Effective Date, all Liquidating Trust Assets will vest and be deemed to vest in the Liquidating Trust in accordance with section 1141 of the Bankruptcy Code; provided, that the Liquidating Trust, with the consent of the Liquidating Trustee and after giving notice to the Beneficiaries, may abandon or otherwise not accept any Liquidating Trust Assets that the Liquidating Trustee believes, in good faith, have no value to the Liquidating Trust. Any Assets the Liquidating Trust so abandons or otherwise does not accept shall not vest in the Liquidating Trust. As of the Effective Date, all Liquidating Trust Assets vested in the Liquidating Trust shall be free and clear of all Liens, Claims, and Interests except as otherwise specifically provided in the Plan or in the Confirmation Order. Upon the transfer by the Debtors of the Liquidating Trust Assets to the Liquidating Trust or abandonment of Liquidating Trust Assets by the Liquidating Trust, the Debtors will have no reversionary or further interest in or with respect to any Liquidating Trust Assets or the Liquidating Trust. Notwithstanding anything herein to the contrary, the Debtors, the Post-Effective Date Debtors, the Liquidating Trust and the Liquidating Trustee shall be deemed to be fully bound by the terms of the Plan and the Confirmation Order.

(c) Upon the occurrence of the Effective Date, the Debtors' remaining books and records that were not sold pursuant to the Purchase Agreement shall be transferred to the Liquidating Trust, which shall maintain or destroy all financial books and records, emails, and other financial documents relating to the Debtors' business that are currently in the Debtors' possession consistent with applicable law and the Liquidating Trustee's duties. Upon the occurrence of the Effective Date, the Debtors shall also provide to the Liquidating Trust access to, and control of, a complete image of the Debtors' server or the cloud (including, in each case, all metadata), including all Outlook data files or other email data files (in each case, including all metadata) stored in such account that were hosted on the Debtors' servers or in the cloud on or prior to the Effective Date. Further, upon the Effective Date, the Debtors shall transfer administrative account access including administrative control relating to all information technology accounts and systems to the Liquidating Trustee. Nothing in the Plan or the Confirmation Order shall affect the obligations of the pre-Effective Date Debtors, the Liquidating Trust, and/or any transferee or custodian to maintain all books and records that are subject to any governmental subpoena, document preservation letter, or other investigative request from a governmental agency.

6. Identity of the Liquidating Trustee

The identity of the Liquidating Trustee shall be disclosed in the Plan Supplement.

7. Compensation of the Liquidating Trustee

The Liquidating Trustee's compensation, on a Post-Effective Date basis, shall be as described in the Plan Supplement.

8. Powers and Duties

(a) General Powers and Duties. From and after the Effective Date, pursuant to the terms and provisions of the Plan and the Liquidating Trust Agreement, the Liquidating Trustee shall be empowered and directed to: (i) take all steps and execute all instruments and documents necessary to make Distributions to Holders of Allowed Claims and to perform the duties assigned to the Liquidating Trustee under the Plan or the Liquidating Trust Agreement; (ii) comply with the Plan and the obligations hereunder; (iii) employ, retain or replace professionals to represent him or her with respect to his or her responsibilities; (iv) object to Claims as provided in the Plan, and prosecute such objections; (v) compromise and settle any issue or dispute regarding the amount, validity, priority, treatment or allowance of any Claim or Interest; (vi) establish, replenish or release any reserves as provided in the Plan, as applicable; (vii) exercise such other powers as may be vested in the Liquidating Trustee pursuant to the Plan, the Liquidating Trust Agreement or any other order of the Bankruptcy Court, including the Confirmation Order, or otherwise act on behalf of and for the Debtors and the Post-Effective Date Debtors from and after the Effective Date; (viii) file applicable tax returns for the Debtors and the Liquidating Trust pursuant to Section 5.4.10(b) of the Plan; (ix) liquidate any of the Liquidating Trust Assets; and (x) prosecute, compromise, resolve or withdraw any of the Retained Causes of Action. The Liquidating Trust may, without the need for further Bankruptcy Court approval, retain legal counsel and financial advisors to advise him or her in the performance of his or her duties, which counsel and advisors may be counsel and advisors for the Debtors and the Committee. The Liquidating Trustee shall not be required to give any bond or surety or other security for the performance of his or her duties unless otherwise ordered by the Bankruptcy Court. Additionally, if the Bankruptcy Court requires the Liquidating Trustee to post a bond or surety, all costs and expenses of procuring any such bond or surety shall be paid for with Cash from the Liquidating Trust Assets.

(b) Distributions. Pursuant to the terms and provisions of the Plan and the Liquidating Trust Agreement, the Liquidating Trustee shall make the required Distributions specified under the Plan and in accordance with the Plan.

(c) Representative of the Estates. The Liquidating Trustee will be appointed as the representative of the Estates pursuant to sections 1123(a)(5), (a)(7), and (b)(3)(B) of the Bankruptcy Code and vested with the authority and power (subject to the Liquidating Trust Agreement) of the representative of the Estates. After the Effective Date, the Liquidating Trust shall have the authority and right on behalf of the Debtors without the need for Bankruptcy Court approval (unless otherwise expressly indicated herein or if required by the Bankruptcy Code or the Bankruptcy Rules), to carry out and implement all provisions of the Plan.

(d) Expenses Incurred On or After the Effective Date. Except as otherwise ordered by the Bankruptcy Court, the fees and expenses (including taxes) incurred by the Liquidating Trustee on or after the Effective Date and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Liquidating Trustee shall be paid in Cash from the Liquidating Trust Assets without any further notice to or action, order, or approval of the Bankruptcy Court.

9. Tax Treatment of the Liquidating Trust

(a) For all federal income tax purposes, the Beneficiaries of the Liquidating Trust will be treated as grantors and owners thereof and it is intended that the Liquidating Trust be classified as a Liquidating Trust under 26 C.F.R. § 301.7701-4 and that the Liquidating Trust is owned by the Beneficiaries. Accordingly, for federal income tax purposes, it is intended that the Beneficiaries be treated as if they had received a distribution of an undivided interest in the Liquidating Trust Assets and then contributed such interests to the Liquidating Trust. Accordingly, the Liquidating Trust will, in an expeditious but orderly manner, liquidate and convert to Cash the Liquidating Trust Assets, make timely Distributions to the Beneficiaries pursuant to the Plan, and not unduly prolong the Liquidating Trust's duration. The Liquidating Trust is intended to satisfy the requirements under Revenue Procedure 94-45, 1994-2 C.B. 684 and thus to qualify as a "grantor trust" for federal income tax purposes with the Beneficiaries treated as grantors and owners of the trust.

(b) The Liquidating Trustee shall file returns for the Liquidating Trust, except with respect to the Disputed Claims Reserve, as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and in accordance with the Plan. The Liquidating Trustee will pay all taxes imposed on the Liquidating Trust (including any taxes imposed on the portion of the Liquidating Trust treated as a "Disputed Ownership Fund") from Liquidating Trust Assets (although any taxes imposed on any Disputed Claims Reserve will be paid out of such Disputed Claims Reserve and not out of general assets held by the Liquidating Trust). The Liquidating Trust's taxable income, gain, loss, deduction or credit will be allocated to each holder in accordance with their relative beneficial interests in the Liquidating Trust.

(c) The Liquidating Trustee may, at the Liquidating Trustee's sole discretion, file a tax election to treat any Disputed Claims Reserve as a "Disputed Ownership Fund" as described in Treasury Regulation § 1.468B-9 or other taxable entity rather than as a part of the Liquidating Trust for federal income tax purposes. If such election is made, all parties, including the Debtors, the Liquidating Trustee, and any Beneficiaries, shall report consistently for U.S. federal, state, and local income tax purposes, and the Liquidating Trust shall comply with all tax reporting and tax compliance requirements applicable to the Disputed Ownership Fund or other taxable entity, including, but not limited to, the filing of separate income tax returns for the Disputed Ownership Fund or other taxable entity and the payment of any federal, state or local income tax due.

(d) As soon as reasonably practicable after the Effective Date, but in any event no later than 180 days thereafter, the Liquidating Trustee shall make a good faith valuation of assets of the Liquidating Trust, and such valuation shall be used consistently by all parties (including the Debtors, the Post-Effective Date Debtors, the Liquidating Trust and the Beneficiaries) for all federal, state and local income tax purposes. The Liquidating Trustee also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit for taxing purposes.

(e) The Liquidating Trustee shall file all income tax returns with respect to any income attributable to the Disputed Claims Reserve and shall pay the federal, state and local income taxes attributable to the Disputed Claims Reserve, based on the items of income, deduction, credit or

loss allocable thereto. The Liquidating Trust may request an expedited determination of Taxes of the Debtors, the Post-Effective Date Debtors or of the Liquidating Trust, including the Disputed Claims Reserve, under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Debtors, the Post-Effective Date Debtors, and the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

(f) The Liquidating Trustee shall be responsible for filing all federal, state, local and foreign tax returns for the Debtors, the Post-Effective Date Debtors, and the Liquidating Trust. Notwithstanding any rule, law, statute, or organizational document of the Debtors or the Post-Effective Date Debtors to the contrary, the Liquidating Trustee or his or her designee shall be deemed the attorney-in-fact for any party required to execute any federal, state, local and foreign tax returns on behalf of the Debtors, the Post-Effective Date Debtors, or the Liquidating Trust. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

10. Distribution and Withholding

(a) Notwithstanding anything in the Plan to the contrary, the Liquidating Trustee will make, or cause to be made, all Distributions under the Plan and the Liquidating Trust Agreement other than (a) those Distributions made by the Debtors on the Effective Date and (b) Distributions from the Professional Fee Escrow in accordance with the Plan.

(b) The Liquidating Trust may withhold from amounts distributable to any Entity any and all amounts, determined in the Liquidating Trustee's sole discretion, required by the Plan, or applicable law, regulation, rule, ruling, directive, or other governmental requirement.

11. Insurance

The Liquidating Trustee may maintain customary insurance coverage for the protection of the Liquidating Trustee and professionals retained by the Liquidating Trust on and after the Effective Date. The cost of such insurance shall be deemed a trust administrative expense.

12. Other Rights and Remedies

(a) In addition to the Liquidating Trustee's rights and duties with respect to the Liquidating Trust, on and after the Effective Date, the Liquidating Trustee will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court.

(b) On the Effective Date, the Liquidating Trust shall: (1) take possession of all books, records, and files of the Debtors and their Estates, in all forms including electronic and hard copy; and (2) provide for the retention and storage of such books, records, and files until such time as the Liquidating Trust determines, in accordance with the Liquidating Trust Agreement, that retention of same is no longer necessary or required. Any and all rights to conduct investigations with respect to Retained Causes of Action or claims not released by the Debtors and to assert such Retained Causes of Action shall vest with the Liquidating Trust and shall continue until dissolution

of the Liquidating Trust and the Liquidating Trust shall have all requisite standing and authority to pursue such rights, including the Retained Causes of Action. The Liquidating Trustee shall be deemed substituted as a party to any proceedings to which any of the Debtors are currently party. The Liquidating Trust, however, shall not be considered a successor of any Debtor and shall not assume any liabilities or obligations of the Debtors other than expressly provided for by the Plan and the Liquidating Trust Agreement.

13. Confidentiality; Privilege

On and after the Effective Date, the Debtors' confidentiality obligations, attorney-client privilege, work-product privilege, joint-interest privilege, or other privilege or immunity attaching to any documents or communications of the Debtors shall vest in the Liquidating Trust and its representatives. The Debtors are authorized to take all actions they deem necessary to effectuate the transfer of such privileges and immunities, and any documents or communications of the Debtors that would otherwise be protected from discovery by virtue of any applicable privilege or immunity shall remain so protected. The Confirmation Order shall provide that the Liquidating Trustee's receipt of transferred privileges shall be without waiver in recognition of the joint and/or successorship interest in prosecuting claims on behalf of the Debtors' Estates. If any privileged documents are inadvertently produced to third parties, such production shall not be deemed to destroy any privilege or be deemed a waiver of any confidentiality protections afforded to such privileged documents.

14. Disputed Claims Reserve

(a) The Liquidating Trustee may maintain, in accordance with the Liquidating Trustee's powers and responsibilities under the Plan and the Liquidating Trust Agreement, a Disputed Claims Reserve. The Liquidating Trustee may, in its reasonable discretion, distribute such amounts (net of any expenses, including any taxes relating thereto), as provided herein and in the Liquidating Trust Agreement, as Disputed Claims are resolved, and such amounts may be distributed on account of such Disputed Claims as if such Disputed Claims were Allowed Claims as of the Effective Date.

(b) The Liquidating Trust will pay taxes on the taxable net income or gain allocable to Holders of Disputed Claims on behalf of such Holders. If, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the Liquidating Trust as a result of the resolutions of such Disputed Claims.

15. Attribution of Income

Subject to definitive guidance from the Internal Revenue Service (the "IRS") or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests

one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), allocations of taxable income of the Liquidating Trust (other than taxable income allocable to the Liquidating Trust's claims reserves) among Holders of Claims will be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (were such Cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all of its assets (valued at their tax book value) to the holders of the beneficial interests in the Liquidating Trust, adjusted for prior taxable income and loss and taking into account all prior and concurrent Distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust will be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidation distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purpose of this paragraph shall equal their fair market value on the date the Liquidating Trust Assets are transferred to the Liquidating Trust, adjusted in accordance with tax accounting principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

16. Current Basis

All income of the Liquidating Trust will be subject to tax on a current basis.

17. Tax Identification Numbers

The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its Employer or Taxpayer Identification Number as assigned by the IRS or certify to the Liquidating Trustee's satisfaction that Distributions to the Beneficiary are exempt from backup withholding by completing and returning to the Liquidating Trustee the appropriate Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9, as applicable. The Liquidating Trustee may condition any Distribution to any Beneficiary upon receipt of such identification number. If after reasonable inquiry and demand, any Beneficiary fails to provide such identification number to the Liquidating Trustee, the Liquidating Trustee shall deem such Beneficiary's Claim as Disallowed and no Distribution shall be made on account of such Beneficiary's Claim.

18. Wind Down

In addition to the Liquidating Trustee's rights and duties with respect to the Liquidating Trust, on and after the Effective Date, the Liquidating Trustee will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Liquidating Trustee shall have the power and authority to take any action necessary to wind down and dissolve the Debtors, the Estates and the Post-Effective Date Debtors. As soon as practicable after the Effective Date, the Liquidating Trustee shall: (1) in the Liquidating Trustee's reasonable discretion, complete and file all final or otherwise required federal, state, and local tax returns for the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of each Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws; and (2) take such other actions as the

Liquidating Trustee may determine to be necessary or desirable to carry out the purposes of the Plan. From and after the Effective Date, the Post-Effective Date Debtors (a) for all purposes shall be deemed to have withdrawn their business operations from any state in which they were previously conducting, or are registered or licensed to conduct, their business operations, and (b) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date. In addition, (i) the Debtors shall be deemed to have canceled all Interests pursuant to this Plan, and (ii) the new fiscal year end of the Debtors shall be deemed to be the Effective Date. The dissolution of the Post-Effective Date Debtors shall not have any effect, in any manner, on the Retained Causes of Action that the Liquidating Trustee may assert in accordance with the Plan and the Liquidating Trust Agreement.

19. Termination of the Liquidating Trust and the Liquidating Trustee

The Liquidating Trustee shall be discharged and the Liquidating Trust shall be terminated, at such time as (1) all Disputed Claims have been resolved, (2) all of the Liquidating Trust Assets have been liquidated, (3) all duties and obligations of the Liquidating Trustee hereunder have been fulfilled, (4) all Distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made, and (5) the Chapter 11 Cases of the Debtors have been closed, but in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Bankruptcy Court, upon motion by the Liquidating Trustee within the six-month period prior to the fifth anniversary (or the end of any extension period approved by the Bankruptcy Court), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the IRS or an opinion of counsel satisfactory to the Liquidating Trustee that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the liquidation, recovery and Distribution of the Liquidating Trust Assets. The duties, responsibilities, and powers of the Liquidating Trustee will terminate in accordance with the terms of the Liquidating Trust Agreement.

20. Transfer of Beneficial Interests; Certain Securities Law Matters

Notwithstanding anything to the contrary in the Plan, beneficial interests in the Liquidating Trust shall not be transferrable except upon death of the interest holder or by operation of law. The beneficial interests in the Liquidating Trust shall not be “securities” under federal and state securities laws or, to the extent they are “securities,” their issuance shall be exempt from the registration requirements of Section 5 of the Securities Act and any other applicable U.S., state, or other law requiring registration prior to the offering, issuance, Distribution or sale of securities, in accordance with and pursuant to section 1145 of the Bankruptcy Code. In addition, to the extent the beneficial interests in the Liquidating Trust are “securities,” they will not be required to be registered under Section 12(g) of the Exchange Act. The Liquidating Trust will be an affiliate of the Debtors (within the meaning and solely for purposes of sections 1125(e) and 1145(a) of the Bankruptcy Code).

21. Funding of Reserves

(a) Professional Fee Reserve. On or prior to the Effective Date, the Debtors shall establish the Professional Fee Reserve as set forth in Section 3.1.3 of the Plan.

(b) Other Reserves. The Liquidating Trustee shall use Cash to establish and administer any other necessary reserves that may be required to effectuate the Plan and the Distributions to Holders of Allowed Claims under the Plan or the Liquidating Trust Agreement.

22. Indemnification of the Liquidating Trustee and Certain Other Parties

The Liquidating Trust shall indemnify and hold harmless: (i) the Liquidating Trustee (solely in his or her capacity as such) and (ii) the Liquidating Trust Professionals (collectively, the “Indemnified Parties”), with respect to any and all liabilities, losses, damages, claims, costs and expenses arising out of or due to their post-Effective Date actions or omissions, or consequences of such actions or omissions, taken in connection with the Plan, the Liquidating Trust Agreement and the Confirmation Order, other than acts or omissions, or consequences of such post-Effective Date actions or omissions, resulting from such Indemnified Party’s bad faith, willful misconduct (including actual fraud) or gross negligence. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (i) any payment on account of such claim shall be paid solely from the Estates and (ii) the legal fees and related costs incurred by counsel to the Liquidating Trustee in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Estates or any insurance. The indemnification provisions of the Liquidating Trust Agreement shall remain available to and be binding upon any former Liquidating Trustee or the estate of any decedent of the Liquidating Trustee and shall survive the termination of the Liquidating Trust Agreement.

23. Preservation of Retained Causes of Action

The Post-Effective Date Debtors shall retain all Retained Causes of Action and nothing contained in the Plan or the Confirmation Order shall be deemed to be a release, waiver or relinquishment of any such Retained Causes of Action. Upon the assignment of the Retained Causes of Action to, and the vesting of the Retained Causes of Action in, the Liquidating Trust upon the Effective Date, the Liquidating Trust shall retain, reserve, and be entitled to assert all such Retained Causes of Action, and all of the Post-Effective Date Debtors’ and the Liquidating Trust’s legal and equitable rights respecting any Claim or Cause of Action that are not specifically waived or relinquished by the Plan, the Confirmation Order, or any Final Order (including settlement or other agreements authorized thereby) may be asserted after the Effective Date by the Liquidating Trust.

The Retained Causes of Action that will be transferred to the Liquidating Trust include, without limitation:

1. any and all Claims and Causes of Action to recover retention bonuses in the aggregate amount of \$3,013,237 that were paid to current or former employees or officers of the Debtors in May and June 2024;
2. any and all Avoidance Actions (for example, preference claims and fraudulent conveyance claims);
3. any and all Claims and Causes of Action against current or former directors, officers and insiders of the Debtors arising out of, connected to, or related to the facts and circumstances set forth in the Derivative Lawsuit or the Securities Lawsuit;
4. any and all Claims and Causes of Action against current or former directors and officers for breach of fiduciary duty;
5. any and all Claims and Causes of Action against consultants, auditors, or accountants for negligence, gross negligence or aiding and abetting breach of fiduciary duty; and
6. any Claims or Causes of Action set forth on the Schedule of Additional Retained Causes of Action.

In determining whether to pursue, litigate, settle, or abandon, any or all of these Claims or Causes of Action, the Liquidating Trustee will consider the costs and benefits of any such course of action, including, without limitation, potential defenses, collectability, and the availability of contingency counsel to prosecute such Claims and Causes of Action.

24. Covenant Not to Execute

Except as provided below, the Debtors, the Post-Effective Date Debtors, the Liquidating Trust and the Liquidating Trustee shall not seek to recover on any Retained Cause of Action against the personal assets of any of the Debtors' officers and directors serving as of the Petition Date (collectively, the "Current D&Os"), and shall only seek recovery on any Retained Causes of Action against the Current D&Os from the proceeds of insurance coverage, if any, provided under any applicable Insurance Contract (the "Covenant"). The Covenant does not apply to recovery in respect of Retained Causes of Action against the Current D&Os (1) that arise from criminal acts, willful misconduct, actual fraud, or gross negligence, unless and to the extent such alleged conduct is covered under any applicable Insurance Contract, in which case the Covenant shall apply, (2) that arise from any other acts or omissions for which coverage is not available or is excluded under the terms of an applicable Insurance Contract, (3) for which coverage is denied by the insurer under the applicable Insurance Contract, *provided that* the Current D&Os shall be permitted the opportunity to challenge any such denial of coverage, and this exclusion to the Covenant shall apply only upon (i) a final determination by a court of competent jurisdiction that such denial of coverage was valid, (ii) the passing of the period during which any such challenge must be brought under the terms of the applicable Insurance Contract or otherwise under applicable law, or (iii) the written waiver by such Current D&Os of their right to challenge such denial of coverage; or (4) that constitute Retention Bonuses or Claims or Causes of Action to recover Retention Bonuses. The Covenant is a contractual obligation of the Debtors, the Post-Effective Date Debtors, the

Liquidating Trust and the Liquidating Trustee not to take any of the actions identified in Section 5.8 of the Plan, which Covenant shall be approved by Final Order of the Bankruptcy Court, and is not a release of any Retained Cause of Action against any of the Current D&Os. The Covenant does not relieve the Current D&Os of any legal obligation to pay any possible settlement of or judgment related to any Retained Causes of Action against them by the Debtors, the Post-Effective Date Debtors, or the Liquidating Trust, as applicable, but is a contractual obligation of the Debtors, the Post-Effective Date Debtors, the Liquidating Trust and the Liquidating Trustee not to take any of the actions identified in Section 5.8 of the Plan. Nothing in the Plan or any filings in the Bankruptcy Cases, including the Covenant, constitutes any acknowledgment of wrongdoing or liability by the Debtors or any of the Current D&Os with respect to any Retained Causes of Action against them or relieves the Current D&Os of any obligation to cooperate with the Debtors' insurance carriers in connection with the defense of any Retained Causes of Action pursued by the Liquidating Trust or to fulfill any other contractual obligations that the Current D&Os may have under such Insurance Contracts. The Covenant does not contravene public policy. Nothing in Section 5.8 of the Plan, nor anything else in the Plan, shall impair or affect the existing rights of any insurer or the Current D&Os to enforce the terms of the Insurance Contracts consistent with applicable law.

C. Estimated Recoveries for Holders of Allowed General Unsecured Claims

The Debtors estimate that Holders of Allowed General Unsecured Claims in these Chapter 11 Cases should recover approximately 39% – 55% of the total amount of their respective Allowed General Unsecured Claims. The Debtors have calculated this projected recovery by taking into account, among other variables: (a) the total estimated amount of Allowed General Unsecured Claims; and (b) the total estimated amount of Cash available for Distributions to Holders of Allowed General Unsecured Claims. This estimate does not account for potential additional recoveries based on Retained Causes of Action and other Assets. Actual recoveries may differ from these projected recoveries as a result of, among other reasons: (a) actual recoveries with respect to the Retained Causes of Action; (b) an increase in the total amount of Allowed Administrative or Priority Non-Tax Claims from current estimates; (c) the total amount of Allowed General Unsecured Claims differing from the current estimated amounts, including increases or reductions based on the assumption and assignment or rejection of executory contracts and unexpired leases; and (d) the expenses of the Liquidating Trust differing from expectations. The Debtors estimate that the amount of Allowed General Unsecured Claims will be approximately \$8,882,000 - \$12,350,000 in the aggregate.

As of November 30, 2024, the Debtors' Cash on hand was approximately \$10,096,542. However, the Cash has been or will be reduced by, among other things, (a) costs associated with administrating the Estates; (b) the Liquidating Trust Professional Fees; (c) any other wind-down fees, costs and expenses of the Debtors; and (d) Claims required to be paid by the Estates pursuant to the Plan with priority over Allowed General Unsecured Claims. After considering all of these variables and others, the Debtors estimate that approximately \$4,847,915 in Cash will be available for Distributions for Allowed General Unsecured Claims. This does not take into account any potential recoveries with respect to the Retained Causes of Action that the Liquidating Trust may pursue.

D. Treatment of Unclassified Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims and Priority Tax Claims have not been classified and the respective treatment of such unclassified Claims is set forth in Section 3.1 of the Plan.

1. Administrative Claims

Except as otherwise provided for in the Plan, in the Confirmation Order, or in a separate order of the Bankruptcy Court, on, or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) 30 days following the date on which an Administrative Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim shall receive, in full satisfaction of such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing.

2. Administrative Claims Bar Date

All requests for payment of an Administrative Claim (other than a Section 503(b)(9) Claim) arising on or after the Petition Date must be Filed with the Bankruptcy Court and served on counsel to the Liquidating Trustee and counsel to the U.S. Trustee no later than 30 days after the Effective Date. In the event of an objection to allowance of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

3. Professional Fee Claims and Professional Fee Reserve

On or before the Effective Date, the Debtors shall establish the Professional Fee Reserve, which shall only be used to pay Professional Fee Claims, unless and until all Professional Fee Claims have been paid in full, otherwise satisfied or withdrawn. The Estates shall fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtors and the Committee and that approximates, as of the Effective Date, the total projected amount of unpaid Professional Fee Claims. If the Debtors and the Committee are unable to agree on the amount in which the Professional Fee Reserve is to be funded, the Debtors and the Committee shall submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be transferred to the Liquidating Trust to be used for other purposes consistent with the Plan and the Liquidating Trust Agreement. If the Professional Fee Reserve is insufficient to pay in full all Allowed Professional Fee Claims, the Liquidating Trustee shall pay the balance of any unpaid Allowed Professional Fee Claims out of the Liquidating Trust Assets.

4. Professional Fee Claims Bar Date

All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Liquidating Trustee, counsel to the Post-Effective Date Debtors, counsel to the Committee, and the U.S. Trustee no later than 45 days

after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Liquidating Trustee, counsel to the Post-Effective Date Debtors, counsel to the Committee, the U.S. Trustee, and the requesting Professional in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and any applicable orders of the Bankruptcy Court, including the Interim Compensation Order. All Professional Fee Claims shall be paid by the Estates to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order. For the avoidance of doubt, notwithstanding anything to the contrary in the Plan, all parties rights are reserved with respect to the final allowance and payment of any Professional Fee Claims.

5. Priority Tax Claims

In full satisfaction of such Claims, Holders of Allowed Priority Tax Claims shall be paid, at the Liquidating Trustee's discretion, as follows: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim on the later of the Effective Date or 30 days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim; (b) in regular installment payments in Cash over a period not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs; and (c) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the Liquidating Trustee shall have agreed upon in writing.

E. Classification and Treatment of Claims and Interests

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, withdrawn or otherwise settled prior to the Effective Date.

1. Class 1: Secured Claims

On or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) 30 days following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive, at the discretion of the Liquidating Trustee, in full satisfaction of such Allowed Secured Claim, (i) Cash equal to the value of such Claim; (ii) the return of the Holder's Collateral securing such Claim; (iii) the reinstatement of such Claim pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code; or (iv) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing.

Class 1 is Unimpaired, and therefore Holders of Secured Claims are conclusively presumed to have accepted the Plan.

2. Class 2: Priority Non-Tax Claims

On or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) 30 days following the date on which a Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, the Holder of such Allowed Priority Non-Tax Claim shall receive, in full satisfaction of such Allowed Priority Non-Tax Claim, either (i) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Non-Tax Claim; or (ii) such other less favorable treatment as to which such Holder and the Liquidating Trustee shall have agreed upon in writing. ***Class 2 is Unimpaired, and therefore Holders of Priority Non-Tax Claims are conclusively presumed to have accepted the Plan.***

3. Class 3: General Unsecured Claims

Holders of Allowed General Unsecured Claims shall receive a beneficial interest in the Liquidating Trust entitling such Holders to (i) their Pro Rata share of the General Unsecured Claim Distribution, or (ii) such other less favorable treatment as to which any such Holder and the Liquidating Trustee shall have agreed upon in writing. ***Class 3 is Impaired, and therefore Holders of General Unsecured Claims are entitled to vote on the Plan.***

4. Class 4: Subordinated Claims

On the Effective Date, Holders of Subordinated Claims shall not be entitled to, and shall not receive or retain, any property or interest in property under the Plan on account of such Subordinated Claims. ***Class 4 is deemed to have rejected the Plan, and therefore Holders of Subordinated Claims are not entitled to vote on the Plan.***

5. Class 5: Intercompany Claims

On the Effective Date, all Intercompany Claims shall be eliminated and extinguished by reason of being set off, settled, distributed, contributed, cancelled, released, and/or otherwise addressed at the option of the Debtors (with the consent of the Committee) without any distribution on account of such Claims. Class 5 is Impaired. ***Class 5 is deemed to have rejected the Plan, and therefore Holders of Intercompany Claims are not entitled to vote on the Plan.***

6. Class 6: Interests

On the Effective Date, all Interests of any kind shall be deemed cancelled, and the Holders thereof shall not receive or retain any property, interest in property or consideration under the Plan

on account of such Interests. ***Class 6 is deemed to have rejected the Plan, and therefore Holders of Interests are not entitled to vote on the Plan.***

7. Provision Governing Allowance and Defenses to Claims

On and after the Effective Date, all of the Debtors' and the Estates' rights under section 558 of the Bankruptcy Code shall be assigned to, and shall vest in, the Liquidating Trust. Nothing under the Plan shall affect the rights and defenses of the Estates, the Debtors, the Post-Effective Date Debtors, the Liquidating Trust or the Liquidating Trustee in respect of any Claim not Allowed by Final Order, including all rights in respect of legal and equitable objections, defenses, setoffs or recoupment against such Claims. The Liquidating Trust may, but shall not be required to, setoff against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made) any claims of any nature whatsoever that the Estates, the Debtors, the Post-Effective Date Debtors, the Liquidating Trust, or the Liquidating Trustee may have against the Claim Holder, including Avoidance Actions, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Estates, the Debtors, the Post-Effective Date Debtors, the Liquidating Trust or the Liquidating Trustee of any such Claim they may have against such Claim Holder. The Liquidating Trustee may (i) designate any Claim as Allowed at any time from and after the Effective Date and (ii) may designate any Claim as a Disputed Claim and not Allowed at any time from and after the Effective Date until the Claim Objection Deadline.

F. Acceptance or Rejection of the Plan

1. Impaired Class of Claims Entitled to Vote

Only the votes of Holders of Allowed Claims in Class 3 shall be solicited with respect to the Plan.

2. Acceptance by an Impaired Class

In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, Class 3 shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds ($\frac{2}{3}$) in dollar amount and more than one-half ($\frac{1}{2}$) in number of such Claims allowed for purposes of Plan voting pursuant to the Disclosure Statement Order that have timely and properly voted to accept or reject the Plan.

3. Presumed Acceptances by Unimpaired Classes

Class 1 and Class 2 are Unimpaired under the Plan. ***Under section 1126(f) of the Bankruptcy Code, the Holders of Claims in such Unimpaired Classes are conclusively presumed to have accepted the Plan, and, therefore, the votes of the Holders of such Claims shall not be solicited.***

4. Impaired Classes Deemed to Reject Plan

Holders of Subordinated Claims, Intercompany Claims, and Interests in Classes 4, 5 and 6, respectively, are not entitled to receive or retain any property or interests in property under the Plan. ***Under section 1126(g) of the Bankruptcy Code, such Holders are deemed to have rejected the Plan, and, therefore, the votes of such Holders shall not be solicited.***

5. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code

Because at least one Impaired Class is deemed to have rejected the Plan, the Debtors will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan, the Plan Supplement or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

6. Elimination of Vacant Classes

Any Class of Claims that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of a Claim allowed for purposes of Plan voting pursuant to the Disclosure Statement Order shall be deemed eliminated from the Plan for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

G. Implementation of the Plan

1. Implementation of the Plan

The Plan will be implemented by, among other things, the appointment of the Liquidating Trustee and the making of Distributions from the Liquidating Trust Assets, including all Cash and the proceeds, if any, from the Retained Causes of Action, by the Liquidating Trust in accordance with the Plan and the Liquidating Trust Agreement. Except as otherwise provided in the Plan, on and after the Effective Date, all Assets of the Estates, including all claims, rights, Retained Causes of Action and any property acquired by the Debtors under or in connection with the Plan, shall vest in the Liquidating Trust, free and clear of all Liens, Claims, and Interests subject to the substantive consolidation provided for in the Plan.

2. Substantive Consolidation for Plan Purposes Only

Except as otherwise provided in the Plan, each Debtor shall continue to maintain its separate corporate existence after the Effective Date for all purposes, other than the treatment of Claims and Distributions under the Plan. Except as expressly provided in the Plan (or as otherwise ordered by the Bankruptcy Court), on the Effective Date, for purposes of voting to accept or reject the Plan and Distributions: (i) the Assets and liabilities of the Debtors shall be deemed merged or treated as though they were merged into and with the Assets and liabilities of Debtor DermTech, Inc.; (ii) all guarantees by one Debtor of the obligations of the other Debtor shall be deemed eliminated and extinguished so that any Claim against any Debtor, and any guarantee thereof executed by either Debtor and any joint or several liability of either Debtor shall be deemed to be one obligation of Debtor DermTech, Inc.; (iii) each and every Claim filed or to be filed in either

of the Chapter 11 Cases shall be treated as filed against the consolidated Debtors and shall be treated as one Claim against and obligation of DermTech, Inc.; (iv) all Intercompany Claims shall be eliminated and extinguished, and holders of Intercompany Claims shall not receive any Distributions or retain any property pursuant to the Plan on account of such Intercompany Claims; and (v) for purposes of determining the availability of the right of setoff under section 553 of the Bankruptcy Code, the Debtors shall be treated as one entity, DermTech, Inc., so that, subject to the other provisions of section 553 of the Bankruptcy Code, debts due to either Debtor may be set off against the debts of the other Debtor. Such substantive consolidation shall not (other than for purposes relating to the Plan) affect the legal and corporate structures of the Post-Effective Date Debtors. Moreover, such substantive consolidation shall not affect any subordination provisions set forth in any agreement relating to any Claim or Interest or the ability of the Liquidating Trust to seek to have any Claim or Interest subordinated in accordance with any contractual rights or equitable principles. Notwithstanding anything in this section to the contrary, all post-Effective Date fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930, if any, shall be calculated on a separate legal entity basis for each Post-Effective Date Debtor.

3. The Debtors' Post-Effective Date Corporate Affairs

(a) Debtors' Officers and Directors

On the Effective Date, the Debtors' officers and directors shall be terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtors following the occurrence of the Effective Date.

(b) Dissolution and Cancellation of the Debtors

On the Effective Date, the Liquidating Trustee shall be the sole officer and director of the Post-Effective Date Debtors and appointed to manage the Post-Effective Date Debtors in accordance with the Plan and the Liquidating Trust Agreement. Following the implementation of the Plan, the administration and Distribution of the Liquidating Trust Assets in accordance with the terms of the Plan, and the winding down of the Post-Effective Date Debtors' affairs, without the need for any further order or action of the Bankruptcy Court, the Post-Effective Date Debtors will be dissolved, and their affairs will be wound up in accordance with Delaware law. The Liquidating Trustee is authorized to take all actions reasonably necessary to dissolve the Post-Effective Date Debtors, and none of the Liquidating Trustee, the Liquidating Trust or the Post-Effective Date Debtors shall be required to pay any taxes or fees in order to cause such dissolution and termination of the Post-Effective Date Debtors' existence.

(c) Securities Filings and "Going Dark"

Each of the Debtors, the Post-Effective Date Debtors, and the Liquidating Trustee are authorized, as of the Effective Date, to file with the Securities and Exchange Commission a Form 15 on behalf of the Debtors for the purpose of suspending the duty to file reports under Sections 13 and 15(d) of the Securities Exchange Act of 1934, as amended, and shall file such Form 15 on or promptly after the Effective Date, unless the Debtors have previously filed such Form 15.

H. Executory Contracts and Unexpired Leases

1. Executory Contracts and Unexpired Leases

Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtors, other than the Insurance Contracts, that have not been assumed, assumed and assigned, or rejected, prior to the Effective Date, or are not subject to a motion to assume or reject Filed before the Effective Date, shall be deemed rejected pursuant to the Confirmation Order, as of the Effective Date. For the avoidance of doubt, any postpetition consulting or transition services agreements shall not be deemed rejected as of the Effective Date. ***Any Creditor asserting a Rejection Claim shall File a proof of claim with the Debtors' claims and noticing agent, Stretto, Inc. ("Stretto") (i) electronically, through the online proof of claim Form available at <https://Cases.Stretto.com/DermTech/File-A-Claim/> or (ii) by First-Class Mail, Hand Delivery or Overnight Mail at the applicable address below, within 30 days of the Effective Date, and shall also serve such proof of claim upon the Liquidating Trustee.***

If by First-Class Mail:

DermTech Claims Processing
c/o Stretto
410 Exchange, Suite 100
Irvine, CA 92602

If by Hand Delivery or Overnight Mail:

DermTech Claims Processing
c/o Stretto
410 Exchange, Suite 100
Irvine, CA 92602

2. Rejection Claims

Any Rejection Claims arising from the Plan that are not timely Filed pursuant to Section 6.1 of the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed pursuant to Section 6.1 of the Plan, the Liquidating Trustee may File an objection to any Rejection Claim on or prior to the Claim Objection Deadline.

3. Special Provisions Regarding Insurance

Notwithstanding anything to the contrary herein or in the Plan, the Plan Supplement, the Confirmation Order, any bar date notice or claim objection, any other document related to any of the foregoing, or any other order of the Bankruptcy Court (including any other provision that purports to be preemptory or supervening, grants an injunction, discharge or release, confers Bankruptcy Court jurisdiction, or requires a party to opt out of any releases):

(a) subject to Section 6.3(e) of the Plan, on the Effective Date, the Insurance Contracts shall vest, unaltered and in their entirety with the Post-Effective Date Debtors, and all debts, obligations, and liabilities of the Debtors (and, after the Effective Date, of the Post-Effective Date

Debtors) thereunder, whether arising before or after the Effective Date, shall survive and shall not be amended, modified, waived, released, discharged or impaired in any respect, all such debts, obligations, and liabilities of the Debtors (and, after the Effective Date, of the Post-Effective Date Debtors) shall be satisfied by the Post-Effective Date Debtors in the ordinary course of business, and the Insurers shall not need to or be required to file or serve any objection to a proposed cure amount or a request, application, Claim, proof or motion for payment or allowance of any Claim or Administrative Claim and shall not be subject to any bar date or similar deadline governing cure amounts, proofs of Claims or Administrative Claims;

(b) for the avoidance of doubt, subject to the automatic stay under section 362 of the Bankruptcy Code and the injunction under Section 11.1 of the Plan, if there is available insurance, any party with rights against or under the applicable Insurance Contract, including the Estates, the Post-Effective Date Debtors, the Liquidating Trust, and Holders of Insured Claims, may pursue such rights, and the Liquidating Trustee may, but shall not be required to, move to limit an Insured Claim to the Face Amount of such Insured Claim less the total coverage available with respect to that Insured Claim under the Insurance Contracts; *provided, however*, that doing so in no way obligates an Insurer to pay any portion of the Insured Claim or otherwise alters an Insurer's coverage defenses; *provided further, however*, that, subject to Section 6.3(e) of the Plan, nothing alters or modifies the duty, if any, that Insurers have to pay Insured Claims covered by the Insurance Contracts and the Insurers' right to seek payment or reimbursement from the Debtors (or after the Effective Date, the Post-Effective Date Debtors); *provided finally, however*, the automatic stay of Bankruptcy Code section 362(a) and the injunctions set forth in Article XI of the Plan, if and to the extent applicable, shall be deemed lifted without further order of the Bankruptcy Court, solely to permit: (i) all current and former employees of the Debtors to proceed with any workers compensation claims they might have in the appropriate judicial or administrative forum; (ii) direct action claims against an Insurer under applicable non-bankruptcy law to proceed with their claims; (iii) the Insurers to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of the Bankruptcy Court, (A) any valid workers compensation claims, (B) claims where a claimant asserts a direct claim against any Insurer under applicable non-bankruptcy law, or an order has been entered by the Bankruptcy Court granting a claimant relief from the automatic stay to proceed with its Insured Claim, and (C) all costs in relation to each of the foregoing; and (iv) the Insurers to cancel any Insurance Contracts, to the extent permissible under applicable non-bankruptcy and bankruptcy law, and in accordance with the terms of the Insurance Contracts (other than on the basis of any outstanding prepetition claims against the Debtors, the Estates, the Post-Effective Date Debtors or the Liquidating Trust arising from or related to such Insurance Contracts);

(c) nothing in Section 6.3 of the Plan shall constitute a waiver of any causes of action the Debtors, the Estates, the Post-Effective Date Debtors or the Liquidating Trust may hold against any Entity, including any Insurers. Nothing in Section 6.3 of the Plan is intended to, shall or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a recovery from any Insurer in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; *provided, however*, that the Debtors, the Estates, the Post-Effective Date Debtors and the Liquidating Trust do not waive, and expressly reserve their rights to assert that the proceeds of the Insurance Contracts are an Asset and property of the Estates to which they

are entitled to the extent that the Debtors are entitled to assert first-party claims pursuant to the terms and conditions of the applicable Insurance Contract;

(d) subject to Section 6.3 (e) of the Plan, nothing shall modify the scope of, or alter in any other way, the rights and obligations of the Insurers, the Debtors (or, after the Effective Date, the Post-Effective Date Debtors or the Liquidating Trust), or any other individual or entity, as applicable, under the Insurance Contracts, and all such rights and obligations shall be determined under the Insurance Contracts and applicable non-bankruptcy law, and, for the avoidance of doubt, the Insurers shall retain any and all rights, claims and defenses to liability and/or coverage that they have under the Insurance Contracts, including the right to contest and/or litigate with any party, including the Debtors, the Post-Effective Date Debtors and the Liquidating Trust, the existence, primacy and/or scope of liability and/or available coverage under any alleged applicable Insurance Contract; and

(e) any payment, reimbursement or other financial or monetary obligations of the Debtors, the Estates or the Post-Effective Date Debtors owing to the Insurers under the Insurance Contracts, including reimbursement for payments within a deductible, shall be satisfied solely from existing collateral and/or security, if any, held by the Insurers in the ordinary course and pursuant to the terms of the Insurance Contracts, and to the extent that any such collateral and/or security is insufficient to satisfy any such obligations, the Insurers shall have no recourse to the Debtors, the Estates, the Post-Effective Date Debtors or the Liquidating Trust, and hereby waive any and all claims against, and rights to a Distribution from, the Debtors, the Estates, the Post-Effective Date Debtors and the Liquidating Trust; *provided, however*, that nothing in Section 6.3(e) of the Plan shall modify the scope of, or alter in any other way, (i) the rights of the Insurers to assert any setoff and recoupment rights in any proof of claim submitted in accordance with the Bar Date Order, (ii) the rights of any subrogee of an Insurer to assert a claim in accordance with the Bar Date Order, or (iii) the rights and defenses of the Debtors, the Estates, the Post-Effective Date Debtors or the Liquidating Trust with respect to any proofs of claim asserted by the Insurers or a subrogee of an Insurer. In no event shall the Liquidating Trust, the Liquidating Trustee or any of the Liquidating Trust Assets be liable for any payment, reimbursement or other financial or monetary obligations under Section 6.3 of the Plan.

I. Provisions Governing Distributions

1. Interest on Claims

Except to the extent provided in section 506(b) of the Bankruptcy Code, the Plan or the Confirmation Order, postpetition interest, penalties or fees shall not accrue or be paid on Allowed Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Allowed Claim from and after the Petition Date.

2. Distributions by Liquidating Trustee

The Liquidating Trustee or its designee shall serve as the disbursing agent under the Plan with respect to Distributions to Holders of Allowed Claims (*provided* that the Liquidating Trustee may hire professionals or consultants to assist with making Distributions). The Liquidating

Trustee shall make all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan, the Confirmation Order and the Liquidating Trust Agreement. Neither the Liquidating Trustee nor the Liquidating Trust shall be required to give any bond or surety or other security for the performance of the Liquidating Trustee's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

3. Distributions for Claims Allowed as of the Effective Date

Except as otherwise provided in the Plan or as ordered by the Bankruptcy Court, all Distributions to be made on account of Claims that are Allowed as of the Effective Date shall be made on the Initial Distribution Date by the Liquidating Trustee.⁶ Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of the Plan and the Liquidating Trust Agreement. No Distribution shall be made on account of, without limitation, any Allowed Claim or portion thereof that (i) has been satisfied after the Petition Date; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a proof of claim has not been timely filed; or (iii) is evidenced by a proof of claim that has been amended by a subsequently Filed proof of claim.

4. Means of Cash Payment

Cash payments under the Plan shall be made, at the option, and in the sole discretion, of the Liquidating Trustee, by wire, check or such other method as the Liquidating Trustee deems appropriate under the circumstances. Cash payments to foreign creditors may be made at the option, and in the sole discretion, of the Liquidating Trustee, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to the Plan in the form of checks issued by the Liquidating Trustee shall be null and void if not cashed within 90 days after the date of the issuance thereof. Requests for reissuance of any check within 90 days after the date of the issuance thereof shall be made directly to the Liquidating Trustee.

For purposes of effectuating Distributions under the Plan, any Claim denominated in foreign currency shall be converted to U.S. Dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

5. Fractional Distributions

Notwithstanding anything in the Plan to the contrary, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

⁶ The Initial Distribution Date (if any) and the amount of any initial distributions would depend on, among other things, the timing and various potential outcomes of the claim reconciliation process and are presently uncertain.

6. De Minimis Distributions

Notwithstanding anything to the contrary contained in the Plan, the Liquidating Trust shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$50. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$50 shall be forever barred from asserting such Claim against the Estates.

7. Delivery of Distributions

All Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth in the claims register maintained in the Chapter 11 Cases (subject to, after the Effective Date, a change of address notification provided by a Holder in writing in a manner reasonably acceptable to the Liquidating Trustee) or, in the absence of a Filed-proof of claim, the Schedules. If a Distribution is returned as undeliverable, the Liquidating Trust shall have no obligation to locate the Holder's current address. If the Liquidating Trustee cannot determine, or is not notified in writing of, a Holder's then-current address within 90 days after the Effective Date or does not receive a request for reissuance of any check within 90 days after the date of the issuance, the Distribution reserved for such Holder shall be deemed an unclaimed Distribution. The responsibility to provide the Liquidating Trustee a current address of a Holder of Claims or Interests shall always be the responsibility of such Holder. Except as set forth above, nothing contained in the Plan shall require the Liquidating Trustee or the Liquidating Trust to attempt to locate any Holder of an Allowed Claim or Interest. Amounts in respect of undeliverable Distributions made by the Liquidating Trust shall be held in trust on behalf of the Holder of the Allowed Claim or Interest to which they are payable by the Liquidating Trust until the earlier of the date that such undeliverable Distributions are claimed by such Holder and 90 days after the date the undeliverable Distributions were made. The Liquidating Trust and the Liquidating Trustee are entitled to, but shall have no obligation to, recognize the sale or transfer of any Claim that occurs after the Confirmation Date.

8. Withholding, Payment and Reporting Requirements with Respect to Distributions

All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment and reporting requirements. The Liquidating Trustee may require, in his or her sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim or Interest complete and return to the Liquidating Trustee the appropriate Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9, as applicable. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on

account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim or Interest, any tax obligation that would be imposed upon the Estates or the Liquidating Trust in connection with such Distribution; and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Liquidating Trustee for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Estates in connection with such Distribution.

9. Setoffs

The Liquidating Trust and the Liquidating Trustee may, but shall not be required to, set off against any Claim, any payments, Retained Causes of Actions, or other Distributions to be made by the Liquidating Trust pursuant to the Plan in respect of such Claim, and any claims of any nature whatsoever that the Debtors or the Estates may have against the Holder of such Claim; *provided, however*, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors, the Estates, the Post-Effective Date Debtors or the Liquidating Trust of any such claim that it may have against such Holder, provided further, that if the Liquidating Trust sets off any Avoidance Action or Retained Cause of Action against the recovery to any Holder of a Claim pursuant to Section 7.9 of the Plan, the Liquidating Trust shall not be deemed to have impaired, estopped, waived, or released any rights to prosecute the same such Avoidance Action or Retained Cause of Action against any other Person or Entity.

10. No Distribution in Excess of Allowed Amounts

Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim.

11. Allocation of Distributions

All Distributions received under the Plan by Holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States federal income tax purposes and then to accrued interest, if any, with respect to such Claim.

12. Forfeiture of Distributions

If the Holder of an Allowed Claim fails to cash a check payable to it within the period set forth in Section 7.4(a) of the Plan, fails to claim an undeliverable Distribution within the time limit set forth in Section 7.7 of the Plan, or fails to complete and return to the Liquidating Trustee the appropriate Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9 within 120 days of the written request by the Post-Effective Date Debtors for the completion and return to it of the appropriate form pursuant to Section 7.8 of the Plan, then such Holder shall be deemed to have forfeited its right to any Distributions from the Estates (or the proceeds thereof) and the Liquidating Trust. The forfeited Distributions shall become unrestricted Assets and shall be redistributed to Holders of Allowed Claims in accordance with the terms of the Plan after reserving as necessary for payment of expenses of the Liquidating Trustee and otherwise in compliance with

the Plan and the Liquidating Trust Agreement. If the Liquidating Trustee determines, in his or her sole discretion, that any such amounts are too small in total to economically redistribute to the Holders of Allowed Claims, the Liquidating Trust may instead donate such amounts to a charitable organization(s), free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary.

J. Procedures for Resolving Disputed, Contingent and Unliquidated Claims and Distributions with Respect Thereto

1. Claims Administration Responsibility

Except as otherwise specifically provided in the Plan and in the Liquidating Trust Agreement, after the Effective Date, the Liquidating Trustee shall have the authority (a) to file, withdraw or litigate to judgment objections to Claims; (b) to settle, compromise or Allow any Claim or Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court; (c) to amend the Schedules in accordance with the Bankruptcy Code; and (d) to administer and adjust the claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court. Any agreement entered into by the Liquidating Trustee in accordance with the terms of the Plan and the Confirmation Order with respect to the allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

2. Claim Objections

All objections to Claims (other than (i) Administrative Claims and (ii) Professional Fee Claims, which Professional Fee Claims shall be governed by Section 3.1.3 of the Plan) shall be Filed on or before the Claim Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Liquidating Trustee on or before the Claim Objection Deadline with notice only to those parties entitled to notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 as of the filing of such motion. The Filing of a motion to extend the Claim Objection Deadline shall automatically extend the Claim Objection Deadline until a final order is entered by the Bankruptcy Court. If such a motion to extend the Claim Objection Deadline is denied, the Claim Objection Deadline shall be the later of the then-current Claim Objection Deadline (as previously extended, if applicable) or 30 days after entry of a Final Order denying the motion to extend the Claim Objection Deadline.

3. No Distributions Pending Allowance

Notwithstanding any other provision of the Plan or of the Liquidating Trust Agreement, no payments or Distributions shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or determined by a Final Order, and the Disputed Claim has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtors, the Post-Effective Date Debtors, or the Liquidating Trust on account of a Retained Cause of Action, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such

Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

4. Estimation of Contingent or Unliquidated Claims

The Liquidating Trustee may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtors have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. If the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount shall constitute the Allowed amount of such Claim. All of the Claims objection, estimation and resolution procedures in Section 8 of the Plan are cumulative and are not necessarily exclusive of one another.

5. Amendments to Claims

On or after the Effective Date, a Claim may not be filed or amended to increase liability or to assert new liabilities without the prior authorization of the Bankruptcy Court or the Liquidating Trustee and any such new or amended Claim filed without prior authorization shall be deemed disallowed in full and expunged without any further action. Any Claims filed after the applicable deadlines in the Bar Date Order or the Plan shall be automatically deemed disallowed in full and expunged without further action, unless otherwise ordered by the Bankruptcy Court.

K. Conditions Precedent to the Occurrence of the Effective Date

1. Conditions to Occurrence of the Effective Date

The Effective Date shall not occur, and the Plan shall not be consummated, unless and until each of the following conditions has been satisfied or duly waived, as applicable, pursuant to Section 9.3 of the Plan:

- (a) the Bankruptcy Court shall have entered the Confirmation Order;
- (b) the Confirmation Order shall not be subject to any stay;
- (c) the Liquidating Trust Agreement shall have been executed, and a Liquidating Trustee shall have been appointed;
- (d) the Professional Fee Reserve shall be funded in Cash pursuant to and in accordance with Sections 3.1.3 and 5.5.1 of the Plan in an amount agreed to by the Debtors and the Committee or, if there is a dispute concerning the amount of the funding required, in an amount fixed by the Bankruptcy Court; and
- (e) all actions, documents, and agreements necessary to implement the provisions of the Plan to be effectuated on or prior to the Effective Date shall be reasonably

satisfactory to the Debtors and the Committee, and such actions, documents, and agreements shall be effective or executed and delivered.

2. Waiver of Conditions to the Occurrence of the Effective Date

The conditions to the Effective Date set forth in Section 9.1 of the Plan, other than 9.1(a) of the Plan, may be waived in writing by the Debtors (with the prior written consent of the Committee) at any time without further Order.

3. Effect of Non-Occurrence of Conditions to the Effective Date

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 9.1 and 9.2 of the Plan, the Debtors reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated. If the Confirmation Order is vacated pursuant to Section 9.3 of the Plan, (i) the Plan shall be null and void in all respects; and (ii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims or any Interests, or (b) prejudice in any manner the rights of the Debtors, the Estates or any other Person or Entity.

L. Retention of Jurisdiction

1. Scope of Retained Jurisdiction

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to do the following:

- (a) allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status of any Claim or Interest not otherwise Allowed under the Plan, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims or Interests;
- (b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 327, 328, 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;
- (c) hear and determine all matters with respect to the assumption, assignment or rejection of any executory contract or unexpired lease to which the Debtors are a party or with respect to which the Debtors may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;
- (d) effectuate performance of and payments under the provisions of the Plan and any agreement or order of the Bankruptcy Court with respect to the sale of the Assets

prior to the Effective Date and enforce remedies upon any default under the Plan and any such sale agreement or order;

- (e) hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters that are pending as of the Effective Date, that are arising out of, under or related to, the Chapter 11 Cases, including the Retained Causes of Action;
- (f) enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created, executed or contemplated in connection with the Plan, the Disclosure Statement or the Confirmation Order;
- (g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;
- (h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including the Confirmation Order;
- (i) issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the implementation, consummation or enforcement of the Plan or the Confirmation Order;
- (j) enter and implement such Orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;
- (k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, any agreement or Final Order of the Bankruptcy Court, or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with any of the foregoing documents and Orders;
- (l) enforce, interpret and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;
- (m) except as otherwise limited in the Plan, recover all Assets of the Debtors, wherever located;
- (n) hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

- (o) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;
- (p) resolve any cases, controversies, suits, or disputes related to the Estates, including the Assets; and
- (q) enter a final decree closing the Chapter 11 Cases.

2. Failure of the Bankruptcy Court to Exercise Jurisdiction

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Cases, including the matters set forth in Section 10.1 of the Plan, the provisions of Article X of the Plan shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

M. Releases, Exculpations, and Injunctions

1. Non-Discharge of the Debtors; Injunction

In accordance with section 1141(d)(3) of the Bankruptcy Code, the Plan does not discharge the Debtors. Section 1141(c) of the Bankruptcy Code nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Liens, Claims, and Interests. As such, no Person or Entity holding a Lien, Claim or Interest may receive any payment from, or seek recourse against, any Assets or property of the Debtors, the Estates, the Post-Effective Date Debtors or the Liquidating Trust other than Assets or property required to be distributed to that Person or Entity under the Plan. From the Effective Date, all parties are precluded from asserting against any Assets or property of the Debtors through the date on which all Distributions required to be made by the Liquidating Trust under the Plan and the Liquidating Trust Agreement have been made, the Estates, the Post-Effective Date Debtors and the Liquidating Trust any Claims, rights, causes of action, liabilities or Interests based upon any act, omission, transaction or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

Except as otherwise expressly provided for in the Plan or the Confirmation Order, all Persons and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, from:

- (a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtors, the Estates, the Post-Effective Date Debtors, the Liquidating Trust, their successors and assigns and any of their Assets and properties;
- (b) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtors, the Estates, the Post-

Effective Date Debtors, the Liquidating Trust, their successors and assigns and any of their Assets and properties;

(c) creating, perfecting or enforcing any encumbrance of any kind against the Debtors, the Estates, the Post-Effective Date Debtors, the Liquidating Trust, their successors and assigns and any of their Assets and properties;

(d) asserting any right of setoff or subrogation of any kind against any obligation due from the Debtors, the Estates, the Post-Effective Date Debtors, the Liquidating Trust or their successors and assigns, or against any of their Assets and properties, except to the extent that a right to setoff or subrogation is asserted in a timely filed proof of claim; or

(e) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim, Interest or cause of action released or settled hereunder.

From and after the Effective Date, all Persons and Entities are permanently enjoined from commencing or continuing in any manner against the Debtors, the Estates, the Post-Effective Date Debtors, the Liquidating Trust, the Released Parties, their successors and assigns and any of their Assets and properties, any suit, action or other proceeding, on account of or respecting any claim, interest, demand, liability, obligation, debt, right, cause of action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order.

2. Releases and Related Matters

(a) Releases by Debtors. As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the administration of the Chapter 11 Cases and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan and the Chapter 11 Cases, the Released Parties are deemed forever released by the Debtors and the Estates, and anyone claiming by or through the Debtors and the Estates, from any and all claims, interests, obligations, rights, suits, damages, causes of action (including any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including any derivative claims or claims asserted or assertible on behalf of the Debtors and the Estates, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that the Debtors or the Estates would have been legally entitled to assert in their own right or on behalf of the Holder of any Claim or Interest, based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date, including in any way relating to the Debtors, the Estates, the Chapter 11 Cases, the Sale Order and the transactions approved thereunder, the Plan, the Disclosure Statement or related agreements, instruments or other documents in the Chapter 11 Cases; *provided, however*, that the foregoing provisions shall not operate to waive, release or otherwise impair (1) any Causes of Action arising from

criminal acts, willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction or (2) any Excluded Released Party Claims; *provided further, however*, that nothing in Section 11.2(a) of the Plan shall release any direct claims held by non-Debtor parties.

(b) Releases by Holders of Claims. As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the administration of the Chapter 11 Cases and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan and the Chapter 11 Cases, and subject to Section 11.2(d) of the Plan, each of the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action (including any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including any derivative claims or claims asserted or assertible on behalf of the Debtors and the Estates, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Releasing Party would have been legally entitled to assert (whether individually or collectively), based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date, relating to the Debtors, the Estates, the Chapter 11 Cases, the Sale Order and the transactions approved thereunder, the Plan, the Disclosure Statement or related agreements, instruments or other documents; *provided, however*, that nothing in the Plan shall be deemed a waiver or release of any right of any such Releasing Parties to receive a Distribution pursuant to the terms of the Plan; *provided further, however*, that the foregoing provisions of the release in Section 11.2(b) of the Plan shall not operate to waive, release or otherwise impair any causes of action arising from criminal acts, willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. For the avoidance of doubt, notwithstanding anything to the contrary in the Plan, the foregoing release by the Releasing Parties is not, and shall not be deemed to be, in exchange for a waiver of the Debtors' (or the Liquidating Trust's) rights or claims against the Releasing Parties, including the Debtors' (or the Liquidating Trust's) rights to assert setoffs, recoupments or counterclaims, or to object or assert defenses to any Claim or Interest, and all such rights and claims are expressly reserved.

(c) Each Releasing Party provides the releases set forth in Section 11.2(b) of the Plan, unless such Holder timely opts out of such release by: (i) in the case of a Holder of a Claim in an Unimpaired Class that is deemed to accept the Plan, by checking the appropriate box on its Opt-Out Form and returning such Opt-Out Form to the Voting Agent prior to the Voting Deadline or Filing an objection to such releases prior to the deadline to object to Confirmation of the Plan; or (ii) in the case of a Holder of a Claim in Class 3, indicating its decision to not participate in such releases by checking the appropriate box on its Ballot and

returning such Ballot to the Voting Agent or Filing an objection to such releases prior to the deadline to object to Confirmation of the Plan.

(d) Section 1542 of the Civil Code of the State of California provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each Holder of a Claim in a Class deemed to accept the Plan and each Holder in Class 3, in each case, that does not timely submit a Release Opt-Out indicating such Holder's decision to not participate in the releases set forth in Section 11.2(b) of the Plan or File an objection to such releases prior to the deadline to object to Confirmation of the Plan shall be deemed to have voluntarily waived the rights described in Section 1542 of the Civil Code of the State of California.

3. Exculpation and Limitation of Liability

On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Person or Entity, including to any Holder of a Claim or an Interest, for any act taken or omitted to be taken on or after the Petition Date and prior to or on the Effective Date in connection with, relating to, or arising out of the Chapter 11 Cases, the Sale Order and the transactions approved thereunder, the formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, confirmation or consummation of the Plan, the Disclosure Statement, the Liquidating Trust Agreement or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with the Plan, or the administration of the Plan or the Assets and property to be distributed under the Plan; *provided, however*, that the such exculpation provisions shall not apply to acts or omissions constituting actual fraud, willful misconduct or gross negligence by such Exculpated Party, as determined by a Final Order. The Confirmation Order and the Plan shall serve as a permanent injunction against any Person or Entity seeking to enforce any claim or cause of action against the Exculpated Parties that has been exculpated pursuant to Section 11.3 of the Plan.

4. Terms of Injunctions or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (including any injunctions or stays contained in or arising from the Plan or the Confirmation Order), shall remain in full force and effect.

5. Preservation of Retained Causes of Action

(a) Vesting of Causes of Action.

Except as otherwise provided in the Plan or in the Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, the Debtors hereby reserve, and, as of the Effective Date, assign to, the Liquidating Trust, the Retained Causes of Action, which shall vest upon the Effective Date in the Liquidating Trust.

Except as otherwise provided in the Plan or in the Confirmation Order, after the Effective Date, the Liquidating Trust or the Liquidating Trustee, as applicable, shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Retained Causes of Action, in accordance with the terms of the Plan and the Liquidating Trust Agreement and without further order of or notice to the Bankruptcy Court, in any court or other tribunal, including in an adversary proceeding filed in the Chapter 11 Cases.

(b) Other Provisions With Respect To Retained Causes of Action

In pursuing any Retained Causes of Action, the Liquidating Trustee shall be entitled to the tolling provisions provided under Bankruptcy Code section 108 and shall succeed to the Debtors' rights with respect to the periods in which any of the Retained Causes of Action may be brought under Bankruptcy Code section 546. The Liquidating Trust shall have the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code, and shall also be vested with the Debtors' rights, as such rights existed prior to the Effective Date, to conduct discovery and oral examinations of any party under Bankruptcy Rule 2004.

Any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity held by the Committee shall be transferred to and shall vest in the Liquidating Trust. The Liquidating Trust shall have access to all discovery obtained by the Committee in these Chapter 11 Cases, including discovery obtained pursuant to Bankruptcy Rule 2004.

(c) Reservation of Causes of Action.

Unless a Retained Cause of Action against a Holder or other Person or Entity is expressly waived, relinquished, released, compromised or settled in the Plan, the Confirmation Order or any Final Order of the Bankruptcy Court, the Debtors, the Estates and the Liquidating Trust expressly reserve such Retained Cause of Action for later adjudication by the Liquidating Trust, including Retained Causes of Action of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist. Therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), laches or the like, shall apply to such Retained Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan, or Confirmation Order, except where such Retained Causes of Action have been expressly waived, relinquished, released, compromised

or settled in the Plan, the Confirmation Order, a Final Order of the Bankruptcy Court or, following the Effective Date, in a written agreement duly executed by the Liquidating Trustee, which agreement, by its terms, is not subject to Bankruptcy Court approval.

N. Miscellaneous Plan Provisions

1. Payment of Statutory Fees; Filing of Quarterly Reports

Any U.S. Trustee Fees payable prior to the Effective Date shall be paid on or before the Effective Date. Any U.S. Trustee Fees that arise after the Effective Date shall be paid by the Liquidating Trust in the ordinary course. The Liquidating Trust shall have the obligation to pay any quarterly U.S. Trustee Fees to the Office of the United States Trustee until the Chapter 11 Cases are closed, dismissed or converted. In no circumstances will there be any double payment of U.S. Trustee Fees with respect to the same Assets. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claims with respect to quarterly U.S. Trustee Fees.

2. Dissolution of Committee

On the Effective Date, the Committee shall dissolve and all members, ex officio members, employees, attorneys, financial advisors, other Professionals or other agents thereof shall be released from all rights and duties arising from or related to the Chapter 11 Cases or the Plan and its implementation, and the retention or employment of the Committee's attorneys and financial advisors and other agents shall terminate, *provided, however*, that the Committee shall continue in existence and its Professionals shall continue to be retained with respect to (i) applications Filed or to be Filed pursuant to sections 330 and 331 of the Bankruptcy Code and (ii) any appeals of the Confirmation Order.

3. Modifications and Amendments

(a) The Debtors may, in consultation with the Committee (except with respect to any provision of the Plan that requires consent of the Committee, in which case, only with the prior written consent of the Committee), alter, amend, or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. All alterations, amendments or modifications to the Plan must comply with section 1127 of the Bankruptcy Code. The Debtors shall provide parties in interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or Order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

(b) After the Confirmation Date and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Debtors or the Post-Effective Date Debtors, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement approved with respect to the Plan or the Confirmation Order,

and such matters as may be necessary to carry out the purpose and effect of the Plan. Such proceedings must comply with section 1127 of the Bankruptcy Code. To the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or an order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan as altered, amended, modified, or clarified, if the proposed alteration, amendment, modification, or clarification does not materially and adversely change the treatment of the Claim of such Holder.

4. Severability of Plan Provisions

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

5. Successors and Assigns

The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, personal representative, successor or assign of such Entity.

6. Post-Effective Date Compromises and Settlements

From and after the Effective Date, the Liquidating Trustee may compromise and settle Claims against the Debtors and the Estates, as well as the Retained Causes of Action, without any further approval by or notice to the Bankruptcy Court.

7. Binding Effect of Plan

Upon the Effective Date, section 1141 of the Bankruptcy Code shall become applicable with respect to the Plan and the Plan shall be binding on all parties to the fullest extent permitted by section 1141(e) of the Bankruptcy Code.

8. Section 1146 Exemption

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtors pursuant to, in implementation of, or as contemplated by the Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax or any similar tax or fee.

9. Conflicts with the Plan

If and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, the Plan Supplement, or any agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence; *provided, however*, that the Confirmation Order shall control and take precedence in the event of any inconsistency between the Confirmation Order, any provision of the Plan, and any of the foregoing documents.

10. No Stay of Confirmation Order

The Debtors will request that the Bankruptcy Court waive any stay of enforcement of the Confirmation Order otherwise applicable, including pursuant to Bankruptcy Rules 3020(e), 6004(h) and 7062.

11. Revocation, Withdrawal or Non-Consummation

The Debtors reserve the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims) and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Interests in, the Debtors, or any Avoidance Actions, Retained Causes of Action or other claims by or against the Debtors or any Entity, (ii) prejudice in any manner the rights of the Debtors or any Entity in any further proceedings involving the Debtors or (iii) constitute an admission of any sort by the Debtors or any other Entity.

V. RISK FACTORS

A. Risk of Amendment, Waiver, Modification or Withdrawal of the Plan

The Debtors, the Post-Effective Date Debtors, the Liquidating Trust, and the Liquidating Trustee, as applicable, reserve the right, in accordance with the Bankruptcy Code, the Bankruptcy Rules and consistent with the terms of the Plan, to amend the terms of the Plan or waive any conditions thereto if and to the extent that such amendments or waivers are necessary or desirable to consummate the Plan. The potential impact of any such amendment or waiver on the holders of Claims and Interests cannot presently be foreseen, but may include a change in the economic impact of the Plan on some or all of the proposed Classes or a change in the relative rights of such Classes.

B. Parties May Object to the Plan's Classification of Claims and Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or

interests in such class. The Debtors believe that the classification of the Claims and Interests under the Plan complies with this requirement. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that parties will not object to the proposed classification.

C. The Plan May Not Be Confirmed

The Debtors may not receive the requisite acceptances to confirm the Plan. In the event that votes with respect to Claims in the Class entitled to vote are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek Confirmation of the Plan by the Bankruptcy Court. However, if the requisite acceptances are not received, the Debtors may not be able to obtain Confirmation of the Plan. Even if the requisite acceptances of the Plan are received, the Bankruptcy Court might not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements for confirmation under section 1129 of the Bankruptcy Code has not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan would be on terms as favorable to Holders of Allowed Claims as the terms of the Plan. In addition, there can be no assurance that the Debtors will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtors' creditors.

D. The Conditions Precedent to the Effective Date of the Plan May Not Occur

As more fully set forth in the Plan, the Effective Date is subject to a number of conditions precedent. If such conditions precedent are not met or waived, the Effective Date will not occur.

E. General Unsecured Creditors May Recover Less Than Projected

The Cash available for Distributions to Holders of Allowed General Unsecured Claims may be reduced by, among other things, the prior payment of (a) the Liquidating Trust Expenses; (b) any other wind-down fees, costs and expenses of the Debtors; and (c) Allowed Claims required to be paid by the Estates pursuant to the Plan with priority over Allowed General Unsecured Claims.

F. The Allowed Amount of Claims May Differ from Current Estimates

There can be no assurance that the estimated Allowed Claim amounts set forth in the Plan and herein are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated in the Disclosure Statement. Furthermore, a number of additional claims may be Filed, including on account of rejection damages for executory contracts and unexpired leases rejected pursuant to the Plan. Any such claims may result in a greater amount of Allowed General Unsecured Claims than estimated in the Disclosure Statement.

G. Risks Related to Income Taxation

There are several income tax considerations, risks and uncertainties associated with the Plan. Interested parties should read carefully the discussions set forth in Article VII of the Disclosure Statement regarding certain United States federal income tax consequences of the transactions proposed by the Plan.

H. Litigation

As is the case with most litigation, the outcomes of any litigation involving the Debtors, or any other Retained Cause of Action are difficult to assess or quantify.

I. Failure to Identify Litigation Claims or Projected Objections

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. The Debtors and, after the Effective Date, the Liquidating Trustee, may seek to investigate, File, and prosecute Claims and Interests and may object to Claims or Interests after the Confirmation or Effective Date irrespective of whether this Disclosure Statement identifies such Claims or Interests or objections to such Claims or Interests.

Further, no reliance should be placed on the fact that a particular legal action or proceeding that may be pending or threatened against the Debtors is, or is not, identified in this Disclosure Statement, including any such action or proceeding that was disclosed in the Schedules. The Debtors reserve all rights, defenses, objections, and the like in connection with any pending or threatened legal action or proceeding.

J. No Waiver of Right to Object or Right to Recover Transfers and Assets

The vote by a Holder of a Claim for or against the Plan does not constitute a waiver or release of any claims, causes of action, or rights of the Debtors, the Liquidating Trustee (or any entity, as the case may be) to object to that Holder's Claim, or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any Claims or Causes of Action of the Debtors or their respective estates are specifically or generally identified in this Disclosure Statement.

VI. CONFIRMATION OF THE PLAN

A. The Confirmation Hearing

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

The Bankruptcy Court has scheduled the Confirmation Hearing to commence on January 23, 2025, at 1:00 p.m. (Eastern Time), before the Honorable John T. Dorsey, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Fifth Floor, Courtroom No. 5, Wilmington, Delaware 19801. The Confirmation Hearing Notice, which sets forth the time, date and place of the Confirmation Hearing, has been included along with the Disclosure Statement. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or in a notice of agenda for the Confirmation Hearing Filed with the Bankruptcy Court.

Objections to Confirmation of the Plan must be Filed and served so that they are actually received by no later than January 16, 2025, at 4:00 p.m. (Eastern Time). Unless objections to Confirmation of the Plan are timely served and Filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court.

B. Requirements for Confirmation of the Plan

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

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that: (a) the Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11 of the Bankruptcy Code; (b) the Debtors have complied or will have complied with all of the necessary requirements of chapter 11 of the Bankruptcy Code; and (c) the Plan has been proposed in good faith. Specifically, the Debtors believe that the Plan satisfies or will satisfy the following applicable Confirmation requirements of section 1129 of the Bankruptcy Code, along with any other such requirements:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Each Holder of a Claim in an Impaired Class of Claims has either (1) accepted the Plan; or (2) will receive or retain under the Plan property of a value, as of the Effective Date, that

is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code.

- Except to the extent a different treatment is agreed to, the Plan provides that all Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Tax Claims, Allowed Secured Claims and Allowed Priority Non-Tax Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable or otherwise satisfied in accordance with the Plan.
- At least one Class of Impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.
- All accrued and unpaid fees of the type described in 28 U.S.C. § 1930, including the fees of the U.S. Trustee, will be paid as of the Effective Date.

C. Best Interests of Creditors

Often called the “best interests of creditors” test, section 1129(a)(7) of the Bankruptcy Code requires that a Bankruptcy Court find, as a condition to confirmation of a chapter 11 plan, that the plan provides, with respect to each impaired class, that each holder of a claim or an interest in such class either (a) has accepted the plan or (b) will receive or retain under the plan property of a value that is not less than the amount that such holder would receive or retain if the debtor liquidated under chapter 7 on the Effective Date.

Here, the costs of liquidation under chapter 7 of the Bankruptcy Code would include, among other things, the statutory fees payable to a chapter 7 trustee and the fees that would be payable to additional attorneys and other professionals that such a trustee may engage, which amounts would have to be paid before anything is paid to Holders of Allowed General Unsecured Claims. The Liquidation Analysis reflects the Debtors’ expectation, in consultation with their legal and financial advisors, that a Chapter 7 Trustee would likely retain legal, accounting, and other professionals who would require additional time and resources to familiarize themselves with the Debtors, their assets and liabilities, and the facts and circumstances of the Chapter 11 Cases, whereas a Liquidation Trustee would more likely retain professionals who are already familiar with the foregoing matters. Accordingly, to reflect such assumed additional time and expense, for purposes of the Liquidation Analysis, the Debtors have estimated that a Chapter 7 Trustee’s professional fees and expenses would exceed the professional fees and expenses of a Liquidating Trustee by approximately \$480,000.

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

As more fully set forth in the hypothetical liquidation analysis (the “Liquidation Analysis”)⁷ attached hereto as **Exhibit B**, the Debtors estimate they will have approximately \$9,019,000 in Cash available in the Estates upon the Effective Date. The Debtors believe that such amount will exceed the amount of expenses that will be incurred in implementing the Plan and winding up the affairs of the Debtors and the Estates, in accordance with the Plan and the Liquidating Trust Agreement. After considering the effects that a chapter 7 liquidation would have on the funds available for Distribution to Holders of Allowed Claims, including, among other things, fees payable to a chapter 7 trustee, the Debtors believe that Holders of Allowed Claims will receive not less than such Holders would receive if the Chapter 11 Cases were converted to chapter 7 cases.

In light of the foregoing, the Debtors believe that confirmation of the Plan will provide each Holder of an Allowed Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

D. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtors, or any successor to the Debtors (unless such liquidation or reorganization is proposed in the plan). This requirement is satisfied as the Plan proposes a liquidation of the Assets, and the Debtors believe the Debtors’ Cash (and any additional proceeds from the liquidation of the Debtors’ remaining Assets) will be sufficient to allow the Liquidating Trust to make all payments required to be made under the Plan.

E. Acceptance by Impaired Classes

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

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

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds ($\frac{2}{3}$) in dollar amount and more than one-

⁷ The Liquidation Analysis was prepared by the Debtors in consultation with their professional advisors. Underlying the Liquidation Analysis are a number of estimates and assumptions that, although carefully developed and considered reasonable by the Debtors and their professional advisors, are inherently subject to significant economic uncertainties beyond such parties’ control. The Liquidation Analysis is also based on assumptions with regard to liquidation decisions that are subject to change.

half ($\frac{1}{2}$) in number of allowed claims in that class, counting only those claims that actually voted to accept or reject the plan. Thus, a Class of Impaired Claims will have voted to accept the Plan only if two-thirds in dollar amount and a majority in number actually voting on the Plan cast their Ballots in favor of acceptance.

F. Confirmation Without Acceptance by All Impaired Classes

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

Because at least one Impaired Class is deemed to have rejected the Plan, the Debtors will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke or withdraw the Plan, the Plan Supplement or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

1. No Unfair Discrimination

The "unfair discrimination" test applies to classes of claims or interests that reject or are deemed to have rejected a plan and that are of equal priority with another class of claims or interests that is receiving different treatment under such plan. The test does not require that the treatment of such classes of claims or interests be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will consider a number of factors in determining whether a plan discriminates unfairly, and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class. The Debtors submit that the Plan does not "discriminate unfairly" against any rejecting Class.

2. Fair and Equitable Test

The "fair and equitable" test applies to classes that reject or are deemed to have rejected a plan and are of different priority and status vis-à-vis another class (*e.g.*, secured versus unsecured claims, or unsecured claims versus interests), and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class, including interest. As to the rejecting class, the test sets different standards depending upon the type of claims or interests in such rejecting class. The Debtors submit that the Plan meets the "fair and equitable" test.

G. Alternatives to Confirmation and Consummation of the Plan

The Debtors believe that the Plan affords Holders of Allowed General Unsecured Claims the potential for a greater recovery on the Assets than a chapter 7 liquidation, and, therefore, is in the best interests of such Holders. If, however, the requisite acceptances of the Voting Class are not received, or the Plan is not confirmed or consummated, the theoretical alternatives to the Plan include (i) formulation of an alternative plan or plans of liquidation, or (ii) liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

The Debtors believe that the Plan enables Holders of Allowed General Unsecured Claims to realize the greatest possible recovery under the circumstances, and, as compared to any alternative plan of liquidation, has the greatest chance of being confirmed and consummated.

The Chapter 11 Cases may also be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to complete the liquidation of the Assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. As described above, the Debtors believe that the Plan will provide each Holder of an Allowed General Unsecured Claim with a greater recovery than such Holder would receive with respect to a liquidation of the Assets under chapter 7 of the Bankruptcy Code.

VII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

The following discussion summarizes certain United States federal income tax consequences of the Plan to the Debtors and to certain holders of Claims. This discussion is based on the Internal Revenue Code, the Treasury Regulations promulgated thereunder, judicial decisions, and published administrative rulings and pronouncements of the IRS, all as in effect on the date hereof. Legislative, judicial, or administrative changes in law or its interpretation, as well as other events occurring after the date of this Disclosure Statement, and which may be retroactive, could materially alter the tax treatment described below. Furthermore, this discussion is not binding on the IRS or any other tax authority. There is no assurance that a tax authority will not take, or that a court will not sustain, a position with respect to the tax consequences of the Plan that differs from the tax consequences described below. No ruling has been or will be sought from the IRS, no opinion of counsel has been or will be obtained, and no representations are made regarding any tax aspect of the Plan.

The following discussion does not address all aspects of U.S. federal income taxation that may be relevant to a particular Holder in light of such Holder's facts and circumstances, or to certain types of Holders subject to special treatment under the Internal Revenue Code (for example,

governmental entities and entities exercising governmental authority, non-U.S. taxpayers, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, regulated investment companies, persons holding a Claim as part of a hedge, straddle, constructive sale, conversion transaction, or other integrated transaction, Holders that are or hold their Claims through a partnership or other pass-through entity, and Persons that have a functional currency other than the U.S. dollar). This summary does not address state, local, or non-United States tax consequences of the Plan, nor does this summary address federal taxes other than income taxes. Furthermore, this discussion generally does not address U.S. federal income tax consequences to Holders that are unimpaired under the Plan or that are not entitled to receive or retain any property under the Plan or to Persons who are deemed to have rejected the Plan.

A. Liquidating Trust

1. Grantor Trust

It is intended that the Liquidating Trust qualify as a grantor trust pursuant to sections 671 and 677 of the Internal Revenue Code, and that the Beneficiaries are treated as grantors of the Liquidating Trust and the owners of the Liquidating Trust Assets. For U.S. federal income tax purposes, it is intended that the Liquidating Trust (except with respect to the Disputed Claims, including any disputed ownership fund election that might be made) be classified as a liquidating trust under Treasury Regulation Section 301.7701-4 and Revenue Procedure 9445, 1994-2 C.B. 684, with no objective to continue to engage in the conduct of a trade or business. As described more fully in the Plan and the Disclosure Statement, the transfer of the Liquidating Trust Assets will be treated for federal income tax purposes as a transfer to the Beneficiaries, followed by a deemed transfer from such Beneficiaries to the Liquidating Trust; provided, however, that the Liquidating Trust Assets will be subject to any post-Effective Date obligations incurred by the Liquidating Trust relating to the pursuit of Liquidating Trust Assets. Accordingly, the Beneficiaries will be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets. The foregoing treatment shall also apply, to the extent permitted by applicable law, for state and local income tax purposes. All items of income, gain, loss, deduction, and credit will be included in the income of the Beneficiaries as if such items had been recognized directly by the Beneficiaries in the proportions in which they own beneficial interests in the Liquidating Trust.

2. Reporting

The Liquidating Trustee shall comply with all tax reporting requirements, including filing returns for the Liquidating Trust as a grantor trust pursuant to Treasury Regulation § 1.671-4(a) and the guidelines set forth for a “Liquidating Trust” in Revenue Procedure 94-95, 1994-2 C.B. 684. In connection therewith, the Liquidating Trustee may require Beneficiaries to provide certain tax information as a condition to receipt of Distributions, including certification of the Beneficiary’s Taxpayer or Employer Identification Number.

3. Valuation

As soon as reasonably practicable after the Effective Date, but in any event no later than 180 days thereafter, the Liquidating Trustee shall make a good faith valuation of assets of the Liquidating Trust, and such valuation shall be used consistently by all parties (including the Debtors, the Post-Effective Date Debtors, the Liquidating Trust and the Beneficiaries) for all federal, state and local income tax purposes. The Liquidating Trustee also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the Liquidating Trust that are required by any Governmental Unit for taxing purposes.

4. Tax Returns

The Liquidating Trustee shall be responsible for filing (and for paying all costs, expenses and taxes with respect to the preparation and filing of) all federal, state, local and foreign tax returns for the Debtors, the Post-Effective Date Debtors, and the Liquidating Trust. Notwithstanding any rule, law, statute, or organizational document of the Debtors or the Post-Effective Date Debtors to the contrary, the Liquidating Trustee or his or her designee shall be deemed the attorney-in-fact for any party required to execute any federal, state, local and foreign tax returns on behalf of the Debtors, the Post-Effective Date Debtors, or the Liquidating Trust. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements.

5. Disputed Ownership Fund Election

The Plan permits the Liquidating Trustee to establish Disputed Claim Reserves. The Liquidating Trustee may, at the Liquidating Trustee's sole discretion, file a tax election to treat any such Disputed Claim Reserve as a Disputed Ownership Fund as described in Treasury Regulation § 1.468B-9 or other taxable entity rather than as a part of the Liquidating Trust for federal income tax purposes. If such election is made, the Liquidating Trust shall comply with all tax reporting and tax compliance requirements applicable to the Disputed Ownership Fund or other taxable entity, including, but not limited to, the filing of separate income tax returns for the Disputed Ownership Fund or other taxable entity and the payment of any federal, state or local income tax due.

6. Attribution of Income

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), attribution of Liquidating Trust taxable income or loss shall be by reference to the manner in which any economic gain or loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purpose of this paragraph shall equal their fair market value on the date the Liquidating Trust Assets are transferred to the Liquidating Trust, adjusted in accordance with tax accounting

principles prescribed by the Internal Revenue Code, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

7. Income Taxed on a Current Basis

All income of the Liquidating Trust will be subject to tax on a current basis. Except with respect to the Disputed Ownership Fund, the Plan requires the Debtors, the Liquidating Trust, and the Beneficiaries to report consistently with characterization of the Liquidating Trust as a grantor trust and requires the Liquidating Trustee to file tax returns treating the Liquidating Trust as a “grantor trust” pursuant to Treasury Regulation section 1.671-4(a) and to report to each Beneficiary a statement of the Beneficiary’s share of Liquidating Trust income, gain, loss, deduction, and credit for inclusion in the Beneficiary’s U.S. federal income tax return. Beneficiaries therefore may owe tax on Liquidating Trust income, without regard to whether cash distributions are made to beneficial owners by the Liquidating Trust.

8. Tax Identification Numbers

Amounts paid to Beneficiaries are subject to generally applicable withholding, information, and backup withholding rules. The Liquidating Trustee may require any Beneficiary to furnish to the Liquidating Trustee its Employer or Taxpayer Identification Number as assigned by the IRS or certify to the Liquidating Trustee’s satisfaction that Distributions to the Beneficiary are exempt from backup withholding. The Liquidating Trustee may condition any Distribution to any Beneficiary upon receipt of such identification number. If after reasonable inquiry, any Beneficiary fails to provide such identification number to the Liquidating Trustee, the Liquidating Trustee shall deem such Beneficiary’s Claim as Disallowed and no Distribution shall be made on account of such Beneficiary’s Claim.

9. Notices

The Liquidating Trustee shall distribute such notices to the Beneficiaries as the Liquidating Trustee determines are necessary or desirable.

10. Expedited Determination

The Liquidating Trustee may request an expedited determination of taxes of the Debtors or of the Liquidating Trust under Bankruptcy Code section 505(b) for all tax returns filed for, or on behalf of, the Debtors and the Liquidating Trust for all taxable periods through the dissolution of the Liquidating Trust.

B. Federal Income Tax Consequences to the Debtors

1. Cancellation of Indebtedness Income and Reduction of Tax Attributes

For U.S. federal income tax purposes, gross income generally includes income from cancellation of indebtedness (“COD”). In general, the Debtors will have COD income equal to the excess of the amount of debt discharged pursuant to the Plan over the adjusted issue price of the debt, less the amount of cash and the fair market value of property distributed to holders of the

debt. Various statutory or judicial exceptions limit the incurrence of COD income (such as where payment of the cancelled debt would have given rise to a tax deduction). COD income also includes interest accrued on obligations of the Debtors but unpaid at the time of discharge. An exception to the recognition of COD income applies to a debtor in a chapter 11 bankruptcy proceeding. Bankrupt debtors generally do not include COD in taxable income, but must instead reduce certain tax attributes (such as capital losses, certain credits, and the excess of the tax basis of the debtor's property over the amount of liabilities outstanding after discharge) by the amount of COD income that was excluded under the bankruptcy exception. Tax benefits are reduced after the tax is determined for the year of discharge.

C. Federal Income Tax Consequences to Holders

1. Characterization

The tax treatment of Holders, and the character, amount, and timing of income, gain, or loss recognized as a consequence of the Plan and any Distributions pursuant to the Plan may vary, depending upon, among other things: (A) whether the Claim (or a portion of the Claim) is for principal or interest; (B) the type of consideration the Holder receives for the Claim; (C) whether the Holder receives Distributions under the Plan in more than one taxable year; (D) the manner in which the Holder acquired the Claim; (E) the length of time that the Claim has been held; (F) whether the Claim was acquired at a discount; (G) whether the Holder of the Claim has taken a bad debt deduction with respect to part or all of the Claim; (H) whether the Holder of the Claim has previously included in income accrued but unpaid interest on the Claim; (I) the Holder's method of tax accounting; (J) whether the Claim is an installment obligation for U.S. federal income tax purposes; (K) whether the Claim, and any instrument received in exchange for the Claim, is a "security" for U.S. federal income tax purposes; and (L) whether and the manner in which the "market discount" rules of the Internal Revenue Code apply to the holder of the Claim. The discussion below refers to the treatment of Cash and property received by holders of Claims in their capacity as Beneficiaries of the Liquidating Trust.

2. Gain and Loss Recognition

Holders that receive cash and property other than stock and securities for their Claim will recognize gain or loss for U.S. federal income tax purposes equal to the difference between the "amount realized" by the Holder and the Holder's tax basis in the Claim. The "amount realized" is the sum of the amount of cash and the fair market value of any other property received under the Plan in respect of the Claim (other than amounts received in respect of a Claim for accrued unpaid interest). The Holder's tax basis in the Claim (other than a Claim for accrued unpaid interest) is generally the Holder's cost, though tax basis could be more or less than cost depending on the specific facts of the Holder. Any gain or loss realized may be capital gain or loss or ordinary gain or loss, depending on the circumstances of the Holder.

3. Interest Issues

Holders that receive cash and property in exchange for unpaid accrued interest on their Claims may recognize interest income to the extent the interest was not already included in income.

To the extent a Holder of a Claim receives consideration that is attributable to indebtedness and unpaid accrued interest thereon, the Debtors intend to take the position, and the Plan provides, that for U.S. federal income tax purposes, such consideration should be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing unpaid accrued interest. Notwithstanding this Plan provision, there is general uncertainty regarding the extent to which the receipt of cash or other property should be attributable to unpaid accrued interest. To the extent any cash received pursuant to the Plan is considered attributable to unpaid accrued interest, a Holder will recognize ordinary income to the extent the value of the cash exceeds the amount of unpaid accrued interest previously included in gross income by the Holder. A Holder generally will be entitled to recognize a loss to the extent any accrued interest previously included in its gross income is not paid in full.

HOLDERS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE FEDERAL INCOME TAX TREATMENT OF THE RECEIPT OF INTERESTS IN THE LIQUIDATING TRUST IN EXCHANGE FOR THEIR CLAIMS.

4. Bad Debt and Worthless Security Deductions

A Holder who receives, in respect of such Holder's Claim, an amount that is less than such Holder's tax basis in the Claim may be entitled to a bad debt or worthless securities deduction. The rules governing the character, timing, and amount of these deductions depend upon the facts and circumstances of the Holder, the obligor, and the instrument with respect to which the deduction is claimed, including whether (i) the Holder is a corporation or (ii) the Claim constituted (a) a debt created or acquired (as the case may be) in connection with the Holder's trade or business or (b) a debt, the loss from worthlessness of which is incurred in the holder's trade or business. A Holder that has previously recognized a loss or deduction in respect of such Holder's Claim may be required to include in income amounts received under the Plan that exceed the Holder's adjusted basis in its Claim.

5. Installment Obligations

A Holder of a Claim that is an installment obligation for U.S. federal income tax purposes may be required to recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than its face value, distributed, transmitted, sold, or otherwise disposed of within the meaning of section 453B of the Internal Revenue Code.

6. Market Discount

A Holder of a Claim that acquires a Claim at a market discount generally is required to treat any gain realized on the disposition of the Claim as ordinary income to the extent of the market discount that accrued during the period the Claim was held by the Holder and that was not previously included in income by the Holder.

7. Withholding

Amounts paid to Holders are subject to generally applicable withholding, information, and backup withholding rules. The Plan authorizes the Debtors and the Liquidating Trustee, as applicable, to withhold and report amounts required by law to be withheld and reported. Amounts properly withheld from Distributions to a Holder and paid over to the applicable taxing authority for the account of such Holder will be treated as amounts distributed to such Holder. Holders are required to provide the Debtors and the Liquidating Trustee, as applicable, with the information necessary to effect information reporting and withholding as required by law. Notwithstanding any other provision of the Plan, holders of Claims that receive a Distribution pursuant to the Plan are responsible for the payment and satisfaction of all tax obligations, including income, withholding, and other tax obligations imposed with respect to the Distribution, and no Distribution shall be made until a Holder has made arrangements satisfactory to the Debtors or the Liquidating Trustee, as applicable, for the payment and satisfaction of such obligations.

8. Backup Withholding

Holders may be subject to backup withholding on payments pursuant to the Plan unless the Holder (A) is not a corporation and is not otherwise exempt from backup withholding and, when required, demonstrates that or (B) provides a correct taxpayer identification and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of previous failure to report dividend and interest income. Amounts withheld due to backup withholding will be credited against the Holder's federal income tax liability and excess withholding may be refunded if a timely claim for refund (generally, a U.S. federal income tax return) is filed with the IRS.

9. Certain Disclosure Requirements

Treasury regulations require tax return disclosure of certain types of transactions that result in the taxpayer claiming a loss in excess of specified thresholds. Holders are urged to consult their own tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and would require such disclosure.

D. Importance of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS: (I) INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN; (II) NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL; AND (III) FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES TO EACH HOLDER ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE STRONGLY URGED TO CONSULT WITH SUCH HOLDERS' TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN INCOME TAX CONSEQUENCES OF THE PLAN.

VIII. RECOMMENDATION

IN THE OPINION OF THE DEBTORS, THE PLAN IS SUPERIOR AND PREFERABLE TO ANY ALTERNATIVE.

ACCORDINGLY, THE DEBTORS, AS THE PLAN PROPONENTS, RECOMMEND THAT HOLDERS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN AND SUPPORT CONFIRMATION OF THE PLAN.

Dated: December 13, 2024

DEBTORS

By: /s/ Ramin Akhavan
Ramin Akhavan
President and General Counsel

EXHIBIT A

Chapter 11 Plan

[Intentionally Omitted]

EXHIBIT B

Liquidation Analysis

LIQUIDATION ANALYSIS

INTRODUCTION¹

Under the “best interests” test set forth in section 1129(a)(7) of the Bankruptcy Code, the Bankruptcy Court may not confirm a plan unless the plan provides each holder of a claim or interest who does not vote in favor of the plan with property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code. To demonstrate that the proposed Plan satisfies this test, the Debtors and their professionals have prepared the following hypothetical liquidation analysis (the “Liquidation Analysis”) based upon certain assumptions discussed in the Plan and in these accompanying notes.

The Liquidation Analysis estimates potential distributions to holders of Allowed Claims and Interests in a hypothetical Chapter 7 liquidation of all the Debtors’ Assets (the “Chapter 7 Scenario”). As such, asset values discussed in the Liquidation Analysis may differ materially from values referred to in the Plan. The Debtors prepared the Liquidation Analysis with the assistance of their advisors.

The Debtors have prepared this Liquidation Analysis based on a hypothetical liquidation under Chapter 7 of the Bankruptcy Code. It is assumed that the Debtors would convert their chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code following the Effective Date, which is assumed to be January 31, 2025 (the “Conversion Date”), after which the Debtors would commence a hypothetical liquidation of any remaining Assets under Chapter 7 and Distribution of the proceeds thereof. The liquidation under Chapter 7 would commence under the direction of a Court-appointed trustee and would continue for a period of time sufficient to and liquidate the Debtors’ assets in a manner that maximizes the return to the Debtors’ unsecured creditors and otherwise complete the wind-down, during which time the Debtors’ cash, net of liquidation-related costs, would be distributed to creditors in accordance with relevant law.

The determination of the costs of, and proceeds from, the hypothetical liquidation of the Debtors’ assets in a Chapter 7 Liquidation Scenario is an uncertain process involving the use of significant estimates and assumptions that, although considered reasonable by the Debtors, are inherently subject to significant business, economic, and competitive uncertainties, and contingencies beyond the control of the Debtors, their management, and their advisors, or a Chapter 7 trustee. Inevitably, some assumptions in the Liquidation Analysis would not materialize in an actual Chapter 7 liquidation, and unanticipated events and circumstances could materially affect the ultimate results in an actual Chapter 7 liquidation.

THE DEBTORS BELIEVE THAT ANY ANALYSIS OF A HYPOTHETICAL LIQUIDATION IS NECESSARILY SPECULATIVE. NEITHER THE ANALYSIS, NOR THE FINANCIAL INFORMATION ON WHICH IT IS BASED, HAS BEEN EXAMINED OR REVIEWED BY INDEPENDENT ACCOUNTANTS IN ACCORDANCE WITH STANDARDS PROMULGATED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC

¹ Capitalized terms used but not defined in the Liquidation Analysis shall have the meanings given to them in the Disclosure Statement or the Plan, as applicable.

ACCOUNTANTS. NEITHER THE DEBTORS NOR THEIR ADVISORS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD NOT VARY MATERIALLY FROM THE HYPOTHETICAL RESULTS PRESENTED IN THE LIQUIDATION ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY.

THIS LIQUIDATION ANALYSIS IS A HYPOTHETICAL EXERCISE THAT HAS BEEN PREPARED FOR THE SOLE PURPOSE OF PRESENTING A REASONABLE GOOD FAITH ESTIMATE OF THE PROCEEDS THAT WOULD BE REALIZED IF THE DEBTORS WERE LIQUIDATED UNDER CHAPTER 7 OF THE BANKRUPTCY CODE AS OF THE PLAN EFFECTIVE DATE. THIS LIQUIDATION ANALYSIS SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THIS LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE DEBTORS' ASSETS AS A GOING CONCERN, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THIS LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED OR CLAIMS GENERATED IN AN ACTUAL LIQUIDATION.

NOTHING CONTAINED IN THIS LIQUIDATION ANALYSIS IS INTENDED TO BE, OR CONSTITUTES, A CONCESSION, ADMISSION, OR ALLOWANCE OF ANY CLAIM BY THE DEBTORS. THE ACTUAL AMOUNT AND PRIORITY OF ALLOWED CLAIMS IN THESE CHAPTER 11 CASES COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH AND USED IN THIS LIQUIDATION ANALYSIS.

THE DEBTORS RESERVE ALL RIGHTS TO SUPPLEMENT, MODIFY, OR AMEND THE LIQUIDATION ANALYSIS.

The Debtors have determined, as summarized in the Liquidation Analysis, that Confirmation of the Plan (the "Chapter 11 Scenario") would provide creditors with a recovery that is not less than what they would otherwise receive under the Chapter 7 Scenario.

NOTES AND ASSUMPTIONS

The Liquidation Analysis should be read in conjunction with, and is qualified in its entirety by, the Disclosure Statement and the following notes and assumptions (which refer specifically to the Liquidation Analysis):

1. **Consolidated Basis.** The Liquidation Analysis was prepared on a consolidated basis.
2. **Conversion Date.** The Liquidation Analysis assumes that the Debtors hypothetically convert their Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code as of the Conversion Date. The Liquidation Analysis illustrates that under Chapter 7 of the Bankruptcy Code, Holders of Claims and Interests will receive or retain property of a value no greater than the amount that such Holders will receive under the Plan.
3. **Dependence on Forecasted Financials.** The Liquidation Analysis includes numerous estimated amounts that are still under review and remain subject to further legal and accounting analysis.

4. Tax Consequences. The Liquidation Analysis does not include estimates for the tax consequences, both foreign and domestic, that may be triggered upon the liquidation of assets in the manner described above. Such tax consequences may be material.

5. Claims Estimates. Unless otherwise specified in the Liquidation Analysis, estimated Claim amounts are based on forecasted book liabilities as of the Petition Date.

6. Administrative, Professional Fee and Priority Claims. In both the Chapter 7 Scenario and Chapter 11 Scenario, Administrative (including 503(b)(9)) Claims, Professional Fee Claims and Priority Claims are expected to be the same.

7. Assets. Cash at Effective Date reflects balance sheet cash on hand as of the Conversion Date, plus estimated recoveries for Accounts Receivable and reimbursements from the transition services agreement between the Debtors and the purchaser of substantially all of the Debtors' assets pursuant to the APA (as defined in the Plan) and Sale Order entered by the Bankruptcy Court. Solely for purposes of this Liquidation Analysis, the Debtors assume that there are no other assets with significant value as of the Conversion Date. The ultimate recoveries for potential litigation claims, including chapter 5 causes of action for avoidance and recovery of preferences and fraudulent transfers, are unknown at this time. The recoveries, if any, under the Chapter 7 Scenario and the Chapter 11 Scenario are assumed to be the same.

8. Chapter 7 Liquidation Costs and Length of Liquidation Process. The Liquidation Analysis assumes that, in the Chapter 7 Scenario, liquidation would occur over approximately six to nine months, with certain claims reconciliation effort that may extend beyond the first six to nine months. In an actual liquidation, the wind down process and time period(s) could vary significantly thereby impacting recoveries. For example, the potential for priority, contingent and other claims, litigation, rejection costs and the final determination of Allowed Claims could substantially impact both the timing and amount of distributions to the Holders of Allowed Claims. Accordingly, there can be no assurance that the values reflected in the Liquidation Analysis would be realized.

Pursuant to section 726 of the Bankruptcy Code, the allowed administrative expenses incurred by the Chapter 7 trustee will be entitled to payment in full prior to any distribution to Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims. The estimate used in the Liquidation Analysis for these expenses includes estimates for certain legal, accounting, and other professionals who will need additional time and resources, among other things, to familiarize themselves with the Debtors and their assets and liabilities, as well as a fee calculated based upon liquidated assets payable to a Chapter 7 trustee Fees in accordance with section 326 of the Bankruptcy Code. The Liquidation Analysis estimates Chapter 7 trustee fees to be approximately \$279,000 and Chapter 7 trustee professional fees of \$1.415 million. The Chapter 7 Scenario additionally assumes that the Debtors would pay approximately \$3,000 in quarterly U.S. Trustee fees based on disbursements before the Conversion Date.

9. Chapter 11 Costs and Length of Liquidation Process. The Liquidation Analysis assumes that, in the Chapter 11 Scenario, liquidation would occur over approximately six to nine months, with certain claims reconciliation effort that may extend beyond the first six to nine months. In an actual liquidation, the wind down process and time period(s) could vary significantly

thereby impacting recoveries. For example, the potential for priority, contingent and other claims, litigation, rejection costs and the final determination of Allowed Claims could substantially impact both the timing and amount of distributions to the Holders of Allowed Claims. Accordingly, there can be no assurance that the values reflected in the Liquidation Analysis would be realized.

In the Chapter 11 Scenario, fees for the Liquidating Trustee are assumed to be \$410,000. Combined legal and financial advisor fees for the Liquidating Trustee are assumed to be \$935,000. The Chapter 11 Scenario additionally estimates approximately \$18,000 in quarterly U.S. Trustee fees for disbursements in the first quarter of 2025.

10. Allowed General Unsecured Claims. The Liquidation Analysis assumes that there will approximately be between \$8.882 and \$12.350 million of Allowed Class 3 General Unsecured Claims as of the Liquidation Date. The estimate of Allowed Class 3 General Unsecured Claims is based on the Debtors' books and records as of the Petition Date and is subject to change. This estimate may not include all potential claims, including potential unsecured damages claims resulting from the rejection of Executory Contracts and Unexpired Leases. These amounts are subject to change depending on the outcome of ongoing reconciliation and review and the claims objection process. Additionally, as noted in the Disclosure Statement at Section II.C, it is possible that the U.S. Attorney's Office for the Southern District of California may assert a claim against the Debtors in these Chapter 11 cases for potential violations of the False Claims Act, 31 U.S.C. 3729(a). The Debtors are hopeful any issues related thereto can be resolved without the assertion of substantial claims against the Debtors or their estates. The actual amount of Allowed Class 3 General Unsecured Claims may vary materially from the projected amounts.

11. Subordinated Claims. On the Effective Date, Holders of Subordinated Claims shall not be entitled to, and shall not or retain, any property or interest in property under the Plan on account of such Subordinated Claims.

12. Interests. As of the Effective Date, Holders of Interests shall not be entitled to, and shall not receive or retain any property or interest in property under the Plan on account of such Interests, and all Interests of any kind shall be deemed cancelled, released, and extinguished and shall be of no further force or effect.

13. Distribution of Net Proceeds. Administrative Claims, Professional Fee Claims, Priority Tax Claims, U.S. Trustee Fee Claims, and Priority Non-Tax Claims that may arise in a liquidation scenario would be paid in full from the liquidation proceeds before the balance of those proceeds will be made available to pay pre-bankruptcy priority, secured, and general unsecured claims. Under the absolute priority rule pursuant to section 1129(b) of the Bankruptcy Code, no junior creditor would receive any distribution until all senior creditors are paid in full, and no equity holder would receive any distribution until all creditors are paid in full. The assumed distributions to creditors as reflected in the Liquidation Analysis are estimated in accordance with the absolute priority rule.

DermTech
Liquidation Analysis

	Chapter 11 Plan Recovery Analysis			Chapter 7 Liquidation Recovery Analysis		
<i>In USD 000's</i>	Book Value	Recovery %	Recovery \$	Book Value	Recovery %	Recovery \$
Assets						
Balance Sheet Cash	\$ 8,410		\$ 8,410	\$ 8,410		\$ 8,410
Cowen Transaction Fee	-		-	-		-
Cash at Effective Date	\$ 8,410	100%	\$ 8,410	\$ 8,410	100%	\$ 8,410
Accounts Receivable	451	25%	113	451	25%	113
Litigation Claims	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Projected Gross Distributable Value	8,860		8,522	8,860		8,522
Remaining Cost Estimates						
Chapter 11 Liquidating Trustee Fees			410			-
Chapter 11 Liquidating Trustee Professional Fees			935			-
Chapter 7 Liquidating Trustee Fees			-			279
Chapter 7 Liquidating Trustee Professional Fees			-			1,415
Wind Down Operating Expense			900			900
Total Estimated Costs			2,245			2,594
Net Distributable Value			6,277			5,928
Claims Waterfall						
Administrative Claims	168	100%	168	168	100%	168
Professional Fee Claims	1,144	100%	1,144	1,144	100%	1,144
Priority Tax Claims	100	100%	100	100	100%	100
US Trustee Fee Claims	18	100%	18	3	100%	3
Priority Non-Tax Claims	-	100%	-	-	100%	-
DOJ Claims	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
Other General Unsecured Claims						
Low	8,882	55%	4,848	8,882	51%	4,514
High	12,350	39%	4,848	12,350	37%	4,514