IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
TARONIS FUELS, INC., *et al*.,[1]	Case No. 22-11121 (BLS)
Debtor.	(Jointly Administered)
	Re: Docket Nos. 782 & 832

NOTICE OF FILING OF SECOND AMENDED COMBINED CHAPTER 11 PLAN OF LIQUIDATION AND DISCLOSURE STATEMENT FOR TARONIS FUELS, INC. AND AFFILIATE DEBTORS

PLEASE TAKE NOTICE that, on May 15, 2024, Taronis Fuels, Inc., and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), filed the *Combined Chapter 11 Plan of Liquidation and Disclosure Statement for Taronis Fuels, Inc. and Affiliate Debtors* [Docket No. 782] (the "Combined Plan and Disclosure Statement"), with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that, on June 24, 2024, the Debtors filed the *Notice of Filing of Amended Combined Chapter 11 Plan of Liquidation and Disclosure Statement for Taronis Fuels, Inc. and Affiliate Debtors* [Docket No. 832] (the "Amended Combined Plan and Disclosure Statement") with the Court.

PLEASE TAKE FURTHER NOTICE that, attached hereto as **Exhibit A** is a second amended version of the Combined Plan and Disclosure Statement (the "Second Amended

[1] The Debtors in the chapter 11 cases, along with the last four digits (if any) of each Debtor's federal tax identification number include: Taronis Fuels, Inc. (7454), Taronis Sub IV LLC (6662), Taronis Sub III LLC (5826), Taronis Sub V LLC (8686), MagneGas Real Estate Holdings, LLC (7412), MagneGas IP, LLC (0988), MagneGas Production, LLC (7727), Taronis Sub I LLC (4205), Taronis-TAS, LLC (2356), Taronis-TAH, LLC (3542), and Taronis Sub II LLC (9673). The location of the Debtors' service address in these chapter 11 cases is c/o Aurora Management Partners (Attn: Tim Turek and David Baker) 112 South Tryon St., Suite 1770, Charlotte, NC 28284.

Combined Plan and Disclosure Statement"). For the convenience of the Court and all parties in interest, a blackline comparing the Second Amended Combined Plan and Disclosure Statement against the Amended Combined Plan and Disclosure Statement is attached hereto as **Exhibit B**.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve all rights to further amend, revise, modify, or supplement the Second Amended Combined Plan and Disclosure Statement.

Dated: August 8, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Katelin A. Morales

Jeremy W. Ryan (No. 4057)
L. Katherine Good (No. 5101)
Katelin A. Morales (No. 6683)
Sameen Rizvi (No. 6902)
POTTER ANDERSON & CORROON LLP
1313 N. Market Street, 6th Floor
Wilmington, Delaware 19801
Telephone: (302) 984-6000
Facsimile: (302) 658-1192
Email: jryan@potteranderson.com
kgood@potteranderson.com
kmorales@potteranderson.com
srizvi@potteranderson.com

Counsel for Debtors and Debtors in Possession

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
TARONIS FUELS, INC., *et al.*,[1]	Case No. 22-11121 (BLS)
Debtors.	(Jointly Administered)

SECOND AMENDED COMBINED CHAPTER 11 PLAN OF LIQUIDATION AND DISCLOSURE STATEMENT FOR TARONIS FUELS, INC. AND AFFILIATE DEBTORS

POTTER ANDERSON & CORROON LLP
Jeremy W. Ryan (No. 4057)
L. Katherine Good (No. 5101)
Aaron H. Stulman (No. 5807)
R. Stephen McNeill (No. 5210)
Katelin A. Morales (No. 6683)
1313 N. Market Street, 6th Floor
Wilmington, Delaware 19801
Telephone: (302) 984-6000
Facsimile: (302) 658-1192
Email: jryan@potteranderson.com
kgood@potteranderson.com
astulman@potteranderson.com
rmcneill@potteranderson.com
kmorales@potteranderson.com

Counsel for Debtors and Debtors in Possession

[1] The Debtors in these chapter 11 cases, along with the last four digits (if any) of each Debtor's federal tax identification number include: Taronis Fuels, Inc. (7454), Taronis Sub IV LLC (6662), Taronis Sub III LLC (5826), Taronis Sub V LLC (8686), MagneGas Real Estate Holdings, LLC (7412), MagneGas IP, LLC (0988), MagneGas Production, LLC (7727), Taronis Sub I LLC (4205), Taronis-TAS, LLC (2356), Taronis-TAH, LLC (3542), and Taronis Sub II LLC (9673). The location of the Debtors' service address in these chapter 11 cases is c/o Aurora Management Partners (Attn: Tim Turek and David Baker) 112 South Tryon St., Suite 1770, Charlotte, NC 28284.

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NOTICE

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT EXCEPT AS EXPRESSLY INDICATED HEREIN. THE COMBINED PLAN AND DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION, AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED, OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT ON THE DEBTORS OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

PLEASE NOTE THAT MUCH OF THE INFORMATION CONTAINED HEREIN HAS BEEN TAKEN, IN WHOLE OR IN PART, FROM INFORMATION CONTAINED IN THE DEBTORS' BOOKS AND RECORDS AND CERTAIN PLEADINGS FILED BY THE DEBTORS WITH THE BANKRUPTCY COURT. ALTHOUGH THE DEBTORS HAVE ATTEMPTED TO BE ACCURATE IN ALL MATERIAL RESPECTS, THE DEBTORS ARE UNABLE TO REPRESENT OR WARRANT THAT ALL OF THE INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT IS WITHOUT ERROR. THE STATEMENTS CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS COMBINED PLAN AND DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 1125 AND 1126 AND BANKRUPTCY RULES 3016, 3017, AND 3018 AND NOT NECESSARILY IN COMPLIANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER RULES GOVERNING DISCLOSURE OUTSIDE THE CONTEXT OF CHAPTER 11.

NO REPRESENTATION CONCERNING THE DEBTORS OR THE VALUE OF THE DEBTORS' ASSETS HAS BEEN AUTHORIZED BY THE BANKRUPTCY COURT OTHER THAN AS SET FORTH IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT. THE DEBTORS ARE NOT RESPONSIBLE FOR ANY INFORMATION, REPRESENTATION, OR INDUCEMENT MADE TO OBTAIN YOUR ACCEPTANCE, WHICH IS OTHER THAN, OR INCONSISTENT WITH, INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT.

YOU ARE STRONGLY URGED TO CONSULT WITH YOUR FINANCIAL, LEGAL, AND TAX ADVISORS TO UNDERSTAND FULLY THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT IS GIVEN AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED. THE DELIVERY OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT DOES NOT, UNDER ANY CIRCUMSTANCE, IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN AFTER SUCH DATE. THIS COMBINED PLAN AND DISCLOSURE STATEMENT MUST BE READ IN CONJUNCTION WITH ANY EXHIBITS.

IF A HOLDER OF A CLAIM WISHES TO CHALLENGE THE ALLOWANCE OR DISALLOWANCE OF A CLAIM FOR VOTING PURPOSES UNDER THE TABULATION RULES SET FORTH IN THE SOLICITATION PROCEDURES ORDER, SUCH ENTITY MUST FILE A MOTION, PURSUANT TO BANKRUPTCY RULE 3018(a), FOR AN ORDER TEMPORARILY ALLOWING SUCH CLAIM IN A DIFFERENT AMOUNT OR CLASSIFICATION FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN AND SERVE SUCH MOTION ON THE UNDERSIGNED COUNSEL TO THE DEBTORS SO THAT IT IS RECEIVED NO LATER THAN **4:00 P.M., PREVAILING EASTERN TIME, ON JULY 11, 2024.** THE DEBTORS AND OTHER PARTIES IN INTEREST SHALL HAVE UNTIL **JULY 18, 2024** TO FILE AND SERVE ANY RESPONSES TO SUCH MOTIONS. UNLESS THE BANKRUPTCY COURT ORDERS OTHERWISE, SUCH CLAIM WILL NOT BE COUNTED FOR VOTING PURPOSES IN EXCESS OF THE AMOUNT DETERMINED IN ACCORDANCE WITH THE TABULATION RULES.

I. Introduction and Executive Summary[2]

The Debtors propose the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code sections 1125 and 1129, and Local Rule 3017-2. The Debtors are the "proponents" of the Combined Plan and Disclosure Statement within the meaning of Bankruptcy Code section 1129.

Copies of the Combined Plan and Disclosure Statement and all other documents related to the Chapter 11 Cases are available for review without charge on the Case Website at: https://www.donlinrecano.com/Clients/tfi/Index.

[2] All capitalized terms used but not defined in the introduction and executive summary shall have the meanings ascribed to them in Article III of the Combined Plan and Disclosure Statement.

The Combined Plan and Disclosure Statement is a liquidating chapter 11 plan for the Debtors. The Purchased Assets from both the California Sale and the Texas Sale have been transferred from the Debtors to the respective Purchasers as part of closing of each sale. The Combined Plan and Disclosure Statement provides that, upon the Effective Date, the Liquidating Trust Assets will be transferred to the Liquidating Trust and the Debtors will be dissolved. The Liquidating Trust Assets will be administered and distributed as soon as practicable pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement.

Each Holder of a Claim against the Debtors who is entitled to vote to accept or reject the Combined Plan and Disclosure Statement is encouraged to read the Combined Plan and Disclosure Statement in its entirety before voting.

Holders of Miscellaneous Secured Claims (classified in Class 1) are not Impaired and will receive, either (a) such other treatment as may be agreed upon by any such holder of a Miscellaneous Secured Claim, the Debtors (prior to the Effective Date), and the Liquidation Trustee (after the Effective Date), or (b) at the Debtors' option: (i) payment in full in cash of the allowed amount of such Miscellaneous Secured Claim (as determined by settlement or order of the Bankruptcy Court), or (ii) treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

Holders of Non-Tax Priority Claims (classified in Class 2) are not Impaired and will be paid in full in cash on the Effective Date of the allowed amount of such claim, or receive such other treatment as may be agreed upon by the holder of a Non-Tax Priority Claim, the Debtors (prior to the Effective Date), and the Liquidation Trustee (after the Effective Date).

Holders of General Unsecured Claims (classified in Class 3) are Impaired and will be paid Pro Rata from the Liquidating Trust Assets (including cash and recoveries of Estate Claims), net of Allowed Professional Fee Claims, Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Non-Tax Priority Claims, and the administrative expenses of the Liquidating Trustee and his or her professionals.

Holders of Intercompany Claims (classified in Class 4) and Existing Equity (classified in Class 5) are Impaired and are not entitled to receive any Distribution.

The Liquidating Trust Expenses, including the fees of the Liquidating Trustee and fees for the Liquidating Trustee's professionals, will be paid out of the Liquidating Trust Assets prior to any interim or final Distribution being made to Holders of Claims or Interests.

Subject to the restrictions on modifications as set forth in Bankruptcy Code section 1127, Bankruptcy Rule 3019, and in the Combined Plan and Disclosure Statement, the Debtors expressly reserve the right to alter, amend, or modify the Combined Plan and Disclosure Statement one or more times before the Confirmation Hearing and/or its substantial consummation.

II. Important Dates

Voting Record Date	July 2, 2024
Deadline to Mail Solicitation Packages and all Notices	July 5, 2024
Deadline to File Plan Supplement	July 31, 2024
Deadline for Creditors to File Rule 3018 Motions	July 11, 2024
Deadline to Respond to Rule 3018 Motions	July 18, 2024
Voting Deadline for the Combined Plan and Disclosure Statement	August 7, 2024 at 4:00 p.m. (prevailing Eastern time)
Combined Plan and Disclosure Statement Objection Deadline	August 7, 2024 at 4:00 p.m. (prevailing Eastern time)
Deadline to File Confirmation Brief and Other Evidence Supporting the Combined Plan and Disclosure Statement, and form of Confirmation Order	August 12, 2024 at 12:00 p.m. (prevailing Eastern time)
Deadline to File Voting Tabulation Affidavit	August 12, 2024 at 12:00 p.m. (prevailing Eastern time)
Confirmation Hearing	August 14, 2024 at 10:00 a.m. (prevailing Eastern time)

III. Definitions and Construction of Terms

A. Definitions

"**Administrative Claim Bar Date**" means, for any unpaid Administrative Expense Claim arising on or between February 11, 2023 and the Effective Date, the date that is thirty (30) calendar days after service of the notice of Effective Date, with such date to be provided in the notice of Effective Date, *provided, however*, Professional Fee Claims shall cover the period beginning from each Professional's retention date pursuant to an order of the Bankruptcy Court and the Effective Date. Administrative Expense Claims arising from the Petition Date through and including February 10, 2023 are governed by the Bar Date Order and subject to the administrative claim bar date set therein.

"**Administrative Expense Claim**" means any right to payment constituting actual and necessary costs and expenses of preserving the Estates under Bankruptcy Code sections 503(b) and 507(a)(2) including, without limitation any fees or charges assessed against the Estates under section 1930 of title 28 of the United States Code and Professional Fee Claims.

"Affiliate" means an "affiliate" as defined in Bankruptcy Code section 101(2).

"**Airgas**" means Airgas USA, LLC.

"**Airgas Sale**" means the prepetition sale of the Debtors' retail operations for their industrial gas and welding supply distribution to Airgas USA, LLC for $7 million, plus the assumption of certain liabilities.

"**Allowed**" means, with reference to any Claim, proof of which was properly filed or, if no Proof of Claim was filed, that has been or hereafter is listed by a Debtor on its Schedules as liquidated in amount and not disputed or contingent and, in each case, as to which: (a) no objection to allowance has been interposed within the applicable period fixed by the Combined Plan and Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bankruptcy Court; or (b) an objection has been interposed and such Claim has been allowed by the Bankruptcy Court, in whole or in part, by a Final Order.

"**Arizona District Court**" means the United States District Court for the District of Arizona.

"**Assets**" means any and all right, title, and interest of the Debtors in and to property of whatever type or nature, real or personal, tangible or intangible, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, works in progress, accounts, chattel paper, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, Causes of Action, Claims, other causes of action, and any general intangibles, but specifically excludes the Purchased Assets.

"**Avoidance Actions**" means any and all Causes of Action and rights to recover or avoid transfers or to avoid any lien under chapter 5 of the Bankruptcy Code or applicable state law or otherwise which were excluded from the definition of Purchased Assets pursuant to the Sale Orders.

"**Ballot**" means the voting form distributed to each Holder of an Impaired Claim entitled to vote on the Combined Plan and Disclosure Statement, on which the Holder is to indicate acceptance or rejection of the Combined Plan and Disclosure Statement in accordance with the voting instructions and make any other elections or representations required pursuant to the Combined Plan and Disclosure Statement.

"**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware, having jurisdiction over the Chapter 11 Cases or, if such Court ceases to exercise jurisdiction over the Chapter 11 Cases, such other court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases in lieu of the United States Bankruptcy Court for the District of Delaware.

"**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time.

"**Bar Date Motion**" means the *Debtors' Motion for Entry of an Order (I) Establishing Deadlines for the Filing of Proofs of Claim and Requests for Allowance of Administrative Expense Claims, (II) Approving the Forms and Manner of Notice Thereof, and (III) Granting Related Relief* filed on February 1, 2023 [Docket No. 281].

"**Bar Date Order**" means the *Order (I) Establishing Deadlines for the Filing of Proofs of Claim and Requests for Allowance of Administrative Expense Claims, (II) Approving the Forms and Manner of Notice Thereof, and (III) Granting Related Relief* [Docket No. 308].

"**Board**" means the members of the Debtors' Board of Directors from any time prior to or after the Petition Date through the Effective Date.

"**Business Day**" means any day other than a Saturday, Sunday, or any other day on which commercial banks in Wilmington, Delaware are required or authorized to close by law or executive order.

"**California Assets**" means all of the assets, including real property, used in the industrial gas and welding supply business of MagneGas West that were sold, assigned, transferred, conveyed, and delivered to Airgas pursuant to the California Sale Order and the asset purchase agreement attached thereto as Exhibit A. Any inconsistencies that arise under this definition shall be interpreted in favor of the definition of "Purchased Assets" in the asset purchase agreement, as modified by the California Sale Order.

"**California Sale**" means the sale of the California Assets free and clear of liens, claims, interests, and encumbrances, pursuant to the California Sale Order and the asset purchase agreement attached thereto as Exhibit A.

"**California Sale Order**" means the *Order (I) Authorizing the Private Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Authorizing Sellers to Assume and Assign Certain Executory Contracts, (III) Approving Bidder Protections, and (IV) Granting Related Relief* [Docket No. 135].

"**Case Website**" means the website maintained by the Claims and Noticing Agent where parties are able to view the Combined Plan and Disclosure Statement and other documents related to the Chapter 11 Cases at https://www.donlinrecano.com/Clients/tfi/Index.

"**Causes of Action**" means any Claim, cause of action (including Retained Avoidance Actions, Avoidance Actions, and D&O Claims), controversy, right of setoff, cross claim, counterclaim, or recoupment, and any claim on contracts or for breaches of duties not transferred to the Purchasers pursuant to the Sale Orders and not otherwise expressly released hereunder imposed by law or in equity, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, or franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract

or in tort, in law or in equity, or pursuant to any other theory of law, that have not been waived by a prior order of the Bankruptcy Court or released under the Combined Plan and Disclosure Statement.

"**Chapter 11 Cases**" means the chapter 11 cases initiated by the Debtors' filing on the Petition Date of voluntary petitions for relief in the Bankruptcy Court under chapter 11 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered by the Bankruptcy Court under Case No. 22-11121 (BLS).

"**Chief Restructuring Officer**" means Timothy Turek from Aurora Management Partners, Inc.

"**Claim**" shall have the meaning set forth in Bankruptcy Code section 101(5).

"**Claims and Noticing Agent**" means Donlin, Recano & Company, Inc. in its capacity as claims and noticing agent to the Debtors.

"**Claims Objection Deadline**" means the date that is one hundred and eighty (180) days after the Effective Date or such later date as may be approved by the Bankruptcy Court upon motion. Upon filing a motion to extend the Claims Objection Deadline, the Claims Objection Deadline shall be automatically extended as provided by the Local Rules.

"**Claims Register**" means the official register of Claims maintained by the Claims and Noticing Agent.

"**Class**" means any group of substantially similar Claims or Interests classified by the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

"**Clerk**" means the Clerk of the Bankruptcy Court.

"**Combined Plan and Disclosure Statement**" means this combined chapter 11 plan of liquidation and disclosure statement including, without limitation, all exhibits, supplements, appendices, and schedules hereto, either in their present form or as the same may be altered, amended, or modified from time to time, including those set forth in the Plan Supplement.

"**Confirmation**" means confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129.

"**Confirmation Date**" means the date on which the Confirmation Order is entered on the Docket.

"**Confirmation Hearing**" means the combined hearing to be held by the Bankruptcy Court to consider (a) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125, and (b) confirmation of the Combined

Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129, as such hearing may be adjourned or continued from time to time.

"**Confirmation Order**" means the order of the Bankruptcy Court confirming the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129.

"**Contingency Counsel**" means any counsel engaged by the Debtors, the Liquidating Trust, and/or the Liquidating Trustee on a contingency fee basis to pursue the Causes of Action, Avoidance Actions, Retained Avoidance Action, and/or any other Claims pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement.

"**CRCM**" means CRCM Opportunity Fund III, LP.

"**CRCM NPA**" means that certain note purchase agreement by and between Taronis Fuels and CRCM whereby Taronis Fuels issued $2.5 million of convertible promissory notes to CRCM.

"**CRCM Adversary Action**" means that certain adversary action commenced against CRCM on January 5, 2023 to recover transfers made to CRCM related to the CRCM NPA, currently pending before the Bankruptcy Court styled as *Taronis Fuels, Inc. v. CRCM Opportunity Fund III, LP* (Adv. Proc. No. 23-50002).

"**Creditor**" means any Person that is the Holder of a Claim against the Debtors as defined in Bankruptcy Code section 101(10).

"**D&O Claims**" means any Claims or Causes of Action arising prior to the Petition Date and held by the Debtors or their Estates against current and former members of the Board and current and former officers of the Debtors, except as limited by Article XI.C hereof.

"**Debtors**" means, collectively, Taronis Fuels, Taronis Sub IV, Taronis Sub III, Taronis Sub V, MagneGas Real Estate, MagneGas IP, MagneGas Production, Taronis Sub I, Taronis-TAS, Taronis-TAH, and Taronis Sub II.

"**DIP Loan Agreement**" means the *Loan and Security Agreement*, dated as of October 21, 2020, as amended from time to time including the *Third Modification to Loan and Security Agreement [Debtor-in-Possession]* among the Debtors, the DIP Lender, and guarantors identified therein [Docket No. 136, Exhibit A-1].

"**DIP Facility**" means the senior secured superpriority credit facility in the aggregate principal amount of $11,000,000, consisting of (a) a $5,600,000 postpetition multi-draw loan, and (b) a roll-up of the Prepetition Loan into loans under the DIP Facility, subject to the terms and conditions of the DIP Orders and the DIP Loan Agreement.

"**DIP Facility Claim**" means all Claims against the Debtors by the DIP Lender under the DIP Loan Agreement and DIP Orders, including, without limitation, principal, accrued and unpaid interest, any reimbursement obligations (contingent or otherwise), all fees, expenses, and disbursements (including, without limitations, attorneys' fees, financial advisors' fees, and related

expenses and disbursements incurred by, or on behalf of, the DIP Lender), indemnification obligations, all other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect thereof.

"**DIP Lender**" means Tech Capital, LLC, in its capacity as lender under the DIP Loan Agreement.

"**DIP Motion**" means the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Secured Liens and Provide Claims with Superpriority Administrative Expense Status, and (D) Grant Adequate Protection to the Prepetition Secured Parties; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief* [Docket No. 13].

"**DIP Orders**" means, collectively, the (i) *Interim Order (I) Authorizing the Debtors to Obtain Postpetittion Financing, (II) Granting Liens and Providing Superprioirty Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 37]; (ii) *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 136]; and (iii) *Order Amending Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 241].

"**Disallowed**" means any Claim or any portion thereof that (i) has been Disallowed by a Final Order, (ii) is not Scheduled and as to which no Proof of Claim or Administrative Expense Claim has been filed or submitted, (iii) is Scheduled as zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim or Administrative Expense Claim has been filed or submitted, or (iv) has been withdrawn by the Holder of the Claim, or by agreement of the Debtors and the Holder thereof.

"**Disputed**" means any Claim or Interest, or any portion thereof, that is (a) listed on the Schedules as unliquidated, disputed, and/or contingent for which no Proof of Claim in a liquidated and non-contingent amount has been filed, or (b) the subject of an objection or request for estimation filed by the Debtors or the Liquidating Trustee or any other party in interest in accordance with applicable law and which objection has not been withdrawn, resolved, or overruled by a Final Order.

"**Distribution**" means any distribution to the Holders of Allowed Claims against the Debtors pursuant to the Combined Plan and Disclosure Statement.

"**Docket**" means the docket in these Chapter 11 Cases maintained by the Clerk.

"**ECT NPA**" means that certain note purchase agreement by and between Taronis Fuels and the Ezrah Charitable Trust whereby Taronis Fuels issued $1.25 million of convertible promissory notes to the Ezrah Charitable Trust.

"**ECT Adversary Action**" means that certain adversary action commenced against the Ezrah Charitable Trust on January 5, 2023 to recover transfers made to the Ezrah Charitable Trust related to the ECT NPA and currently pending before the Bankruptcy Court styled as *Taronis Fuels, Inc. v. The Ezrah Charitable Trust* (Adv. Proc. No. 23-50001).

"**Effective Date**" means the date on which the conditions specified in Article X.B of the Combined Plan and Disclosure Statement have been met or satisfied.

"**Effective Date Distributions**" means all Distributions required to be made on the Effective Date of the Combined Plan and Disclosure Statement to the Holders of Claims against the Debtors that are Allowed as of the Effective Date.

"**Entity**" means an "entity" as defined in Bankruptcy Code section 101(15).

"**ERISA Action**" means the action initiated by Tyler B. Wilson against Taronis Fuels currently pending in the Arizona District Court styled as *Wilson v. Taronis Fuels, Inc.*, Case No. 2:22-cv-00229-SPL.

"**Espri Sale**" means the prepetition sale whereby the Debtors sold their Florida wholesale operations to Tech-Gas Solutions LLC, an entity formed by TMG Gases Inc. (d/b/a EspriGas), for $8.6 million, plus the assumption of certain liabilities.

"**Estates**" means the estates of the Debtors created upon the commencement of the Chapter 11 Cases pursuant to Bankruptcy Code section 541.

"**Exculpated Parties**" means, with respect to the period beginning from the Petition Date, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtors' Officers; (b) the Chief Restructuring Officer; and (c) the Debtors' Professionals retained in the Chapter 11 Cases by order of the Bankruptcy Court.

"**Executory Contract**" or "**Unexpired Lease**" means, as the case may dictate, any executory contract or unexpired lease as of the Petition Date between the Debtors and any other Person or Persons, specifically excluding contracts and agreements entered into pursuant to the Combined Plan and Disclosure Statement.

"**Existing Equity**" means existing equity of the Debtors, classified in Class 5 in the Combined Plan and Disclosure Statement.

"**Final Decree**" means the order entered pursuant to Bankruptcy Code section 350, Bankruptcy Rule 3022, and Local Rule 5009-1 closing the Chapter 11 Cases.

"**Final DIP Order**" means, collectively, the (i) *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 136] and (ii) *Order Amending Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 241].

"**Final Order**" means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction that has been entered on the docket in the Chapter 11 Cases (or the docket of such other court) that is not subject to a stay and has not been modified, amended, reversed, or vacated and as to which (a) the time to appeal, petition for certiorari, move for leave to appeal, or move for a new trial, reargument, or rehearing pursuant to Bankruptcy Rule 9023 has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (b) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was timely and properly appealed, or certiorari shall have been denied or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument, or rehearing shall have expired.

"**First Day Declaration**" means the *Declaration of R. Jered Ruyle in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Docket No. 15].

"**First Day Motions**" refer collectively to those certain motions filed by the Debtors on or shortly after the Petition Date, and as more specifically identified in Part III of the First Day Declaration.

"**First Day Orders**" means the Final Orders entered by the Bankruptcy Court approving the First Day Motions and granting the relief set forth in each First Day Motion.

"**Forbearance Agreement**" means that certain forbearance agreement whereby the Prepetition Lender agreed to forbear from exercising any of its right and remedies under the Prepetition Loan until October 6, 2022.

"**General Bar Date**" means, with respect to those Claims covered by the Bar Date Order, March 27, 2023 at 5:00 p.m. prevailing Eastern Time, excluding Proofs of Claim filed by a Governmental Unit, which must be submitted by the Governmental Bar Date.

"**General Unsecured Claims**" means any unsecured Claim against the Debtors which is *not* a Non-Tax Priority Claim, Administrative Expense Claim, Professional Fee Claim, Priority Tax Claim, Miscellaneous Secured Claim, Intercompany Claim, Section 510(b) Claim, or Existing Equity.

"**Governmental Bar Date**" means, pursuant to the Bar Date Order, the date by which Proofs of Claim on behalf of Governmental Units must be submitted: May 10, 2023 at 5:00 p.m. prevailing Eastern Time.

"**Governmental Unit**" means a "governmental unit" as defined in Bankruptcy Code section 101(27).

"**Holder**" means the beneficial holder of any Claim or Interest.

"**Impaired**" means, with respect to any Class, a Class that is impaired within the meaning of Bankruptcy Code sections 1123(a)(4) and 1124.

"**Intercompany Claims**" means any Claim held by one Debtor against another Debtor.

"**Interest**" means any "equity security" in a Debtor as defined in Bankruptcy Code section 101(16), including, without limitation, all issued, unissued, authorized, or outstanding ownership interests (including common and preferred) or other equity interests and membership units, together with any warrants, options, convertible securities, liquidating preferred securities, or contractual rights to purchase or acquire any such equity interests at any time and all rights arising with respect thereto.

"**Interim DIP Order**" means the *Interim Order (I) Authorizing the Debtors to Obtain Postpetittion Financing, (II) Granting Liens and Providing Superprioirty Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 37].

"**Liquidating Trust**" means the liquidating trust established on the Effective Date pursuant to the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement for the purpose of administering the Liquidating Trust Assets and to make one or more Distribution(s) to Holders of Allowed Claims against the Debtors.

"**Liquidating Trust Agreement**" means the trust agreement, and related documents, that documents and governs the powers, duties, and responsibilities of the Liquidating Trustee, and which agreement will be materially consistent with and subject to the Combined Plan and Disclosure Statement and otherwise in the substance and form included in the Plan Supplement.

"**Liquidating Trust Assets**" means the (a) Causes of Action, including (i) Avoidance Actions, (ii) Retained Avoidance Actions, (iii) D&O Claims, (iv) any other Claims and Causes of Action that are not Purchased Assets under the Sale Orders, and (iv) the proceeds of each of the forgoing; (b) any other remaining Assets of the Estates, and (c) any and all Claims and Causes of Action related to or arising under the Sale Orders.

"**Liquidating Trust Beneficiaries**" means, collectively, the Holders of Allowed Claims under the Combined Plan and Disclosure Statement against the Debtors, or any successors to such Holders, or their interests in the Liquidating Trust, whether said Claims are Allowed before or after the Effective Date.

"**Liquidating Trust Expenses**" means all actual and necessary fees, costs, expenses, and obligations incurred or owed by the Liquidating Trustee or its agents, employees, attorneys, advisors, or other professionals in administering the Combined Plan and Disclosure Statement and the Liquidating Trust (including, without limitation, reasonable compensation for services rendered, and reimbursement for actual and necessary expense incurred by the Liquidating Trustee and its agents, employees, and professionals) arising after the Effective Date through and including the date upon which the Bankruptcy Court enters a Final Decree closing the Chapter 11 Cases, which shall be solely payable from the Liquidating Trust Assets prior to any Distribution to Creditors.

"**Liquidating Trust Interests**" mean the non-certificated beneficial interests of the Liquidating Trust allocable to Holders of Allowed Claims in accordance with the terms of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement, which may or may not be transferable.

"**Liquidating Trustee**" means the Person selected to administer the Liquidating Trust under the Liquidating Trust Agreement and as identified in the Plan Supplement and the Liquidating Trust Agreement.

"**Local Rules**" means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

"**MagneGas IP**" means MagneGas IP, LLC, a Debtor in the Chapter 11 Cases.

"**MagneGas Production**" means MagneGas Production, LLC, a Debtor in the Chapter 11 Cases.

"**MagneGas Real Estate**" means MagneGas Real Estate Holdings, LLC, a Debtor in the Chapter 11 Cases.

"**Merchant NPA**" means that certain note purchase agreement by and between Taronis Fuels and the Merchant Livestock Company, Inc. whereby Taronis Fuels issued $2.5 million of convertible promissory notes to the Merchant Livestock Company, Inc.

"**Merchant Notes**" means the $2.5 million of convertible promissory notes issued under the Merchant NPA.

"**MGP**" means MGP Holdings II Corp.

"**Miscellaneous Secured Claims**" means Claims which are: (a) secured by a valid and perfected lien in collateral which is enforceable pursuant to applicable law, the amount of which is equal to or less than the value of such collateral (i) as set forth in the Combined Plan and Disclosure Statement, (ii) as agreed to by the Holder of such Claim and the Debtors, or (iii) as determined by a Final Order in accordance with Bankruptcy Code section 506(a); or (b) subject to a valid right of setoff under Bankruptcy Code section 553 that is not a DIP Facility Claim or Prepetition Loan Claim.

"Non-Tax Priority Claims" means any Claim entitled to priority pursuant to Bankruptcy Code section 507(a) other than Administrative Expense Claims, Professional Fee Claims, and Priority Tax Claims.

"**OCP Order**" means the *Order (I) Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business and (II) Granting Related Relief* [Docket No. 161].

"**Officers**" means the officers of the Debtors as of the Petition Date.

"**Person**" means a "person" as defined in Bankruptcy Code section 101(41).

"**Petition Date**" means November 11, 2022, the date on which the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

"**Plan Supplement**" means the appendix of schedules and exhibits to be filed with the Bankruptcy Court at least seven (7) days before the Voting Deadline. The Plan Supplement will contain, among other things: (a) a liquidation analysis; (b) the Liquidating Trust Agreement; (c) identification of the Liquidating Trustee; (d) the Schedule of Causes of Action; and (e) any other disclosures as required by the Bankruptcy Code.

"**PPP Loans**" mean, the two promissory notes by and between (i) Taronis Fuels and Wells Fargo Bank in the amount of $1,993,712; and (ii) Taronis Fuels and MidFirst Bank in the amount of $2,000,000, pursuant to the Paycheck Protection Program of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") and administered by the U.S. Small Business Administration.

"**Prepetition Lender**" means Tech Capital, LLC, in its capacity as lender under the Prepetition Loan Agreement.

"**Prepetition Loan**" means the approximately $5.6 million in principal and accrued interest under the Prepetition Loan Agreement.

"**Prepetition Loan Agreement**" means collectively, (i) that certain *Loan and Security Agreement*, dated as of October 21, 2020, as amended, supplemented, or otherwise modified, by and among the Debtors, as borrowers, and the Prepetition Lender, pursuant to which the Prepetition Lender provided prepetition loans, and (ii) that certain Term Note entered into on December 14, 2020 in the amount of $2.5 million

"**Priority Tax Claims**" means Claims of a Governmental Unit against any Debtor entitled to priority pursuant to Bankruptcy Code section 507(a)(8) or as specified in Bankruptcy Code section 502(i).

"**Pro Rata**" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in the same Class.

"**Professional**" means any professional Person employed in the Chapter 11 Cases pursuant to Bankruptcy Code sections 327, 328, 363, or 1103 pursuant to an order of the Bankruptcy Court and who is to be compensated for services rendered pursuant to Bankruptcy Code sections 327, 328, 329, 330, 331, or 363.

"**Professional Fee Claims**" means all Claims for compensation and reimbursement of expenses by Professionals, for the period starting with each Professional's retention date pursuant to an order of the Bankruptcy Court and ending with the Effective Date, to the extent Allowed by the Bankruptcy Court.

"**Professional Fee Escrow**" means the escrow account containing $747,218.08 (as of April 18, 2024) that was funded in accordance with the DIP Loan Agreement and DIP Orders, and held by the Debtors.

"**Promissory Note Settlement**" means the settlement agreement entered into by the parties in the action styled *CRCM Opportunity Fund III LP, v. Taronis Fuels Inc.*, C.A. No. N22C-05-175 PRW (CCLD) (Del. Supr. Ct. May 26, 2022).

"**Proof of Claim**" means a proof of claim filed against any Debtor in accordance with the Bar Date Order or any other order of the Bankruptcy Court requiring or setting forth a time period for the fixing of Claims.

"**Purchased Assets**" means, collectively, the Texas Assets and the California Assets.

"**Purchasers**" means MGP and Airgas.

"**Rejection Claim**" means any Claim arising from, or relating to, the rejection of an Executory Contract or Unexpired Lease pursuant to Bankruptcy Code section 365(a) by any of the Debtors, as limited, in the case of a rejected Unexpired Lease, by Bankruptcy Code section 502(b)(6).

"**Related Person**" means with respect to any Person, such Person's current and former officers, directors, principals, partners, members, managers, shareholders, attorneys, accountants, financial advisors, investment bankers, and their respective successors and assigns all in their capacities as such.

"**Released Party**" means, collectively, and in each case, in their respective capacities as such, (i) all of the Debtors' Officers, directors, managers, principals, members, employees, and agents, that served prior to or after the Petition Date (except as set forth below); (ii) all current and former Professionals of the Debtors, investment bankers, consultants, representatives, and other professionals, each in their capacity as such; and (iii) all Holders of Claims. For the avoidance of doubt, the Released Parties shall not include (i) any Holders of Interests in their capacity as such; (ii) former Chief Executive Officer of Taronis Technologies, Scott Mahoney; and (iii) any potential defendant in a Retained Avoidance Action.

"**Retained Avoidance Actions**" means all Avoidance Actions included in the Schedule of Causes of Action.

"**Sale Orders**" means, collectively, the California Sale Order and the Texas Sale Order.

"**Sales**" means, collectively, the California Sale and the Texas Sale.

"**Schedule of Causes of Action**" means the non-exclusive schedule of Causes of Action included in the Plan Supplement.

"**Schedules**" means collectively the schedules of assets and liabilities, the list of Holders of Interests, and the statements of financial affairs filed by each of the Debtors under Bankruptcy Code section 521 and Bankruptcy Rule 1007, and all amendments and modifications thereto.

"**Scheduled**" refers to any Claim included in the Debtors' Schedules.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**SEC Action**" means the action initiated by the SEC against Taronis Fuels and its former officers, currently pending in the United States District Court for the Middle District of Florida, styled as *Securities and Exchange Commission v. Taronis Technologies, Inc., et al.*, Case No. 8:22-cv-1939-TPB-AAS.

"**SEC Investigation**" means the investigation into the Debtors launched by the SEC, further explained in Article IV.A.3.a below.

"**Section 510(b) Claim**" means any Claim subject to subordination under section 510(b) of the Bankruptcy Code.

"**Solicitation Package**" means the package to be distributed to certain Creditors for solicitation of votes on the Combined Plan and Disclosure Statement.

"Solicitation Procedures Order" means the order, as amended, granting preliminary approval of the Combined Plan and Disclosure Statement for solicitation and scheduling the Confirmation Hearing.

"**Statutory Fees**" means all fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930, and any interest thereupon.

"**Taronis-TAH**" means Taronis-TAH, LLC, a Debtor in the Chapter 11 Cases.

"**Taronis-TAS**" means Taronis-TAS, LLC, a Debtor in the Chapter 11 Cases.

"**Taronis Fuels**" means Taronis Fuels, Inc., a Debtor in the Chapter 11 Cases.

"**Taronis Sub I**" means Taronis Sub I LLC, a Debtor in the Chapter 11 Cases.

"**Taronis Sub II**" means Taronis Sub II LLC, a Debtor in the Chapter 11 Cases.

"**Taronis Sub III**" means Taronis Sub III LLC, a Debtor in the Chapter 11 Cases.

"**Taronis Sub IV**" means Taronis Sub IV LLC f/k/a MagneGas Welding Supply – West, LLC ("MagneGas West"), a Debtor in the Chapter 11 Cases.

"**Taronis Sub V**" means Taronis Sub V LLC f/k/a MagneGas Welding Supply – South, LLC ("MagneGas South"), a Debtor in the Chapter 11 Cases.

"**Taronis Technologies**" means Taronis Technologies, Inc.

"**Tax Code**" means the Internal Revenue Code, as amended.

"**Term Note**" means that certain *Secured Promissory Note* with the Prepetition Lender for a senior secured term loan in the amount of $2.5 million.

"**Texas APA**" means the asset purchase agreement attached to the Texas Sale Order as Exhibit A.

"**Texas Assets**" means the Debtors' assets relating to the operation of their Texas retail business that were sold, granted, transferred, assigned, conveyed, and delivered to MGP pursuant to the Texas Sale Order and the Texas APA. Any inconsistencies that arise under this definition shall be interpreted in favor of the definition of "Purchased Assets" in the asset purchase agreement, as modified by the Texas Sale Order.

"**Texas Bidding Procedures Order**" means the *Amended Order (I) Approving Bidding Procedures for the Sale of the Debtors Texas Assets, (II) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek Approval of Bid Protections, (III) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (IV) Approving Assumption and Assignment Procedures, (V) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (VI) Granting Other Related Relief* [Docket No. 147].

"**Texas Sale**" means the sale of the Texas Assets free and clear of liens, claims, interests, and encumbrances, pursuant to the Texas Sale Order and the asset purchase agreement attached thereto as Exhibit A.

"**Texas Sale Order**" means the *Order (I) Authorizing the Sale of Texas Assets Free and Clear of all Liens, Claims, Encumbrances an Other Interests, (II) Authorizing Debtors to Assume and Assign Certain Executory Contracts, and (III) Granting Related Relief* [Docket No. 286].

"**Treasury Regulations**" means the regulations, including temporary regulations or any successor regulations, promulgated under the United States Internal Revenue Code, as amended from time to time.

"**U.S. Trustee**" means the Office of the United States Trustee for the District of Delaware.

"**Unclaimed Distribution**" means a Distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

"**Unclaimed Distribution Deadline**" means three (3) months from the date the Debtors or Liquidating Trustee, as the case may be, make a Distribution pursuant to the Combined Plan and Disclosure Statement.

"**Unimpaired**" means, with respect to a Claim, Interest, or Class of Claims or Interests, not "impaired" within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

"**Voting Class**" means Class 3.

"**Voting Deadline**" means August 7, 2024 at 4:00 p.m. prevailing Eastern Time.

"**Voting Record Date**" means July 2, 2024.

"**Wetherald Note**" means the note issued to Thomas Wetherald, a former director of Taronis Fuels, in the principal amount of $2.5 million.

B. Interpretation; Application of Definitions and Rules of Construction

The following rules of construction, interpretation, and application shall apply:

(1) Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and neutral genders.

(2) Unless otherwise specified, each section, article, schedule, or exhibit reference in the Combined Plan and Disclosure Statement is to the respective section in, article of, schedule to, or exhibit to the Combined Plan and Disclosure Statement.

(3) The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Combined Plan and Disclosure Statement as a whole and not to any particular section, subsection, or clause contained in the Combined Plan and Disclosure Statement.

(4) The rules of construction contained in Bankruptcy Code section 102 shall apply to the construction and interpretation of the Combined Plan and Disclosure Statement.

(5) A term used herein that is not defined herein but that is used in the Bankruptcy Code shall have the meaning ascribed to that term in the Bankruptcy Code.

(6) The headings in the Combined Plan and Disclosure Statement are for convenience of reference only and shall not limit or otherwise affect the provisions of the Combined Plan and Disclosure Statement.

(7) Unless otherwise provided, any reference in the Combined Plan and Disclosure Statement to an existing document, exhibit, or schedule means such document, exhibit, or schedule as may be amended, restated, revised, supplemented, or otherwise modified.

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

IV. Disclosures

A. General Background

1. The Company and Its Business

The Debtors manufactured and distributed industrial and medical gases and associated welding and safety supplies. The Debtors supplied its customers with traditional industrial gas products ranging from bulk quantities of cryogenic gases to individual packaged cylinders and complementary products including welding supplies. The Debtors had the capacity and expertise to supply large, bulk cryogenic gas customers, as well as small one-person businesses.

In addition to its traditional industrial gas business, the Debtors claimed it had developed a clean, renewable, and environmentally sustainable metal cutting fuel comprised of hydrogen which was branded as "MagneGas". By the beginning of 2022, the Debtors operated as a consolidated company, consisting of a corporate headquarters and four business divisions, three retail – South, West, Southeast, and a wholesale division -- TGS.

MagneGas was marketed to investors beginning in 2008 as a disruptive technology to traditional fossil fuel-based metal cutting fuels, such as acetylene and propane. However, while MagneGas was technologically feasible, over time it became apparent its production was not commercially (competitively) viable. Although the Debtors claimed that MagneGas was both environmentally cleaner and safer than acetylene, trial production of MagneGas resulted in the deaths of two Taronis employees and severely injured a third.

The Debtors initially marketed MagneGas to end users through deep price discounts. However, even with substantial discounts, end users never adopted it as an alternative to acetylene. At its peak in 2020, total MagneGas sales reached only $250,000, less than 2% of all of the Debtors' gas sales. In the 4th quarter of 2021, Taronis Fuels' Board of Directors decided to cease all MagneGas operations and discontinue the sale and production of the product. The discontinued sales left the Debtors with thousands of spent and environmentally hazardous gas cylinders.

As of the end of 2021, the Debtors had suspended the production and retail sales of MagneGas, shutting down the entire MagneGas business. In August 2022, before the Petition Date, pursuant to two sales transactions, the Debtors sold their wholesale operations and their retail operations in Florida. As a result of these sales, as of the Petition Date, the Debtors' business

operations solely consisted of the distribution and sale of various gases to retail customers, primarily in their South (Texas, Indiana, and Louisiana) and West (California) regions.

The lead debtor in these Chapter 11 Cases, Taronis Fuels, was initially organized as a Delaware limited liability company on February 1, 2017, under the name MagneGas Welding Supply, LLC, to be a holding company for Taronis Technologies' welding supply companies. On April 9, 2019, Taronis Fuels was converted from a limited liability company to a corporation in accordance with the Delaware General Corporation Law. In conjunction with the conversion, Taronis Fuels' name was changed to the name it holds today.

On December 5, 2019, Taronis Technologies spun-off Taronis Fuels from the remainder of its businesses through a distribution of 100% of the issued and outstanding shares of common stock of Taronis Fuels to the shareholders of Taronis Technologies on a pro rata basis. As a result, Taronis Fuels became an independent, publicly traded company. The spin-off was believed to provide each company with certain opportunities and benefits, including enhanced strategic focus, access to capital, and financial flexibility. In connection with the spin-off, Taronis Fuels and Taronis Technologies entered into a number of agreements whereby Taronis Fuels and Taronis Technologies agreed, among other things, to (i) indemnify each other's past and present directors, officers, and employees, and each of their successors and assigns, against certain liabilities incurred in connection with the spin-off and Taronis Technologies' respective businesses, (ii) be liable for all pre-distribution U.S. federal income taxes, foreign income taxes, and non-income taxes attributable to the businesses, as well as for all other taxes attributable to each business after the distribution, (iii) provide and/or make available various administrative services and assets to each other, and (iv) lease or sublease certain office space to each other.

As of the Petition Date, the Debtors operated fifteen (15) retail locations, three (3) gas fill plants, and had approximately ninety-two (92) employees, serving retail customers in four (4) states.

Taronis Fuels is a Delaware corporation that is the parent of the remaining Debtors. The Debtors also have certain, dormant and asset-less non-Debtor foreign Affiliates, namely MagneGas Limited, Taronis Netherlands, B.V., and MagneGas Ireland Limited.

2. Financial Overview of the Company

As of the Petition Date, the Debtors had approximately $10.1 million in assets, cash and cash equivalents, accounts receivable, inventory, and deposits, and approximately $26.2 million in total liabilities, primarily relating to (i) rent-related obligations under the Debtors' leases for their distribution facilities in the South and West Regions, (ii) approximately $5.6 million in principal and accrued interest under the Prepetition Loan Agreement; (iii) approximately $4.2 million for trade and other third party accounts payable; (iv) unsecured notes payables to certain parties; and (v) certain obligations to employees.

a. **The Prepetition Secured Debt**

Debtors Taronis Fuels, Taronis Sub III, Taronis Sub V, Taronis Sub IV, Taronis Sub II, Taronis-TAS, and Taronis-TAH were borrowers under the Prepetition Loan Agreement, dated October 21, 2020, with the Prepetition Lender. The Prepetition Loan Agreement provided the Debtors with a senior secured asset-based revolving credit facility up to $10 million. In December of 2020, the Debtors' and Prepetition Lender agreed on reducing that $10 million credit facility to $7.5 million and funding a $2.5 million term loan - both of which were secured by substantially all of the Debtors' assets, including inventory and accounts receivable. The Debtors were also required to give the Prepetition Lender a right of first refusal on all future potential asset sales. Debtors MagneGas Production, MagneGas Real Estate Holdings, MagneGas IP, and Taronis Sub I, and non-Debtors MagneGas Limited, Taronis Netherlands, B.V., and MagneGas Ireland Limited were guarantors under the Prepetition Loan Agreement.

Additionally, as of the Petition Date, the Debtors owned motor vehicles which were subject to financing agreements and certain real property that was subject to mortgages.

b. **Unsecured Debt**

As of the Petition Date, the Debtors estimated they had in excess of $20 million of unsecured debt comprised of the following categories: (i) outstanding rent related obligations for its retail, fill plant, and headquarters locations; (ii) trade debts; (iii) employee obligations; and (iv) obligations under certain unsecured notes payable related to the acquisition of distributorship locations.

In addition to the foregoing, in August and September 2021, the Debtors raised additional funds through the issuance of convertible promissory notes. On August 3, 2021, Taronis Fuels issued $2.5 million worth of notes to CRCM pursuant to the CRCM NPA, on August 19, 2021, Taronis Fuels issued $2.5 million worth of notes to the Merchant Livestock Company, Inc. pursuant to the Merchant NPA, and on September 2, 2021 Taronis Fuels issued $1.25 million worth of notes to the Ezrah Charitable Trust pursuant to the ECT NPA.

c. **Equity**

As of November 2, 2022, the Debtors had approximately 17,060,699 outstanding shares of common stock, held by 224 investors. As of May 2022, the Debtors had issued approximately 171,661 common stock grants, approximately 927,097 common stock options, and approximately 2,070,577 warrants. However, the Debtors deregistered their common stock on May 23, 2022.

3. Events Precipitating the Chapter 11 Filing

A number of factors negatively impacted the Debtors' financial performance, ultimately leading the Debtors to seek relief under chapter 11.

a. The SEC Investigation, the 2021 Proxy Contest, and the Resulting Governance Changes

In June 2020, the SEC initiated an investigation into Taronis Fuels, Taronis Technologies, and their officers, directors, and employees. The SEC probe focused on potential violations of securities laws, including false public statements related to sales contracts, operational developments, improper financial reporting, and fraudulent press releases regarding partnerships with municipalities and corporations. This SEC Investigation prompted the company's Board of Directors to launch its own internal investigation.

In December 2020, Mary Pat Thompson, the newly appointed Chief Financial Officer, and Tobias Welo, a Board Member, reported to the full Board of Directors their findings including additional allegations (beyond the SEC's initial claims) of accounting fraud, mismanagement, and other improprieties by Messrs. Mahoney and Wilson.

Ms. Thompson and Mr. Welo resigned from the Board, and Ms. Thompson resigned as Chief Financial Officer. Along with other employees, they reported their findings to the SEC under its whistleblower's statutes.

Messrs. Mahoney and Wilson resigned on April 2, 2021, and May 6, of 2021, respectively. On April 28, 2021, a seven member, newly constituted Board of Directors was formed.

The newly constituted Board deemed unreliable the company's previously issued financial statements for the year ending December 31, 2019, and interim quarterly periods in fiscal 2020, and the December 31, 2020, 10-K annual report was never filed.

In March 2022, the SEC notified Taronis Fuels of its preliminary determination and enforcement action including a proposed penalty of $29.5 million prompting the Board to voluntarily deregister the company's common stock. Subsequently, the SEC filed a formal complaint seeking injunctions, penalties, disgorgement, and officer-and-director bars against Mr. Mahoney, Mr. Wilson, Taronis Fuels, and Taronis Technologies. Mr. Mahoney and Mr. Wilson consented to a civil penalty, a five-year ban from management of public companies, and certain reimbursement payable to Taronis Fuels, while Taronis Fuels reached a settlement agreement dated July 11, 2022, under which Taronis Fuels agreed to pay $5,107,900 in fines in four installments. While the first installment of $1,276,975 was paid into escrow in July 2022, no further SEC settlement payments were made prior to the Petition Date.

b. Liquidity Crisis with the Prepetition Lender

On March 8, 2022, the Prepetition Lender declared an event of default under the Prepetition Loan Agreement, alleging a material adverse change in the Debtors' business and financial condition as a result of the SEC Investigation and possible outcomes of such investigation, and, among other things, increased the rate of interest on the obligations outstanding under the Prepetition Loan Agreement and the Term Note by 5% and 4%, respectively, over the non-default rate. In connection with the default, the Debtors and the Prepetition Lender entered into a

Forbearance Agreement dated April 5, 2022, which provided for a 60-day forbearance period, with the option for additional 60-day extensions. Ultimately, the Prepetition Lender agreed to forbear from exercising any of its rights and remedies until October 6, 2022.

c. **Prepetition Litigation**

Due in large part to the SEC Action and the Prepetition Lender default, certain of the Debtors also became parties to various lawsuits, including the ERISA Action filed by Mr. Wilson, and breach of contract actions filed by CRCM and the Ezrah Charitable Trust.

(i) **The ERISA Action**

On February 11, 2022, Mr. Wilson filed a complaint against Taronis Fuels in the Arizona District Court, alleging that Taronis Fuels failed to pay Mr. Wilson a severance benefit to which he was entitled under Taronis Fuels' executive severance plan. Mr. Wilson sought, by motion, an award of that benefit totaling $1,873,213.78 plus interest, attorneys' fees, and costs.[3] On September 20, 2022, the parties virtually attended a private mediation but were unable to reach a settlement to resolve the claims and defenses. On September 27, 2022, Mr. Wilson filed a motion for sanctions against Taronis Fuels, alleging that Taronis Fuels failed to participate in mediation in good faith. On September 30, 2022, Taronis Fuels filed a motion to stay all proceedings in the ERISA Action pending resolution of the SEC Action.

As a result of the Chapter 11 Cases and the automatic stay under section 362 of the Bankruptcy Code, the Arizona District Court entered an order staying the ERISA Action and ordering the action be dismissed without further notice on February 20, 2023, unless a motion to continue the stay is filed or the parties advise the Arizona District Court that the bankruptcy stay has been lifted and counsel are ready to proceed with the case. On January 3, 2023, Mr. Wilson filed the *Motion of Tyler B. Wilson for Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code and Bankruptcy Rule 4001(a)(3)* [Docket No. 202]. After discussions with Mr. Wilson, the Debtors agreed to a form of order lifting the automatic stay as to the ERISA Action. *See* Docket No. 238. Accordingly, on January 19, 2023, the Court entered the *Order Granting Tyler B. Wilson Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code and Bankruptcy Rule 4001(a)(3)* [Docket No. 242]. On July 5, 2023, the Arizona District Court decided the ERISA Action and issued orders denying Mr. Wilson's claim for benefits in his ERISA Action and dismissing the ERISA Action.

On July 17, 2023, Mr. Wilson filed *Plaintiff's Motion for New Trial, Relief from Judgment (Doc. 56), and Reconsideration of Order (Doc. 55)* (the "Motion for Reconsideration"). On November 27, 2023, the Arizona District Court granted the Motion for Reconsideration.

(ii) **Other Actions**

On March 11, 2022, Mr. Wilson also filed a complaint against Taronis Fuels in the Court of Chancery, seeking advancement for legal fees and expenses incurred by Mr. Wilson in

[3] On July 5, 2023, the Arizona District Court entered an order granting such motion.

connection with the SEC Investigation and any related present or future proceedings, including the SEC Action. Pursuant to a settlement agreement reached between the parties, Taronis Fuels agreed to pay Mr. Wilson's fees to fulfill its advancement obligations to Mr. Wilson. Taronis Fuels paid a total of $172,653.21 prior to the Petition Date.

On May 26, 2022, CRCM and the Ezrah Charitable Trust filed a lawsuit in Delaware Superior Court alleging breach of contract of their respective promissory notes, styled *CRCM Opportunity Fund III LP, v. Taronis Fuels Inc.*, C.A. No. N22C-05-175 PRW (CCLD) (Del. Supr. Ct. May 26, 2022). The parties in this action entered a settlement agreement whereby Taronis Fuels agreed to pay the principal and interest due under the CRCM NPA in the amount of $2,525,958.50, and the principal and interest due under the ECT NPA in the amount of $1,261,918.25. Accordingly, on August 20, 2022, CRCM and the Ezrah Charitable Trust dismissed the lawsuit with prejudice.

These circumstances severely disrupted the Debtors' business plans and operations and imposed a significant liquidity crisis.

d. **Deregistration and Restatement of Financial Results**

The Debtors had been seeking to restate their historical financial results and become current in its reporting obligations under the Securities and Exchange Act of 1934. The Debtors sought to raise funds in order to continue the work needed for these goals, but the Debtors were unable to secure any such funding, in large part because of the SEC Investigation and the possible outcomes of such investigation (as discussed above). Ultimately, Taronis Fuels was unable to complete a restatement of its historical financial results and become current in its reporting obligations.

After careful consideration of the alternatives, the Board determined that deregistering Taronis Fuels' securities under the Securities and Exchange Act of 1934 was in the best interests of Taronis Fuels and its stockholders because, among other reasons, deregistration should reduce legal, accounting, and consultant expenses, and allow for the reallocation of management and employee time to advancing core business strategies.

On May 23, 2022, Taronis Fuels filed a Form 15 with the SEC to deregister its common stock and associated rights under section 12(g) of the Securities and Exchange Act of 1934, which suspended Taronis Fuels' obligation to file periodic reports, such as Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and other filing requirements under section 13(a) of the Securities and Exchange Act of 1934. As of September 19, 2022, Taronis Fuels ceased to be a publicly reporting company with the SEC.

e. **Sale of Certain Assets**

To address these operational and liquidity issues, prior to the Petition Date, the Debtors undertook various actions including negotiating with the Prepetition Lender prior and subsequent to alleged defaults, negotiating with certain parties in connection with the sale of the Debtors' assets, and engaging restructuring professionals. In August 2022, the Debtors sold two divisions,

their wholesale operations, and their Southeast regional operations through two transactions: the (i) wholesale operations were sold to EspriGas for $8.6 million, less the assumption of certain liabilities (the "Espri Sale") and (ii) Florida retail operations were sold to Airgas for $7 million subject to certain holdbacks and purchase price adjustments (referred to herein as the Airgas Sale).

With respect to the Espri Sale, the $8.6 million purchase price was reduced by (i) the assumption of nearly $4.5 million of the Debtors' indebtedness related to the whole sale division; (ii) the paying off an additional $423,000 of indebtedness relating to assets being sold as part of the Espri Sale, and (iii) a $750,000 escrow for other purchase price adjustments. In total, the sale allowed the Prepetition Lender to receive a payoff of only $1.741 million and yielded cash to the Debtors of only $1.197 million. Post petition, $597,000 of the purchase price escrow was released to the Debtors. *See Order Granting Debtors' Motion for Entry of an Order Approving Entry into the Settlement and Mutual Release Agreement by and Among Certain of the Debtors and Tech-Gas Solutions, LLC* [Docket No. 443].

With respect to the Airgas Sale, the Debtors used $3.788 million of the proceeds from the Airgas Sale to satisfy in full Taronis Fuels' obligations under the CRCM NPA and the ECT NPA as discussed above. In addition, $375,000 was held back for purchase price adjustments and another $375,000 was withheld as a break-up fee tied to the timely sale of the Debtors' California retail operations to Airgas. Both of those holdbacks were forfeited by the Debtors. The Prepetition Lender received just shy of $597,000 and the Airgas Sale yielded only $1.865 million to the Debtors.

It had been the Debtors' intention to complete the sale of its California retail operations to Airgas and pursue an out-of-court restructuring centered around the Texas retail operations. Following the closing of the Airgas Sale and the Espri Sale, the Debtors began to work towards those goals. As an initial matter, the Debtors were concerned that the sale of the California retail operations, when taken as a whole with the Airgas Sale and Espri Sale, might constitute a sale of "substantially all of its property and assets" which would require shareholder approval pursuant to 8 Del. C. §271(a) even though the Debtors would reorganize around their Texas retail operations.

Ultimately the Debtors, working with their advisors, concluded that selling the California assets and restructuring around the Texas assets was not financially viable as the Texas retail operations, while profitable, would be responsible for all of the legacy liabilities of the Debtors including, *inter alia*: (i) the cost of the Arizona headquarters lease which ran until 2030, (ii) the SEC liabilities, (iii) the advancement obligations owed to Mr. Wilson, (iv) remaining liabilities on convertible debt notes and other unsecured notes, and (v) accumulated trade payables.

In late September and early October of 2022, the Debtors determined that liquidating their remaining operations inside of Chapter 11 was the best path forward to maximize the value of their assets and generate recoveries for Creditors. Thus, the Debtors commenced the Chapter 11 Cases to continue the marketing and sale of substantially all of their remaining assets. The Debtors believed that a sale of their remaining businesses as a going concern would maximize value for all of their stakeholders, including their employees and Creditors.

B. The Chapter 11 Cases

1. First Day Orders

On the Petition Date, each of the Debtors filed voluntary petitions for relief. The Debtors also filed a number of First Day Motions and applications seeking customary relief intended to facilitate a smooth transition for the Debtors into the Chapter 11 Cases and to minimize disruptions to the Debtors' business operations.

The First Day Motions requested relief from the Bankruptcy Court to, among other things: (a) jointly administer the Chapter 11 Cases; (b) appoint the Claims and Noticing Agent; (c) pay employee wages; (d) maintain the Debtors' cash management system; (e) pay taxes; (f) pay insurance obligations; (g) maintain utilities; (h) obtain postpetition financing; and (i) pay critical vendors. In support of the First Day Motions, the Debtors relied upon the First Day Declaration. The First Day Motions were all entered on an interim and/or final basis, as applicable.

The First Day Motions, the First Day Declaration, and all orders for relief granted in these Chapter 11 Cases can be viewed free of charge at https://www.donlinrecano.com/Clients/tfi/Index.

2. DIP Financing

Pursuant to the DIP Motion, the Debtors sought authorization to obtain the DIP Facility pursuant to the DIP Agreement: an $11 million senior secured super priority term loan facility provided by the DIP Lender, consisting of $5.6 million post-petition "new money" term loan facility and a dollar-for-dollar "roll-up" of the obligations under the Prepetition Loan in an amount equal to each DIP Advance (as defined in the DIP Motion) at the time each DIP Advance is made, and which obligations under the Prepetition Loan shall be deemed converted into and exchanged on the terms and conditions set forth in the DIP Agreement.

The Debtors further sought authorization, through the DIP Motion, to use the Prepetition Collateral, including Cash Collateral (each as defined in the Interim DIP Order), and granting the DIP Lender (i) automatically perfected security interests in and liens on all of the DIP Collateral (as defined in the DIP Motion) in the priorities set forth in the Interim DIP Order and DIP Agreement as well as (ii) super priority administrative expense claims with respect to the Debtors' obligations under the DIP Facility. The Debtors entered the Chapter 11 Cases with minimal cash on hand, and thus access to the DIP Facility and the use of Cash Collateral was critical to ensure the Debtors' smooth entry into chapter 11 and ability to fund the marketing and sale of their assets. The Court entered the Interim DIP Order on November 16, 2022, and the Final DIP Order on December 12, 2022, in each case approving the DIP Motion.

3. Retention of Professionals

The Debtors, through various applications which were subsequently approved by the Bankruptcy Court, employed certain professionals including: Potter Anderson & Corroon LLP as counsel [Docket No. 148]; Aurora Management Partners, Inc. to provide a Chief Restructuring Officer and certain financial advisory services [Docket No. 149]; Capstone Partners as investment

banker [Docket No. 204]; Chipman Brown Cicero & Cole, LLP as Contingency Counsel [Docket No. 162]; and Donlin, Recano & Company, Inc. as Claims and Noticing Agent and administrative advisor [Docket Nos. 36 & 160].

On November 28, 2022, the Debtors also employed certain professionals pursuant to the OCP Order. Thus far, the Debtors have employed Smith-LC, Holland & Hart LLP, Perkins Coie LLP, and Forvis, LLP in the ordinary course of business, pursuant to the OCP Order. *See* Docket Nos. 92, 133, 186 & 509.

On April 19, 2023, the Debtors filed the *Final Fee Application of Capstone Partners as Investment Banker to the Debtors*, seeking approval of $504,533 in fees and $7,619 in expenses related to Capstone's work for the Debtor during the Chapter 11 Cases. The Bankruptcy Court approved this application on May 25, 2023. *See* Docket No. 419.

4. No Appointment of a Creditors' Committee

On November 23, 2022, the U.S. Trustee filed the *Statement That Unsecured Creditors' Committee Has Not Been Appointed* [Docket No. 65], notifying parties in interest that the U.S. Trustee had not appointed a statutory committee of unsecured creditors in the Chapter 11 Cases. The Debtors held a meeting of creditors pursuant to section 341 of the Bankruptcy Code on December 9, 2022.

5. Lease Rejection Motions

In order to downsize their footprint and to prevent administrative expenses from accruing in the Chapter 11 Cases, the Debtors, through various motions which were subsequently approved by the Bankruptcy Court, have successfully rejected most of their real property leases and vacated those related premises. *See* Docket Nos. 124, 240, 275, 307, 350 & 404.

6. Sale of Substantially All of the Debtors' Assets

As discussed above, prior to the Petition Date, the Debtors sold their wholesale operations through the Espri Sale and their Southeast region operations to Airgas through the Airgas Sale. As a result of these sales, the Debtors' business operations on the Petition Date solely consisted of the distribution and sale of various gases to retail customers, primarily in Texas and California. The Debtors filed the Chapter 11 Cases to continue the process of marketing and selling substantially all of the Debtors' remaining assets.

To that end, amongst other things, the Debtors, on November 16, 2022, filed the *Motion of the Debtors for Entry of an Order (I) Authorizing the Private Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Authorizing the Sellers to Assume and Assign an Executory Contract, (III) Approving Bidder Protections, and (IV) Granting Other Related Relief* [Docket No. 40] and, on November 18, 202, the Debtors filed the *Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of the Debtors' Texas Assets, (B) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek Approval of Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof,*

(D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief [Docket No. 45].

On December 12, 2022, the Bankruptcy Court entered the *Order (I) Authorizing the Private Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Authorizing the Sellers to Assume and Assign an Executory Contract, (III) Approving Bidder Protections, and (IV) Granting Other Related Relief* [Docket No. 135], whereby the Bankruptcy Court authorized the Debtors to, among other things, enter into the asset purchase agreement with Airgas for the sale of substantially all of the Debtors' assets located in California that are used or useful in the industrial gas and welding supply distribution business (referred to herein as the California Sale). The California Sale closed soon thereafter, and the proceeds were used to pay down the debt obligations to the DIP Lender.

Additionally, on December 14, 2022, the Bankruptcy Court entered the Texas Bidding Procedures Order, whereby the Bankruptcy Court approved, among other things, certain bidding procedures in connection with the sale of the Texas Assets related to the Texas retail business of the Debtors. On January 13, 2023, the Court entered the *Order (A) Authorizing Stalking Horse Designation, (B) Approving Stalking Horse Bid Protections, and (C) Granting Related Relief* [Docket No. 229], which designated Airgas as the stalking horse bidder.

On January 24, 2022, pursuant to the Texas Bidding Procedures Order, the Debtors commenced an auction for the sale of the Texas Assets. MGP was named as the successful bidder for the Texas Assets. After a successful auction and a hearing to approve the Texas Sale, on February 2, 2023, the Bankruptcy Court entered the *Order (I) Authorizing the Sale of Texas Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Authorizing the Debtors to Assume and Assign Certain Executory Contracts, and (III) Granting Other Related Relief* [Docket No. 286], approving, *inter alia*, the sale of the Texas Assets to MGP. The Texas Sale closed on February 10, 2023. The proceeds from the Texas Sale were used to pay down the DIP Lender in full.

7. Claims Process and General Bar Date

The Debtors filed the Bar Date Motion on February 1, 2023 and on February 21, 2023, the Bankruptcy Court entered the Bar Date Order. The Debtors filed the *Notice of Deadline for Filing Proofs of Claim and Requests for Allowance of Administrative Claims* on March 6, 2023 [Docket No. 335], which established the General Bar Date, the Governmental Bar Date, and an administrative claim bar date for Administrative Expense Claims arising from the Petition Date through and including February 10, 2023.

Pursuant to the Bar Date Order, all Creditors holding or wishing to assert a Claim against the Debtors or the Debtors' Estates, accruing prior to the Petition Date, and which remain unpaid,

including Claims arising under Bankruptcy Code section 503(b)(9), were required to file a Proof of Claim by the General Bar Date.

In addition, pursuant to the Bar Date Order, all Creditors holding or wishing to assert Administrative Expense Claims against the Debtors or their Estates, accruing from the Petition Date through and including February 10, 2023, were required to file such Claims by the General Bar Date. Administrative Expense Claims arising from February 11, 2023 through the Effective Date of the Combined Plan and Disclosure Statement are governed by the Administrative Claim Bar Date set forth herein.

Further, pursuant to the Bar Date Order, Governmental Units with Claims against the Debtors or the Debtors' Estates, accruing prior to the Petition Date, were required to file Proofs of Claim by the Governmental Bar Date.

8. CRCM Action and ECT Action

As discussed above, CRCM and the Ezrah Charitable Trust received payment in full of all obligations owed to them under the CRCM NPA and the ECT NPA. The Debtors believed that the payments to CRCM and the Ezrah Charitable Trust are avoidable pursuant to chapter 5 of the Bankruptcy Code.

On January 5, 2023, the Debtors initiated separate adversary proceedings against CRCM and against the Ezrah Charitable Trust alleging that cash transferred to CRCM and the Ezrah Charitable Trust constituted avoidable preferences under section 547 of the Bankruptcy Code and related provisions. After a mediation, the parties agreed upon the terms of a settlement to resolve all outstanding matters related to and arising out of the Debtors' relationship with CRCM and Ezrah, including, but not limited to, the claims asserted in the CRCM Action and ECT Action, and any claims CRCM and the Ezrah Charitable Truste have, or may have, against any of the Debtors' or any of their estates. The Debtor moved to approve this settlement, which includes the repayment of $1.7 million from CRCM and the Ezrah Charitable Trust to the Debtors and the mutual release of all claims, on March 22, 2024. *See Motion to Taronis Fuels, Inc. for Approval of Settlement and Release Agreement with CRCM Opportunity Fund III, LP, and the Ezrah Charitable Trust Pursuant to Bankruptcy Rule 9019* [Docket No. 715] (the "Settlement Motion"). An order approving the Settlement Motion was entered on April 15, 2024. *See* Docket No. 746.

9. Satisfaction of Claims Prior to the Effective Date

a. **Prepetition Loan Claims** – The Prepetition Loan Claims were fully satisfied by being rolled up into the DIP Facility. The Prepetition Lender will not receive any further Distribution on account of any obligations arising under the Prepetition Loan.

b. **DIP Facility Claims** – The DIP Facility Claims were satisfied through the closings of the California and Texas Sales. The DIP

Lender will not receive any further Distribution on account of any claims arising from the DIP Facility.

C. Summary of Assets

Following the closings of the California and Texas Sales, the Debtors have no remaining tangible Assets, and its remaining Assets consist primarily of cash, Avoidance Actions including the CRCM Action and the ECT Action, other litigation claims, and other miscellaneous Assets.

D. Summary of Treatment of Claims and Interests under the Plan

The following chart summarizes the classification and treatment of the Classes:

Class	Estimated Allowed Claims[4]	Treatment	Entitled to Vote	Estimated Recovery to Holders of Allowed Claims[5]
Class 1 – Miscellaneous Secured Claims	$0	Unimpaired	No	100%
Class 2 – Non-Tax Priority Claims	$280,660	Unimpaired	No	100%
Class 3 - General Unsecured Claims	$18,439,964.40	Impaired	Yes	9.2%
Class 4 – Section 510(b) Claims	$0	Impaired	No	0%
Class 5 – Intercompany Claims	$0	Deemed Impaired	No	0%
Class 6 – Existing Equity	N/A	Deemed Impaired	No	0%

[4] These amounts represent estimated Allowed Claims against the Debtors and do not represent amounts actually asserted by creditors in Proofs of Claim or otherwise. The Debtors have not completed their analysis of Claims in the Chapter 11 Cases, and all objections to such Claims have not been filed and/or fully litigated and may continue following the Effective Date. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.

[5] The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims against the Debtors in the Chapter 11 Cases. As set forth above, the actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are actually Allowed by the Bankruptcy Court and the actual amount of cash available for Distribution.

E. Certain U.S. Federal Income Tax Consequences to this Combined Plan and Disclosure Statement

Substantial uncertainty exists with respect to many of the tax issues discussed below. Therefore, each holder of a Claim is urged to consult its own tax advisor regarding the federal, state, and other tax consequences of this Combined Plan and Disclosure Statement. No rulings have been or are expected to be requested from the Internal Revenue Service ("IRS") with respect to any tax aspects of this Combined Plan and Disclosure Statement.

A summary description of certain United States ("U.S.") federal income tax consequences of this Combined Plan and Disclosure Statement is provided below. The description of tax consequences below is for informational purposes only and, due to lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various U.S. federal income tax consequences of this Combined Plan and Disclosure Statement as discussed herein. Only the potential material U.S. federal income tax consequences to the Debtors and to hypothetical Holders of Claims who are entitled to vote to accept or reject this Combined Plan and Disclosure Statement are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of this Combined Plan and Disclosure Statement, and no tax opinion is being given in this Combined Plan Disclosure Statement. No rulings or determinations of the IRS or any other tax authorities have been obtained or sought with respect to any tax consequences of this Combined Plan and Disclosure Statement, and the discussion below is not binding upon the IRS or such other authorities. No representations are being made regarding the particular tax consequences of the confirmation and consummation of this Combined Plan and Disclosure Statement. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein.

The discussion of the U.S. federal income tax consequences below is based on the Tax Code, Treasury Regulations promulgated and proposed thereunder, judicial decisions, and administrative rulings and pronouncements of the IRS and other applicable authorities, all as in effect on the date hereof. Legislative, judicial, or administrative changes or interpretations enacted or promulgated in the future could alter or modify the analyses and conclusions set forth below. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences to the Holders of Claims. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences discussed below.

THIS DISCUSSION DOES NOT ADDRESS FOREIGN, STATE, OR LOCAL TAX CONSEQUENCES OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT, NOR DOES IT PURPORT TO ADDRESS THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT TO SPECIAL CLASSES OF TAXPAYERS (SUCH AS FOREIGN ENTITIES, NONRESIDENT ALIEN INDIVIDUALS, PASS-THROUGH ENTITIES SUCH AS PARTNERSHIPS AND HOLDERS THROUGH SUCH PASS-THROUGH ENTITIES, S CORPORATIONS, MUTUAL FUNDS, INSURANCE COMPANIES, FINANCIAL

INSTITUTIONS, SMALL BUSINESS INVESTMENT COMPANIES, REGULATED INVESTMENT COMPANIES, CERTAIN SECURITIES TRADERS, BROKER-DEALERS, AND TAX-EXEMPT ORGANIZATIONS). FURTHERMORE, ESTATE AND GIFT TAX ISSUES ARE NOT ADDRESSED HEREIN AND TAX CONSEQUENCES RELATING TO THE ALTERNATIVE MINIMUM TAX ARE NOT DISCUSSED HEREIN.

NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT TO ANY SPECIFIC HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT.

1. Consequences to the Debtors

Under the Tax Code, a U.S. taxpayer generally must include in gross income the amount of any cancellation of indebtedness ("COD") income recognized during the taxable year. COD income generally equals the excess of the adjusted issue price of the indebtedness discharged over the sum of (i) the amount of cash, (ii) the issue price of any new debt, and (iii) the fair market value of any other property (including stock) transferred by the Debtors in satisfaction of such discharged indebtedness. COD income also includes any interest that has been previously accrued and deducted but remains unpaid at the time the indebtedness is discharged.

Section 108(a)(1)(A) of the Tax Code provides an exception to this rule, however, where a taxpayer is in bankruptcy and where the discharge is granted or is effected pursuant to an approved plan of reorganization by the Bankruptcy Court. In such a case, instead of recognizing income, the taxpayer is required, under section 108(b) of the Tax Code, to reduce certain of its tax attributes by the amount of COD income. The attributes of the taxpayer are to be reduced in the following order: current year Net Operating Losses ("NOLs") and NOL carryovers, general business and minimum tax credit carryforwards, capital loss carryforwards, the basis of the taxpayer's assets, and finally, foreign tax credit carryforwards. The reduction in the foregoing tax attributes generally occurs after the calculation of a debtor's tax for the year in which the debt is discharged. Section 108(b)(5) of the Tax Code permits a taxpayer to elect to first apply the reduction to the basis of the taxpayer's depreciable assets, with any remaining balance applied to the taxpayer's other tax attributes in the order stated above. In addition to the foregoing, section 108(e)(2) of the Tax Code provides a further exception to the realization of COD income upon the discharge of debt in that a taxpayer will not recognize COD income to the extent that the taxpayer's satisfaction of the debt would have given rise to a deduction for federal income tax purposes.

The Debtors may realize COD income as a result of this Combined Plan and Disclosure Statement. The ultimate amount of any COD income realized by the Debtors is uncertain because, among other things, it will depend on the fair market value of all assets transferred to Holders of Claims issued on the Effective Date.

In general, if a debtor sells property to a third party it will recognize taxable income equal to the difference between the amount realized on the sale and its tax basis in such assets sold. In addition, if a debtor conveys appreciated (or depreciated) property (i.e., property having an adjusted tax basis less (or greater) than its fair market value) to a creditor in cancellation of debt, the debtor must recognize taxable gain or loss (which may be ordinary income or loss, capital gain or loss, or a combination of each) equal to the excess or shortfall, respectively, of such fair market value over the debtor's adjusted tax basis in such property.

On the Effective Date, the Debtors and the Liquidating Trustee shall execute the Liquidating Trust Agreement, and shall take all steps necessary to establish the Liquidating Trust in accordance with this Combined Plan and Disclosure Statement, which shall be for the benefit of the Holders of Claims that receive beneficial interests in the Liquidating Trust. Additionally, on the Effective Date the Debtors shall transfer and/or assign and shall be deemed to transfer and/or assign to the Liquidating Trust all of their rights, title, and interest in and to all of the Liquidating Trust Assets, and in accordance with Bankruptcy Code section 1141, the Liquidating Trust Assets shall automatically vest in the Liquidating Trust free and clear of all Claims and liens, subject only to (a) the beneficial interests in the Liquidating Trust, and (b) the expenses of the Liquidating Trust as provided for in the Liquidating Trust Agreement and herein.

The Liquidating Trust shall be governed by the Liquidating Trust Agreement and administered by the Liquidating Trustee. The powers, rights, responsibilities, and compensation of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement. The Liquidating Trustee shall hold and distribute the Liquidating Trust Assets in accordance with this Combined Plan and Disclosure Statement and the Liquidating Trust Agreement. Other rights and duties of the Liquidating Trustee and the Holders of Claims that receive beneficial interests in the Liquidating Trust shall be as set forth in the Liquidating Trust Agreement.

After the Effective Date, the Debtors shall have no interest in the Liquidating Trust Assets. To the extent that any Liquidating Trust Assets cannot be transferred to the Liquidating Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by Bankruptcy Code section 1123 or any other provision of the Bankruptcy Code, such Liquidating Trust Assets shall be deemed to have been retained by the Debtors and the Liquidating Trust shall be deemed to have been designated as a representative of the Debtors pursuant to Bankruptcy Code section 1123(b)(3)(B) to enforce and pursue such Liquidating Trust Assets on behalf of the Debtors for the benefit of the Holders of Claims that receive beneficial interests in the Liquidating Trust. Notwithstanding the foregoing, all net proceeds of such Liquidating Trust Assets shall be transferred to the Liquidating Trust, to be distributed in accordance with this Combined Plan and Disclosure Statement.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Liquidating Trust is intended to be treated as a "liquidating trust" for U.S. federal income tax purposes pursuant to Treasury Regulation section 301.7701-4(d), and the Liquidating Trustee will take this position on the Liquidating Trust's tax return accordingly. The beneficiaries of the Liquidating Trust shall be treated as the grantors of the Liquidating Trust and as the deemed owners of the Liquidating Trust Assets. For U.S. federal income tax purposes, the transfer of

assets to the Liquidating Trust will be deemed to occur as (a) a first-step transfer of the Liquidating Trust Assets to the Holders of Allowed Claims and (b) a second-step transfer by such Holders to the Liquidating Trust. As a result, the transfer of the Liquidating Trust Assets to the Liquidating Trust should be a taxable transaction, and the Debtors should recognize gain or loss equal to the difference between the tax basis and fair value of such assets. In addition, as detailed above, if the total fair value of the Liquidating Trust Assets is less than the total of the Allowed Claims (that have been deducted for federal income tax purposes) the Debtors will recognize COD income equal to such difference. As soon as possible after the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make a good faith valuation of the Liquidating Trust Assets. This valuation will be made available from time to time, as relevant for tax reporting purposes. Each of the Debtors, Liquidating Trustee, and the Holders of Claims receiving beneficial interests in the Liquidating Trust shall take consistent positions with respect to the valuation of the Liquidating Trust Assets, and such valuations shall be utilized for all U.S. federal income tax purposes. The Liquidating Trust shall in no event be dissolved later than five (5) years from the creation of such Liquidating Trust unless the Bankruptcy Court, upon motion within the six (6) month period prior to the fifth (5th) anniversary (or within the six (6) month period prior to the end of an extension period), determines that a fixed period extension (not to exceed five (5) years with a private 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 trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets.

If the Liquidating Trust were not to qualify as a "liquidating trust," as described above, the Liquidating Trustee will take the position that it is a partnership for U.S. federal income tax purposes. In either case, each Liquidating Trust Beneficiary will include its distributive share of income, as reported to it by the Liquidating Trustee, and may not receive sufficient cash to satisfy its tax liability. The IRS may take the position that the Liquidating Trust should be taxed as a corporation for U.S. federal income tax purposes. If the IRS were to prevail in that position, the Liquidating Trust would be subject to U.S. federal income tax which would reduce the return to a Liquidating Trust Beneficiary. Each Liquidating Trust Beneficiary is urged to consult with its own tax advisor.

As detailed above, the transfer of the Liquidating Trust Assets to the Liquidating Trust could give rise to taxable income or loss equal to the difference between the tax basis and fair value of the Liquidating Trust Assets.

With respect to any COD income recognized due the transfer of the Liquidating Trust Assets to the Liquidating Trust, section 108(a)(1)(A) of the Tax Code should apply and thus any COD income should be excluded. However, any NOLs (or other tax attributes) remaining after the use of said NOLs to offset taxable income generated by the asset transfers will be reduced by the amount of such COD income excluded above.

2. Consequences to Holders of Class 3 General Unsecured Claims

Pursuant to this Combined Plan and Disclosure Statement, each Holder of an Allowed General Unsecured (Class 3) Claim against the Debtors will receive in satisfaction of its Claim a Pro Rata beneficial interest in the Liquidating Trust which includes all of the Liquidating Trust Assets remaining after satisfaction of all Liquidating Trust Expenses and senior Claims. The U.S. federal income tax treatment to Holders of Allowed General Unsecured Claims may depend in part on the tax basis a Holder has in its Claim, and, in some circumstances, what gave rise to or the nature of the Holder's Claim.

As set forth above, for federal income tax purposes, the Class 3 General Unsecured Claims will be satisfied by the deemed transfer to them of the Liquidating Trust Assets followed by a deemed contribution of said assets to the Liquidating Trust in exchange for their Pro Rata beneficial interest in the Liquidating Trust. It is intended that the Liquidating Trust be treated as a liquidating trust for federal income tax purposes and, if it does not so qualify, as a partnership for federal income tax purposes.

Because of the nature of the Liquidating Trust Assets, the deemed transfer by the Debtors of the Liquidating Trust Assets could cause a Holder to recognize gain, or loss, due to said transfer. The Liquidating Trust Assets that will be deemed transferred to Holders of Class 3 General Unsecured Claims consist of various assets including the Causes of Action (and proceeds thereof). To the extent that the (i) fair market value of the Pro Rata beneficial interest in the Liquidating Trust Assets that a Holder of a Class 3 General Unsecured Claim receives, exceeds (or is less than) (ii) the Holder's tax basis in such Claim, the Holder should recognize gain (or loss) on such deemed transfer equal to such excess. Such gain (or loss) could be capital or ordinary in nature depending on the genesis and nature of the Claim being satisfied.

F. Certain Risk Factors to Be Considered

Holders of Claims who are entitled to vote on the Combined Plan and Disclosure Statement should read and carefully consider the following factors, before deciding whether to vote to accept or reject the Combined Plan and Disclosure Statement.

Effect of Failure to Confirm the Combined Plan and Disclosure Statement. If the Combined Plan and Disclosure Statement is not confirmed by the requisite majorities in number and amount as required by Bankruptcy Code section 1126, or if any of the other confirmation requirements imposed by the Bankruptcy Code are not met, the Chapter 11 Cases may not have sufficient funding to proceed, which may result in conversion to a case under chapter 7 of the Bankruptcy Code or dismissal of the Chapter 11 Cases.

"Cramdown". While the Debtors believe that the requirements of Bankruptcy Code section 1129 have been met, the Bankruptcy Court is afforded discretion to determine whether dissenting Holders of Claims would receive more if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

Claims Estimation. While the Debtors have undertaken their best efforts to estimate the amount of Claims in each Class is correct, the actual amount of allowed Claims may differ from the estimates and, thus, the potential Distributions to Creditors may be different.

Causes of Action. Pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Assets, including the Estates' Causes of Action will be transferred to the Liquidating Trust upon the establishment of the Liquidating Trust on the Effective Date. The Causes of Action include Causes of Action which are not released, waived, or transferred pursuant to the California Sale, the Texas Sale, the Combined Plan and Disclosure Statement, or otherwise. There is no assurance that the Liquidating Trust will be successful in prosecuting any Cause of Action or generate sufficient proceeds from the Causes of Action for Distribution. To the extent Distributions are possible from the Causes of Action, or the SEC Action, the timing of any such Distribution is uncertain.

Delays. Any delay in confirmation of the Combined Plan and Disclosure Statement or delay to the Effective Date could result in additional Statutory Fees, Administrative Expense Claims, and/or other expenses. This may endanger ultimate approval of the effectiveness of the Combined Plan and Disclosure Statement or result in a decreased recovery for Holders of Claims entitled to a Distribution.

Sufficient Cash to Pay Claims. The Combined Plan and Disclosure Statement and the process for confirming the same is subject to the Debtors' and Estates' use of their Assets. To the extent that the Debtors or the Estates incur costs beyond the Cash held by the Debtors, the Holders of Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, Secured Tax Claims, and Non-Tax Priority Claims may not be paid in full.

Sufficient Cash for Liquidating Trust Distributions. There is no assurance that the Liquidating Trust Assets will be sufficient to fund the Liquidating Trust's expenses to enable the Liquidating Trust to hold and liquidate the Liquidating Trust Assets as envisioned under the Combined Plan and Disclosure Statement. Accordingly, there is no assurance that the Liquidating Trust will make any Distributions, the amount, if any, or the timing on which such Distributions may be made.

G. Feasibility

The Bankruptcy Code requires that, in order for a plan of reorganization to be confirmed, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or need for further reorganization of the debtors unless contemplated by the plan. 11 U.S.C. § 1129(a)(1).

Here, the Combined Plan and Disclosure Statement provides for the liquidation and distribution of all of the Debtors' remaining Assets. Accordingly, the Debtors believe all chapter 11 plan obligations will be satisfied without the need for further reorganization of the Debtors.

H. Best Interests Test and Alternatives to the Combined Plan and Disclosure Statement

Notwithstanding acceptance of a plan of reorganization by a voting impaired class, if an impaired class does not vote to accept the plan, the Bankruptcy Court must determine that the plan provides to each member of such impaired class a recovery, on account of each member's claim or interest, that has a value, as of the effective date, at least equal to the recovery that such class member would receive if the debtor was liquidated under Chapter 7. 11 U.S.C. § 1129(a)(7). This inquiry is often referred to as the "best interests of creditors test."

In a typical Chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of the properties securing their liens. If any assets are remaining in the bankruptcy estate after satisfaction of the secured creditors' claims, administrative expenses are next to receive payment, followed by priority claims such as certain tax claims. Unsecured creditors are paid from any remaining proceeds, according to their respective priorities. Unsecured creditors with the same priority share *pro rata*. Finally, equity interest holders receive the balance that remains, if any, after all other creditors are paid in full.

Here, the Debtors believe the Combined Plan and Disclosure Statement satisfies the best interests test as the recoveries expected to be available to Holders of Allowed Claims under the Combined Plan and Disclosure Statement will be greater than the recoveries expected in a liquidation under chapter 7 of the Bankruptcy Code.

The Purchased Assets have already been sold to the Purchasers under the Sale Orders, and the Debtors have limited Assets remaining in their Estates. While a liquidation under chapter 7 of the Bankruptcy Code would have the same goal, the Debtors believe that the Combined Plan and Disclosure Statement provides the best source of recovery for several reasons. First, liquidation under chapter 7 of the Bankruptcy Code would not provide for a timely Distribution and likely no Distribution at all. Second, Distributions would likely be smaller because of the fees and expenses incurred in a liquidation under chapter 7 of the Bankruptcy Code. The Debtors believe that a liquidation under chapter 7 would not provide for a timely distribution and that such distributions would likely be smaller because a chapter 7 trustee and his/her professionals would have to expend significant time and resources familiarizing themselves with the history of the Debtors and the Causes of Action prior to pursuing any such Causes of Action.

Under the Combined Plan and Disclosure Statement, the Liquidating Trust Expenses, including the fees of the Liquidating Trustee and fees for the Liquidating Trustee's professionals, will be paid out of the Liquidating Trust Assets prior to any Distribution being made to creditors.

At this time, there are no alternative plans available to the Debtors. The closings of both the California Sale and Texas Sale have already occurred, and the Debtors are no longer a going concern enterprise and have few Assets remaining, if any, to administer. Therefore, the Debtors believe that the Combined Plan and Disclosure Statement provides the greatest possible value to

all stakeholders under the circumstances, and has the greatest chance to be confirmed and consummated.

V. Unclassified Claims

A. Administrative Expense Claims

Other than Professional Fee Claims set forth below, Administrative Expense Claims incurred or arising on or prior to February 10, 2023 are governed by the Bar Date Order and the administrative claim bar date set therein.

Requests for allowance and payment of Administrative Expense Claims arising on or after February 11, 2023 through the Effective Date must be filed no later than the Administrative Claim Bar Date. Any such Administrative Expense Claim must be filed with the Bankruptcy Court with a copy served on Debtors' counsel (prior to the Effective Date) and the Liquidating Trustee and its counsel (after the Effective Date), as applicable, by regular mail, overnight courier, or hand delivery to the Claims and Noticing Agent at the following addresses by the Administrative Claim Bar Date:

(by mail)
Donlin, Recano & Company, Inc.
Re: Taronis Fuels, Inc., et al.
Attn: Voting Department
P.O. Box 2053
New York, NY 10272-2042

(by overnight courier or hand delivery)
Donlin, Recano & Company, Inc.
Re: Taronis Fuels, Inc., et al.
c/o Equiniti
Attn: Voting Department
48 Wall Street, 22nd Floor
New York, NY 10005

Holders of Administrative Expense Claims arising on or after February 11, 2023 through the Effective Date that do not file requests for the allowance and payment thereof on or before the Administrative Claim Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Debtors or the Estates, the Liquidating Trust, or the Liquidating Trust Assets.

Except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to a less favorable treatment or has been paid by any applicable Debtor or any Purchaser prior to the Effective Date, each Holder of an Allowed Administrative Expense Claim will be paid the full unpaid amount of such Allowed Administrative Expense Claim in cash (or other available funds in the Estates) from the remaining Assets or the Liquidating Trust Assets: (a) on the Effective Date or as soon thereafter as is reasonably practicable or, if not then due, when such Allowed Administrative Expense Claim is due or as soon thereafter as is reasonably practicable; (b) if an Administrative Expense Claim is Allowed after the Effective Date, on the date such Administrative Expense Claim is Allowed or as soon thereafter as is reasonably practicable or, if not then due, when such Allowed Administrative Expense Claim is due; or (c) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

B. Professional Fee Claims

All Professionals or other Persons requesting compensation or reimbursement of Professional Fee Claims for services rendered before the Effective Date (including compensation requested by any Professional or other entity for making a substantial contribution in the Chapter 11 Cases) shall file an application for final allowance of compensation and reimbursement of expenses no later than the Administrative Claim Bar Date.

A final fee hearing to determine the allowance of Professional Fee Claims shall be held as soon as practicable after the Administrative Claim Bar Date. The Debtors or the Liquidating Trustee shall file a notice of such final fee hearing. Such notice shall be posted on the Case Website and served upon counsel for all Professionals and the U.S. Trustee.

Allowed Professional Fee Claims shall be paid by the Debtors/Liquidating Trustee: (a) as soon as is reasonably practicable following the later of (i) the Effective Date and (ii) the date upon which the order relating to any such Allowed Professional Fee Claims is entered by the Bankruptcy Court; or (b) upon such other terms as agreed by the Holder of such an Allowed Professional Fee Claim.

Allowed Professional Fee Claims shall be paid in full in cash from the Professional Fee Escrow, and to the extent necessary, the Debtors' available Assets, or other available Liquidating Trust Assets, and in accordance with the Final Orders entered in the Chapter 11 Cases.

C. Priority Tax Claims

Except to the extent the Debtors and/or Liquidating Trustee and the Holder of an Allowed Priority Tax Claim agree to a different and less favorable treatment, the Debtors or the Liquidating Trustee, as applicable, shall pay, in full satisfaction and release of such Claim, to each Holder of a Priority Tax Claim, cash from their available Assets or as otherwise provided for in the Liquidating Trust Agreement, in an amount equal to such Allowed Priority Tax Claim, on the later of: (a) the Effective Date; and (b) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due from the Liquidating Trust Assets. After the Allowed Priority Tax Claim is paid in full, any liens securing such Allowed Priority Tax Claim shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization, or approval of any Person.

D. Statutory Fees

All U.S. Trustee Statutory Fees due and payable prior to the Effective Date shall be paid by the Debtors on the Effective Date. After the Effective Date, the Debtors and the Liquidating Trust shall be jointly and severally liable to pay any and all U.S. Trustee Statutory Fees when due

and payable. The Debtors shall file all monthly operating reports due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Liquidating Trust shall file with the Bankruptcy Court separate UST Form 11-PCR reports when they become due. The Liquidating Trust shall remain obligated to pay U.S. Trustee Statutory Fees on account of each Debtor's Chapter 11 Case until the earliest of that particular Debtor's Chapter 11 Case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to file any Proof of Claim for an Administrative Expense Claim in the Chapter 11 Cases and shall not be treated as providing any release under the Plan.

VI. Classification and Treatment of Claims and Interests

A. Classification of Claims and Interests

The below categories of Claims and Interests classify such Claims and Interests for all purposes, including voting, Confirmation, and Distribution pursuant hereto and pursuant to Bankruptcy Code sections 1122 and 1123.

B. Treatment of Claims and Interests

1. Class 1 – Miscellaneous Secured Claims

a. *Classification:* Class 1 consists of the Miscellaneous Secured Claims.

b. *Treatment:* In full and complete satisfaction of an Allowed Miscellaneous Secured Claim against the Debtors, each Holder of an Allowed Class 1 Miscellaneous Secured Claim shall receive, either:

(i) such other treatment as may be agreed upon by any such Holder of a Miscellaneous Secured Claim, the Debtors (prior to the Effective Date), and the Liquidating Trustee (after the Effective Date), or

(ii) at the Debtors' or Liquidating Trustee's option, as applicable: (x) payment in full in cash of the Allowed amount of such Miscellaneous Secured Claim (as determined by settlement or order of the Bankruptcy Court), or (y) treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

c. *Voting:* Holders of Miscellaneous Secured Claims in Class 1 are Unimpaired and therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

2. Class 2 – Non-Tax Priority Claims

a. *Classification:* Class 2 consists of the Non-Tax Priority Claims.

b. *Treatment:* In full and complete satisfaction of an Allowed Non-Tax Priority Claim against the Debtors, each Holder of an Allowed Class 2 Non-Tax Priority Claim shall receive payment in full on the Effective Date in cash of the allowed amount of such Claim (as determined by settlement or order of the Bankruptcy Court), or such other treatment as may be agreed upon by the Holder of a Non-Tax Priority Claim, the Debtors (prior to the Effective Date), and the Liquidating Trustee (after the Effective Date).

c. *Voting:* Holders of Non-Tax Priority Claims in Class 2 are Unimpaired and therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

3. Class 3 – General Unsecured Claims

a. *Classification*: Class 3 consists of the General Unsecured Claims.

b. *Treatment*: In full and complete satisfaction of an Allowed General Unsecured Claim against the Debtors, each Holder of an Allowed Class 3 General Unsecured Claim shall receive its Pro Rata share of the Liquidating Trust Assets (including cash and recoveries of Causes of Action), net of Allowed Professional Fee Claims, Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Non-Tax Priority Claims, and Liquidating Trust Expenses.

c. *Voting:* Holders of General Unsecured Claims in Class 3 are Impaired and therefore, are entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

4. Class 4 – Section 510(b) Claims

a. *Classification*: Class 4 consists of all Section 510(b) Claims.

b. *Allowance:* Notwithstanding anything to the contrary herein, a Section 510(b) Claim, if any such Claim exists, may only become Allowed by a Final Order of the Bankruptcy Court. The Debtors are not aware of any valid Section 510(b) Claim and believe that no such Section 510(b) Claim exists.

c. *Treatment*: Allowed Section 510(b) Claims, if any, shall be canceled, released, and extinguished as of the Effective Date, and

will be of no further force or effect, and Holders of Allowed Section 510(b) Claims will not receive any distribution on account of such Allowed Section 510(b) Claims.

d. *Voting*: Holders of Section 510(b) Claims in Class 4 are deemed Impaired and are deemed to reject the Combined Plan and Disclosure Statement. As such, Holders of Section 510(b) Claims in Class 4 are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

5. Class 5 – Intercompany Claims

a. *Classification*: Class 5 consists of the Intercompany Claims.

b. *Treatment*: Each of the Debtors shall agree that any and all Intercompany Claims between the Debtors will be canceled on the Effective Date and the Debtors shall not receive any recovery, subject to tax considerations minimizing the Debtors' tax liabilities.

c. *Voting*: Holders of Intercompany Claims in Class 4 are deemed Impaired and are deemed to reject the Combined Plan and Disclosure Statement. As such, Holders of Intercompany Claims in Class 5 are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

6. Class 6 – Existing Equity

a. *Classification:* Class 6 consists of all Existing Equity.

b. *Treatment*: On the Effective Date, existing equity of the Debtors shall be cancelled, and the Holders of existing equity interests shall receive no Distribution under the Combined Plan and Disclosure Statement.

c. *Voting*: Holders of Existing Equity in Class 6 are deemed Impaired and are deemed to reject the Combined Plan and Disclosure Statement. As such, Holders of Existing Equity in Class 6 are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

C. Impaired Claims and Interests

Under the Combined Plan and Disclosure Statement, Holders of Claims in Classes 3, 4, and 5 are the Impaired Classes pursuant to Bankruptcy Code section 1124 because the Combined Plan and Disclosure Statement alters the legal, equitable, or contractual rights of the Holders of such Claims treated in such Classes.

D. Cramdown and No Unfair Discrimination

To the extent that any Impaired Class does not vote to accept the Combined Plan and Disclosure Statement, the Debtors will seek Confirmation pursuant to Bankruptcy Code section 1129(b). This provision allows the Bankruptcy Court to confirm a plan of reorganization accepted by at least one impaired class so long as it does not unfairly discriminate and is fair and equitable with respect to each class of claims and interest that is impaired and has not accepted the plan. Colloquially, this mechanism is known as a "cramdown."

The Debtors believe the treatment of Claims and Interests described in the Combined Plan and Disclosure Statement are fair and equitable and do not discriminate unfairly. The proposed treatment of Claims and Interests provides that each Holder of such Allowed Claim or Interest will be treated identically within its respective Class and that, except when agreed to by such Holder, no Holder of any Claim or Interest junior will receive or retain any property on account of such junior Claim or Interest.

VII. Confirmation Procedures

A. Confirmation Procedures

1. Confirmation Hearing

The Confirmation Hearing before the Bankruptcy Court has been scheduled for **August 14, 2024 at 10:00 a.m. (prevailing Eastern time)** at the United States Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom No. 1, Wilmington, Delaware 19801 to consider (a) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125, and (b) confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing and filed with the Bankruptcy Court.

2. Procedure for Objections

Any objection to approval or confirmation of the Combined Plan and Disclosure Statement must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim held by the objector. Any such objection must be filed by **August 7, 2024 at 4:00 p.m. (prevailing Eastern time)** with the Bankruptcy Court and served on (i) counsel to the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware, Attn: Jeremy W. Ryan, Esq. (jryan@potteranderson.com) and L. Katherine Good, Esq. (kgood@potteranderson.com) and (ii) the Office of the United States Trustee for the District of Delaware, Attn: Linda J. Casey (Linda.Casey@usdoj.gov). Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court.

3. Requirements for Confirmation

The Bankruptcy Court will confirm the Combined Plan and Disclosure Statement only if the requirements of Bankruptcy Code section 1129 are met. As set forth in the Combined Plan and Disclosure Statement, the Debtors believe that the Combined Plan and Disclosure Statement: (a) meets the cramdown requirements; (b) meets the feasibility requirements; (c) is in the best interests of creditors; (d) has been proposed in good faith; and (e) meets all other technical requirements imposed by the Bankruptcy Code.

Additionally, pursuant to Bankruptcy Code section 1126, under the Combined Plan and Disclosure Statement, only Holders of Claims in Impaired Classes are entitled to vote.

B. Solicitation and Voting Procedures

1. Eligibility to Vote on the Combined Plan and Disclosure Statement

Except as otherwise ordered by the Bankruptcy Court, only Holders of Claims in Class 3 against the Debtors may vote on the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1126. To vote on the Combined Plan and Disclosure Statement, a Holder must hold a Claim in Class 3 and have timely filed a Proof of Claim or have a Claim that is identified on the Schedules and is not listed as disputed, unliquidated, or contingent, or be the holder of a Claim that has been temporarily Allowed for voting purposes only under Bankruptcy Rule 3018(a).

ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASS 3.

2. Solicitation Package

The Solicitation Packages will contain: (a) the Combined Plan and Disclosure Statement and any exhibits or schedules thereto; (b) the Solicitation Procedures Order, excluding the exhibits annexed thereto; (c) notice of the Confirmation Hearing; (d) an appropriate Ballot, including voting instructions and a pre-addressed, postage prepaid return envelope; and (e) such other materials as the Bankruptcy Court may direct or approve, or that the Debtors deem appropriate.

Holders of Claims in non-voting classes that are deemed to either accept or reject the Combined Plan and Disclosure Statement will receive packages consisting of: (a) notice of the Confirmation Hearing; and (b) a notice of such Holder's non-voting status.

Copies of the Combined Plan and Disclosure Statement and any exhibits annexed thereto shall be available on the Claims and Noticing Agent's website at https://www.donlinrecano.com/Clients/tfi/Index. Any creditor or party-in-interest can request a hard copy of the Combined Plan and Disclosure Statement be sent to them by regular mail by contacting the Claims and Noticing Agent by email at tfiinfo@donlinrecano.com, or phone at 866-703-9066 (toll-free).

3. Voting Procedures and Voting Deadline

The Voting Record Date for determining which Holders of Claims in Class 3 may vote on the Combined Plan and Disclosure Statement is [Month] [Day], 2023.

The Voting Deadline by which the Claims and Noticing Agent must *RECEIVE* original Ballots is **August 7, 2024 at 4:00 p.m. (prevailing Eastern time)**. In order to be counted as a vote to accept or reject the Combined Plan and Disclosure Statement, each Ballot must be properly delivered to the Claims and Noticing Agent by either: (i) mail to Donlin, Recano & Company, Inc., Re: Taronis Fuels, Inc., et al., Attn: Voting Department, P.O. Box 2053, New York, NY 10272-2042; (ii) overnight courier or hand delivery to Donlin, Recano & Company, Inc., c/o Equiniti, Attn: Voting Department, 48 Wall Street, New York, NY 10005; or (iii) online transmission through the Claims and Noticing Agent's customized, electronic balloting platform at https://www.donlinrecano.com/Clients/tfi/vote ("E-Ballot Portal"). The E-Ballot Portal will be available on the Case Website for the Chapter 11 Cases. Holders of Claims in Class 3 may cast an E-Ballot and electronically sign and submit such electronic ballot via the E-Ballot Portal. Instructions for casting an electronic Ballot will be available on the Case Website.

If you are entitled to vote to accept or reject the Combined Plan and Disclosure Statement, a Ballot is enclosed. Please carefully review the Ballot instructions and complete the Ballot by: (a) indicating your acceptance or rejection of the Combined Plan and Disclosure Statement; and (b) signing and returning the Ballot to the Claims and Noticing Agent.

If you are a member of a Class entitled to vote and did not receive a Ballot, received a damaged Ballot, or lost your Ballot, contact the Claims and Noticing Agent – Donlin, Recano & Company, Inc. – at (866) 703-9066 (U.S. and Canada); (212) 771-1128 (outside the U.S. and Canada); or at tfiinfo@donlinrecano.com.

The following Ballots will not be counted or considered:

(a) any Ballot received after the Voting Deadline, unless the Bankruptcy Court grants an extension to the Voting Deadline with respect to such Ballot or the Debtors in their discretion agree to such extension;

(b) any Ballot that is illegible or contains insufficient information;

(c) any Ballot cast by a Person or Entity that does not hold a Claim in a Class entitled to vote;

(d) any Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of the Combined Plan and Disclosure Statement or that indicates both acceptance and rejection of the Combined Plan and Disclosure Statement;

(e) simultaneous duplicative Ballots voted inconsistently;

(f) Ballots partially rejecting and partially accepting the Combined Plan and Disclosure Statement;

(g) any Ballot received other than the official form sent by the Claims and Noticing Agent;

(h) any unsigned Ballot; or

(i) any Ballot that is submitted by facsimile or e-mail except via the E-Ballot Portal, unless the Debtors in their discretion agree to accept such Ballot by facsimile or e-mail.

4. Deemed Acceptance or Rejection

Holders of Claims in Classes 1 and 2 are unimpaired, and thus deemed to accept the Combined Plan and Disclosure Statement. Under Bankruptcy Code section 1126(f), Holders of such Claims are conclusively presumed to have accepted the Combined Plan and Disclosure Statement, and the votes of the Holders of such Claims shall not be solicited.

Holders of Claims in Classes 4 and 5 will not receive any Distribution under the Combined Plan and Disclosure Statement. Pursuant to Bankruptcy Code section 1126(g), Holders of Claims in Classes 4 and 5 are conclusively deemed to have rejected the Combined Plan and Disclosure Statement and the votes of these Holders therefore shall not be solicited.

5. Acceptance by an Impaired Class

In order for the Combined Plan and Disclosure Statement to be accepted by an Impaired Class of Claims, a majority in number (i.e., more than half) and two-thirds in dollar amount of the Claims voting (of each Impaired Class of Claims) must vote to accept the Combined Plan and Disclosure Statement. At least one (1) Impaired Class of creditors, excluding the votes of insiders, must actually vote to accept the Combined Plan and Disclosure Statement. The Debtors urge that you vote to accept the Combined Plan and Disclosure Statement.

YOU ARE URGED TO COMPLETE, DATE, SIGN, AND PROMPTLY MAIL THE BALLOT ATTACHED TO THE NOTICE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR.

VIII. Implementation and Execution of the Combined Plan and Disclosure Statement

A. Effective Date

The Effective Date shall not occur until all conditions for the Effective Date are satisfied or otherwise waived in accordance with the terms of the Combined Plan and Disclosure Statement. Upon occurrence of the Effective Date, the Debtors shall file a notice of Effective Date, which shall also be posted on the Case Website.

B. Implementation of the Combined Plan and Disclosure Statement

1. General

The Combined Plan and Disclosure Statement shall be implemented as described in detail below; *provided*, *however*, that the provisions contained in the Combined Plan and Disclosure Statement shall be subject in all respects to the provisions of the Sale Orders, the asset purchase agreements associated with the California and Texas Sales, and the Final DIP Order; and nothing in the Combined Plan and Disclosure Statement shall be deemed to modify, negate, abrogate, overrule, or supersede the terms and provisions of the aforementioned documents.

2. Corporate Action, Officers and Directors, and Effectuating Documents

On the Effective Date, all matters and actions provided for under the Combined Plan and Disclosure Statement that would otherwise require approval of the Officer(s) or director(s) of the Debtors, including the Chief Restructuring Officer, shall be deemed to have been authorized and effective in all respects as provided herein and shall be taken without any requirement for further action by the Board.

The Chief Restructuring Officer, prior to the Effective Date, or the Liquidating Trustee, after the Effective Date, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate and implement the provisions of the Combined Plan and Disclosure Statement.

C. Records

The Liquidating Trustee shall retain those documents maintained by the Debtors in the ordinary course of business and which were not otherwise transferred to the Purchasers pursuant to the Sale Orders. After receipt of such documents, the Liquidating Trustee shall be authorized to destroy any documents he or she deems necessary or appropriate in his or her reasonable judgment; *provided*, *however*, that the Liquidating Trustee shall not destroy any documents, including but not limited to tax documents, that the Liquidating Trust is required to retain under applicable law.

D. Liquidating Trust

1. Establishment of the Liquidating Trust

The Liquidating Trust will be formed on the Effective Date in accordance with the Combined Plan and Disclosure Statement and pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (i) implementing the Combined Plan and Disclosure Statement, (ii) prosecuting the Causes of Action (including Avoidance Actions and D&O Claims), (iii) investigating and, if appropriate, pursuing other Causes of Action (including Avoidance Actions and D&O Claims), (iv) administering, monetizing and/or liquidating the Liquidating Trust Assets, (v) resolving all Disputed Claims, and (v) making all Distributions to Holders of Allowed Claims

from the Liquidating Trust and as provided for in the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement.

The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, prosecuting any Causes of Action transferred to the Liquidating Trust to maximize recoveries for the benefit of the Liquidating Trust Beneficiaries, and making Distributions in accordance with the Combined Plan and Disclosure Statement to the Liquidating Trust Beneficiaries, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust Beneficiaries treated as grantors and owners of the trust.

Upon establishment of the Liquidating Trust, all Liquidating Trust Assets shall be deemed transferred to the Liquidating Trust without any further action of any of the Debtors, or any employees, Officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtors. The Debtors shall have the power and authority to enter into the Liquidating Trust Agreement on the Effective Date.

The Liquidating Trust Agreement will be filed by no later than the filing of the Plan Supplement and will be considered an integral part of the Combined Plan and Disclosure Statement and is incorporated herein by reference in its entirety.

2. Appointment and Duties of Liquidating Trustee

Appointment of the Liquidating Trustee. The Liquidating Trustee will be a disinterested Person designated by the Debtors in the Plan Supplement. 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. As set forth herein, the material terms of the Liquidating Trustee's compensation are included in the Liquidating Trust Agreement. Effective as of the Effective Date, the Board and/or members/managers of each Debtor shall be comprised solely of the Liquidating Trustee. Effective as of the Effective Date, to the extent not previously resigned, each member of the Board, Officer, manager, or member of each Debtor shall be deemed to have resigned and shall have no continuing obligations to the Debtors on or after the Effective Date. Effective as of the Effective Date, the sole Officer/director/member/manager of each Debtor shall be the Liquidating Trustee.

The Liquidating Trustee shall carry out the duties as set forth in this Section VIII.D and in the Liquidating Trust Agreement. Pursuant to Bankruptcy Code section 1123(b)(3), the Liquidating Trustee shall be deemed the appointed representative to, and may pursue, litigate, and compromise and settle any such rights, Claims, and Causes of Action in accordance with the best interests of and for the benefit of the Liquidating Trust Beneficiaries. In the event that the Liquidating Trustee resigns, is removed, terminated, or otherwise unable to serve as the Liquidating Trustee, then a successor shall be appointed as set forth in the Liquidating Trust Agreement. Any successor Liquidating Trustee appointed shall be bound by and comply with the

terms of the Combined Plan and Disclosure Statement, the Confirmation Order, and the Liquidating Trust Agreement.

Responsibilities and Authority of Liquidating Trustee. The responsibilities and authority of the Liquidating Trustee shall include: (a) establishing reserves and investing cash; (b) liquidating non-cash Liquidating Trust Assets; (c) retaining and paying Professionals as necessary to carry out the purposes of the Liquidating Trust; (d) preparing and filing tax returns for the Debtors and the Liquidating Trust as set forth herein; (e) preparing and filing reports and other documents necessary to conclude and close the Chapter 11 Cases; (f) objecting to, reconciling, seeking to subordinate, compromising, or settling any or all Claims and Interests, and administering Distributions on account of the Holders of Allowed Claims that are Liquidating Trust Beneficiaries pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement; (g) evaluating, filing, litigating, settling, or otherwise pursuing any Causes of Action; (h) abandoning any property of the Liquidating Trust that cannot be sold or distributed economically; (i) making interim and final Distributions of Liquidating Trust Assets; (j) winding up the affairs of the Liquidating Trust and dissolving it under applicable law; (k) destroying records once they are no longer needed for administration of the Chapter 11 Cases or the Liquating Trust; and (l) such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order, or any Bankruptcy Court order or as may be necessary and proper to carry out the provisions of the Combined Plan and Disclosure Statement.

Powers of the Liquidating Trustee. The Liquidating Trustee shall have the power and authority to perform the acts described in the Liquidating Trust Agreement (subject to approval by the Bankruptcy Court where applicable), in addition to any powers granted by law or conferred to it by any other provision of the Combined Plan and Disclosure Statement, including without limitation any powers set forth herein, *provided however*, that enumeration of the following powers shall not be considered in any way to limit or control the power and authority of the Liquidating Trustee to act as specifically authorized by any other provision of the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order, and/or any applicable law, and to act in such manner as the Liquidating Trustee may deem necessary or appropriate to take any act deemed appropriate by the Liquidating Trustee, including, without limitation, to discharge all obligations assumed by the Liquidating Trustee or provided herein and to conserve and protect the Liquidating Trust or to confer on the creditors the benefits intended to be conferred upon them by the Combined Plan and Disclosure Statement. The Liquidating Trustee shall have the power and authority without further approval by the Bankruptcy Court to liquidate the Liquidating Trust Assets, to hire and pay professional fees and expenses of counsel and other advisors, including Contingency Counsel, to prosecute and settle objections to Disputed Claims, to prosecute and settle any Cause of Action, and otherwise take any action as shall be necessary to administer the Chapter 11 Cases and effect the closing of the Chapter 11 Cases, including, without limitation, as follows: (a) the power to invest funds, in accordance with Bankruptcy Code section 345, make Distributions and pay taxes and other obligations owed by the Liquidating Trust from funds held by the Liquidating Trustee in accordance with the Combined Plan and Disclosure Statement and Liquidating Trust Agreement; (b) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and Professionals, including Contingency

Counsel, to assist the Liquidating Trustee with respect to his or her responsibilities; (c) the power to pursue, prosecute, resolve, and compromise and settle any Causes of Action on behalf of the Liquidating Trust without prior Bankruptcy Court approval but in accordance with the Liquidating Trust Agreement; (d) the power to object to Claims, including, without limitation, the power to subordinate and recharacterize Claims by objection, motion, or adversary proceeding; and (e) such other powers as may be vested in or assumed by the Liquidating Trustee pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order, any other Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Combined Plan and Disclosure Statement. Except as expressly set forth in the Combined Plan and Disclosure Statement and in the Liquidating Trust Agreement, the Liquidating Trustee, on behalf of the Liquidating Trust, shall have absolute discretion to pursue or not to pursue any Causes of Action as it determines is in the best interests of the Liquidating Trust Beneficiaries and consistent with the purposes of the Liquidating Trust, and shall have no liability for the outcome of his or her decision, other than those decisions constituting gross negligence or willful misconduct. The Liquidating Trustee may incur any reasonable and necessary expenses in liquidating and converting the Liquidating Trust Assets to cash. Subject to the other terms and provisions of the Combined Plan and Disclosure Statement, the Liquidating Trustee shall be granted standing, authority, power, and right to assert, prosecute and/or settle the Causes of Action and/or make a claim under any primary director and officer liability, employment practices liability, or fiduciary liability insurance policies based upon its powers as a Court-appointed representative of the Estates with the same or similar abilities possessed by insolvency trustees, receivers, examiners, conservators, liquidators, rehabilitators, or similar officials.

Enforcement of Any Avoidance Actions and Other Causes of Action. Pursuant to Bankruptcy Code section 1123(b), the Liquidating Trustee, on behalf of and for the benefit of the Liquidating Trust Beneficiaries, shall be vested with and shall retain and may enforce any Avoidance Actions and D&O Claims and other Causes of Action transferred to the Liquidating Trust that were held by, through, or on behalf of the Debtors and/or the Estates against any other Person, arising before the Effective Date that have not been fully resolved or disposed of prior to the Effective Date, whether or not such Avoidance Actions and D&O Claims are specifically identified in the Combined Plan and Disclosure Statement and whether or not litigation with respect to same has been commenced prior to the Effective Date. The recoveries from any Avoidance Action, D&O Claim, and other Causes of Action transferred to the Liquidating Trust will be deposited into the Liquidating Trust and distributed in accordance with the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement.

Compensation of Liquidating Trustee. The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement; *provided, however* that such compensation shall only be payable from the Liquidating Trust Assets. The Liquidating Trustee shall fully comply with the terms, conditions, and rights set forth in the Combined Plan and Disclosure Statement, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee shall not be required to file a fee application to receive compensation.

Retention and Payment of Professionals. The Liquidating Trustee shall have the right to retain the services of attorneys, accountants, and other professionals and agents, including counsel,

to assist and advise the Liquidating Trustee in the performance of his or her duties and compensate such professionals from the Liquidating Trust Assets as set forth in the Liquidating Trust Agreement, including but not limited to, Professionals retained by the Debtors, without the need for an order of the Bankruptcy Court.

Limitation of Liability of the Liquidating Trustee. The Liquidating Trust shall indemnify the Liquidating Trustee and his or her Professionals against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits, or claims that the Liquidating Trustee or his or her Professionals may incur or sustain by reason of being or having been a Liquidating Trustee or Professional of the Liquidating Trustee for performing any functions incidental to such service; *provided, however*, the foregoing shall not relieve the Liquidating Trustee or his or her professionals from liability for willful misconduct, reckless disregard of duty, breach of fiduciary duty, criminal conduct, gross negligence, fraud, or self-dealing.

3. Purpose of Liquidating Trust

The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, prosecuting any Causes of Action transferred to the Liquidating Trust to maximize recoveries for the benefit of the Liquidating Trust Beneficiaries, and making Distributions in accordance with the Combined Plan and Disclosure Statement to the Liquidating Trust Beneficiaries with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d).

The Liquidating Trust shall be responsible for filing all required federal, state, and local tax returns and/or informational returns for the Liquidating Trust, and, to the extent not previously filed, for any of the Debtors. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements including, without limitation, requiring that, as a condition to the receipt of a Distribution, the Holder of an Allowed Claim complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each Holder. Notwithstanding any other provision of this Combined Plan and Disclosure Statement, (a) each Holder of an Allowed Claim that is to receive a Distribution from the Liquidating Trust shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Combined Plan and Disclosure Statement unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee to allow it to comply with its tax withholding and reporting requirements. Any property to be distributed by the Liquidating Trust shall, pending the implementation of such arrangements, be treated as an unclaimed Distribution to be held by the Liquidating Trustee, as the case may be, until such time as the Liquidating Trustee is satisfied with the Holder's arrangements for any withholding tax obligations.

In connection with the consummation of this Combined Plan and Disclosure Statement, the Debtors and the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority and all Distributions hereunder shall be subject to any such withholding and reporting requirements. All Liquidating Trust Beneficiaries, as a condition to receiving any Distribution, shall provide the Liquidating Trustee with a completed and executed Tax Form W-8 or Tax Form W-9, or similar form within sixty (60) days of a written request by the Liquidating Trustee or be forever barred from receiving a Distribution.

4. Transfer of Liquidating Trust Assets to Liquidating Trust

Pursuant to Bankruptcy Code sections 1123(a)(5) and 1141, all transfers and contributions made to the Liquidating Trust shall be made free and clear of all Claims, liens, encumbrances, charges, and other Interests. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtors will have no further interest in, or with respect to, the Liquidating Trust Assets or the Liquidating Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) will treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms of the Combined Plan and Disclosure Statement as a transfer to the Liquidating Trust Beneficiaries, followed by a transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

5. Preservation of Rights

Under the Combined Plan and Disclosure Statement, but subject in all respects to the Sale Orders, the Liquidating Trustee retains any and all rights of, and on behalf of, the Debtors, the Estates, and the Liquidating Trust to commence and pursue any and all Causes of Action, including, without limitation, Avoidance Actions, other causes of action, setoff, offset, and recoupment rights, regardless of whether or not such rights are specifically enumerated in the Combined Plan and Disclosure Statement, the Plan Supplement, or elsewhere or the representative of the Estates pursuant to section 1123 of the Bankruptcy Code and all other applicable law, and all such rights shall not be deemed modified, waived, released in any manner, nor shall confirmation of the Combined Plan and Disclosure Statement or the Confirmation Order act as *res judicata* or limit any of such rights of the Liquidating Trustee to commence and pursue any and all Causes of Action, Avoidance Actions, and other causes of actions, or Claims, including, without limitation, setoff, offset and recoupment rights, to the extent the Liquidating Trustee deems appropriate. Any and all Causes of Action, including, without limitation, Avoidance Actions, other causes of action, setoff, offset, and recoupment rights, may, but need not, be pursued by the Debtors prior to the Effective Date and by the Liquidating Trustee after the Effective Date, to the extent warranted.

Unless a Cause of Action, Avoidance Action, or other Claim or cause of action against a creditor or other Entity is expressly waived, relinquished, released, compromised, or settled in the Combined Plan and Disclosure Statement, or any Final Order, including the Sale Orders, the

Debtors expressly reserve any and all Causes of Action, including, without limitation, setoff, offset, and recoupment rights, for later enforcement and prosecution by the Liquidating Trustee (including, without limitation, any Causes of Actions set forth in the Plan Supplement, or not specifically identified herein, or otherwise, or which the Debtors may presently be unaware of, or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time, or facts or circumstances which may change or be different from those which the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such any and all Causes of Action, including, without limitation, setoff, offset, and recoupment rights, upon or after the confirmation or consummation of the Combined Plan and Disclosure Statement based on the Combined Plan and Disclosure Statement or the Confirmation Order. In addition, the Liquidating Trust expressly reserves the right to pursue or adopt any and all Causes of Action, including, without limitation, setoff, offset, and recoupment rights, alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, subject to the provisions of the Combined Plan and Disclosure Statement or any Final Order.

The Debtors and the Liquidating Trustee do not intend, and it should not be assumed (nor shall it be deemed) that because any existing or potential Causes of Action, including, without limitation, setoff, offset, and recoupment rights, have not yet been pursued by the Debtors or are not set forth herein, or otherwise, that any Causes of Action, including, without limitation, setoff, offset, and recoupment rights, has been waived or expunged.

6. Liquidating Trust Expenses

The Liquidating Trustee may, in the ordinary course of business and without the necessity for any application to, or approval of, the Bankruptcy Court, pay any accrued but unpaid Liquidating Trust Expenses. All Liquidating Trust Expenses shall be charged against and paid from the Liquidating Trust Assets as provided in the Liquidating Trust Agreement.

7. Privileges

On and subject to the terms of the Combined Plan and Disclosure Statement, all of the Debtors' privileges (the "Privileges"), including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "Transferred Privileges") shall be transferred, assigned, and delivered to the Liquidating Trust, without waiver, limitation, or release, and shall vest with the Liquidating Trust on the Effective Date.

The Liquidating Trust shall hold and be the beneficiary of all Transferred Privileges and entitled to assert all Transferred Privileges. No Privilege shall be waived by disclosures to the Liquidating Trustee of the Debtors' documents, information, or communications subject to any privilege, protection, or immunity or protections from disclosure jointly held by the Debtors and the Liquidating Trust.

The Debtor's Privileges relating to the Liquidating Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement. Nothing contained herein or in the Confirmation Order, nor any Professional's compliance herewith and therewith, shall constitute a breach or waiver of any Privileges.

To the extent of any conflict between this Section VIII.D.7 of the Combined Plan and Disclosure Statement and any other provision of the Combined Plan and Disclosure Statement relating to Privileges, this Section VIII.D.& shall control.

8. Liquidating Trust Interest

Each Liquidating Trust Interest will entitle its Holder to Distributions from the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement. The Liquidating Trust Interests will be uncertificated; thus, Distributions from a Liquidating Trust Interest will be accomplished solely by the entry of names of the Holders and their respective Liquidating Trust Interests in the books and records of the Liquidating Trust. Each Holder of a Liquidating Trust Interest shall take and hold its uncertificated beneficial Interest subject to all the terms and provisions of the Combined Plan and Disclosure Statement, the Confirmation Order, and the Liquidating Trust Agreement.

The Liquidating Trust Interests shall not be registered pursuant to the Securities Act of 1933, as amended, or any state securities law and shall be exempt from registrations thereunder pursuant to section 1145 of the Bankruptcy Code. The Liquidating Trust Interest shall be freely transferrable; *provided, however*, that the transfer of the Liquidating Trust Interest will be prohibited to the extent such transfer would subject the Debtors or the Liquidating Trust to the registration and reporting requirements of the Securities Act and the Security Exchange Act.

9. Termination of Liquidating Trust

The Liquidating Trust shall be dissolved upon the earlier of the Distribution of all of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries or the fifth (5th) anniversary of the creation of the Liquidating Trust, *provided that* the Liquidating Trustee shall, in his/her sole discretion, be authorized to seek to extend the dissolution date upon Bankruptcy Court approval by the filing of a motion served on the master service list for cause shown. This motion must be filed with the Bankruptcy Court no earlier than six (6) months before the termination date of the Liquidating Trust.

E. Effective Date and Other Transactions

1. Transfer of Assets to Liquidating Trust

On the Effective Date, except as otherwise expressly provided in the Combined Plan and Disclosure Statement, title to the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all liens, encumbrances, or interests of any kind. Except as otherwise provided in the Sale Orders or the Combined Plan and Disclosure Statement, the Liquidating Trust shall succeed

to all rights and interests retained by or provided to the Debtors and the Estates to the extent permitted under the Sale Orders.

On the Effective Date, the Debtors will transfer to the Liquidating Trust the Liquidating Trust Assets. All Debtors shall thereafter be deemed dissolved on the Effective Date without the need for further notice or action.

F. Provisions Governing Distributions under the Combined Plan and Disclosure Statement

1. Method of Payment

Except as otherwise provided herein, any Distributions and deliveries to be made hereunder with respect to Claims that are Allowed as of the Effective Date shall be made on the Effective Date or as soon thereafter as is reasonably practicable. Except as otherwise provided herein, any Distributions and deliveries to be made hereunder with respect to Claims that are Allowed after the Effective Date shall be made as soon as is reasonably practicable after the date on which such Claim becomes Allowed. Distributions made after the Effective Date to Holders of Allowed Claims shall be deemed to have been made on the Effective Date and, except as otherwise provided in the Combined Plan and Disclosure Statement, no interest shall accrue or be payable with respect to such Claims or any Distribution related thereto. In the event that any payment or act under the Combined Plan and Disclosure Statement is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

All Distributions hereunder shall be made by the Debtors, the Liquidating Trustee, or his/her named successor or assign, as "Disbursing Agent," on or after the Effective Date or as otherwise provided herein. For the avoidance of doubt, (i) the Debtors or such other Entity designated by the Debtors, shall act as Disbursing Agent with respect to all Effective Date Distributions, and (ii) the Liquidating Trustee, or such other Entity designated by the Liquidating Trustee, shall act as Disbursing Agent with respect to all other Distributions to be made pursuant to the Combined Plan and Disclosure Statement or the Liquidating Trust Agreement following the Effective Date. A Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court, and, in the event that a Disbursing Agent is so ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Disbursing Agent.

Unless otherwise expressly agreed in writing, all cash payments to be made pursuant to the Combined Plan and Disclosure Statement shall be made by check drawn on a domestic bank or an electronic wire.

2. Delivery of Distributions

Except as otherwise provided herein, Distributions to Holders of Allowed Claims shall be made: (a) at the addresses set forth on the respective Proofs of Claim filed by such Holders; (b) at the addresses set forth in any written notice of address changes delivered to the Liquidating Trustee after the date of any related Proof of Claim; or (c) at the address reflected in the Schedules or other more recent records of the Debtors if no Proof of Claim is filed and the Liquidating Trustee has not received a written notice of a change of address.

Subject to applicable Bankruptcy Rules, all Distributions to Holders of Allowed Claims shall be made to the Disbursing Agent who shall transmit such Distributions to the applicable Holders of Allowed Claims or their designees. If any Distribution to a Holder of an Allowed Claim is returned as undeliverable the Disbursing Agent shall make reasonable inquiry for a correct current address. In the event reasonable inquiry does not yield a correct current address, the Disbursing Agent shall have no further obligation to determine the correct current address of such Holder and no Distribution to such Holder shall be made unless and until the Disbursing Agent is notified, in writing, by the Holder of the correct current address of such Holder within ninety (90) days of such Distribution, at which time a Distribution shall be made to such Holder without interest; *provided that* such Distributions shall be deemed unclaimed property or an unclaimed Distribution under Bankruptcy Code section 347(b) at the expiration of ninety (90) days from the Distribution. After such date, all unclaimed property or interest in property shall revert to the Liquidating Trust and (i) if there are to be further Distributions to Holders of Allowed Claims, such unclaimed property or interest in property shall be distributed to Holders of Allowed Claims in accordance with the terms of the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement, (ii) if a final Distribution has been made, such unclaimed property or interest in property shall be disposed of in accordance with Section VIII.F.5 of the Combined Plan and Disclosure Statement and the Claim of any other Holder to such property or interest in property shall be released and forever barred.

3. Objection to and Resolution of Claims

Except as expressly provided herein, or in any order entered in the Chapter 11 Cases prior to the Effective Date, including the Confirmation Order, no Claim or Interest shall be deemed Allowed unless and until such Claim or Interest is deemed Allowed under the Combined Plan and Disclosure Statement or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases allowing such Claim or Interest. On or after the Effective Date, the Liquidating Trust shall be vested with any and all rights and defenses each Debtor had with respect to any Claim or Interest immediately prior to the Effective Date.

Except as provided herein and in Article IX of the Combined Plan and Disclosure Statement, the Liquidating Trustee or other party in interest with standing, to the extent permitted pursuant to section 502(a) of the Bankruptcy Code, shall file and serve any objection to any Claim no later than the Claims Objection Deadline.

4. Preservation of Rights to Settle Claims

Except as otherwise expressly provided herein, including in Article XI of the Combined Plan and Disclosure Statement, nothing contained in the Combined Plan and Disclosure Statement and related documents, or in the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that the Debtors or their Estates may have or which the Liquidating Trustee may choose to assert on behalf of the Estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law or rule, common law, equitable principle or other source of right or obligation, including, without limitation, (a) any and all claims against any Person or Entity, to the extent such Person or Entity asserts a crossclaim, counterclaim, and/or claim for setoff which seeks affirmative relief against the Debtors, their Officers, directors, or representatives, and (b) the turnover of all property of the Estates. This section shall not apply to any Claims sold, released, waived, relinquished, exculpated, compromised, or settled under the Combined Plan and Disclosure Statement or pursuant to a Final Order, expressly including the Sale Orders. Except as expressly provided in the Combined Plan and Disclosure Statement, nothing contained in the Combined Plan and Disclosure Statement and related documents, or in the Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense. No Entity may rely on the absence of a specific reference in the Combined Plan and Disclosure Statement, the Plan Supplement, or any other document related to the Combined Plan and Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Liquidating Trustee, as applicable, will not pursue any and all available Causes of Action against them. The Debtors and the Liquidating Trustee expressly reserve all rights to prosecute any and all Causes of Action against any Person or Entity, except as otherwise expressly provided in the Combined Plan and Disclosure Statement.

5. Miscellaneous Distribution Provisions

Disputed Claims. At such time as a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall distribute to the Holder of such Claim the Distribution to which such Holder is entitled under the Combined Plan and Disclosure Statement with respect to the Class in which such Claim belongs. To the extent that all or a portion of a Disputed Claim is Disallowed, the Holder of such Claim shall not receive any Distribution on account of the portion of such Claim that is Disallowed and any property withheld pending the resolution of such Claim shall be reallocated Pro Rata to the Holders of Allowed Claims in the same Class.

Disputed Claims Reserve. The Liquidating Trustee may establish a separate Disputed Claims Reserve in accordance with the Liquidating Trust Agreement on account of Distributions of cash or other property as necessary hereunder. The Liquidating Trustee shall not make any Distributions of Liquidating Trust Assets to the Liquidating Trust Beneficiaries unless the Liquidating Trustee retains and reserves in the Disputed Claims Reserve such amounts as are reasonably necessary to satisfy amounts that would have been distributed in accordance with Combined Plan and Disclosure Statement in respect of Disputed Claims if the Disputed Claims were determined to be Allowed Claims immediately prior to such proposed Distribution to the Liquidating Trust Beneficiaries.

Distributions After Allowance. To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, a Distribution shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Combined Plan and Disclosure Statement. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Trustee or, as applicable, the Disbursing Agent shall provide to the Holder of such Claim the Distribution to which such Holder is entitled hereunder.

Setoff. The Debtors or Liquidating Trustee, as applicable, retain the right to reduce any Claim by way of setoff in accordance with the Debtors' books and records and in accordance with the Bankruptcy Code. A claimant may challenge any such setoff made by the Debtors or the Liquidating Trustee in the Bankruptcy Court or any other court with jurisdiction.

Postpetition Interest. Except as may be expressly provided herein, interest shall not accrue on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date. No prepetition Claim shall be Allowed to the extent it is for postpetition interest or other similar charges, except to the extent permitted for Holders of Secured Claims, if any, under section 506(b) of the Bankruptcy Code.

Minimum Distributions. Notwithstanding anything herein to the contrary, (a) the Liquidating Trustee shall not be required to make Distributions or payments of fractions of dollars, and whenever any Distribution of a fraction of a dollar under the Combined Plan and Disclosure Statement would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down; and (b) the Liquidating Trustee shall have no duty to make a Distribution on account of any Allowed Claim (i) if the aggregate amount of all Distributions authorized to be made on such date is less than $100,000, in which case such Distributions shall be deferred to the next Distribution date, (ii) if the amount to be distributed to a Holder on the particular Distribution date is less than $100.00, unless such Distribution constitutes the final Distribution to such Holder, or (iii) if the amount of the final Distribution to such Holder is $50.00 or less, in which case no Distribution will be made to that Holder and such Distribution shall revert to the Liquidating Trust for distribution on account of other Allowed Claims.

Donation of Remaining Liquidating Trust Assets. After final Distributions have been made in accordance with the terms of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement, if the amount of remaining cash is less than $30,000, the Liquidating Trustee shall donate such amount to charity in accordance with the terms of the Liquidating Trust Agreement.

IX. Executory Contracts and Unexpired Leases

A. Background

During the Chapter 11 Cases, the Debtors rejected various Executory Contracts and Unexpired Leases of non-residential real property as further described herein. The Sale Orders also provide for certain treatment of Executory Contracts and Unexpired Leases. While nothing

in the Combined Plan and Disclosure Statement shall be deemed to supersede Sale Orders, Article IX of the Combined Plan and Disclosure Statement is included out of an abundance of caution.

B. Executory Contracts and Unexpired Leases

All Executory Contracts and Unexpired Leases of the Debtors which have not been assumed, assigned, and/or rejected prior to the Effective Date and that are not subject to a motion to assume or reject as of the Effective Date (if any) shall be deemed rejected on the Effective Date, but the rejection will be effective as of the entry of the Confirmation Order.

C. Rejection Claims

In the event that the rejection of an Executory Contract or Unexpired Lease by any of the Debtors pursuant to the Combined Plan and Disclosure Statement results in a Rejection Claim in favor of a counterparty to such Executory Contract or Unexpired Lease, such Rejection Claim, if not heretofore evidenced by a timely and properly filed Proof of Claim, shall be forever barred and shall not be enforceable against the Debtors or the Liquidating Trust, or their respective properties or Interests in property as agents, successors, or assigns, unless a Proof of Claim is filed with the Bankruptcy Court and served upon counsel for the Debtors and the Liquidating Trustee on or before the date that is thirty (30) days after service of notice of the Effective Date, which notice shall set forth the bar date for Rejection Claims. All Allowed Rejection Claims shall be treated as General Unsecured Claims in Class 3 pursuant to the terms of the Combined Plan and Disclosure Statement.

X. Conditions Precedent to Confirmation and the Effective Date

A. Conditions Precedent to Confirmation

The following is the list of conditions precedent to Confirmation:

(1) the Plan Supplement is filed;

(2) the form of Liquidating Trust Agreement shall be agreed upon by the Debtors and the proposed Liquidating Trustee; and

(3) the Combined Plan and Disclosure Statement shall not have been materially amended, altered, or modified from the Combined Plan and Disclosure Statement as filed unless such material amendment, alteration, or modification has been made in accordance with Article XIII herein.

B. Conditions Precedent to the Effective Date

The following is the list of conditions precedent to the Effective Date:

(1) The Bankruptcy Court shall have entered the Confirmation Order acceptable to the Debtors and the Confirmation Order shall be a Final Order;

(2) no stay of the Confirmation Order shall then be in effect;

(3) the Liquidating Trust Agreement shall be executed and the Liquidating Trustee shall have been appointed and accepted such appointment;

(4) the Combined Plan and Disclosure Statement shall not have been materially amended, altered, or modified from the Combined Plan and Disclosure Statement as confirmed by the Confirmation Order, unless such material amendment, alteration, or modification has been made in accordance with Article XIII herein; and

(5) the Debtors shall have filed a notice of Effective Date.

C. Waiver of Conditions

The conditions precedent to Confirmation and conditions precedent to the Effective Date may be waived in whole or in part, in writing, by each of the Debtors, without further order of the Bankruptcy Court.

D. Effect of Nonoccurrence of Conditions

If the conditions precedent to the Effective Date are not satisfied or waived, the Debtors may, upon motion and notice to parties in interest, seek to vacate the Confirmation Order; *provided, however*, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions precedent to the Effective Date are satisfied or waived before the Bankruptcy Court enters an order granting such motion.

If the Confirmation Order is vacated: (a) the Combined Plan and Disclosure Statement is null and void in all respects; and (b) nothing contained in the Combined Plan and Disclosure Statement shall (i) constitute a waiver or release of any Claims by or against the Debtors, or (ii) prejudice, in any manner, the rights of the Debtors or any other party in interest.

XI. Exculpation, Injunctions, and Releases

A. Injunction

All injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the Confirmation Date shall remain in full force and effect until the later of (a) the Effective Date, or (b) the date indicated in the order providing for such injunction or stay. Notwithstanding the foregoing, nothing herein shall be otherwise deemed to modify, limit, amend, or supersede any injunctions or stays granted in the Sale Orders.

Except as otherwise provided in the Combined Plan and Disclosure Statement or to the extent necessary to enforce the terms and conditions of the Combined Plan and Disclosure Statement, the Confirmation Order, or a separate order of the Bankruptcy Court,

all entities who have held, hold, or may hold Claims against or Interests in the Debtors shall be permanently enjoined from taking any of the following actions against any of the property that is to be distributed under the terms of the Combined Plan and Disclosure Statement (including Liquidating Trust Assets), on account of any such Claims or Interests: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (c) creating, perfecting, or enforcing any lien or encumbrance; (d) asserting a right of setoff, other than any rights of setoff that were exercised prior to the Petition Date; and (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Combined Plan and Disclosure Statement; *provided, however*, that such Entities shall not be precluded from exercising their rights pursuant to and consistent with the terms of the Combined Plan and Disclosure Statement or the Confirmation Order; *provided, further*, that the foregoing shall not apply to any acts, omissions, claims, Causes of Action, or other obligations expressly set forth in and preserved by the Combined Plan and Disclosure Statement or any defenses thereto. Notwithstanding the foregoing, nothing herein shall be otherwise deemed to modify, limit, amend or supersede any injunctions or stays granted in the Sale Orders.

Notwithstanding any language to the contrary in the Combined Plan and Disclosure Statement and/or Confirmation Order, no provision shall (i) preclude the SEC from enforcing its police or regulatory powers; or (ii) enjoin, limit, impair, or delay the SEC from commencing or continuing any claims, causes of action, proceedings, or investigations against any non-Debtor person or non-Debtor entity in any forum. For the avoidance of doubt, the SEC's General Unsecured Claim will be paid in accordance with the Combined Plan and Disclosure Statement.

B. Exculpation

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT, EFFECTIVE AS OF THE EFFECTIVE DATE, THE EXCULPATED PARTIES SHALL NOT HAVE NOR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST OR ANY OF THEIR RELATED PERSONS FOR ANY POSTPETITION, BUT PRE-EFFECTIVE DATE, ACT OR OMISSION IN CONNECTION WITH, RELATED TO, OR ARISING OUT OF THE CHAPTER 11 CASES, THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE PURSUIT OF CONFIRMATION, THE SOLICITATION OF VOTES ON THE PLAN, THE CONFIRMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE CONSUMMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE ADMINISTRATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE PROPERTY TO BE LIQUIDATED AND/OR DISTRIBUTED UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT, OR ANY POSTPETITION, BUT PRE-EFFECTIVE DATE, ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR IN CONTEMPLATION OF THE LIQUIDATION OF THE DEBTORS, INCLUDING SPECIFICALLY THE PURSUIT AND ENTRY OF THE SALE ORDERS, EXCEPT FOR THEIR FRAUD, WILLFUL MISCONDUCT, OR

GROSS NEGLIGENCE AS SUBSEQUENTLY DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION, AND IN ALL RESPECTS SHALL BE ENTITLED TO RELY REASONABLY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT.

THE FOREGOING PARAGRAPH SHALL APPLY TO ATTORNEYS AND LAWYERS TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE BAR RULES AND CASE LAW BUT SHALL NOT BE DEEMED TO RELEASE, AFFECT, OR LIMIT ANY OF THE RIGHTS AND OBLIGATIONS OF THE EXCULPATED PARTIES FROM, OR EXCULPATE THE EXCULPATED PARTIES WITH RESPECT TO, ANY OF THE EXCULPATED PARTIES' OBLIGATIONS OR COVENANTS ARISING PURSUANT TO THIS COMBINED PLAN AND DISCLOSURE STATEMENT OR THE CONFIRMATION ORDER.

C. Releases and Limitation of Liability

ON THE EFFECTIVE DATE, THE RELEASED PARTIES SHALL BE FULLY RELEASED AND DISCHARGED BY THE DEBTORS AND THEIR ESTATES FROM ANY AND ALL LIABILITIES OF THE DEBTORS AND ALL CLAIMS OR CAUSES OF ACTION WHICH COULD BE PURSUED BY OR ON BEHALF OF THE DEBTORS, THEIR ESTATES, OR THE LIQUIDATING TRUSTEE PURSUANT TO THIS COMBINED PLAN AND DISCLOSURE STATEMENT.

Notwithstanding any language to the contrary in the Combined Plan and Disclosure Statement and/or Confirmation Order, nothing herein shall release any party from the Retained Avoidance Actions.

XII. Retention of Jurisdiction

Following the Confirmation Date and the Effective Date, the Bankruptcy Court shall retain jurisdiction for the following purposes:

(1) to hear and determine any objections to Claims and to address any issues relating to Disputed Claims;

(2) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

(3) to issue such orders in aid of execution and consummation of the Combined Plan and Disclosure Statement, to the extent authorized by Bankruptcy Code section 1142;

(4) to consider any amendments to or modifications of the Combined Plan and Disclosure Statement, to cure any defect or omission, or to reconcile any

inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(5) to hear and determine all requests for compensation and reimbursement of expenses to the extent allowed by the Bankruptcy Court under Bankruptcy Code sections 330 or 503;

(6) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Combined Plan and Disclosure Statement;

(7) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Sale Orders;

(8) to hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;

(9) to hear any other matter as to which the Bankruptcy Court has jurisdiction;

(10) to enter the Final Decree;

(11) to ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Combined Plan and Disclosure Statement;

(12) to decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;

(13) to issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Combined Plan and Disclosure Statement, except as otherwise provided herein;

(14) to determine any other matters that may arise in connection with or related to the Combined Plan and Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Combined Plan and Disclosure Statement;

(15) to determine any other matters that may arise in connection with or related to the Sale Orders or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Sale Orders;

(16) to enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, and rulings entered in connection with the Chapter 11 Cases (whether or not the Chapter 11 Cases have been closed);

(17) to resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof; and

(18) to resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Cases, the General Bar Date, the administrative claim bar date set forth in the Bar Date Order, the Governmental Bar Date, or the Confirmation Hearing for the purpose of determining whether a Claim or Interest is released or enjoined hereunder, or for any other purpose.

XIII. Miscellaneous Provisions

A. Amendment or Modification of the Combined Plan and Disclosure Statement

The Debtors may amend or modify the Combined Plan and Disclosure Statement at any time prior to entry of the Confirmation Order in accordance with the Bankruptcy Code and the Bankruptcy Rules, or after Confirmation and before substantial consummation, provided that the Combined Plan and Disclosure Statement, as modified, meets the requirements of Bankruptcy Code sections 1122 and 1123 and the circumstances warrant such modifications and any such modifications are in compliance with section 1127(b) of the Bankruptcy Code and Bankruptcy Rule 3019 (b). A Holder of a Claim that has accepted the Combined Plan and Disclosure Statement shall be deemed to have accepted such Combined Plan and Disclosure Statement as modified if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim of such Holder.

B. Closing of Certain Debtor Cases upon the Effective Date

Following the Effective Date, the Liquidating Trustee may file a motion and submit proposed orders for the entry by the Bankruptcy Court to effectuate the closing of each of the Chapter 11 Cases of the Debtors.

C. Plan Supplement

The Debtors will file the Plan Supplement no later than seven (7) days prior to the Voting Deadline. The Plan Supplement will contain, among other things: (a) Liquidation Analysis; (b) the Liquidating Trust Agreement; (c) identification of the Liquidating Trustee; (d) a schedule of Causes of Action; and (e) any other disclosures as required by the Bankruptcy Court.

D. Filing of Additional Documents

On or before substantial consummation of the Combined Plan and Disclosure Statement, the Liquidating Trustee shall file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement.

E. Entire Agreement

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

F. Binding Effect of Plan

The Combined Plan and Disclosure Statement shall be binding upon and inure to the benefit of the Debtors, the Holders of Claims, the Holders of Interests, other parties-in-interest and their respective successors, assigns and heirs. Notwithstanding anything to the contrary herein, nothing in the Combined Plan and Disclosure Statement modifies, alters, or amends the respective rights and obligations of the Debtors or Purchaser under the Sale Orders or any other document governing the Texas and California Sales.

G. Application of Bankruptcy Rule 7068

The Debtors, before the Effective Date, and the Liquidating Trustee following the Effective Date, are authorized to serve upon a Holder of Disputed Claim an offer to allow judgment to be taken on account of such Disputed Claim, and, pursuant to Bankruptcy Rule 7068 and 9014, Federal Rule of Civil Procedure 68 shall apply to such offer of judgment. To the extent the Holder of a Disputed Claim must pay the costs incurred by the Debtors or the Liquidating Trustee after the making of such offer, the Debtors and the Liquidating Trustee are entitled to set off such amounts against the amount of any Distribution to be paid to such Holder without any further notice to or action, order, or approval of the Bankruptcy Court.

H. Governing Law

Except as required by the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules, the rights and obligations arising under the Combined Plan and Disclosure Statement shall be governed by, and construed and enforced in accordance with the laws of the State of Delaware.

I. Time

To the extent that any time for the occurrence or happening of an event as set forth in the Combined Plan and Disclosure Statement falls on a day that is not a Business Day, the time for the next occurrence or happening of said event shall be extended to the next Business Day.

J. Severability

Should any provision of the Combined Plan and Disclosure Statement be deemed unenforceable after the Effective Date, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Combined Plan and Disclosure Statement.

K. Revocation

The Debtors reserve the right to revoke and withdraw the Combined Plan and Disclosure Statement prior to the entry of the Confirmation Order. If the Debtors revoke or withdraw the Combined Plan and Disclosure Statement, the Combined Plan and Disclosure Statement shall be deemed null and void, and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other Person, or to prejudice in any manner the rights of such parties in any further proceedings involving the Debtors.

L. Claims and Noticing Agent

The Claims and Noticing Agent, shall be relieved of such duties on the date of the entry of the Final Decree or upon written notice by the Debtors or Liquidating Trustee, and subject to approval by the Bankruptcy Court.

M. Inconsistency

To the extent that the Combined Plan and Disclosure Statement conflicts with or is inconsistent with any agreement related to the Combined Plan and Disclosure Statement, the provisions of the Combined Plan and Disclosure Statement shall control; *provided, however*, that nothing in the Combined Plan and Disclosure Statement shall be deemed to supersede, amend, or modify the provisions of the Sale Orders or the Final DIP Order. In the event of any inconsistency between any provision of any of the foregoing documents, and any provision of the Confirmation Order, the Confirmation Order shall control and take precedence.

N. No Admissions

Notwithstanding anything herein to the contrary, nothing contained in the Combined Plan and Disclosure Statement shall be deemed an admission by any Entity or Person with respect to any matter set forth herein.

O. Successors and Assigns

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

P. Post-Effective Date Limitation of Notice

After the Effective Date, in order to continue receiving documents pursuant to Bankruptcy Rule 2002, Persons and Entities must file with the Bankruptcy Court a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Persons and Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Persons and Entities that have filed with the Bankruptcy Court such a renewed request *provided, however*, that parties in interest shall also serve those parties directly affected

by, or having a direct interest in, the particular filing in accordance with Local Bankruptcy Rule 2002-1(b).

Q. Post-Confirmation Reporting

After the Effective Date, in accordance with the Guidelines established by the U.S. Trustee, the Liquidating Trustee will file quarterly operating reports with the Bankruptcy Court.

R. Substantial Consummation of the Plan

On the Effective Date, the Combined Plan and Disclosure Statement shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

S. Reservation of Rights

Except as expressly set forth herein, the Combined Plan and Disclosure Statement shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Combined Plan and Disclosure Statement, any statement or provision contained herein, or the taking of any action by the Debtors with respect to the Combined Plan and Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors, Holders of Claims, or Holders of Interests before the Effective Date.

T. No Discharge

As set forth in Bankruptcy Code section 1141(d)(3), the Combined Plan and Disclosure Statement does not grant the Debtors a discharge.

U. Term of Injunction or Stays

Unless otherwise provided in the Combined Plan and Disclosure Statement or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Combined Plan and Disclosure Statement or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Combined Plan and Disclosure Statement or the Confirmation Order shall remain in full force and effect in accordance with their terms.

V. Notices

To be effective, all notices, requests and demands to or upon the Debtors shall be in writing (which may be by E-mail, if available), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by E-mail, when received and telephonically confirmed, addressed to the following:

If to the Debtors:

Aurora Management Partners, Inc.
Attn: Timothy Turek and David Baker
112 South Tyron St.
Suite 1770
Charlotte, North Carolina 28284

With a copy (which shall not serve as notice) to:

Potter Anderson & Corroon LLP
Attn: Jeremy W. Ryan and L. Katherine Good
1313 North Market Street
6th Floor
Wilmington, Delaware 19801
jryan@pottteranderson.com
kgood@potteranderson.com

If to the Office of the United States Trustee:

U.S. Department of Justice
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207, Lockbox 35
Attn: Linda J. Casey, Esq.
Wilmington, DE 19801
Linda.casey@usdoj.gov

XIV. Recommendation

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

Dated: August 8, 2024
Wilmington, Delaware

/s/ Timothy Turek
Timothy Turek
Chief Restructuring Officer of the Debtors

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
TARONIS FUELS, INC., *et al.*,[1]	Case No. 22-11121 (BLS)
Debtors.	(Jointly Administered)

SECOND *AMENDED* COMBINED CHAPTER 11 PLAN ~~OF~~ OF LIQUIDATION AND DISCLOSURE STATEMENT FOR TARONIS FUELS, INC. AND AFFILIATE DEBTORS

POTTER ANDERSON & CORROON LLP
Jeremy W. Ryan (No. 4057)
L. Katherine Good (No. 5101)
Aaron H. Stulman (No. 5807)
R. Stephen McNeill (No. 5210)
Katelin A. Morales (No. 6683)
1313 N. Market Street, 6th Floor
Wilmington, Delaware 19801
Telephone: (302) 984-6000
Facsimile: (302) 658-1192
Email: jryan@potteranderson.com
kgood@potteranderson.com
astulman@potteranderson.com
rmcneill@potteranderson.com
kmorales@potteranderson.com

Counsel for Debtors and Debtors in Possession

[1] The Debtors in these chapter 11 cases, along with the last four digits (if any) of each Debtor's federal tax identification number include: Taronis Fuels, Inc. (7454), Taronis Sub IV LLC (6662), Taronis Sub III LLC (5826), Taronis Sub V LLC (8686), MagneGas Real Estate Holdings, LLC (7412), MagneGas IP, LLC (0988), MagneGas Production, LLC (7727), Taronis Sub I LLC (4205), Taronis-TAS, LLC (2356), Taronis-TAH, LLC (3542), and Taronis Sub II LLC (9673). The location of the Debtors' service address in these chapter 11 cases is c/o Aurora Management Partners (Attn: Tim Turek and David Baker) 112 South Tryon St., Suite 1770, Charlotte, NC 28284.

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NOTICE

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT EXCEPT AS EXPRESSLY INDICATED HEREIN. THE COMBINED PLAN AND DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION, AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED, OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT ON THE DEBTORS OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

PLEASE NOTE THAT MUCH OF THE INFORMATION CONTAINED HEREIN HAS BEEN TAKEN, IN WHOLE OR IN PART, FROM INFORMATION CONTAINED IN THE DEBTORS' BOOKS AND RECORDS AND CERTAIN PLEADINGS FILED BY THE DEBTORS WITH THE BANKRUPTCY COURT. ALTHOUGH THE DEBTORS HAVE ATTEMPTED TO BE ACCURATE IN ALL MATERIAL RESPECTS, THE DEBTORS ARE UNABLE TO REPRESENT OR WARRANT THAT ALL OF THE INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT IS WITHOUT ERROR. THE STATEMENTS CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS COMBINED PLAN AND DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 1125 AND 1126 AND BANKRUPTCY RULES 3016, 3017, AND 3018 AND NOT NECESSARILY IN COMPLIANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER RULES GOVERNING DISCLOSURE OUTSIDE THE CONTEXT OF CHAPTER 11.

NO REPRESENTATION CONCERNING THE DEBTORS OR THE VALUE OF THE DEBTORS' ASSETS HAS BEEN AUTHORIZED BY THE BANKRUPTCY COURT OTHER THAN AS SET FORTH IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT. THE DEBTORS ARE NOT RESPONSIBLE FOR ANY INFORMATION, REPRESENTATION, OR INDUCEMENT MADE TO OBTAIN YOUR ACCEPTANCE, WHICH IS OTHER THAN, OR INCONSISTENT WITH, INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT.

YOU ARE STRONGLY URGED TO CONSULT WITH YOUR FINANCIAL, LEGAL, AND TAX ADVISORS TO UNDERSTAND FULLY THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT IS GIVEN AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED. THE DELIVERY OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT DOES NOT, UNDER ANY CIRCUMSTANCE, IMPLY THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN AFTER SUCH DATE. THIS COMBINED PLAN AND DISCLOSURE STATEMENT MUST BE READ IN CONJUNCTION WITH ANY EXHIBITS.

IF A HOLDER OF A CLAIM WISHES TO CHALLENGE THE ALLOWANCE OR DISALLOWANCE OF A CLAIM FOR VOTING PURPOSES UNDER THE TABULATION RULES SET FORTH IN THE SOLICITATION PROCEDURES ORDER, SUCH ENTITY MUST FILE A MOTION, PURSUANT TO BANKRUPTCY RULE 3018(a), FOR AN ORDER TEMPORARILY ALLOWING SUCH CLAIM IN A DIFFERENT AMOUNT OR CLASSIFICATION FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN AND SERVE SUCH MOTION ON THE UNDERSIGNED COUNSEL TO THE DEBTORS SO THAT IT IS RECEIVED NO LATER THAN **4:00 P.M., PREVAILING EASTERN TIME, ON ~~[[MONTH] [DAY]~~JULY 11, 2024~~]~~.** THE DEBTORS AND OTHER PARTIES IN INTEREST SHALL HAVE UNTIL ~~**4:00 P.M., PREVAILING EASTERN TIME, ON [[MONTH] [DAY]**~~**JULY 18, 2024**~~]~~ TO FILE AND SERVE ANY RESPONSES TO SUCH MOTIONS. UNLESS THE BANKRUPTCY COURT ORDERS OTHERWISE, SUCH CLAIM WILL NOT BE COUNTED FOR VOTING PURPOSES IN EXCESS OF THE AMOUNT DETERMINED IN ACCORDANCE WITH THE TABULATION RULES.

I. Introduction and Executive Summary[2]

The Debtors propose the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code sections 1125 and 1129, and Local Rule 3017-2. The Debtors are the "proponents" of the Combined Plan and Disclosure Statement within the meaning of Bankruptcy Code section 1129.

[2] All capitalized terms used but not defined in the introduction and executive summary shall have the meanings ascribed to them in Article III of the Combined Plan and Disclosure Statement.

Copies of the Combined Plan and Disclosure Statement and all other documents related to the Chapter 11 Cases are available for review without charge on the Case Website at: https://www.donlinrecano.com/Clients/tfi/Index.

The Combined Plan and Disclosure Statement is a liquidating chapter 11 plan for the Debtors. The Purchased Assets from both the California Sale and the Texas Sale have been transferred from the Debtors to the respective Purchasers as part of closing of each sale. The Combined Plan and Disclosure Statement provides that, upon the Effective Date, the Liquidating Trust Assets will be transferred to the Liquidating Trust and the Debtors will be dissolved. The Liquidating Trust Assets will be administered and distributed as soon as practicable pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement.

Each Holder of a Claim against the Debtors who is entitled to vote to accept or reject the Combined Plan and Disclosure Statement is encouraged to read the Combined Plan and Disclosure Statement in its entirety before voting.

Holders of Miscellaneous Secured Claims (classified in Class 1) are not Impaired and will receive, either (a) such other treatment as may be agreed upon by any such holder of a Miscellaneous Secured Claim, the Debtors (prior to the Effective Date), and the Liquidation Trustee (after the Effective Date), or (b) at the Debtors' option: (i) payment in full in cash of the allowed amount of such Miscellaneous Secured Claim (as determined by settlement or order of the Bankruptcy Court), or (ii) treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

Holders of Non-Tax Priority Claims (classified in Class 2) are not Impaired and will be paid in full in cash on the Effective Date of the allowed amount of such claim, or receive such other treatment as may be agreed upon by the holder of a Non-Tax Priority Claim, the Debtors (prior to the Effective Date), and the Liquidation Trustee (after the Effective Date).

Holders of General Unsecured Claims (classified in Class 3) are Impaired and will be paid Pro Rata from the Liquidating Trust Assets (including cash and recoveries of Estate Claims), net of Allowed Professional Fee Claims, Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Non-Tax Priority Claims, and the administrative expenses of the Liquidating Trustee and his or her professionals.

Holders of Intercompany Claims (classified in Class 4) and Existing Equity (classified in Class 5) are Impaired and are not entitled to receive any Distribution.

The Liquidating Trust Expenses, including the fees of the Liquidating Trustee and fees for the Liquidating Trustee's professionals, will be paid out of the Liquidating Trust Assets prior to any interim or final Distribution being made to Holders of Claims or Interests.

Subject to the restrictions on modifications as set forth in Bankruptcy Code section 1127, Bankruptcy Rule 3019, and in the Combined Plan and Disclosure Statement, the Debtors expressly reserve the right to alter, amend, or modify the Combined Plan and Disclosure

Statement one or more times before the Confirmation Hearing and/or its substantial consummation.

II. Important Dates

Voting Record Date	~~[Month] [Day]~~July 2, 2024
Deadline to Mail Solicitation Packages and all Notices	~~[Month] [Day]~~July 5, 2024
~~Deadline to Object to Claims for Voting Purposes Only~~	~~[Month] [Day], 2024 at 4:00 p.m. (prevailing Eastern time)~~
Deadline to File Plan Supplement	~~[Month] [Day]~~July 31, 2024~~ at 4:00 p.m. (prevailing Eastern time)~~
Deadline for Creditors to File Rule 3018 Motions	~~[Month] [Day]~~July 11, 2024~~ at 4:00 p.m. (prevailing Eastern time)~~
Deadline to Respond to Rule 3018 Motions	~~[Month] [Day]~~July 18, 2024~~ at 4:00 p.m. (prevailing Eastern time)~~
Voting Deadline for the Combined Plan and Disclosure Statement	~~[Month] [Day]~~August 7, 2024 at 4:00 p.m. (prevailing Eastern time)
Combined Plan and Disclosure Statement Objection Deadline	~~[Month] [Day]~~August 7, 2024 at 4:00 p.m. (prevailing Eastern time)
Deadline to File Confirmation Brief and Other Evidence Supporting the Combined Plan and Disclosure Statement, and form of Confirmation Order	~~[Month] [Day]~~August 12, 2024 at ~~5:00 p.m~~12:00 p.m. (prevailing Eastern time)
Deadline to File Voting Tabulation Affidavit	~~[Month] [Day]~~August 12, 2024 at ~~5:00 p.m~~12:00 p.m. (prevailing Eastern time)
Confirmation Hearing	~~[Month] [Day]~~August 14, 2024 at ~~[]:[] [a/p].m~~10:00 a.m. (prevailing Eastern time)

III. Definitions and Construction of Terms

A. Definitions

"**Administrative Claim Bar Date**" means, for any unpaid Administrative Expense Claim arising on or between February 11, 2023 and the Effective Date, the date that is thirty (30) calendar days after service of the notice of Effective Date, with such date to be provided in the notice of Effective Date, *provided, however*, Professional Fee Claims shall cover the period beginning from each Professional's retention date pursuant to an order of the Bankruptcy Court and the Effective Date. Administrative Expense Claims arising from the Petition Date through and including February 10, 2023 are governed by the Bar Date Order and subject to the administrative claim bar date set therein.

"**Administrative Expense Claim**" means any right to payment constituting actual and necessary costs and expenses of preserving the Estates under Bankruptcy Code sections 503(b) and 507(a)(2) including, without limitation any fees or charges assessed against the Estates under section 1930 of title 28 of the United States Code and Professional Fee Claims.

"Affiliate" means an "affiliate" as defined in Bankruptcy Code section 101(2).

"**Airgas**" means Airgas USA, LLC.

"**Airgas Sale**" means the prepetition sale of the Debtors' retail operations for their industrial gas and welding supply distribution to Airgas USA, LLC for $7 million, plus the assumption of certain liabilities.

"**Allowed**" means, with reference to any Claim, proof of which was properly filed or, if no Proof of Claim was filed, that has been or hereafter is listed by a Debtor on its Schedules as liquidated in amount and not disputed or contingent and, in each case, as to which: (a) no objection to allowance has been interposed within the applicable period fixed by the Combined Plan and Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or the Bankruptcy Court; or (b) an objection has been interposed and such Claim has been allowed by the Bankruptcy Court, in whole or in part, by a Final Order.

"**Arizona District Court**" means the United States District Court for the District of Arizona.

"**Assets**" means any and all right, title, and interest of the Debtors in and to property of whatever type or nature, real or personal, tangible or intangible, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, works in progress, accounts, chattel paper, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, Causes of Action, Claims, other causes of action, and any general intangibles, but specifically excludes the Purchased Assets.

"**Avoidance Actions**" means any and all Causes of Action and rights to recover or avoid transfers or to avoid any lien under chapter 5 of the Bankruptcy Code or applicable state law or otherwise which were excluded from the definition of Purchased Assets pursuant to the Sale Orders.

"**Ballot**" means the voting form distributed to each Holder of an Impaired Claim entitled to vote on the Combined Plan and Disclosure Statement, on which the Holder is to indicate acceptance or rejection of the Combined Plan and Disclosure Statement in accordance with the voting instructions and make any other elections or representations required pursuant to the Combined Plan and Disclosure Statement.

"**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware, having jurisdiction over the Chapter 11 Cases or, if such Court ceases to exercise jurisdiction over the Chapter 11 Cases, such other court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases in lieu of the United States Bankruptcy Court for the District of Delaware.

"**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure, as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time.

"**Bar Date Motion**" means the *Debtors' Motion for Entry of an Order (I) Establishing Deadlines for the Filing of Proofs of Claim and Requests for Allowance of Administrative Expense Claims, (II) Approving the Forms and Manner of Notice Thereof, and (III) Granting Related Relief* filed on February 1, 2023 [Docket No. 281].

"**Bar Date Order**" means the *Order (I) Establishing Deadlines for the Filing of Proofs of Claim and Requests for Allowance of Administrative Expense Claims, (II) Approving the Forms and Manner of Notice Thereof, and (III) Granting Related Relief* [Docket No. 308].

"**Board**" means the members of the Debtors' Board of Directors from any time prior to or after the Petition Date through the Effective Date.

"**Business Day**" means any day other than a Saturday, Sunday, or any other day on which commercial banks in Wilmington, Delaware are required or authorized to close by law or executive order.

"**California Assets**" means all of the assets, including real property, used in the industrial gas and welding supply business of MagneGas West that were sold, assigned, transferred, conveyed, and delivered to Airgas pursuant to the California Sale Order and the asset purchase agreement attached thereto as Exhibit A. Any inconsistencies that arise under this definition shall be interpreted in favor of the definition of "Purchased Assets" in the asset purchase agreement, as modified by the California Sale Order.

"**California Sale**" means the sale of the California Assets free and clear of liens, claims, interests, and encumbrances, pursuant to the California Sale Order and the asset purchase agreement attached thereto as Exhibit A.

"**California Sale Order**" means the *Order (I) Authorizing the Private Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Authorizing Sellers to Assume and Assign Certain Executory Contracts, (III) Approving Bidder Protections, and (IV) Granting Related Relief* [Docket No. 135].

"**Case Website**" means the website maintained by the Claims and Noticing Agent where parties are able to view the Combined Plan and Disclosure Statement and other documents related to the Chapter 11 Cases at https://www.donlinrecano.com/Clients/tfi/Index.

"**Causes of Action**" means any Claim, cause of action (including Retained Avoidance Actions, Avoidance Actions, and D&O Claims), controversy, right of setoff, cross claim, counterclaim, or recoupment, and any claim on contracts or for breaches of duties not transferred to the Purchasers pursuant to the Sale Orders and not otherwise expressly released hereunder imposed by law or in equity, demand, right, action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, power, privilege, license, or franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law, that have not been waived by a prior order of the Bankruptcy Court or released under the Combined Plan and Disclosure Statement. ~~A non-exclusive schedule of Causes of Action will be provided in the Plan Supplement.~~

"**Chapter 11 Cases**" means the chapter 11 cases initiated by the Debtors' filing on the Petition Date of voluntary petitions for relief in the Bankruptcy Court under chapter 11 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered by the Bankruptcy Court under Case No. 22-11121 (BLS).

"**Chief Restructuring Officer**" means Timothy Turek from Aurora Management Partners, Inc.

"**Claim**" shall have the meaning set forth in Bankruptcy Code section 101(5).

"**Claims and Noticing Agent**" means Donlin, Recano & Company, Inc. in its capacity as claims and noticing agent to the Debtors.

"**Claims Objection Deadline**" means the date that is one hundred and eighty (180) days after the Effective Date or such later date as may be approved by the Bankruptcy Court upon motion. Upon filing a motion to extend the Claims Objection Deadline, the Claims Objection Deadline shall be automatically extended as provided by the Local Rules.

"**Claims Register**" means the official register of Claims maintained by the Claims and Noticing Agent.

"**Class**" means any group of substantially similar Claims or Interests classified by the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code sections 1122 and 1123(a)(1).

"**Clerk**" means the Clerk of the Bankruptcy Court.

"**Combined Plan and Disclosure Statement**" means this combined chapter 11 plan of liquidation and disclosure statement including, without limitation, all exhibits, supplements, appendices, and schedules hereto, either in their present form or as the same may be altered, amended, or modified from time to time, including those set forth in the Plan Supplement.

"**Confirmation**" means confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129.

"**Confirmation Date**" means the date on which the Confirmation Order is entered on the Docket.

"**Confirmation Hearing**" means the combined hearing to be held by the Bankruptcy Court to consider (a) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125, and (b) confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129, as such hearing may be adjourned or continued from time to time.

"**Confirmation Order**" means the order of the Bankruptcy Court confirming the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129.

"**Contingency Counsel**" means any counsel engaged by the Debtors, the Liquidating Trust, and/or the Liquidating Trustee on a contingency fee basis to pursue the Causes of Action, Avoidance Actions, Retained Avoidance Action, and/or any other Claims pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement.

"**CRCM**" means CRCM Opportunity Fund III, LP.

"**CRCM NPA**" means that certain note purchase agreement by and between Taronis Fuels and CRCM whereby Taronis Fuels issued $2.5 million of convertible promissory notes to CRCM.

"**CRCM Adversary Action**" means that certain adversary action commenced against CRCM on January 5, 2023 to recover transfers made to CRCM related to the CRCM NPA, currently pending before the Bankruptcy Court styled as *Taronis Fuels, Inc. v. CRCM Opportunity Fund III, LP* (Adv. Proc. No. 23-50002).

"**Creditor**" means any Person that is the Holder of a Claim against the Debtors as defined in Bankruptcy Code section 101(10).

"**D&O Claims**" means any Claims or Causes of Action arising prior to the Petition Date and held by the Debtors or their Estates against current and former members of the Board and current and former officers of the Debtors, except as limited by Article XI.C hereof.

"**Debtors**" means, collectively, Taronis Fuels, Taronis Sub IV, Taronis Sub III, Taronis Sub V, MagneGas Real Estate, MagneGas IP, MagneGas Production, Taronis Sub I, Taronis-TAS, Taronis-TAH, and Taronis Sub II.

"**DIP Loan Agreement**" means the *Loan and Security Agreement*, dated as of October 21, 2020, as amended from time to time including the *Third Modification to Loan and Security*

Agreement [Debtor-in-Possession] among the Debtors, the DIP Lender, and guarantors identified therein [Docket No. 136, Exhibit A-1].

"**DIP Facility**" means the senior secured superpriority credit facility in the aggregate principal amount of $11,000,000, consisting of (a) a $5,600,000 postpetition multi-draw loan, and (b) a roll-up of the Prepetition Loan into loans under the DIP Facility, subject to the terms and conditions of the DIP Orders and the DIP Loan Agreement.

"**DIP Facility Claim**" means all Claims against the Debtors by the DIP Lender under the DIP Loan Agreement and DIP Orders, including, without limitation, principal, accrued and unpaid interest, any reimbursement obligations (contingent or otherwise), all fees, expenses, and disbursements (including, without limitations, attorneys' fees, financial advisors' fees, and related expenses and disbursements incurred by, or on behalf of, the DIP Lender), indemnification obligations, all other charges, amounts, and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect thereof.

"**DIP Lender**" means Tech Capital, LLC, in its capacity as lender under the DIP Loan Agreement.

"**DIP Motion**" means the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Secured Liens and Provide Claims with Superpriority Administrative Expense Status, and (D) Grant Adequate Protection to the Prepetition Secured Parties; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief* [Docket No. 13].

"**DIP Orders**" means, collectively, the (i) *Interim Order (I) Authorizing the Debtors to Obtain Postpetittion Financing, (II) Granting Liens and Providing Superprioirty Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 37]; (ii) *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 136]; and (iii) *Order Amending Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 241].

"**Disallowed**" means any Claim or any portion thereof that (i) has been Disallowed by a Final Order, (ii) is not Scheduled and as to which no Proof of Claim or Administrative Expense Claim has been filed or submitted, (iii) is Scheduled as zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim or Administrative Expense Claim has been filed or submitted, or (iv) has been withdrawn by the Holder of the Claim, or by agreement of the Debtors and the Holder thereof.

"**Disputed**" means any Claim or Interest, or any portion thereof, that is (a) listed on the Schedules as unliquidated, disputed, and/or contingent for which no Proof of Claim in a liquidated and non-contingent amount has been filed, or (b) the subject of an objection or request for estimation filed by the Debtors or the Liquidating Trustee or any other party in interest in accordance with applicable law and which objection has not been withdrawn, resolved, or overruled by a Final Order.

"**Distribution**" means any distribution to the Holders of Allowed Claims against the Debtors pursuant to the Combined Plan and Disclosure Statement.

"**Docket**" means the docket in these Chapter 11 Cases maintained by the Clerk.

"**ECT NPA**" means that certain note purchase agreement by and between Taronis Fuels and the Ezrah Charitable Trust whereby Taronis Fuels issued $1.25 million of convertible promissory notes to the Ezrah Charitable Trust.

"**ECT Adversary Action**" means that certain adversary action commenced against the Ezrah Charitable Trust on January 5, 2023 to recover transfers made to the Ezrah Charitable Trust related to the ECT NPA and currently pending before the Bankruptcy Court styled as *Taronis Fuels, Inc. v. The Ezrah Charitable Trust* (Adv. Proc. No. 23-50001).

"**Effective Date**" means the date on which the conditions specified in Article X.B of the Combined Plan and Disclosure Statement have been met or satisfied.

"**Effective Date Distributions**" means all Distributions required to be made on the Effective Date of the Combined Plan and Disclosure Statement to the Holders of Claims against the Debtors that are Allowed as of the Effective Date.

"**Entity**" means an "entity" as defined in Bankruptcy Code section 101(15).

"**ERISA Action**" means the action initiated by Tyler B. Wilson against Taronis Fuels currently pending in the Arizona District Court styled as *Wilson v. Taronis Fuels, Inc.*, Case No. 2:22-cv-00229-SPL.

"**Espri Sale**" means the prepetition sale whereby the Debtors sold their Florida wholesale operations to Tech-Gas Solutions LLC, an entity formed by TMG Gases Inc. (d/b/a EspriGas), for $8.6 million, plus the assumption of certain liabilities.

"**Estates**" means the estates of the Debtors created upon the commencement of the Chapter 11 Cases pursuant to Bankruptcy Code section 541.

"**Exculpated Parties**" means, with respect to the period beginning from the Petition Date, individually and collectively, in each case solely in their capacity as such, each and all of: (a) the Debtors' Officers; (b) the Chief Restructuring Officer; and (c) the Debtors' Professionals

retained in the Chapter 11 Cases by order of the Bankruptcy Court~~; and (d) the Claims and Noticing Agent, including any and all of the foregoing such parties' Related Persons~~.

"**Executory Contract**" or "**Unexpired Lease**" means, as the case may dictate, any executory contract or unexpired lease as of the Petition Date between the Debtors and any other Person or Persons, specifically excluding contracts and agreements entered into pursuant to the Combined Plan and Disclosure Statement.

"**Existing Equity**" means existing equity of the Debtors, classified in Class 5 in the Combined Plan and Disclosure Statement.

"**Final Decree**" means the order entered pursuant to Bankruptcy Code section 350, Bankruptcy Rule 3022, and Local Rule 5009-1 closing the Chapter 11 Cases.

"**Final DIP Order**" means, collectively, the (i) *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 136] and (ii) *Order Amending Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Superpriority Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 241].

"**Final Order**" means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction that has been entered on the docket in the Chapter 11 Cases (or the docket of such other court) that is not subject to a stay and has not been modified, amended, reversed, or vacated and as to which (a) the time to appeal, petition for certiorari, move for leave to appeal, or move for a new trial, reargument, or rehearing pursuant to Bankruptcy Rule 9023 has expired and as to which no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing shall then be pending, or (b) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, such order or judgment shall have been affirmed by the highest court to which such order was timely and properly appealed, or certiorari shall have been denied or a new trial, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument, or rehearing shall have expired.

"**First Day Declaration**" means the *Declaration of R. Jered Ruyle in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Docket No. 15].

"**First Day Motions**" refer collectively to those certain motions filed by the Debtors on or shortly after the Petition Date, and as more specifically identified in Part III of the First Day Declaration.

"**First Day Orders**" means the Final Orders entered by the Bankruptcy Court approving the First Day Motions and granting the relief set forth in each First Day Motion.

"**Forbearance Agreement**" means that certain forbearance agreement whereby the Prepetition Lender agreed to forbear from exercising any of its right and remedies under the Prepetition Loan until October 6, 2022.

"**General Bar Date**" means, with respect to those Claims covered by the Bar Date Order, March 27, 2023 at 5:00 p.m. prevailing Eastern Time, excluding Proofs of Claim filed by a Governmental Unit, which must be submitted by the Governmental Bar Date.

"**General Unsecured Claims**" means any unsecured Claim against the Debtors which is *not* a Non-Tax Priority Claim, Administrative Expense Claim, Professional Fee Claim, Priority Tax Claim, Miscellaneous Secured Claim, Intercompany Claim, Section 510(b) Claim, or Existing Equity.

"**Governmental Bar Date**" means, pursuant to the Bar Date Order, the date by which Proofs of Claim on behalf of Governmental Units must be submitted: May 10, 2023 at 5:00 p.m. prevailing Eastern Time.

"**Governmental Unit**" means a "governmental unit" as defined in Bankruptcy Code section 101(27).

"**Holder**" means the beneficial holder of any Claim or Interest.

"**Impaired**" means, with respect to any Class, a Class that is impaired within the meaning of Bankruptcy Code sections 1123(a)(4) and 1124.

"**Intercompany Claims**" means any Claim held by one Debtor against another Debtor.

"**Interest**" means any "equity security" in a Debtor as defined in Bankruptcy Code section 101(16), including, without limitation, all issued, unissued, authorized, or outstanding ownership interests (including common and preferred) or other equity interests and membership units, together with any warrants, options, convertible securities, liquidating preferred securities, or contractual rights to purchase or acquire any such equity interests at any time and all rights arising with respect thereto.

"**Interim DIP Order**" means the *Interim Order (I) Authorizing the Debtors to Obtain Postpetittion Financing, (II) Granting Liens and Providing Superprioirty Expense Status, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief* [Docket No. 37].

"**Liquidating Trust**" means the liquidating trust established on the Effective Date pursuant to the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement for the purpose of administering the Liquidating Trust Assets and to make one or more Distribution(s) to Holders of Allowed Claims against the Debtors.

"**Liquidating Trust Agreement**" means the trust agreement, and related documents, that documents and governs the powers, duties, and responsibilities of the Liquidating Trustee, and

which agreement will be materially consistent with and subject to the Combined Plan and Disclosure Statement and otherwise in the substance and form included in the Plan Supplement.

"**Liquidating Trust Assets**" means the (a) Causes of Action, including (i) Avoidance Actions, (ii) Retained Avoidance Actions, (iii) D&O Claims, (~~iii~~iv) any other Claims and Causes of Action that are not Purchased Assets under the Sale Orders, and (iv) the proceeds of each of the forgoing; (b) any other remaining Assets of the Estates, and (c) any and all Claims and Causes of Action related to or arising under the Sale Orders.

"**Liquidating Trust Beneficiaries**" means, collectively, the Holders of Allowed Claims under the Combined Plan and Disclosure Statement against the Debtors, or any successors to such Holders, or their interests in the Liquidating Trust, whether said Claims are Allowed before or after the Effective Date.

"**Liquidating Trust Expenses**" means all actual and necessary fees, costs, expenses, and obligations incurred or owed by the Liquidating Trustee or its agents, employees, attorneys, advisors, or other professionals in administering the Combined Plan and Disclosure Statement and the Liquidating Trust (including, without limitation, reasonable compensation for services rendered, and reimbursement for actual and necessary expense incurred by the Liquidating Trustee and its agents, employees, and professionals) arising after the Effective Date through and including the date upon which the Bankruptcy Court enters a Final Decree closing the Chapter 11 Cases, which shall be solely payable from the Liquidating Trust Assets prior to any Distribution to Creditors.

"**Liquidating Trust Interests**" mean the non-certificated beneficial interests of the Liquidating Trust allocable to Holders of Allowed Claims in accordance with the terms of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement, which may or may not be transferable.

"**Liquidating Trustee**" means the Person selected to administer the Liquidating Trust under the Liquidating Trust Agreement and as identified in the Plan Supplement and the Liquidating Trust Agreement.

"**Local Rules**" means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

"**MagneGas IP**" means MagneGas IP, LLC, a Debtor in the Chapter 11 Cases.

"**MagneGas Production**" means MagneGas Production, LLC, a Debtor in the Chapter 11 Cases.

"**MagneGas Real Estate**" means MagneGas Real Estate Holdings, LLC, a Debtor in the Chapter 11 Cases.

"**Merchant NPA**" means that certain note purchase agreement by and between Taronis Fuels and the Merchant Livestock Company, Inc. whereby Taronis Fuels issued $2.5 million of convertible promissory notes to the Merchant Livestock Company, Inc.

"**Merchant Notes**" means the $2.5 million of convertible promissory notes issued under the Merchant NPA.

"**MGP**" means MGP Holdings II Corp.

"**Miscellaneous Secured Claims**" means Claims which are: (a) secured by a valid and perfected lien in collateral which is enforceable pursuant to applicable law, the amount of which is equal to or less than the value of such collateral (i) as set forth in the Combined Plan and Disclosure Statement, (ii) as agreed to by the Holder of such Claim and the Debtors, or (iii) as determined by a Final Order in accordance with Bankruptcy Code section 506(a); or (b) subject to a valid right of setoff under Bankruptcy Code section 553 that is not a DIP Facility Claim or Prepetition Loan Claim.

"**Non-Tax Priority Claims**" means any Claim entitled to priority pursuant to Bankruptcy Code section 507(a) other than Administrative Expense Claims, Professional Fee Claims, and Priority Tax Claims.

"**OCP Order**" means the *Order (I) Authorizing the Debtors to Retain and Compensate Professionals Utilized in the Ordinary Course of Business and (II) Granting Related Relief* [Docket No. 161].

"**Officers**" means the officers of the Debtors as of the Petition Date.

"**Person**" means a "person" as defined in Bankruptcy Code section 101(41).

"**Petition Date**" means November 11, 2022, the date on which the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

"**Plan Supplement**" means the appendix of schedules and exhibits to be filed with the Bankruptcy Court at least seven (7) days before the Voting Deadline. The Plan Supplement will contain, among other things: (a) a liquidation analysis; (b) the Liquidating Trust Agreement; (c) identification of the Liquidating Trustee; (d) ~~a non-exclusive schedule~~the Schedule of Causes of Action; and (e) any other disclosures as required by the Bankruptcy Code.

"**PPP Loans**" mean, the two promissory notes by and between (i) Taronis Fuels and Wells Fargo Bank in the amount of $1,993,712; and (ii) Taronis Fuels and MidFirst Bank in the amount of $2,000,000, pursuant to the Paycheck Protection Program of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") and administered by the U.S. Small Business Administration.

"**Prepetition Lender**" means Tech Capital, LLC, in its capacity as lender under the Prepetition Loan Agreement.

"**Prepetition Loan**" means the approximately $5.6 million in principal and accrued interest under the Prepetition Loan Agreement.

"**Prepetition Loan Agreement**" means collectively, (i) that certain *Loan and Security Agreement*, dated as of October 21, 2020, as amended, supplemented, or otherwise modified, by and among the Debtors, as borrowers, and the Prepetition Lender, pursuant to which the Prepetition Lender provided prepetition loans, and (ii) that certain Term Note entered into on December 14, 2020 in the amount of $2.5 million

"**Priority Tax Claims**" means Claims of a Governmental Unit against any Debtor entitled to priority pursuant to Bankruptcy Code section 507(a)(8) or as specified in Bankruptcy Code section 502(i).

"**Pro Rata**" means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in the same Class.

"**Professional**" means any professional Person employed in the Chapter 11 Cases pursuant to Bankruptcy Code sections 327, 328, 363, or 1103 pursuant to an order of the Bankruptcy Court and who is to be compensated for services rendered pursuant to Bankruptcy Code sections 327, 328, 329, 330, 331, or 363.

"**Professional Fee Claims**" means all Claims for compensation and reimbursement of expenses by Professionals, for the period starting with each Professional's retention date pursuant to an order of the Bankruptcy Court and ending with the Effective Date, to the extent Allowed by the Bankruptcy Court.

"**Professional Fee Escrow**" means the escrow account containing $747,218.08 (as of April 18, 2024) that was funded in accordance with the DIP Loan Agreement and DIP Orders, and held by the Debtors.

"**Promissory Note Settlement**" means the settlement agreement entered into by the parties in the action styled *CRCM Opportunity Fund III LP, v. Taronis Fuels Inc.*, C.A. No. N22C-05-175 PRW (CCLD) (Del. Supr. Ct. May 26, 2022).

"**Proof of Claim**" means a proof of claim filed against any Debtor in accordance with the Bar Date Order or any other order of the Bankruptcy Court requiring or setting forth a time period for the fixing of Claims.

"**Purchased Assets**" means, collectively, the Texas Assets and the California Assets.

"**Purchasers**" means MGP and Airgas.

"**Rejection Claim**" means any Claim arising from, or relating to, the rejection of an Executory Contract or Unexpired Lease pursuant to Bankruptcy Code section 365(a) by any of the Debtors, as limited, in the case of a rejected Unexpired Lease, by Bankruptcy Code section 502(b)(6).

"**Related Person**" means with respect to any Person, such Person's current and former officers, directors, principals, partners, members, managers, shareholders, attorneys, accountants, financial advisors, investment bankers, and their respective successors and assigns all in their capacities as such.

~~"**Released Party**" means, collectively, and in each case, in their respective capacities as such, (i) the Debtors; (ii) the Debtors' Affiliates and subsidiaries as of the Petition Date; (iii) all of the Debtors' Officers, directors, managers, principals, members, employees, and agents, that served on or after the Petition Date; (iv) all current and former professionals of the Debtors (but only to the extent that such professional was employed by the Debtors on or after June 4, 2021), including but not limited to financial advisors, partners, attorneys, accountants (except for accountants who provided audit services to the Debtors), investment bankers, consultants, representatives, and other professionals, each in their capacity as such; and (v) each Releasing Party. However, to the extent a Released Party or a party related to a Released Party opts out of being a Releasing Party such Released Party or related party, as applicable, shall not be a Released Party.~~

"~~**Releasing**~~**Released Party**" means, collectively, and in each case, in their respective capacities as such~~:~~, (~~a~~i) all ~~Holders of Claims who vote to accept the Combined Plan and Disclosure Statement and do not opt out of the releases granted to Released Parties in the Combined Plan and Disclosure Statement; (b) all Holders of Claims that vote to reject the Combined Plan and Disclosure Statement and who do not opt out of the releases granted to Released Parties in the Combined Plan and Disclosure Statement; and (c) with respect to each Entity in clause (a) and (b), each such Entity's current and former Affiliates, subsidiaries, officers~~of the Debtors' Officers, directors, managers, principals, members, employees, and agents, ~~advisory board members, financial advisors, partners, attorneys, accountants~~that served prior to or after the Petition Date (except as set forth below); (ii) all current and former Professionals of the Debtors, investment bankers, consultants, representatives, and other professionals, each in their capacity as such; and ~~to the fullest extent they would be obligated to release their claims under the principles of agency if so directed by the Releasing Party to whom they relate~~(iii) all Holders of Claims. For the avoidance of doubt, the ~~Releasing~~Released Parties shall not include (i) any Holders of Interests in their capacity as such~~ and~~; (ii) former Chief Executive Officer of Taronis Technologies, Scott Mahoney; and (iii) any potential defendant in a Retained Avoidance Action.

"**Retained Avoidance Actions**" means all Avoidance Actions included in the Schedule of Causes of Action.

"**Sale Orders**" means, collectively, the California Sale Order and the Texas Sale Order.

"**Sales**" means, collectively, the California Sale and the Texas Sale.

"**Schedule of Causes of Action**" means the non-exclusive schedule of Causes of Action included in the Plan Supplement.

"**Schedules**" means collectively the schedules of assets and liabilities, the list of Holders of Interests, and the statements of financial affairs filed by each of the Debtors under Bankruptcy Code section 521 and Bankruptcy Rule 1007, and all amendments and modifications thereto.

"**Scheduled**" refers to any Claim included in the Debtors' Schedules.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**SEC Action**" means the action initiated by the SEC against Taronis Fuels and its former officers, currently pending in the United States District Court for the Middle District of Florida, styled as *Securities and Exchange Commission v. Taronis Technologies, Inc., et al.*, Case No. 8:22-cv-1939-TPB-AAS.

"**SEC Investigation**" means the investigation into the Debtors launched by the SEC, further explained in Article IV.A.3.a below.

"**Section 510(b) Claim**" means any Claim subject to subordination under section 510(b) of the Bankruptcy Code.

"**Solicitation Package**" means the package to be distributed to certain Creditors for solicitation of votes on the Combined Plan and Disclosure Statement.

"Solicitation Procedures Order" means the order, as amended, granting preliminary approval of the Combined Plan and Disclosure Statement for solicitation and scheduling the Confirmation Hearing.

"**Statutory Fees**" means all fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930, and any interest thereupon.

"**Taronis-TAH**" means Taronis-TAH, LLC, a Debtor in the Chapter 11 Cases.

"**Taronis-TAS**" means Taronis-TAS, LLC, a Debtor in the Chapter 11 Cases.

"**Taronis Fuels**" means Taronis Fuels, Inc., a Debtor in the Chapter 11 Cases.

"**Taronis Sub I**" means Taronis Sub I LLC, a Debtor in the Chapter 11 Cases.

"**Taronis Sub II**" means Taronis Sub II LLC, a Debtor in the Chapter 11 Cases.

"**Taronis Sub III**" means Taronis Sub III LLC, a Debtor in the Chapter 11 Cases.

"**Taronis Sub IV**" means Taronis Sub IV LLC f/k/a MagneGas Welding Supply – West, LLC ("MagneGas West"), a Debtor in the Chapter 11 Cases.

"**Taronis Sub V**" means Taronis Sub V LLC f/k/a MagneGas Welding Supply – South, LLC ("MagneGas South"), a Debtor in the Chapter 11 Cases.

"**Taronis Technologies**" means Taronis Technologies, Inc.

"**Tax Code**" means the Internal Revenue Code, as amended.

"**Term Note**" means that certain *Secured Promissory Note* with the Prepetition Lender for a senior secured term loan in the amount of $2.5 million.

"**Texas APA**" means the asset purchase agreement attached to the Texas Sale Order as Exhibit A.

"**Texas Assets**" means the Debtors' assets relating to the operation of their Texas retail business that were sold, granted, transferred, assigned, conveyed, and delivered to MGP pursuant to the Texas Sale Order and the Texas APA. Any inconsistencies that arise under this definition shall be interpreted in favor of the definition of "Purchased Assets" in the asset purchase agreement, as modified by the Texas Sale Order.

"**Texas Bidding Procedures Order**" means the *Amended Order (I) Approving Bidding Procedures for the Sale of the Debtors Texas Assets, (II) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek Approval of Bid Protections, (III) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (IV) Approving Assumption and Assignment Procedures, (V) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (VI) Granting Other Related Relief* [Docket No. 147].

"**Texas Sale**" means the sale of the Texas Assets free and clear of liens, claims, interests, and encumbrances, pursuant to the Texas Sale Order and the asset purchase agreement attached thereto as Exhibit A.

"**Texas Sale Order**" means the *Order (I) Authorizing the Sale of Texas Assets Free and Clear of all Liens, Claims, Encumbrances an Other Interests, (II) Authorizing Debtors to Assume and Assign Certain Executory Contracts, and (III) Granting Related Relief* [Docket No. 286].

"**Treasury Regulations**" means the regulations, including temporary regulations or any successor regulations, promulgated under the United States Internal Revenue Code, as amended from time to time.

"**U.S. Trustee**" means the Office of the United States Trustee for the District of Delaware.

"**Unclaimed Distribution**" means a Distribution that is not claimed by a Holder of an Allowed Claim on or prior to the Unclaimed Distribution Deadline.

"**Unclaimed Distribution Deadline**" means three (3) months from the date the Debtors or Liquidating Trustee, as the case may be, make a Distribution pursuant to the Combined Plan and Disclosure Statement.

"**Unimpaired**" means, with respect to a Claim, Interest, or Class of Claims or Interests, not "impaired" within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

"**Voting Class**" means Class 3.

"**Voting Deadline**" means ~~[] []~~August 7, 2024 at 4:00 p.m. prevailing Eastern Time.

"**Voting Record Date**" means ~~[] []~~July 2, 2024.

"**Wetherald Note**" means the note issued to Thomas Wetherald, a former director of Taronis Fuels, in the principal amount of $2.5 million.

B. Interpretation; Application of Definitions and Rules of Construction

The following rules of construction, interpretation, and application shall apply:

(1) Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural and pronouns stated in the masculine, feminine, or neutral gender shall include the masculine, feminine, and neutral genders.

(2) Unless otherwise specified, each section, article, schedule, or exhibit reference in the Combined Plan and Disclosure Statement is to the respective section in, article of, schedule to, or exhibit to the Combined Plan and Disclosure Statement.

(3) The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Combined Plan and Disclosure Statement as a whole and not to any particular section, subsection, or clause contained in the Combined Plan and Disclosure Statement.

(4) The rules of construction contained in Bankruptcy Code section 102 shall apply to the construction and interpretation of the Combined Plan and Disclosure Statement.

(5) A term used herein that is not defined herein but that is used in the Bankruptcy Code shall have the meaning ascribed to that term in the Bankruptcy Code.

(6) The headings in the Combined Plan and Disclosure Statement are for convenience of reference only and shall not limit or otherwise affect the provisions of the Combined Plan and Disclosure Statement.

(7) Unless otherwise provided, any reference in the Combined Plan and Disclosure Statement to an existing document, exhibit, or schedule means such document, exhibit, or schedule as may be amended, restated, revised, supplemented, or otherwise modified.

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

IV. Disclosures

A. General Background

1. The Company and Its Business

The Debtors manufactured and distributed industrial and medical gases and associated welding and safety supplies. The Debtors supplied its customers with traditional industrial gas products ranging from bulk quantities of cryogenic gases to individual packaged cylinders and complementary products including welding supplies. The Debtors had the capacity and expertise to supply large, bulk cryogenic gas customers, as well as small one-person businesses.

In addition to its traditional industrial gas business, the Debtors claimed it had developed a clean, renewable, and environmentally sustainable metal cutting fuel comprised of hydrogen which was branded as "MagneGas". By the beginning of 2022, the Debtors operated as a consolidated company, consisting of a corporate headquarters and four business divisions, three retail – South, West, Southeast, and a wholesale division -- TGS.

MagneGas was marketed to investors beginning in 2008 as a disruptive technology to traditional fossil fuel-based metal cutting fuels, such as acetylene and propane. However, while MagneGas was technologically feasible, over time it became apparent its production was not commercially (competitively) viable. Although the Debtors claimed that MagneGas was both environmentally cleaner and safer than acetylene, trial production of MagneGas resulted in the deaths of two Taronis employees and severely injured a third.

The Debtors initially marketed MagneGas to end users through deep price discounts. However, even with substantial discounts, end users never adopted it as an alternative to acetylene. At its peak in 2020, total MagneGas sales reached only $250,000, less than 2% of all of the Debtors' gas sales. In the 4th quarter of 2021, Taronis Fuels' Board of Directors decided to cease all MagneGas operations and discontinue the sale and production of the product. The discontinued sales left the Debtors with thousands of spent and environmentally hazardous gas cylinders.

As of the end of 2021, the Debtors had suspended the production and retail sales of MagneGas, shutting down the entire MagneGas business. In August 2022, before the Petition Date, pursuant to two sales transactions, the Debtors sold their wholesale operations and their retail operations in Florida. As a result of these sales, as of the Petition Date, the Debtors' business operations solely consisted of the distribution and sale of various gases to retail customers, primarily in their South (Texas, Indiana, and Louisiana) and West (California) regions.

The lead debtor in these Chapter 11 Cases, Taronis Fuels, was initially organized as a Delaware limited liability company on February 1, 2017, under the name MagneGas Welding Supply, LLC, to be a holding company for Taronis Technologies' welding supply companies. On April 9, 2019, Taronis Fuels was converted from a limited liability company to a corporation in accordance with the Delaware General Corporation Law. In conjunction with the conversion, Taronis Fuels' name was changed to the name it holds today.

On December 5, 2019, Taronis Technologies spun-off Taronis Fuels from the remainder of its businesses through a distribution of 100% of the issued and outstanding shares of common stock of Taronis Fuels to the shareholders of Taronis Technologies on a pro rata basis. As a result, Taronis Fuels became an independent, publicly traded company. The spin-off was believed to provide each company with certain opportunities and benefits, including enhanced strategic focus, access to capital, and financial flexibility. In connection with the spin-off, Taronis Fuels and Taronis Technologies entered into a number of agreements whereby Taronis Fuels and Taronis Technologies agreed, among other things, to (i) indemnify each other's past and present directors, officers, and employees, and each of their successors and assigns, against certain liabilities incurred in connection with the spin-off and Taronis Technologies' respective businesses, (ii) be liable for all pre-distribution U.S. federal income taxes, foreign income taxes, and non-income taxes attributable to the businesses, as well as for all other taxes attributable to each business after the distribution, (iii) provide and/or make available various administrative services and assets to each other, and (iv) lease or sublease certain office space to each other.

As of the Petition Date, the Debtors operated fifteen (15) retail locations, three (3) gas fill plants, and had approximately ninety-two (92) employees, serving retail customers in four (4) states.

Taronis Fuels is a Delaware corporation that is the parent of the remaining Debtors. The Debtors also have certain, dormant and asset-less non-Debtor foreign Affiliates, namely MagneGas Limited, Taronis Netherlands, B.V., and MagneGas Ireland Limited.

2. Financial Overview of the Company

As of the Petition Date, the Debtors had approximately $10.1 million in assets, cash and cash equivalents, accounts receivable, inventory, and deposits, and approximately $26.2 million in total liabilities, primarily relating to (i) rent-related obligations under the Debtors' leases for their distribution facilities in the South and West Regions, (ii) approximately $5.6 million in principal and accrued interest under the Prepetition Loan Agreement; (iii) approximately $4.2

million for trade and other third party accounts payable; (iv) unsecured notes payables to certain parties; and (v) certain obligations to employees.

a. **The Prepetition Secured Debt**

Debtors Taronis Fuels, Taronis Sub III, Taronis Sub V, Taronis Sub IV, Taronis Sub II, Taronis-TAS, and Taronis-TAH were borrowers under the Prepetition Loan Agreement, dated October 21, 2020, with the Prepetition Lender. The Prepetition Loan Agreement provided the Debtors with a senior secured asset-based revolving credit facility up to $10 million. In December of 2020, the Debtors' and Prepetition Lender agreed on reducing that $10 million credit facility to $7.5 million and funding a $2.5 million term loan - both of which were secured by substantially all of the Debtors' assets, including inventory and accounts receivable. The Debtors were also required to give the Prepetition Lender a right of first refusal on all future potential asset sales. Debtors MagneGas Production, MagneGas Real Estate Holdings, MagneGas IP, and Taronis Sub I, and non-Debtors MagneGas Limited, Taronis Netherlands, B.V., and MagneGas Ireland Limited were guarantors under the Prepetition Loan Agreement.

Additionally, as of the Petition Date, the Debtors owned motor vehicles which were subject to financing agreements and certain real property that was subject to mortgages.

b. **Unsecured Debt**

As of the Petition Date, the Debtors estimated they had in excess of $20 million of unsecured debt comprised of the following categories: (i) outstanding rent related obligations for its retail, fill plant, and headquarters locations; (ii) trade debts; (iii) employee obligations; and (iv) obligations under certain unsecured notes payable related to the acquisition of distributorship locations.

In addition to the foregoing, in August and September 2021, the Debtors raised additional funds through the issuance of convertible promissory notes. On August 3, 2021, Taronis Fuels issued $2.5 million worth of notes to CRCM pursuant to the CRCM NPA, on August 19, 2021, Taronis Fuels issued $2.5 million worth of notes to the Merchant Livestock Company, Inc. pursuant to the Merchant NPA, and on September 2, 2021 Taronis Fuels issued $1.25 million worth of notes to the Ezrah Charitable Trust pursuant to the ECT NPA.

c. **Equity**

As of November 2, 2022, the Debtors had approximately 17,060,699 outstanding shares of common stock, held by 224 investors. As of May 2022, the Debtors had issued approximately 171,661 common stock grants, approximately 927,097 common stock options, and approximately 2,070,577 warrants. However, the Debtors deregistered their common stock on May 23, 2022.

3. Events Precipitating the Chapter 11 Filing

A number of factors negatively impacted the Debtors' financial performance, ultimately leading the Debtors to seek relief under chapter 11.

a. The SEC Investigation, the 2021 Proxy Contest, and the Resulting Governance Changes

In June 2020, the SEC initiated an investigation into Taronis Fuels, Taronis Technologies, and their officers, directors, and employees. The SEC probe focused on potential violations of securities laws, including false public statements related to sales contracts, operational developments, improper financial reporting, and fraudulent press releases regarding partnerships with municipalities and corporations. This SEC Investigation prompted the company's Board of Directors to launch its own internal investigation.

In December 2020, Mary Pat Thompson, the newly appointed Chief Financial Officer, and Tobias Welo, a Board Member, reported to the full Board of Directors their findings including additional allegations (beyond the SEC's initial claims) of accounting fraud, mismanagement, and other improprieties by Messrs. Mahoney and Wilson.

Ms. Thompson and Mr. Welo resigned from the Board, and Ms. Thompson resigned as Chief Financial Officer. Along with other employees, they reported their findings to the SEC under its whistleblower's statutes.

Messrs. Mahoney and Wilson resigned on April 2, 2021, and May 6, of 2021, respectively. On April 28, 2021, a seven member, newly constituted Board of Directors was formed.

The newly constituted Board deemed unreliable the company's previously issued financial statements for the year ending December 31, 2019, and interim quarterly periods in fiscal 2020, and the December 31, 2020, 10-K annual report was never filed.

In March 2022, the SEC notified Taronis Fuels of its preliminary determination and enforcement action including a proposed penalty of $29.5 million prompting the Board to voluntarily deregister the company's common stock. Subsequently, the SEC filed a formal complaint seeking injunctions, penalties, disgorgement, and officer-and-director bars against Mr. Mahoney, Mr. Wilson, Taronis Fuels, and Taronis Technologies. Mr. Mahoney and Mr. Wilson consented to a civil penalty, a five-year ban from management of public companies, and certain reimbursement payable to Taronis Fuels, while Taronis Fuels reached a settlement agreement dated July 11, 2022, under which Taronis Fuels agreed to pay $5,107,900 in fines in four installments. While the first installment of $1,276,975 was paid into escrow in July 2022, no further SEC settlement payments were made prior to the Petition Date.

b. **Liquidity Crisis with the Prepetition Lender**

On March 8, 2022, the Prepetition Lender declared an event of default under the Prepetition Loan Agreement, alleging a material adverse change in the Debtors' business and financial condition as a result of the SEC Investigation and possible outcomes of such investigation, and, among other things, increased the rate of interest on the obligations outstanding under the Prepetition Loan Agreement and the Term Note by 5% and 4%, respectively, over the non-default rate. In connection with the default, the Debtors and the Prepetition Lender entered into a Forbearance Agreement dated April 5, 2022, which provided for a 60-day forbearance period, with the option for additional 60-day extensions. Ultimately, the Prepetition Lender agreed to forbear from exercising any of its rights and remedies until October 6, 2022.

c. **Prepetition Litigation**

Due in large part to the SEC Action and the Prepetition Lender default, certain of the Debtors also became parties to various lawsuits, including the ERISA Action filed by Mr. Wilson, and breach of contract actions filed by CRCM and the Ezrah Charitable Trust.

(i) **The ERISA Action**

On February 11, 2022, Mr. Wilson filed a complaint against Taronis Fuels in the Arizona District Court, alleging that Taronis Fuels failed to pay Mr. Wilson a severance benefit to which he was entitled under Taronis Fuels' executive severance plan. Mr. Wilson sought, by motion, an award of that benefit totaling $1,873,213.78 plus interest, attorneys' fees, and costs.[3] On September 20, 2022, the parties virtually attended a private mediation but were unable to reach a settlement to resolve the claims and defenses. On September 27, 2022, Mr. Wilson filed a motion for sanctions against Taronis Fuels, alleging that Taronis Fuels failed to participate in mediation in good faith. On September 30, 2022, Taronis Fuels filed a motion to stay all proceedings in the ERISA Action pending resolution of the SEC Action.

As a result of the Chapter 11 Cases and the automatic stay under section 362 of the Bankruptcy Code, the Arizona District Court entered an order staying the ERISA Action and ordering the action be dismissed without further notice on February 20, 2023, unless a motion to continue the stay is filed or the parties advise the Arizona District Court that the bankruptcy stay has been lifted and counsel are ready to proceed with the case. On January 3, 2023, Mr. Wilson filed the *Motion of Tyler B. Wilson for Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code and Bankruptcy Rule 4001(a)(3)* [Docket No. 202]. After discussions with Mr. Wilson, the Debtors agreed to a form of order lifting the automatic stay as to the ERISA Action. *See* Docket No. 238. Accordingly, on January 19, 2023, the Court entered the *Order Granting Tyler B. Wilson Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code and Bankruptcy Rule 4001(a)(3)* [Docket No. 242]. On July 5, 2023, the

[3] On July 5, 2023, the Arizona District Court entered an order granting such motion.

Arizona District Court decided the ERISA Action and issued orders denying Mr. Wilson's claim for benefits in his ERISA Action and dismissing the ERISA Action.

On July 17, 2023, Mr. Wilson filed *Plaintiff's Motion for New Trial, Relief from Judgment (Doc. 56), and Reconsideration of Order (Doc. 55)* (the "Motion for Reconsideration"). On November 27, 2023, the Arizona District Court granted the Motion for Reconsideration.

(ii) **Other Actions**

On March 11, 2022, Mr. Wilson also filed a complaint against Taronis Fuels in the Court of Chancery, seeking advancement for legal fees and expenses incurred by Mr. Wilson in connection with the SEC Investigation and any related present or future proceedings, including the SEC Action. Pursuant to a settlement agreement reached between the parties, Taronis Fuels agreed to pay Mr. Wilson's fees to fulfill its advancement obligations to Mr. Wilson. Taronis Fuels paid a total of $172,653.21 prior to the Petition Date.

On May 26, 2022, CRCM and the Ezrah Charitable Trust filed a lawsuit in Delaware Superior Court alleging breach of contract of their respective promissory notes, styled *CRCM Opportunity Fund III LP, v. Taronis Fuels Inc.*, C.A. No. N22C-05-175 PRW (CCLD) (Del. Supr. Ct. May 26, 2022). The parties in this action entered a settlement agreement whereby Taronis Fuels agreed to pay the principal and interest due under the CRCM NPA in the amount of $2,525,958.50, and the principal and interest due under the ECT NPA in the amount of $1,261,918.25. Accordingly, on August 20, 2022, CRCM and the Ezrah Charitable Trust dismissed the lawsuit with prejudice.

These circumstances severely disrupted the Debtors' business plans and operations and imposed a significant liquidity crisis.

d. **Deregistration and Restatement of Financial Results**

The Debtors had been seeking to restate their historical financial results and become current in its reporting obligations under the Securities and Exchange Act of 1934. The Debtors sought to raise funds in order to continue the work needed for these goals, but the Debtors were unable to secure any such funding, in large part because of the SEC Investigation and the possible outcomes of such investigation (as discussed above). Ultimately, Taronis Fuels was unable to complete a restatement of its historical financial results and become current in its reporting obligations.

After careful consideration of the alternatives, the Board determined that deregistering Taronis Fuels' securities under the Securities and Exchange Act of 1964 was in the best interests of Taronis Fuels and its stockholders because, among other reasons, deregistration should reduce legal, accounting, and consultant expenses, and allow for the reallocation of management and employee time to advancing core business strategies.

On May 23, 2022, Taronis Fuels filed a Form 15 with the SEC to deregister its common stock and associated rights under section 12(g) of the Securities and Exchange Act of 1934, which suspended Taronis Fuels' obligation to file periodic reports, such as Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and other filing requirements under section 13(a) of the Securities and Exchange Act of 1934. As of September 19, 2022, Taronis Fuels ceased to be a publicly reporting company with the SEC.

e. **Sale of Certain Assets**

To address these operational and liquidity issues, prior to the Petition Date, the Debtors undertook various actions including negotiating with the Prepetition Lender prior and subsequent to alleged defaults, negotiating with certain parties in connection with the sale of the Debtors' assets, and engaging restructuring professionals. In August 2022, the Debtors sold two divisions, their wholesale operations, and their Southeast regional operations through two transactions: the (i) wholesale operations were sold to EspriGas for $8.6 million, less the assumption of certain liabilities (the "Espri Sale") and (ii) Florida retail operations were sold to Airgas for $7 million subject to certain holdbacks and purchase price adjustments (referred to herein as the Airgas Sale).

With respect to the Espri Sale, the $8.6 million purchase price was reduced by (i) the assumption of nearly $4.5 million of the Debtors' indebtedness related to the whole sale division; (ii) the paying off an additional $423,000 of indebtedness relating to assets being sold as part of the Espri Sale, and (iii) a $750,000 escrow for other purchase price adjustments. In total, the sale allowed the Prepetition Lender to receive a payoff of only $1.741 million and yielded cash to the Debtors of only $1.197 million. Post petition, $597,000 of the purchase price escrow was released to the Debtors. *See Order Granting Debtors' Motion for Entry of an Order Approving Entry into the Settlement and Mutual Release Agreement by and Among Certain of the Debtors and Tech-Gas Solutions, LLC* [Docket No. 443].

With respect to the Airgas Sale, the Debtors used $3.788 million of the proceeds from the Airgas Sale to satisfy in full Taronis Fuels' obligations under the CRCM NPA and the ECT NPA as discussed above. In addition, $375,000 was held back for purchase price adjustments and another $375,000 was withheld as a break-up fee tied to the timely sale of the Debtors' California retail operations to Airgas. Both of those holdbacks were forfeited by the Debtors. The Prepetition Lender received just shy of $597,000 and the Airgas Sale yielded only $1.865 million to the Debtors.

It had been the Debtors' intention to complete the sale of its California retail operations to Airgas and pursue an out-of-court restructuring centered around the Texas retail operations. Following the closing of the Airgas Sale and the Espri Sale, the Debtors began to work towards those goals. As an initial matter, the Debtors were concerned that the sale of the California retail operations, when taken as a whole with the Airgas Sale and Espri Sale, might constitute a sale of "substantially all of its property and assets" which would require shareholder approval pursuant

to 8 Del. C. §271(a) even though the Debtors would reorganize around their Texas retail operations.

Ultimately the Debtors, working with their advisors, concluded that selling the California assets and restructuring around the Texas assets was not financially viable as the Texas retail operations, while profitable, would be responsible for all of the legacy liabilities of the Debtors including, *inter alia*: (i) the cost of the Arizona headquarters lease which ran until 2030, (ii) the SEC liabilities, (iii) the advancement obligations owed to Mr. Wilson, (iv) remaining liabilities on convertible debt notes and other unsecured notes, and (v) accumulated trade payables.

In late September and early October of 2022, the Debtors determined that liquidating their remaining operations inside of Chapter 11 was the best path forward to maximize the value of their assets and generate recoveries for Creditors. Thus, the Debtors commenced the Chapter 11 Cases to continue the marketing and sale of substantially all of their remaining assets. The Debtors believed that a sale of their remaining businesses as a going concern would maximize value for all of their stakeholders, including their employees and Creditors.

B. The Chapter 11 Cases

1. First Day Orders

On the Petition Date, each of the Debtors filed voluntary petitions for relief. The Debtors also filed a number of First Day Motions and applications seeking customary relief intended to facilitate a smooth transition for the Debtors into the Chapter 11 Cases and to minimize disruptions to the Debtors' business operations.

The First Day Motions requested relief from the Bankruptcy Court to, among other things: (a) jointly administer the Chapter 11 Cases; (b) appoint the Claims and Noticing Agent; (c) pay employee wages; (d) maintain the Debtors' cash management system; (e) pay taxes; (f) pay insurance obligations; (g) maintain utilities; (h) obtain postpetition financing; and (i) pay critical vendors. In support of the First Day Motions, the Debtors relied upon the First Day Declaration. The First Day Motions were all entered on an interim and/or final basis, as applicable.

The First Day Motions, the First Day Declaration, and all orders for relief granted in these Chapter 11 Cases can be viewed free of charge at https://www.donlinrecano.com/Clients/tfi/Index.

2. DIP Financing

Pursuant to the DIP Motion, the Debtors sought authorization to obtain the DIP Facility pursuant to the DIP Agreement: an $11 million senior secured super priority term loan facility provided by the DIP Lender, consisting of $5.6 million post-petition "new money" term loan facility and a dollar-for-dollar "roll-up" of the obligations under the Prepetition Loan in an amount equal to each DIP Advance (as defined in the DIP Motion) at the time each DIP Advance

is made, and which obligations under the Prepetition Loan shall be deemed converted into and exchanged on the terms and conditions set forth in the DIP Agreement.

The Debtors further sought authorization, through the DIP Motion, to use the Prepetition Collateral, including Cash Collateral (each as defined in the Interim DIP Order), and granting the DIP Lender (i) automatically perfected security interests in and liens on all of the DIP Collateral (as defined in the DIP Motion) in the priorities set forth in the Interim DIP Order and DIP Agreement as well as (ii) super priority administrative expense claims with respect to the Debtors' obligations under the DIP Facility. The Debtors entered the Chapter 11 Cases with minimal cash on hand, and thus access to the DIP Facility and the use of Cash Collateral was critical to ensure the Debtors' smooth entry into chapter 11 and ability to fund the marketing and sale of their assets. The Court entered the Interim DIP Order on November 16, 2022, and the Final DIP Order on December 12, 2022, in each case approving the DIP Motion.

3. Retention of Professionals

The Debtors, through various applications which were subsequently approved by the Bankruptcy Court, employed certain professionals including: Potter Anderson & Corroon LLP as counsel [Docket No. 148]; Aurora Management Partners, Inc. to provide a Chief Restructuring Officer and certain financial advisory services [Docket No. 149]; Capstone Partners as investment banker [Docket No. 204]; Chipman Brown Cicero & Cole, LLP as Contingency Counsel [Docket No. 162]; and Donlin, Recano & Company, Inc. as Claims and Noticing Agent and administrative advisor [Docket Nos. 36 & 160].

On November 28, 2022, the Debtors also employed certain professionals pursuant to the OCP Order. Thus far, the Debtors have employed Smith-LC, Holland & Hart LLP, Perkins Coie LLP, and Forvis, LLP in the ordinary course of business, pursuant to the OCP Order. *See* Docket Nos. 92, 133, 186 & 509.

On April 19, 2023, the Debtors filed the *Final Fee Application of Capstone Partners as Investment Banker to the Debtors*, seeking approval of $504,533 in fees and $7,619 in expenses related to Capstone's work for the Debtor during the Chapter 11 Cases. The Bankruptcy Court approved this application on May 25, 2023. *See* Docket No. 419.

4. No Appointment of a Creditors' Committee

On November 23, 2022, the U.S. Trustee filed the *Statement That Unsecured Creditors' Committee Has Not Been Appointed* [Docket No. 65], notifying parties in interest that the U.S. Trustee had not appointed a statutory committee of unsecured creditors in the Chapter 11 Cases. The Debtors held a meeting of creditors pursuant to section 341 of the Bankruptcy Code on December 9, 2022.

5. Lease Rejection Motions

In order to downsize their footprint and to prevent administrative expenses from accruing in the Chapter 11 Cases, the Debtors, through various motions which were subsequently

approved by the Bankruptcy Court, have successfully rejected most of their real property leases and vacated those related premises. *See* Docket Nos. 124, 240, 275, 307, 350 & 404.

6. Sale of Substantially All of the Debtors' Assets

As discussed above, prior to the Petition Date, the Debtors sold their wholesale operations through the Espri Sale and their Southeast region operations to Airgas through the Airgas Sale. As a result of these sales, the Debtors' business operations on the Petition Date solely consisted of the distribution and sale of various gases to retail customers, primarily in Texas and California. The Debtors filed the Chapter 11 Cases to continue the process of marketing and selling substantially all of the Debtors' remaining assets.

To that end, amongst other things, the Debtors, on November 16, 2022, filed the *Motion of the Debtors for Entry of an Order (I) Authorizing the Private Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Authorizing the Sellers to Assume and Assign an Executory Contract, (III) Approving Bidder Protections, and (IV) Granting Other Related Relief* [Docket No. 40] and, on November 18, 202, the Debtors filed the *Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of the Debtors' Texas Assets, (B) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek Approval of Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief* [Docket No. 45].

On December 12, 2022, the Bankruptcy Court entered the *Order (I) Authorizing the Private Sale of Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Authorizing the Sellers to Assume and Assign an Executory Contract, (III) Approving Bidder Protections, and (IV) Granting Other Related Relief* [Docket No. 135], whereby the Bankruptcy Court authorized the Debtors to, among other things, enter into the asset purchase agreement with Airgas for the sale of substantially all of the Debtors' assets located in California that are used or useful in the industrial gas and welding supply distribution business (referred to herein as the California Sale). The California Sale closed soon thereafter, and the proceeds were used to pay down the debt obligations to the DIP Lender.

Additionally, on December 14, 2022, the Bankruptcy Court entered the Texas Bidding Procedures Order, whereby the Bankruptcy Court approved, among other things, certain bidding procedures in connection with the sale of the Texas Assets related to the Texas retail business of the Debtors. On January 13, 2023, the Court entered the *Order (A) Authorizing Stalking Horse Designation, (B) Approving Stalking Horse Bid Protections, and (C) Granting Related Relief* [Docket No. 229], which designated Airgas as the stalking horse bidder.

On January 24, 2022, pursuant to the Texas Bidding Procedures Order, the Debtors commenced an auction for the sale of the Texas Assets. MGP was named as the successful

bidder for the Texas Assets. After a successful auction and a hearing to approve the Texas Sale, on February 2, 2023, the Bankruptcy Court entered the *Order (I) Authorizing the Sale of Texas Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Authorizing the Debtors to Assume and Assign Certain Executory Contracts, and (III) Granting Other Related Relief* [Docket No. 286], approving, *inter alia*, the sale of the Texas Assets to MGP. The Texas Sale closed on February 10, 2023. The proceeds from the Texas Sale were used to pay down the DIP Lender in full.

7. Claims Process and General Bar Date

The Debtors filed the Bar Date Motion on February 1, 2023 and on February 21, 2023, the Bankruptcy Court entered the Bar Date Order. The Debtors filed the *Notice of Deadline for Filing Proofs of Claim and Requests for Allowance of Administrative Claims* on March 6, 2023 [Docket No. 335], which established the General Bar Date, the Governmental Bar Date, and an administrative claim bar date for Administrative Expense Claims arising from the Petition Date through and including February 10, 2023.

Pursuant to the Bar Date Order, all Creditors holding or wishing to assert a Claim against the Debtors or the Debtors' Estates, accruing prior to the Petition Date, and which remain unpaid, including Claims arising under Bankruptcy Code section 503(b)(9), were required to file a Proof of Claim by the General Bar Date.

In addition, pursuant to the Bar Date Order, all Creditors holding or wishing to assert Administrative Expense Claims against the Debtors or their Estates, accruing from the Petition Date through and including February 10, 2023, were required to file such Claims by the General Bar Date. Administrative Expense Claims arising from February 11, 2023 through the Effective Date of the Combined Plan and Disclosure Statement are governed by the Administrative Claim Bar Date set forth herein.

Further, pursuant to the Bar Date Order, Governmental Units with Claims against the Debtors or the Debtors' Estates, accruing prior to the Petition Date, were required to file Proofs of Claim by the Governmental Bar Date.

8. CRCM Action and ECT Action

As discussed above, CRCM and the Ezrah Charitable Trust received payment in full of all obligations owed to them under the CRCM NPA and the ECT NPA. The Debtors believed that the payments to CRCM and the Ezrah Charitable Trust are avoidable pursuant to chapter 5 of the Bankruptcy Code.

On January 5, 2023, the Debtors initiated separate adversary proceedings against CRCM and against the Ezrah Charitable Trust alleging that cash transferred to CRCM and the Ezrah Charitable Trust constituted avoidable preferences under section 547 of the Bankruptcy Code and related provisions. After a mediation, the parties agreed upon the terms of a settlement to resolve all outstanding matters related to and arising out of the Debtors' relationship with CRCM

and Ezrah, including, but not limited to, the claims asserted in the CRCM Action and ECT Action, and any claims CRCM and the Ezrah Charitable Truste have, or may have, against any of the Debtors' or any of their estates. The Debtor moved to approve this settlement, which includes the repayment of $1.7 million from CRCM and the Ezrah Charitable Trust to the Debtors and the mutual release of all claims, on March 22, 2024. *See Motion to Taronis Fuels, Inc. for Approval of Settlement and Release Agreement with CRCM Opportunity Fund III, LP, and the Ezrah Charitable Trust Pursuant to Bankruptcy Rule 9019* [Docket No. 715] (the "Settlement Motion"). An order approving the Settlement Motion was entered on April 15, 2024. *See* Docket No. 746.

9. Satisfaction of Claims Prior to the Effective Date

a. **Prepetition Loan Claims** – The Prepetition Loan Claims were fully satisfied by being rolled up into the DIP Facility. The Prepetition Lender will not receive any further Distribution on account of any obligations arising under the Prepetition Loan.

b. **DIP Facility Claims** – The DIP Facility Claims were satisfied through the closings of the California and Texas Sales. The DIP Lender will not receive any further Distribution on account of any claims arising from the DIP Facility.

C. Summary of Assets

Following the closings of the California and Texas Sales, the Debtors have no remaining tangible Assets, and its remaining Assets consist primarily of cash, Avoidance Actions including the CRCM Action and the ECT Action, other litigation claims, and other miscellaneous Assets.

D. Summary of Treatment of Claims and Interests under the Plan

The following chart summarizes the classification and treatment of the Classes:

Class	Estimated Allowed Claims[4]	Treatment	Entitled to Vote	Estimated Recovery to Holders of Allowed Claims[5]
Class 1 – Miscellaneous Secured Claims	$0	Unimpaired	No	100%
Class 2 – Non-Tax Priority Claims	$280,660	Unimpaired	No	100%
Class 3 - General Unsecured Claims	$18,439,964.40	Impaired	Yes	9.2%
Class 4 – Section 510(b) Claims	$0	Impaired	No	0%
Class 5 – Intercompany Claims	$0	Deemed Impaired	No	0%
Class 6 – Existing Equity	N/A	Deemed Impaired	No	0%

E. Certain U.S. Federal Income Tax Consequences to this Combined Plan and Disclosure Statement

Substantial uncertainty exists with respect to many of the tax issues discussed below. Therefore, each holder of a Claim is urged to consult its own tax advisor regarding the federal, state, and other tax consequences of this Combined Plan and Disclosure Statement. No rulings

[4] These amounts represent estimated Allowed Claims against the Debtors and do not represent amounts actually asserted by creditors in Proofs of Claim or otherwise. The Debtors have not completed their analysis of Claims in the Chapter 11 Cases, and all objections to such Claims have not been filed and/or fully litigated and may continue following the Effective Date. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.

[5] The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims against the Debtors in the Chapter 11 Cases. As set forth above, the actual amount of the Allowed Claims may be greater or lower than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are actually Allowed by the Bankruptcy Court and the actual amount of cash available for Distribution.

have been or are expected to be requested from the Internal Revenue Service ("IRS") with respect to any tax aspects of this Combined Plan and Disclosure Statement.

A summary description of certain United States ("U.S.") federal income tax consequences of this Combined Plan and Disclosure Statement is provided below. The description of tax consequences below is for informational purposes only and, due to lack of definitive judicial or administrative authority or interpretation, substantial uncertainties exist with respect to various U.S. federal income tax consequences of this Combined Plan and Disclosure Statement as discussed herein. Only the potential material U.S. federal income tax consequences to the Debtors and to hypothetical Holders of Claims who are entitled to vote to accept or reject this Combined Plan and Disclosure Statement are described below. No opinion of counsel has been sought or obtained with respect to any tax consequences of this Combined Plan and Disclosure Statement, and no tax opinion is being given in this Combined Plan Disclosure Statement. No rulings or determinations of the IRS or any other tax authorities have been obtained or sought with respect to any tax consequences of this Combined Plan and Disclosure Statement, and the discussion below is not binding upon the IRS or such other authorities. No representations are being made regarding the particular tax consequences of the confirmation and consummation of this Combined Plan and Disclosure Statement. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position from any discussed herein.

The discussion of the U.S. federal income tax consequences below is based on the Tax Code, Treasury Regulations promulgated and proposed thereunder, judicial decisions, and administrative rulings and pronouncements of the IRS and other applicable authorities, all as in effect on the date hereof. Legislative, judicial, or administrative changes or interpretations enacted or promulgated in the future could alter or modify the analyses and conclusions set forth below. It cannot be predicted at this time whether any tax legislation will be enacted or, if enacted, whether any tax law changes contained therein would affect the tax consequences to the Holders of Claims. Any such changes or interpretations may be retroactive and could significantly affect the U.S. federal income tax consequences discussed below.

THIS DISCUSSION DOES NOT ADDRESS FOREIGN, STATE, OR LOCAL TAX CONSEQUENCES OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT, NOR DOES IT PURPORT TO ADDRESS THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT TO SPECIAL CLASSES OF TAXPAYERS (SUCH AS FOREIGN ENTITIES, NONRESIDENT ALIEN INDIVIDUALS, PASS-THROUGH ENTITIES SUCH AS PARTNERSHIPS AND HOLDERS THROUGH SUCH PASS-THROUGH ENTITIES, S CORPORATIONS, MUTUAL FUNDS, INSURANCE COMPANIES, FINANCIAL INSTITUTIONS, SMALL BUSINESS INVESTMENT COMPANIES, REGULATED INVESTMENT COMPANIES, CERTAIN SECURITIES TRADERS, BROKER-DEALERS, AND TAX-EXEMPT ORGANIZATIONS). FURTHERMORE, ESTATE AND GIFT TAX ISSUES ARE NOT ADDRESSED HEREIN AND TAX

CONSEQUENCES RELATING TO THE ALTERNATIVE MINIMUM TAX ARE NOT DISCUSSED HEREIN.

NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT TO ANY SPECIFIC HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM IS STRONGLY URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT.

1. Consequences to the Debtors

Under the Tax Code, a U.S. taxpayer generally must include in gross income the amount of any cancellation of indebtedness ("COD") income recognized during the taxable year. COD income generally equals the excess of the adjusted issue price of the indebtedness discharged over the sum of (i) the amount of cash, (ii) the issue price of any new debt, and (iii) the fair market value of any other property (including stock) transferred by the Debtors in satisfaction of such discharged indebtedness. COD income also includes any interest that has been previously accrued and deducted but remains unpaid at the time the indebtedness is discharged.

Section 108(a)(1)(A) of the Tax Code provides an exception to this rule, however, where a taxpayer is in bankruptcy and where the discharge is granted or is effected pursuant to an approved plan of reorganization by the Bankruptcy Court. In such a case, instead of recognizing income, the taxpayer is required, under section 108(b) of the Tax Code, to reduce certain of its tax attributes by the amount of COD income. The attributes of the taxpayer are to be reduced in the following order: current year Net Operating Losses ("NOLs") and NOL carryovers, general business and minimum tax credit carryforwards, capital loss carryforwards, the basis of the taxpayer's assets, and finally, foreign tax credit carryforwards. The reduction in the foregoing tax attributes generally occurs after the calculation of a debtor's tax for the year in which the debt is discharged. Section 108(b)(5) of the Tax Code permits a taxpayer to elect to first apply the reduction to the basis of the taxpayer's depreciable assets, with any remaining balance applied to the taxpayer's other tax attributes in the order stated above. In addition to the foregoing, section 108(e)(2) of the Tax Code provides a further exception to the realization of COD income upon the discharge of debt in that a taxpayer will not recognize COD income to the extent that the taxpayer's satisfaction of the debt would have given rise to a deduction for federal income tax purposes.

The Debtors may realize COD income as a result of this Combined Plan and Disclosure Statement. The ultimate amount of any COD income realized by the Debtors is uncertain because, among other things, it will depend on the fair market value of all assets transferred to Holders of Claims issued on the Effective Date.

In general, if a debtor sells property to a third party it will recognize taxable income equal to the difference between the amount realized on the sale and its tax basis in such assets sold. In

addition, if a debtor conveys appreciated (or depreciated) property (i.e., property having an adjusted tax basis less (or greater) than its fair market value) to a creditor in cancellation of debt, the debtor must recognize taxable gain or loss (which may be ordinary income or loss, capital gain or loss, or a combination of each) equal to the excess or shortfall, respectively, of such fair market value over the debtor's adjusted tax basis in such property.

On the Effective Date, the Debtors and the Liquidating Trustee shall execute the Liquidating Trust Agreement, and shall take all steps necessary to establish the Liquidating Trust in accordance with this Combined Plan and Disclosure Statement, which shall be for the benefit of the Holders of Claims that receive beneficial interests in the Liquidating Trust. Additionally, on the Effective Date the Debtors shall transfer and/or assign and shall be deemed to transfer and/or assign to the Liquidating Trust all of their rights, title, and interest in and to all of the Liquidating Trust Assets, and in accordance with Bankruptcy Code section 1141, the Liquidating Trust Assets shall automatically vest in the Liquidating Trust free and clear of all Claims and liens, subject only to (a) the beneficial interests in the Liquidating Trust, and (b) the expenses of the Liquidating Trust as provided for in the Liquidating Trust Agreement and herein.

The Liquidating Trust shall be governed by the Liquidating Trust Agreement and administered by the Liquidating Trustee. The powers, rights, responsibilities, and compensation of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement. The Liquidating Trustee shall hold and distribute the Liquidating Trust Assets in accordance with this Combined Plan and Disclosure Statement and the Liquidating Trust Agreement. Other rights and duties of the Liquidating Trustee and the Holders of Claims that receive beneficial interests in the Liquidating Trust shall be as set forth in the Liquidating Trust Agreement.

After the Effective Date, the Debtors shall have no interest in the Liquidating Trust Assets. To the extent that any Liquidating Trust Assets cannot be transferred to the Liquidating Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by Bankruptcy Code section 1123 or any other provision of the Bankruptcy Code, such Liquidating Trust Assets shall be deemed to have been retained by the Debtors and the Liquidating Trust shall be deemed to have been designated as a representative of the Debtors pursuant to Bankruptcy Code section 1123(b)(3)(B) to enforce and pursue such Liquidating Trust Assets on behalf of the Debtors for the benefit of the Holders of Claims that receive beneficial interests in the Liquidating Trust. Notwithstanding the foregoing, all net proceeds of such Liquidating Trust Assets shall be transferred to the Liquidating Trust, to be distributed in accordance with this Combined Plan and Disclosure Statement.

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Liquidating Trust is intended to be treated as a "liquidating trust" for U.S. federal income tax purposes pursuant to Treasury Regulation section 301.7701-4(d), and the Liquidating Trustee will take this position on the Liquidating Trust's tax return accordingly. The beneficiaries of the Liquidating Trust shall be treated as the grantors of the Liquidating Trust and as the deemed owners of the Liquidating Trust Assets. For U.S. federal income tax purposes, the transfer of assets to the Liquidating Trust will be deemed to occur as (a) a first-step transfer of the Liquidating Trust Assets to the Holders of Allowed Claims and (b) a second-step transfer by

such Holders to the Liquidating Trust. As a result, the transfer of the Liquidating Trust Assets to the Liquidating Trust should be a taxable transaction, and the Debtors should recognize gain or loss equal to the difference between the tax basis and fair value of such assets. In addition, as detailed above, if the total fair value of the Liquidating Trust Assets is less than the total of the Allowed Claims (that have been deducted for federal income tax purposes) the Debtors will recognize COD income equal to such difference. As soon as possible after the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make a good faith valuation of the Liquidating Trust Assets. This valuation will be made available from time to time, as relevant for tax reporting purposes. Each of the Debtors, Liquidating Trustee, and the Holders of Claims receiving beneficial interests in the Liquidating Trust shall take consistent positions with respect to the valuation of the Liquidating Trust Assets, and such valuations shall be utilized for all U.S. federal income tax purposes. The Liquidating Trust shall in no event be dissolved later than five (5) years from the creation of such Liquidating Trust unless the Bankruptcy Court, upon motion within the six (6) month period prior to the fifth (5th) anniversary (or within the six (6) month period prior to the end of an extension period), determines that a fixed period extension (not to exceed five (5) years with a private 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 trust as a liquidating trust for U.S. federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets.

If the Liquidating Trust were not to qualify as a "liquidating trust," as described above, the Liquidating Trustee will take the position that it is a partnership for U.S. federal income tax purposes. In either case, each Liquidating Trust Beneficiary will include its distributive share of income, as reported to it by the Liquidating Trustee, and may not receive sufficient cash to satisfy its tax liability. The IRS may take the position that the Liquidating Trust should be taxed as a corporation for U.S. federal income tax purposes. If the IRS were to prevail in that position, the Liquidating Trust would be subject to U.S. federal income tax which would reduce the return to a Liquidating Trust Beneficiary. Each Liquidating Trust Beneficiary is urged to consult with its own tax advisor.

As detailed above, the transfer of the Liquidating Trust Assets to the Liquidating Trust could give rise to taxable income or loss equal to the difference between the tax basis and fair value of the Liquidating Trust Assets.

With respect to any COD income recognized due the transfer of the Liquidating Trust Assets to the Liquidating Trust, section 108(a)(1)(A) of the Tax Code should apply and thus any COD income should be excluded. However, any NOLs (or other tax attributes) remaining after the use of said NOLs to offset taxable income generated by the asset transfers will be reduced by the amount of such COD income excluded above.

2. Consequences to Holders of Class 3 General Unsecured Claims

Pursuant to this Combined Plan and Disclosure Statement, each Holder of an Allowed General Unsecured (Class 3) Claim against the Debtors will receive in satisfaction of its Claim a

Pro Rata beneficial interest in the Liquidating Trust which includes all of the Liquidating Trust Assets remaining after satisfaction of all Liquidating Trust Expenses and senior Claims. The U.S. federal income tax treatment to Holders of Allowed General Unsecured Claims may depend in part on the tax basis a Holder has in its Claim, and, in some circumstances, what gave rise to or the nature of the Holder's Claim.

As set forth above, for federal income tax purposes, the Class 3 General Unsecured Claims will be satisfied by the deemed transfer to them of the Liquidating Trust Assets followed by a deemed contribution of said assets to the Liquidating Trust in exchange for their Pro Rata beneficial interest in the Liquidating Trust. It is intended that the Liquidating Trust be treated as a liquidating trust for federal income tax purposes and, if it does not so qualify, as a partnership for federal income tax purposes.

Because of the nature of the Liquidating Trust Assets, the deemed transfer by the Debtors of the Liquidating Trust Assets could cause a Holder to recognize gain, or loss, due to said transfer. The Liquidating Trust Assets that will be deemed transferred to Holders of Class 3 General Unsecured Claims consist of various assets including the Causes of Action (and proceeds thereof). To the extent that the (i) fair market value of the Pro Rata beneficial interest in the Liquidating Trust Assets that a Holder of a Class 3 General Unsecured Claim receives, exceeds (or is less than) (ii) the Holder's tax basis in such Claim, the Holder should recognize gain (or loss) on such deemed transfer equal to such excess. Such gain (or loss) could be capital or ordinary in nature depending on the genesis and nature of the Claim being satisfied.

F. Certain Risk Factors to Be Considered

Holders of Claims who are entitled to vote on the Combined Plan and Disclosure Statement should read and carefully consider the following factors, before deciding whether to vote to accept or reject the Combined Plan and Disclosure Statement.

Effect of Failure to Confirm the Combined Plan and Disclosure Statement. If the Combined Plan and Disclosure Statement is not confirmed by the requisite majorities in number and amount as required by Bankruptcy Code section 1126, or if any of the other confirmation requirements imposed by the Bankruptcy Code are not met, the Chapter 11 Cases may not have sufficient funding to proceed, which may result in conversion to a case under chapter 7 of the Bankruptcy Code or dismissal of the Chapter 11 Cases.

"Cramdown". While the Debtors believe that the requirements of Bankruptcy Code section 1129 have been met, the Bankruptcy Court is afforded discretion to determine whether dissenting Holders of Claims would receive more if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

Claims Estimation. While the Debtors have undertaken their best efforts to estimate the amount of Claims in each Class is correct, the actual amount of allowed Claims may differ from the estimates and, thus, the potential Distributions to Creditors may be different.

Causes of Action. Pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Assets, including the Estates' Causes of Action will be transferred to the Liquidating Trust upon the establishment of the Liquidating Trust on the Effective Date. The Causes of Action include Causes of Action which are not released, waived, or transferred pursuant to the California Sale, the Texas Sale, the Combined Plan and Disclosure Statement, or otherwise. There is no assurance that the Liquidating Trust will be successful in prosecuting any Cause of Action or generate sufficient proceeds from the Causes of Action for Distribution. To the extent Distributions are possible from the Causes of Action, or the SEC Action, the timing of any such Distribution is uncertain.

Delays. Any delay in confirmation of the Combined Plan and Disclosure Statement or delay to the Effective Date could result in additional Statutory Fees, Administrative Expense Claims, and/or other expenses. This may endanger ultimate approval of the effectiveness of the Combined Plan and Disclosure Statement or result in a decreased recovery for Holders of Claims entitled to a Distribution.

Sufficient Cash to Pay Claims. The Combined Plan and Disclosure Statement and the process for confirming the same is subject to the Debtors' and Estates' use of their Assets. To the extent that the Debtors or the Estates incur costs beyond the Cash held by the Debtors, the Holders of Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, Secured Tax Claims, and Non-Tax Priority Claims may not be paid in full.

Sufficient Cash for Liquidating Trust Distributions. There is no assurance that the Liquidating Trust Assets will be sufficient to fund the Liquidating Trust's expenses to enable the Liquidating Trust to hold and liquidate the Liquidating Trust Assets as envisioned under the Combined Plan and Disclosure Statement. Accordingly, there is no assurance that the Liquidating Trust will make any Distributions, the amount, if any, or the timing on which such Distributions may be made.

G. Feasibility

The Bankruptcy Code requires that, in order for a plan of reorganization to be confirmed, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or need for further reorganization of the debtors unless contemplated by the plan. 11 U.S.C. § 1129(a)(1).

Here, the Combined Plan and Disclosure Statement provides for the liquidation and distribution of all of the Debtors' remaining Assets. Accordingly, the Debtors believe all chapter 11 plan obligations will be satisfied without the need for further reorganization of the Debtors.

H. Best Interests Test and Alternatives to the Combined Plan and Disclosure Statement

Notwithstanding acceptance of a plan of reorganization by a voting impaired class, if an impaired class does not vote to accept the plan, the Bankruptcy Court must determine that the

plan provides to each member of such impaired class a recovery, on account of each member's claim or interest, that has a value, as of the effective date, at least equal to the recovery that such class member would receive if the debtor was liquidated under Chapter 7. 11 U.S.C. § 1129(a)(7). This inquiry is often referred to as the "best interests of creditors test."

In a typical Chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of the properties securing their liens. If any assets are remaining in the bankruptcy estate after satisfaction of the secured creditors' claims, administrative expenses are next to receive payment, followed by priority claims such as certain tax claims. Unsecured creditors are paid from any remaining proceeds, according to their respective priorities. Unsecured creditors with the same priority share *pro rata*. Finally, equity interest holders receive the balance that remains, if any, after all other creditors are paid in full.

Here, the Debtors believe the Combined Plan and Disclosure Statement satisfies the best interests test as the recoveries expected to be available to Holders of Allowed Claims under the Combined Plan and Disclosure Statement will be greater than the recoveries expected in a liquidation under chapter 7 of the Bankruptcy Code.

The Purchased Assets have already been sold to the Purchasers under the Sale Orders, and the Debtors have limited Assets remaining in their Estates. While a liquidation under chapter 7 of the Bankruptcy Code would have the same goal, the Debtors believe that the Combined Plan and Disclosure Statement provides the best source of recovery for several reasons. First, liquidation under chapter 7 of the Bankruptcy Code would not provide for a timely Distribution and likely no Distribution at all. Second, Distributions would likely be smaller because of the fees and expenses incurred in a liquidation under chapter 7 of the Bankruptcy Code. The Debtors believe that a liquidation under chapter 7 would not provide for a timely distribution and that such distributions would likely be smaller because a chapter 7 trustee and his/her professionals would have to expend significant time and resources familiarizing themselves with the history of the Debtors and the Causes of Action prior to pursuing any such Causes of Action.

Under the Combined Plan and Disclosure Statement, the Liquidating Trust Expenses, including the fees of the Liquidating Trustee and fees for the Liquidating Trustee's professionals, will be paid out of the Liquidating Trust Assets prior to any Distribution being made to creditors.

At this time, there are no alternative plans available to the Debtors. The closings of both the California Sale and Texas Sale have already occurred, and the Debtors are no longer a going concern enterprise and have few Assets remaining, if any, to administer. Therefore, the Debtors believe that the Combined Plan and Disclosure Statement provides the greatest possible value to all stakeholders under the circumstances, and has the greatest chance to be confirmed and consummated.

V. Unclassified Claims

A. Administrative Expense Claims

Other than Professional Fee Claims set forth below, Administrative Expense Claims incurred or arising on or prior to February 10, 2023 are governed by the Bar Date Order and the administrative claim bar date set therein.

Requests for allowance and payment of Administrative Expense Claims arising on or after February 11, 2023 through the Effective Date must be filed no later than the Administrative Claim Bar Date. Any such Administrative Expense Claim must be filed with the Bankruptcy Court with a copy served on Debtors' counsel (prior to the Effective Date) and the Liquidating Trustee and its counsel (after the Effective Date), as applicable, by regular mail, overnight courier, or hand delivery to the Claims and Noticing Agent at the following addresses by the Administrative Claim Bar Date:

(by mail)
Donlin, Recano & Company, Inc.
Re: Taronis Fuels, Inc., et al.
Attn: Voting Department
P.O. Box 2053
New York, NY 10272-2042

(by overnight courier or hand delivery)
Donlin, Recano & Company, Inc.
Re: Taronis Fuels, Inc., et al.
c/o Equiniti
Attn: Voting Department
48 Wall Street, 22nd Floor
New York, NY 10005

Holders of Administrative Expense Claims arising on or after February 11, 2023 through the Effective Date that do not file requests for the allowance and payment thereof on or before the Administrative Claim Bar Date shall forever be barred from asserting such Administrative Expense Claims against the Debtors or the Estates, the Liquidating Trust, or the Liquidating Trust Assets.

Except to the extent that a Holder of an Allowed Administrative Expense Claim agrees to a less favorable treatment or has been paid by any applicable Debtor or any Purchaser prior to the Effective Date, each Holder of an Allowed Administrative Expense Claim will be paid the full unpaid amount of such Allowed Administrative Expense Claim in cash (or other available funds in the Estates) from the remaining Assets or the Liquidating Trust Assets: (a) on the Effective Date or as soon thereafter as is reasonably practicable or, if not then due, when such Allowed Administrative Expense Claim is due or as soon thereafter as is reasonably practicable; (b) if an Administrative Expense Claim is Allowed after the Effective Date, on the date such Administrative Expense Claim is Allowed or as soon thereafter as is reasonably practicable or, if not then due, when such Allowed Administrative Expense Claim is due; or (c) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

B. Professional Fee Claims

All Professionals or other Persons requesting compensation or reimbursement of Professional Fee Claims for services rendered before the Effective Date (including compensation requested by any Professional or other entity for making a substantial contribution in the Chapter 11 Cases) shall file an application for final allowance of compensation and reimbursement of expenses no later than the Administrative Claim Bar Date.

A final fee hearing to determine the allowance of Professional Fee Claims shall be held as soon as practicable after the Administrative Claim Bar Date. The Debtors or the Liquidating Trustee shall file a notice of such final fee hearing. Such notice shall be posted on the Case Website and served upon counsel for all Professionals and the U.S. Trustee.

Allowed Professional Fee Claims shall be paid by the Debtors/Liquidating Trustee: (a) as soon as is reasonably practicable following the later of (i) the Effective Date and (ii) the date upon which the order relating to any such Allowed Professional Fee Claims is entered by the Bankruptcy Court; or (b) upon such other terms as agreed by the Holder of such an Allowed Professional Fee Claim.

Allowed Professional Fee Claims shall be paid in full in cash from the Professional Fee Escrow, and to the extent necessary, the Debtors' available Assets, or other available Liquidating Trust Assets, and in accordance with the Final Orders entered in the Chapter 11 Cases.

C. Priority Tax Claims

Except to the extent the Debtors and/or Liquidating Trustee and the Holder of an Allowed Priority Tax Claim agree to a different and less favorable treatment, the Debtors or the Liquidating Trustee, as applicable, shall pay, in full satisfaction and release of such Claim, to each Holder of a Priority Tax Claim, cash from their available Assets or as otherwise provided for in the Liquidating Trust Agreement, in an amount equal to such Allowed Priority Tax Claim, on the later of: (a) the Effective Date; and (b) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business as such obligations become due from the Liquidating Trust Assets. After the Allowed Priority Tax Claim is paid in full, any liens securing such Allowed Priority Tax Claim shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order or rule or the vote, consent, authorization, or approval of any Person.

D. Statutory Fees

All U.S. Trustee Statutory Fees ~~incurred~~due and payable prior to the Effective Date shall be paid by the Debtors ~~by~~on the Effective Date. After the Effective Date, the Debtors and the

Liquidating Trust shall be jointly and severally liable to pay any and all U.S. Trustee Statutory Fees when due and payable. The Debtors shall file all monthly ~~and quarterly~~operating reports~~, as applicable,~~ due prior to the Effective Date when they become due, using UST Form 11-MOR. After the Effective Date, the Liquidating ~~Trustee shall pay any and all Statutory Fees when due and payable. To the greatest degree possible, such payments shall be made from the Liquidating Trust Assets. After the Effective Date, the Liquidating Trustee~~Trust shall file with the Bankruptcy Court ~~quarterly~~separate UST Form 11-PCR reports when they become due~~, which reports shall include a separate schedule of any disbursements made by the Liquidating Trustee during the applicable period.~~. The Liquidating Trust shall remain obligated to pay U.S. Trustee Statutory Fees on account of each Debtor's Chapter 11 Case until the earliest of that particular Debtor's Chapter 11 Case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code. The U.S. Trustee shall not be required to file any Proof of Claim for an Administrative Expense Claim in the Chapter 11 Cases and shall not be treated as providing any release under the Plan.

VI. Classification and Treatment of Claims and Interests

A. Classification of Claims and Interests

The below categories of Claims and Interests classify such Claims and Interests for all purposes, including voting, Confirmation, and Distribution pursuant hereto and pursuant to Bankruptcy Code sections 1122 and 1123.

B. Treatment of Claims and Interests

1. Class 1 – Miscellaneous Secured Claims

a. *Classification:* Class 1 consists of the Miscellaneous Secured Claims.

b. *Treatment:* In full and complete satisfaction of an Allowed Miscellaneous Secured Claim against the Debtors, each Holder of an Allowed Class 1 Miscellaneous Secured Claim shall receive, either:

(i) such other treatment as may be agreed upon by any such Holder of a Miscellaneous Secured Claim, the Debtors (prior to the Effective Date), and the Liquidating Trustee (after the Effective Date), or

(ii) at the Debtors' or Liquidating Trustee's option, as applicable: (x) payment in full in cash of the Allowed amount of such Miscellaneous Secured Claim (as determined by settlement or order of the Bankruptcy Court), or (y) treatment

consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

c. *Voting:* Holders of Miscellaneous Secured Claims in Class 1 are Unimpaired and therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

2. Class 2 – Non-Tax Priority Claims

a. *Classification:* Class 2 consists of the Non-Tax Priority Claims.

b. *Treatment:* In full and complete satisfaction of an Allowed Non-Tax Priority Claim against the Debtors, each Holder of an Allowed Class 2 Non-Tax Priority Claim shall receive payment in full on the Effective Date in cash of the allowed amount of such Claim (as determined by settlement or order of the Bankruptcy Court), or such other treatment as may be agreed upon by the Holder of a Non-Tax Priority Claim, the Debtors (prior to the Effective Date), and the Liquidating Trustee (after the Effective Date).

c. *Voting:* Holders of Non-Tax Priority Claims in Class 2 are Unimpaired and therefore, are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

3. Class 3 – General Unsecured Claims

a. *Classification*: Class 3 consists of the General Unsecured Claims.

b. *Treatment*: In full and complete satisfaction of an Allowed General Unsecured Claim against the Debtors, each Holder of an Allowed Class 3 General Unsecured Claim shall receive its Pro Rata share of the Liquidating Trust Assets (including cash and recoveries of Causes of Action), net of Allowed Professional Fee Claims, Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Non-Tax Priority Claims, and Liquidating Trust Expenses.

c. *Voting:* Holders of General Unsecured Claims in Class 3 are Impaired and therefore, are entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

4. Class 4 – Section 510(b) Claims

a. *Classification*: Class 4 consists of all Section 510(b) Claims.

b. *Allowance:* Notwithstanding anything to the contrary herein, a Section 510(b) Claim, if any such Claim exists, may only become Allowed by a Final Order of the Bankruptcy Court. The Debtors are not aware of any valid Section 510(b) Claim and believe that no such Section 510(b) Claim exists.

c. *Treatment*: Allowed Section 510(b) Claims, if any, shall be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and Holders of Allowed Section 510(b) Claims will not receive any distribution on account of such Allowed Section 510(b) Claims.

d. *Voting*: Holders of Section 510(b) Claims in Class 4 are deemed Impaired and are deemed to reject the Combined Plan and Disclosure Statement. As such, Holders of Section 510(b) Claims in Class 4 are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

5. Class 5 – Intercompany Claims

a. *Classification*: Class 5 consists of the Intercompany Claims.

b. *Treatment*: Each of the Debtors shall agree that any and all Intercompany Claims between the Debtors will be canceled on the Effective Date and the Debtors shall not receive any recovery, subject to tax considerations minimizing the Debtors' tax liabilities.

c. *Voting*: Holders of Intercompany Claims in Class 4 are deemed Impaired and are deemed to reject the Combined Plan and Disclosure Statement. As such, Holders of Intercompany Claims in Class 5 are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

6. Class 6 – Existing Equity

a. *Classification:* Class 6 consists of all Existing Equity.

b. *Treatment*: On the Effective Date, existing equity of the Debtors shall be cancelled, and the Holders of existing equity interests shall receive no Distribution under the Combined Plan and Disclosure Statement.

c. *Voting*: Holders of Existing Equity in Class 6 are deemed Impaired and are deemed to reject the Combined Plan and Disclosure Statement. As such, Holders of Existing Equity in

Class 6 are not entitled to vote to accept or reject the Combined Plan and Disclosure Statement.

C. Impaired Claims and Interests

Under the Combined Plan and Disclosure Statement, Holders of Claims in Classes 3, 4, and 5 are the Impaired Classes pursuant to Bankruptcy Code section 1124 because the Combined Plan and Disclosure Statement alters the legal, equitable, or contractual rights of the Holders of such Claims treated in such Classes.

D. Cramdown and No Unfair Discrimination

To the extent that any Impaired Class does not vote to accept the Combined Plan and Disclosure Statement, the Debtors will seek Confirmation pursuant to Bankruptcy Code section 1129(b). This provision allows the Bankruptcy Court to confirm a plan of reorganization accepted by at least one impaired class so long as it does not unfairly discriminate and is fair and equitable with respect to each class of claims and interest that is impaired and has not accepted the plan. Colloquially, this mechanism is known as a "cramdown."

The Debtors believe the treatment of Claims and Interests described in the Combined Plan and Disclosure Statement are fair and equitable and do not discriminate unfairly. The proposed treatment of Claims and Interests provides that each Holder of such Allowed Claim or Interest will be treated identically within its respective Class and that, except when agreed to by such Holder, no Holder of any Claim or Interest junior will receive or retain any property on account of such junior Claim or Interest.

VII. Confirmation Procedures

A. Confirmation Procedures

1. Confirmation Hearing

The Confirmation Hearing before the Bankruptcy Court has been scheduled for ~~**[Month] [Day], 2023 at []:[] [a/p].m**~~**August 14, 2024 at 10:00 a.m. (prevailing Eastern time)** at the United States Bankruptcy Court, 824 North Market Street, 6th Floor, Courtroom No. 1, Wilmington, Delaware 19801 to consider (a) approval of the Combined Plan and Disclosure Statement as providing adequate information pursuant to Bankruptcy Code section 1125, and (b) confirmation of the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1129. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing and filed with the Bankruptcy Court.

2. Procedure for Objections

Any objection to approval or confirmation of the Combined Plan and Disclosure Statement must be made in writing and specify in detail the name and address of the objector, all

grounds for the objection and the amount of the Claim held by the objector. Any such objection must be filed by ~~[Month] [Day], 2023~~**August 7, 2024 at 4:00 p.m. (prevailing Eastern time)** with the Bankruptcy Court and served on (i) counsel to the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware, Attn: Jeremy W. Ryan, Esq. (jryan@potteranderson.com) and L. Katherine Good, Esq. (kgood@potteranderson.com) and (ii) the Office of the United States Trustee for the District of Delaware, Attn: Linda J. Casey (Linda.Casey@usdoj.gov). Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court.

3. Requirements for Confirmation

The Bankruptcy Court will confirm the Combined Plan and Disclosure Statement only if the requirements of Bankruptcy Code section 1129 are met. As set forth in the Combined Plan and Disclosure Statement, the Debtors believe that the Combined Plan and Disclosure Statement: (a) meets the cramdown requirements; (b) meets the feasibility requirements; (c) is in the best interests of creditors; (d) has been proposed in good faith; and (e) meets all other technical requirements imposed by the Bankruptcy Code.

Additionally, pursuant to Bankruptcy Code section 1126, under the Combined Plan and Disclosure Statement, only Holders of Claims in Impaired Classes are entitled to vote.

B. Solicitation and Voting Procedures

1. Eligibility to Vote on the Combined Plan and Disclosure Statement

Except as otherwise ordered by the Bankruptcy Court, only Holders of Claims in Class 3 against the Debtors may vote on the Combined Plan and Disclosure Statement pursuant to Bankruptcy Code section 1126. To vote on the Combined Plan and Disclosure Statement, a Holder must hold a Claim in Class 3 and have timely filed a Proof of Claim or have a Claim that is identified on the Schedules and is not listed as disputed, unliquidated, or contingent, or be the holder of a Claim that has been temporarily Allowed for voting purposes only under Bankruptcy Rule 3018(a).

ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASS 3.

2. Solicitation Package

The Solicitation Packages will contain: (a) the Combined Plan and Disclosure Statement and any exhibits or schedules thereto; (b) the Solicitation Procedures Order, excluding the exhibits annexed thereto; (c) notice of the Confirmation Hearing; (d) an appropriate Ballot, including voting instructions and a pre-addressed, postage prepaid return envelope; and (e) such other materials as the Bankruptcy Court may direct or approve, or that the Debtors deem appropriate.

Holders of Claims in non-voting classes that are deemed to either accept or reject the Combined Plan and Disclosure Statement will receive packages consisting of: (a) notice of the Confirmation Hearing; and (b) a notice of such Holder's non-voting status.

Copies of the Combined Plan and Disclosure Statement and any exhibits annexed thereto shall be available on the Claims and Noticing Agent's website at https://www.donlinrecano.com/Clients/tfi/Index. Any creditor or party-in-interest can request a hard copy of the Combined Plan and Disclosure Statement be sent to them by regular mail by contacting the Claims and Noticing Agent by email at tfiinfo@donlinrecano.com, or phone at 866-703-9066 (toll-free).

3. Voting Procedures and Voting Deadline

The Voting Record Date for determining which Holders of Claims in Class 3 may vote on the Combined Plan and Disclosure Statement is [Month] [Day], 2023.

The Voting Deadline by which the Claims and Noticing Agent must *RECEIVE* original Ballots is ~~**[Month] [Day], 2023**~~**August 7, 2024 at 4:00 p.m. (prevailing Eastern time)**. In order to be counted as a vote to accept or reject the Combined Plan and Disclosure Statement, each Ballot must be properly delivered to the Claims and Noticing Agent by either: (i) mail to Donlin, Recano & Company, Inc., Re: Taronis Fuels, Inc., et al., Attn: Voting Department, P.O. Box 2053, New York, NY 10272-2042; (ii) overnight courier or hand delivery to Donlin, Recano & Company, Inc., c/o Equiniti, Attn: Voting Department, 48 Wall Street, New York, NY 10005; or (iii) online transmission through the Claims and Noticing Agent's customized, electronic balloting platform at https://www.donlinrecano.com/Clients/tfi/vote ("E-Ballot Portal"). The E-Ballot Portal will be available on the Case Website for the Chapter 11 Cases. Holders of Claims in Class 3 may cast an E-Ballot and electronically sign and submit such electronic ballot via the E-Ballot Portal. Instructions for casting an electronic Ballot will be available on the Case Website.

If you are entitled to vote to accept or reject the Combined Plan and Disclosure Statement, a Ballot is enclosed. Please carefully review the Ballot instructions and complete the Ballot by: (a) indicating your acceptance or rejection of the Combined Plan and Disclosure Statement; and (b) signing and returning the Ballot to the Claims and Noticing Agent.

If you are a member of a Class entitled to vote and did not receive a Ballot, received a damaged Ballot, or lost your Ballot, contact the Claims and Noticing Agent – Donlin, Recano & Company, Inc. – at (866) 703-9066 (U.S. and Canada); (212) 771-1128 (outside the U.S. and Canada); or at tfiinfo@donlinrecano.com.

The following Ballots will not be counted or considered:

(a) any Ballot received after the Voting Deadline, unless the Bankruptcy Court grants an extension to the Voting Deadline with respect to such Ballot or the Debtors in their discretion agree to such extension;

(b) any Ballot that is illegible or contains insufficient information;

(c) any Ballot cast by a Person or Entity that does not hold a Claim in a Class entitled to vote;

(d) any Ballot timely received that is cast in a manner that indicates neither acceptance nor rejection of the Combined Plan and Disclosure Statement or that indicates both acceptance and rejection of the Combined Plan and Disclosure Statement;

(e) simultaneous duplicative Ballots voted inconsistently;

(f) Ballots partially rejecting and partially accepting the Combined Plan and Disclosure Statement;

(g) any Ballot received other than the official form sent by the Claims and Noticing Agent;

(h) any unsigned Ballot; or

(i) any Ballot that is submitted by facsimile or e-mail except via the E-Ballot Portal, unless the Debtors in their discretion agree to accept such Ballot by facsimile or e-mail.

4. Deemed Acceptance or Rejection

Holders of Claims in Classes 1 and 2 are unimpaired, and thus deemed to accept the Combined Plan and Disclosure Statement. Under Bankruptcy Code section 1126(f), Holders of such Claims are conclusively presumed to have accepted the Combined Plan and Disclosure Statement, and the votes of the Holders of such Claims shall not be solicited.

Holders of Claims in Classes 4 and 5 will not receive any Distribution under the Combined Plan and Disclosure Statement. Pursuant to Bankruptcy Code section 1126(g), Holders of Claims in Classes 4 and 5 are conclusively deemed to have rejected the Combined Plan and Disclosure Statement and the votes of these Holders therefore shall not be solicited.

5. Acceptance by an Impaired Class

In order for the Combined Plan and Disclosure Statement to be accepted by an Impaired Class of Claims, a majority in number (i.e., more than half) and two-thirds in dollar amount of the Claims voting (of each Impaired Class of Claims) must vote to accept the Combined Plan and Disclosure Statement. At least one (1) Impaired Class of creditors, excluding the votes of insiders, must actually vote to accept the Combined Plan and Disclosure Statement. The Debtors urge that you vote to accept the Combined Plan and Disclosure Statement.

YOU ARE URGED TO COMPLETE, DATE, SIGN, AND PROMPTLY MAIL THE BALLOT ATTACHED TO THE NOTICE. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND LEGIBLY IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR.

VIII. Implementation and Execution of the Combined Plan and Disclosure Statement

A. Effective Date

The Effective Date shall not occur until all conditions for the Effective Date are satisfied or otherwise waived in accordance with the terms of the Combined Plan and Disclosure Statement. Upon occurrence of the Effective Date, the Debtors shall file a notice of Effective Date, which shall also be posted on the Case Website.

B. Implementation of the Combined Plan and Disclosure Statement

1. General

The Combined Plan and Disclosure Statement shall be implemented as described in detail below; *provided*, *however*, that the provisions contained in the Combined Plan and Disclosure Statement shall be subject in all respects to the provisions of the Sale Orders, the asset purchase agreements associated with the California and Texas Sales, and the Final DIP Order; and nothing in the Combined Plan and Disclosure Statement shall be deemed to modify, negate, abrogate, overrule, or supersede the terms and provisions of the aforementioned documents.

2. Corporate Action, Officers and Directors, and Effectuating Documents

On the Effective Date, all matters and actions provided for under the Combined Plan and Disclosure Statement that would otherwise require approval of the Officer(s) or director(s) of the Debtors, including the Chief Restructuring Officer, shall be deemed to have been authorized and effective in all respects as provided herein and shall be taken without any requirement for further action by the Board.

The Chief Restructuring Officer, prior to the Effective Date, or the Liquidating Trustee, after the Effective Date, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate and implement the provisions of the Combined Plan and Disclosure Statement.

C. Records

The Liquidating Trustee shall retain those documents maintained by the Debtors in the ordinary course of business and which were not otherwise transferred to the Purchasers pursuant to the Sale Orders. After receipt of such documents, the Liquidating Trustee shall be authorized

to destroy any documents he or she deems necessary or appropriate in his or her reasonable judgment; *provided*, *however*, that the Liquidating Trustee shall not destroy any documents, including but not limited to tax documents, that the Liquidating Trust is required to retain under applicable law.

D. Liquidating Trust

1. Establishment of the Liquidating Trust

The Liquidating Trust will be formed on the Effective Date in accordance with the Combined Plan and Disclosure Statement and pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (i) implementing the Combined Plan and Disclosure Statement, (ii) prosecuting the Causes of Action (including Avoidance Actions and D&O Claims), (iii) investigating and, if appropriate, pursuing other Causes of Action (including Avoidance Actions and D&O Claims), (iv) administering, monetizing and/or liquidating the Liquidating Trust Assets, (v) resolving all Disputed Claims, and (v) making all Distributions to Holders of Allowed Claims from the Liquidating Trust and as provided for in the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement.

The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, prosecuting any Causes of Action transferred to the Liquidating Trust to maximize recoveries for the benefit of the Liquidating Trust Beneficiaries, and making Distributions in accordance with the Combined Plan and Disclosure Statement to the Liquidating Trust Beneficiaries, with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d). The Liquidating Trust is intended to qualify as a "grantor trust" for federal income tax purposes and, to the extent permitted by applicable law, for state and local income tax purposes, with the Liquidating Trust Beneficiaries treated as grantors and owners of the trust.

Upon establishment of the Liquidating Trust, all Liquidating Trust Assets shall be deemed transferred to the Liquidating Trust without any further action of any of the Debtors, or any employees, Officers, directors, members, partners, shareholders, agents, advisors, or representatives of the Debtors. The Debtors shall have the power and authority to enter into the Liquidating Trust Agreement on the Effective Date.

The Liquidating Trust Agreement will be filed by no later than the filing of the Plan Supplement and will be considered an integral part of the Combined Plan and Disclosure Statement and is incorporated herein by reference in its entirety.

2. Appointment and Duties of Liquidating Trustee

Appointment of the Liquidating Trustee. The Liquidating Trustee will be a disinterested Person designated by the Debtors in the Plan Supplement. 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. As set forth herein, the material terms of the

Liquidating Trustee's compensation are included in the Liquidating Trust Agreement. Effective as of the Effective Date, the Board and/or members/managers of each Debtor shall be comprised solely of the Liquidating Trustee. Effective as of the Effective Date, to the extent not previously resigned, each member of the Board, Officer, manager, or member of each Debtor shall be deemed to have resigned and shall have no continuing obligations to the Debtors on or after the Effective Date. Effective as of the Effective Date, the sole Officer/director/member/manager of each Debtor shall be the Liquidating Trustee.

The Liquidating Trustee shall carry out the duties as set forth in this Section VIII.D and in the Liquidating Trust Agreement. Pursuant to Bankruptcy Code section 1123(b)(3), the Liquidating Trustee shall be deemed the appointed representative to, and may pursue, litigate, and compromise and settle any such rights, Claims, and Causes of Action in accordance with the best interests of and for the benefit of the Liquidating Trust Beneficiaries. In the event that the Liquidating Trustee resigns, is removed, terminated, or otherwise unable to serve as the Liquidating Trustee, then a successor shall be appointed as set forth in the Liquidating Trust Agreement. Any successor Liquidating Trustee appointed shall be bound by and comply with the terms of the Combined Plan and Disclosure Statement, the Confirmation Order, and the Liquidating Trust Agreement.

Responsibilities and Authority of Liquidating Trustee. The responsibilities and authority of the Liquidating Trustee shall include: (a) establishing reserves and investing cash; (b) liquidating non-cash Liquidating Trust Assets; (c) retaining and paying Professionals as necessary to carry out the purposes of the Liquidating Trust; (d) preparing and filing tax returns for the Debtors and the Liquidating Trust as set forth herein; (e) preparing and filing reports and other documents necessary to conclude and close the Chapter 11 Cases; (f) objecting to, reconciling, seeking to subordinate, compromising, or settling any or all Claims and Interests, and administering Distributions on account of the Holders of Allowed Claims that are Liquidating Trust Beneficiaries pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement; (g) evaluating, filing, litigating, settling, or otherwise pursuing any Causes of Action; (h) abandoning any property of the Liquidating Trust that cannot be sold or distributed economically; (i) making interim and final Distributions of Liquidating Trust Assets; (j) winding up the affairs of the Liquidating Trust and dissolving it under applicable law; (k) destroying records once they are no longer needed for administration of the Chapter 11 Cases or the Liquating Trust; and (l) such other responsibilities as may be vested in the Liquidating Trustee pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order, or any Bankruptcy Court order or as may be necessary and proper to carry out the provisions of the Combined Plan and Disclosure Statement.

Powers of the Liquidating Trustee. The Liquidating Trustee shall have the power and authority to perform the acts described in the Liquidating Trust Agreement (subject to approval by the Bankruptcy Court where applicable), in addition to any powers granted by law or conferred to it by any other provision of the Combined Plan and Disclosure Statement, including without limitation any powers set forth herein, *provided however*, that enumeration of the following powers shall not be considered in any way to limit or control the power and authority

of the Liquidating Trustee to act as specifically authorized by any other provision of the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order, and/or any applicable law, and to act in such manner as the Liquidating Trustee may deem necessary or appropriate to take any act deemed appropriate by the Liquidating Trustee, including, without limitation, to discharge all obligations assumed by the Liquidating Trustee or provided herein and to conserve and protect the Liquidating Trust or to confer on the creditors the benefits intended to be conferred upon them by the Combined Plan and Disclosure Statement. The Liquidating Trustee shall have the power and authority without further approval by the Bankruptcy Court to liquidate the Liquidating Trust Assets, to hire and pay professional fees and expenses of counsel and other advisors, including Contingency Counsel, to prosecute and settle objections to Disputed Claims, to prosecute and settle any Cause of Action, and otherwise take any action as shall be necessary to administer the Chapter 11 Cases and effect the closing of the Chapter 11 Cases, including, without limitation, as follows: (a) the power to invest funds, in accordance with Bankruptcy Code section 345, make Distributions and pay taxes and other obligations owed by the Liquidating Trust from funds held by the Liquidating Trustee in accordance with the Combined Plan and Disclosure Statement and Liquidating Trust Agreement; (b) the power to engage and compensate, without prior Bankruptcy Court order or approval, employees and Professionals, including Contingency Counsel, to assist the Liquidating Trustee with respect to his or her responsibilities; (c) the power to pursue, prosecute, resolve, and compromise and settle any Causes of Action on behalf of the Liquidating Trust without prior Bankruptcy Court approval but in accordance with the Liquidating Trust Agreement; (d) the power to object to Claims, including, without limitation, the power to subordinate and recharacterize Claims by objection, motion, or adversary proceeding; and (e) such other powers as may be vested in or assumed by the Liquidating Trustee pursuant to the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement, the Confirmation Order, any other Bankruptcy Court order, or as may be necessary and proper to carry out the provisions of the Combined Plan and Disclosure Statement. Except as expressly set forth in the Combined Plan and Disclosure Statement and in the Liquidating Trust Agreement, the Liquidating Trustee, on behalf of the Liquidating Trust, shall have absolute discretion to pursue or not to pursue any Causes of Action as it determines is in the best interests of the Liquidating Trust Beneficiaries and consistent with the purposes of the Liquidating Trust, and shall have no liability for the outcome of his or her decision, other than those decisions constituting gross negligence or willful misconduct. The Liquidating Trustee may incur any reasonable and necessary expenses in liquidating and converting the Liquidating Trust Assets to cash. Subject to the other terms and provisions of the Combined Plan and Disclosure Statement, the Liquidating Trustee shall be granted standing, authority, power, and right to assert, prosecute and/or settle the Causes of Action and/or make a claim under any primary director and officer liability, employment practices liability, or fiduciary liability insurance policies based upon its powers as a Court-appointed representative of the Estates with the same or similar abilities possessed by insolvency trustees, receivers, examiners, conservators, liquidators, rehabilitators, or similar officials.

Enforcement of Any Avoidance Actions and Other Causes of Action. Pursuant to Bankruptcy Code section 1123(b), the Liquidating Trustee, on behalf of and for the benefit of the Liquidating Trust Beneficiaries, shall be vested with and shall retain and may enforce any

Avoidance Actions and D&O Claims and other Causes of Action transferred to the Liquidating Trust that were held by, through, or on behalf of the Debtors and/or the Estates against any other Person, arising before the Effective Date that have not been fully resolved or disposed of prior to the Effective Date, whether or not such Avoidance Actions and D&O Claims are specifically identified in the Combined Plan and Disclosure Statement and whether or not litigation with respect to same has been commenced prior to the Effective Date. The recoveries from any Avoidance Action, D&O Claim, and other Causes of Action transferred to the Liquidating Trust will be deposited into the Liquidating Trust and distributed in accordance with the Liquidating Trust Agreement and the Combined Plan and Disclosure Statement.

Compensation of Liquidating Trustee. The Liquidating Trustee shall be compensated as set forth in the Liquidating Trust Agreement; *provided*, *however* that such compensation shall only be payable from the Liquidating Trust Assets. The Liquidating Trustee shall fully comply with the terms, conditions, and rights set forth in the Combined Plan and Disclosure Statement, the Confirmation Order, and the Liquidating Trust Agreement. The Liquidating Trustee shall not be required to file a fee application to receive compensation.

Retention and Payment of Professionals. The Liquidating Trustee shall have the right to retain the services of attorneys, accountants, and other professionals and agents, including counsel, to assist and advise the Liquidating Trustee in the performance of his or her duties and compensate such professionals from the Liquidating Trust Assets as set forth in the Liquidating Trust Agreement, including but not limited to, Professionals retained by the Debtors, without the need for an order of the Bankruptcy Court.

Limitation of Liability of the Liquidating Trustee. The Liquidating Trust shall indemnify the Liquidating Trustee and his or her Professionals against any losses, liabilities, expenses (including attorneys' fees and disbursements), damages, taxes, suits, or claims that the Liquidating Trustee or his or her Professionals may incur or sustain by reason of being or having been a Liquidating Trustee or Professional of the Liquidating Trustee for performing any functions incidental to such service; *provided*, *however*, the foregoing shall not relieve the Liquidating Trustee or his or her professionals from liability for willful misconduct, reckless disregard of duty, breach of fiduciary duty, criminal conduct, gross negligence, fraud, or self-dealing.

3. Purpose of Liquidating Trust

The Liquidating Trust shall be established for the purpose of liquidating the Liquidating Trust Assets, prosecuting any Causes of Action transferred to the Liquidating Trust to maximize recoveries for the benefit of the Liquidating Trust Beneficiaries, and making Distributions in accordance with the Combined Plan and Disclosure Statement to the Liquidating Trust Beneficiaries with no objective to continue or engage in the conduct of a trade or business in accordance with Treas. Reg. § 301.7701-4(d).

The Liquidating Trust shall be responsible for filing all required federal, state, and local tax returns and/or informational returns for the Liquidating Trust, and, to the extent not

previously filed, for any of the Debtors. The Liquidating Trust shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority, and all distributions made by the Liquidating Trust shall be subject to any such withholding and reporting requirements. The Liquidating Trustee shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements including, without limitation, requiring that, as a condition to the receipt of a Distribution, the Holder of an Allowed Claim complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each Holder. Notwithstanding any other provision of this Combined Plan and Disclosure Statement, (a) each Holder of an Allowed Claim that is to receive a Distribution from the Liquidating Trust shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income and other tax obligations, on account of such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to this Combined Plan and Disclosure Statement unless and until such Holder has made arrangements satisfactory to the Liquidating Trustee to allow it to comply with its tax withholding and reporting requirements. Any property to be distributed by the Liquidating Trust shall, pending the implementation of such arrangements, be treated as an unclaimed Distribution to be held by the Liquidating Trustee, as the case may be, until such time as the Liquidating Trustee is satisfied with the Holder's arrangements for any withholding tax obligations.

In connection with the consummation of this Combined Plan and Disclosure Statement, the Debtors and the Liquidating Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, or local taxing authority and all Distributions hereunder shall be subject to any such withholding and reporting requirements. All Liquidating Trust Beneficiaries, as a condition to receiving any Distribution, shall provide the Liquidating Trustee with a completed and executed Tax Form W-8 or Tax Form W-9, or similar form within sixty (60) days of a written request by the Liquidating Trustee or be forever barred from receiving a Distribution.

4. Transfer of Liquidating Trust Assets to Liquidating Trust

Pursuant to Bankruptcy Code sections 1123(a)(5) and 1141, all transfers and contributions made to the Liquidating Trust shall be made free and clear of all Claims, liens, encumbrances, charges, and other Interests. Upon completion of the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Debtors will have no further interest in, or with respect to, the Liquidating Trust Assets or the Liquidating Trust. For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) will treat the transfer of the Liquidating Trust Assets to the Liquidating Trust in accordance with the terms of the Combined Plan and Disclosure Statement as a transfer to the Liquidating Trust Beneficiaries, followed by a transfer by such Liquidating Trust Beneficiaries to the Liquidating Trust, and the Liquidating Trust Beneficiaries will be treated as the grantors and owners thereof.

5. Preservation of Rights

Under the Combined Plan and Disclosure Statement, but subject in all respects to the Sale Orders, the Liquidating Trustee retains any and all rights of, and on behalf of, the Debtors, the Estates, and the Liquidating Trust to commence and pursue any and all Causes of Action, including, without limitation, Avoidance Actions, other causes of action, setoff, offset, and recoupment rights, regardless of whether or not such rights are specifically enumerated in the Combined Plan and Disclosure Statement, the Plan Supplement, or elsewhere or the representative of the Estates pursuant to section 1123 of the Bankruptcy Code and all other applicable law, and all such rights shall not be deemed modified, waived, released in any manner, nor shall confirmation of the Combined Plan and Disclosure Statement or the Confirmation Order act as *res judicata* or limit any of such rights of the Liquidating Trustee to commence and pursue any and all Causes of Action, Avoidance Actions, and other causes of actions, or Claims, including, without limitation, setoff, offset and recoupment rights, to the extent the Liquidating Trustee deems appropriate. Any and all Causes of Action, including, without limitation, Avoidance Actions, other causes of action, setoff, offset, and recoupment rights, may, but need not, be pursued by the Debtors prior to the Effective Date and by the Liquidating Trustee after the Effective Date, to the extent warranted.

Unless a Cause of Action, Avoidance Action, or other Claim or cause of action against a creditor or other Entity is expressly waived, relinquished, released, compromised, or settled in the Combined Plan and Disclosure Statement, or any Final Order, including the Sale Orders, the Debtors expressly reserve any and all Causes of Action, including, without limitation, setoff, offset, and recoupment rights, for later enforcement and prosecution by the Liquidating Trustee (including, without limitation, any Causes of Actions set forth in the Plan Supplement, or not specifically identified herein, or otherwise, or which the Debtors may presently be unaware of, or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time, or facts or circumstances which may change or be different from those which the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such any and all Causes of Action, including, without limitation, setoff, offset, and recoupment rights, upon or after the confirmation or consummation of the Combined Plan and Disclosure Statement based on the Combined Plan and Disclosure Statement or the Confirmation Order. In addition, the Liquidating Trust expressly reserves the right to pursue or adopt any and all Causes of Action, including, without limitation, setoff, offset, and recoupment rights, alleged in any lawsuit in which the Debtors are a defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits, subject to the provisions of the Combined Plan and Disclosure Statement or any Final Order.

The Debtors and the Liquidating Trustee do not intend, and it should not be assumed (nor shall it be deemed) that because any existing or potential Causes of Action, including, without limitation, setoff, offset, and recoupment rights, have not yet been pursued by the Debtors or are

not set forth herein, or otherwise, that any Causes of Action, including, without limitation, setoff, offset, and recoupment rights, has been waived or expunged.

6. Liquidating Trust Expenses

The Liquidating Trustee may, in the ordinary course of business and without the necessity for any application to, or approval of, the Bankruptcy Court, pay any accrued but unpaid Liquidating Trust Expenses. All Liquidating Trust Expenses shall be charged against and paid from the Liquidating Trust Assets as provided in the Liquidating Trust Agreement.

7. Privileges

On and subject to the terms of the Combined Plan and Disclosure Statement, all of the Debtors' privileges (the "Privileges"), including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "Transferred Privileges") shall be transferred, assigned, and delivered to the Liquidating Trust, without waiver, limitation, or release, and shall vest with the Liquidating Trust on the Effective Date.

The Liquidating Trust shall hold and be the beneficiary of all Transferred Privileges and entitled to assert all Transferred Privileges. No Privilege shall be waived by disclosures to the Liquidating Trustee of the Debtors' documents, information, or communications subject to any privilege, protection, or immunity or protections from disclosure jointly held by the Debtors and the Liquidating Trust.

The Debtor's Privileges relating to the Liquidating Trust Assets will remain subject to the rights of third parties under applicable law, including any rights arising from the common interest doctrine, the joint defense doctrine, joint attorney-client representation, or any agreement. Nothing contained herein or in the Confirmation Order, nor any Professional's compliance herewith and therewith, shall constitute a breach or waiver of any Privileges.

To the extent of any conflict between this Section VIII.D.7 of the Combined Plan and Disclosure Statement and any other provision of the Combined Plan and Disclosure Statement relating to Privileges, this Section VIII.D.& shall control.

8. Liquidating Trust Interest

Each Liquidating Trust Interest will entitle its Holder to Distributions from the Liquidating Trust in accordance with the terms of the Liquidating Trust Agreement. The Liquidating Trust Interests will be uncertificated; thus, Distributions from a Liquidating Trust Interest will be accomplished solely by the entry of names of the Holders and their respective Liquidating Trust Interests in the books and records of the Liquidating Trust. Each Holder of a Liquidating Trust Interest shall take and hold its uncertificated beneficial Interest subject to all the terms and provisions of the Combined Plan and Disclosure Statement, the Confirmation Order, and the Liquidating Trust Agreement.

The Liquidating Trust Interests shall not be registered pursuant to the Securities Act of 1933, as amended, or any state securities law and shall be exempt from registrations thereunder pursuant to section 1145 of the Bankruptcy Code. The Liquidating Trust Interest shall be freely transferrable; *provided, however*, that the transfer of the Liquidating Trust Interest will be prohibited to the extent such transfer would subject the Debtors or the Liquidating Trust to the registration and reporting requirements of the Securities Act and the Security Exchange Act.

9. Termination of Liquidating Trust

The Liquidating Trust shall be dissolved upon the earlier of the Distribution of all of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries or the fifth (5th) anniversary of the creation of the Liquidating Trust, *provided that* the Liquidating Trustee shall, in his/her sole discretion, be authorized to seek to extend the dissolution date upon Bankruptcy Court approval by the filing of a motion served on the master service list for cause shown. This motion must be filed with the Bankruptcy Court no earlier than six (6) months before the termination date of the Liquidating Trust.

E. Effective Date and Other Transactions

1. Transfer of Assets to Liquidating Trust

On the Effective Date, except as otherwise expressly provided in the Combined Plan and Disclosure Statement, title to the Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all liens, encumbrances, or interests of any kind. Except as otherwise provided in the Sale Orders or the Combined Plan and Disclosure Statement, the Liquidating Trust shall succeed to all rights and interests retained by or provided to the Debtors and the Estates to the extent permitted under the Sale Orders.

On the Effective Date, the Debtors will transfer to the Liquidating Trust the Liquidating Trust Assets. All Debtors shall thereafter be deemed dissolved on the Effective Date without the need for further notice or action.

F. Provisions Governing Distributions under the Combined Plan and Disclosure Statement

1. Method of Payment

Except as otherwise provided herein, any Distributions and deliveries to be made hereunder with respect to Claims that are Allowed as of the Effective Date shall be made on the Effective Date or as soon thereafter as is reasonably practicable. Except as otherwise provided herein, any Distributions and deliveries to be made hereunder with respect to Claims that are Allowed after the Effective Date shall be made as soon as is reasonably practicable after the date on which such Claim becomes Allowed. Distributions made after the Effective Date to Holders of Allowed Claims shall be deemed to have been made on the Effective Date and, except as otherwise provided in the Combined Plan and Disclosure Statement, no interest shall accrue or be payable with respect to such Claims or any Distribution related thereto. In the event that any

payment or act under the Combined Plan and Disclosure Statement is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

All Distributions hereunder shall be made by the Debtors, the Liquidating Trustee, or his/her named successor or assign, as "Disbursing Agent," on or after the Effective Date or as otherwise provided herein. For the avoidance of doubt, (i) the Debtors or such other Entity designated by the Debtors, shall act as Disbursing Agent with respect to all Effective Date Distributions, and (ii) the Liquidating Trustee, or such other Entity designated by the Liquidating Trustee, shall act as Disbursing Agent with respect to all other Distributions to be made pursuant to the Combined Plan and Disclosure Statement or the Liquidating Trust Agreement following the Effective Date. A Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court, and, in the event that a Disbursing Agent is so ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Disbursing Agent.

Unless otherwise expressly agreed in writing, all cash payments to be made pursuant to the Combined Plan and Disclosure Statement shall be made by check drawn on a domestic bank or an electronic wire.

2. Delivery of Distributions

Except as otherwise provided herein, Distributions to Holders of Allowed Claims shall be made: (a) at the addresses set forth on the respective Proofs of Claim filed by such Holders; (b) at the addresses set forth in any written notice of address changes delivered to the Liquidating Trustee after the date of any related Proof of Claim; or (c) at the address reflected in the Schedules or other more recent records of the Debtors if no Proof of Claim is filed and the Liquidating Trustee has not received a written notice of a change of address.

Subject to applicable Bankruptcy Rules, all Distributions to Holders of Allowed Claims shall be made to the Disbursing Agent who shall transmit such Distributions to the applicable Holders of Allowed Claims or their designees. If any Distribution to a Holder of an Allowed Claim is returned as undeliverable the Disbursing Agent shall make reasonable inquiry for a correct current address. In the event reasonable inquiry does not yield a correct current address, the Disbursing Agent shall have no further obligation to determine the correct current address of such Holder~~,~~ and no Distribution to such Holder shall be made unless and until the Disbursing Agent is notified, in writing, by the Holder of the correct current address of such Holder within ninety (90) days of such Distribution, at which time a Distribution shall be made to such Holder without interest; *provided that* such Distributions shall be deemed unclaimed property or an unclaimed Distribution under Bankruptcy Code section 347(b) at the expiration of ninety (90) days from the Distribution. After such date, all unclaimed property or interest in property shall revert to the Liquidating Trust ~~to be~~and (i) if there are to be further Distributions to Holders of Allowed Claims, such unclaimed property or interest in property shall be distributed to ~~other~~ Holders of Allowed Claims in accordance with the terms of the Liquidating Trust Agreement

and the Combined Plan and Disclosure Statement, (ii) if a final Distribution has been made, such unclaimed property or interest in property shall be disposed of in accordance with Section VIII.F.5 of the Combined Plan and Disclosure Statement and the Claim of any other Holder to such property or interest in property shall be released and forever barred.

3. Objection to and Resolution of Claims

Except as expressly provided herein, or in any order entered in the Chapter 11 Cases prior to the Effective Date, including the Confirmation Order, no Claim or Interest shall be deemed Allowed unless and until such Claim or Interest is deemed Allowed under the Combined Plan and Disclosure Statement or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Chapter 11 Cases allowing such Claim or Interest. On or after the Effective Date, the Liquidating Trust shall be vested with any and all rights and defenses each Debtor had with respect to any Claim or Interest immediately prior to the Effective Date.

Except as provided herein and in Article IX of the Combined Plan and Disclosure Statement, the Liquidating Trustee or other party in interest with standing, to the extent permitted pursuant to section 502(a) of the Bankruptcy Code, shall file and serve any objection to any Claim no later than the Claims Objection Deadline.

4. Preservation of Rights to Settle Claims

Except as otherwise expressly provided herein, including in Article XI of the Combined Plan and Disclosure Statement, nothing contained in the Combined Plan and Disclosure Statement and related documents, or in the Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that the Debtors or their Estates may have or which the Liquidating Trustee may choose to assert on behalf of the Estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law or rule, common law, equitable principle or other source of right or obligation, including, without limitation, (a) any and all claims against any Person or Entity, to the extent such Person or Entity asserts a crossclaim, counterclaim, and/or claim for setoff which seeks affirmative relief against the Debtors, their Officers, directors, or representatives, and (b) the turnover of all property of the Estates. This section shall not apply to any Claims sold, released, waived, relinquished, exculpated, compromised, or settled under the Combined Plan and Disclosure Statement or pursuant to a Final Order, expressly including the Sale Orders. Except as expressly provided in the Combined Plan and Disclosure Statement, nothing contained in the Combined Plan and Disclosure Statement and related documents, or in the Confirmation Order shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense. No Entity may rely on the absence of a specific reference in the Combined Plan and Disclosure Statement, the Plan Supplement, or any other document related to the Combined Plan and Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Liquidating Trustee, as applicable, will not pursue any and all available Causes of Action against them. The Debtors and the Liquidating Trustee expressly reserve all

rights to prosecute any and all Causes of Action against any Person or Entity, except as otherwise expressly provided in the Combined Plan and Disclosure Statement.

5. Miscellaneous Distribution Provisions

Disputed Claims. At such time as a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall distribute to the Holder of such Claim the Distribution to which such Holder is entitled under the Combined Plan and Disclosure Statement with respect to the Class in which such Claim belongs. To the extent that all or a portion of a Disputed Claim is Disallowed, the Holder of such Claim shall not receive any Distribution on account of the portion of such Claim that is Disallowed and any property withheld pending the resolution of such Claim shall be reallocated Pro Rata to the Holders of Allowed Claims in the same Class.

Disputed Claims Reserve. The Liquidating Trustee may establish a separate Disputed Claims Reserve in accordance with the Liquidating Trust Agreement on account of Distributions of cash or other property as necessary hereunder. The Liquidating Trustee shall not make any Distributions of Liquidating Trust Assets to the Liquidating Trust Beneficiaries unless the Liquidating Trustee retains and reserves in the Disputed Claims Reserve such amounts as are reasonably necessary to satisfy amounts that would have been distributed in accordance with Combined Plan and Disclosure Statement in respect of Disputed Claims if the Disputed Claims were determined to be Allowed Claims immediately prior to such proposed Distribution to the Liquidating Trust Beneficiaries.

Distributions After Allowance. To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, a Distribution shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Combined Plan and Disclosure Statement. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Trustee or, as applicable, the Disbursing Agent shall provide to the Holder of such Claim the Distribution to which such Holder is entitled hereunder.

Setoff. The Debtors or Liquidating Trustee, as applicable, retain the right to reduce any Claim by way of setoff in accordance with the Debtors' books and records and in accordance with the Bankruptcy Code. A claimant may challenge any such setoff made by the Debtors or the Liquidating Trustee in the Bankruptcy Court or any other court with jurisdiction.

Postpetition Interest. Except as may be expressly provided herein, interest shall not accrue on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date. No prepetition Claim shall be Allowed to the extent it is for postpetition interest or other similar charges, except to the extent permitted for Holders of Secured Claims, if any, under section 506(b) of the Bankruptcy Code.

Minimum Distributions. Notwithstanding anything herein to the contrary, (a) the Liquidating Trustee shall not be required to make Distributions or payments of fractions of dollars, and whenever any Distribution of a fraction of a dollar under the Combined Plan and

Disclosure Statement would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down; and (b) the Liquidating Trustee shall have no duty to make a Distribution on account of any Allowed Claim (i) if the aggregate amount of all Distributions authorized to be made on such date is less than $100,000, in which case such Distributions shall be deferred to the next Distribution date, (ii) if the amount to be distributed to a Holder on the particular Distribution date is less than $100.00, unless such Distribution constitutes the final Distribution to such Holder, or (iii) if the amount of the final Distribution to such Holder is $50.00 or less, in which case no Distribution will be made to that Holder and such Distribution shall revert to the Liquidating Trust for distribution on account of other Allowed Claims.

Donation of Remaining Liquidating Trust Assets. After final Distributions have been made in accordance with the terms of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement, if the amount of remaining cash is less than $30,000, the Liquidating Trustee shall donate such amount to charity in accordance with the terms of the Liquidating Trust Agreement.

IX. Executory Contracts and Unexpired Leases

A. Background

During the Chapter 11 Cases, the Debtors rejected various Executory Contracts and Unexpired Leases of non-residential real property as further described herein. The Sale Orders also provide for certain treatment of Executory Contracts and Unexpired Leases. While nothing in the Combined Plan and Disclosure Statement shall be deemed to supersede Sale Orders, Article IX of the Combined Plan and Disclosure Statement is included out of an abundance of caution.

B. Executory Contracts and Unexpired Leases

All Executory Contracts and Unexpired Leases of the Debtors which have not been assumed, assigned, and/or rejected prior to the Effective Date and that are not subject to a motion to assume or reject as of the Effective Date (if any) shall be deemed rejected on the Effective Date, but the rejection will be effective as of the entry of the Confirmation Order.

C. Rejection Claims

In the event that the rejection of an Executory Contract or Unexpired Lease by any of the Debtors pursuant to the Combined Plan and Disclosure Statement results in a Rejection Claim in favor of a counterparty to such Executory Contract or Unexpired Lease, such Rejection Claim, if not heretofore evidenced by a timely and properly filed Proof of Claim, shall be forever barred and shall not be enforceable against the Debtors or the Liquidating Trust, or their respective properties or Interests in property as agents, successors, or assigns, unless a Proof of Claim is filed with the Bankruptcy Court and served upon counsel for the Debtors and the Liquidating Trustee on or before the date that is thirty (30) days after service of notice of the Effective Date,

which notice shall set forth the bar date for Rejection Claims. All Allowed Rejection Claims shall be treated as General Unsecured Claims in Class 3 pursuant to the terms of the Combined Plan and Disclosure Statement.

X. Conditions Precedent to Confirmation and the Effective Date

A. Conditions Precedent to Confirmation

The following is the list of conditions precedent to Confirmation:

(1) the Plan Supplement is filed;

(2) the form of Liquidating Trust Agreement shall be agreed upon by the Debtors and the proposed Liquidating Trustee; and

(3) the Combined Plan and Disclosure Statement shall not have been materially amended, altered, or modified from the Combined Plan and Disclosure Statement as filed unless such material amendment, alteration, or modification has been made in accordance with Article XIII herein.

B. Conditions Precedent to the Effective Date

The following is the list of conditions precedent to the Effective Date:

(1) The Bankruptcy Court shall have entered the Confirmation Order acceptable to the Debtors and the Confirmation Order shall be a Final Order;

(2) no stay of the Confirmation Order shall then be in effect;

(3) the Liquidating Trust Agreement shall be executed and the Liquidating Trustee shall have been appointed and accepted such appointment;

(4) the Combined Plan and Disclosure Statement shall not have been materially amended, altered, or modified from the Combined Plan and Disclosure Statement as confirmed by the Confirmation Order, unless such material amendment, alteration, or modification has been made in accordance with Article XIII herein; and

(5) the Debtors shall have filed a notice of Effective Date.

C. Waiver of Conditions

The conditions precedent to Confirmation and conditions precedent to the Effective Date may be waived in whole or in part, in writing, by each of the Debtors, without further order of the Bankruptcy Court.

D. Effect of Nonoccurrence of Conditions

If the conditions precedent to the Effective Date are not satisfied or waived, the Debtors may, upon motion and notice to parties in interest, seek to vacate the Confirmation Order; *provided, however*, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions precedent to the Effective Date are satisfied or waived before the Bankruptcy Court enters an order granting such motion.

If the Confirmation Order is vacated: (a) the Combined Plan and Disclosure Statement is null and void in all respects; and (b) nothing contained in the Combined Plan and Disclosure Statement shall (i) constitute a waiver or release of any Claims by or against the Debtors, or (ii) prejudice, in any manner, the rights of the Debtors or any other party in interest.

XI. Exculpation, Injunctions, and Releases

A. Injunction

All injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code sections 105 or 362, or otherwise, and in existence on the Confirmation Date shall remain in full force and effect until the later of (a) the Effective Date, or (b) the date indicated in the order providing for such injunction or stay. Notwithstanding the foregoing, nothing herein shall be otherwise deemed to modify, limit, amend, or supersede any injunctions or stays granted in the Sale Orders.

Except as otherwise provided in the Combined Plan and Disclosure Statement or to the extent necessary to enforce the terms and conditions of the Combined Plan and Disclosure Statement, the Confirmation Order, or a separate order of the Bankruptcy Court, all entities who have held, hold, or may hold Claims against or Interests in the Debtors shall be permanently enjoined from taking any of the following actions against any of the ~~Debtors' Assets, including~~ property that is to be distributed under the terms of the Combined Plan and Disclosure Statement (including Liquidating Trust Assets), on account of any such Claims or Interests: (a) commencing or continuing, in any manner or in any place, any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order; (c) creating, perfecting, or enforcing any lien or encumbrance; (d) asserting a right of setoff, other than any rights of setoff that were exercised prior to the Petition Date; and (e) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Combined Plan and Disclosure Statement; *provided, however*, that such Entities shall not be precluded from exercising their rights pursuant to and consistent with the terms of the Combined Plan and Disclosure Statement or the Confirmation Order; *provided, further*, that the foregoing shall not apply to any acts, omissions, claims, Causes of Action, or other obligations expressly set forth in and preserved by the Combined Plan and Disclosure Statement or any defenses thereto. Notwithstanding the foregoing, nothing

herein shall be otherwise deemed to modify, limit, amend or supersede any injunctions or stays granted in the Sale Orders.

Notwithstanding any language to the contrary in the Combined Plan and Disclosure Statement and/or Confirmation Order, no provision shall (i) preclude the SEC from enforcing its police or regulatory powers; or (ii) enjoin, limit, impair, or delay the SEC from commencing or continuing any claims, causes of action, proceedings, or investigations against any non-Debtor person or non-Debtor entity in any forum. For the avoidance of doubt, the SEC's General Unsecured Claim will be paid in accordance with the Combined Plan and Disclosure Statement.

B. Exculpation

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT, EFFECTIVE AS OF THE EFFECTIVE DATE, THE EXCULPATED PARTIES SHALL NOT HAVE NOR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST OR ANY OF THEIR RELATED PERSONS FOR ANY POSTPETITION, BUT PRE-EFFECTIVE DATE, ACT OR OMISSION IN CONNECTION WITH, RELATED TO, OR ARISING OUT OF THE CHAPTER 11 CASES, THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE PURSUIT OF CONFIRMATION, THE SOLICITATION OF VOTES ON THE PLAN, THE CONFIRMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE CONSUMMATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE ADMINISTRATION OF THE COMBINED PLAN AND DISCLOSURE STATEMENT, THE PROPERTY TO BE LIQUIDATED AND/OR DISTRIBUTED UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT, OR ANY POSTPETITION, BUT PRE-EFFECTIVE DATE, ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR IN CONTEMPLATION OF THE LIQUIDATION OF THE DEBTORS, INCLUDING SPECIFICALLY THE PURSUIT AND ENTRY OF THE SALE ORDERS, EXCEPT FOR THEIR FRAUD, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE AS SUBSEQUENTLY DETERMINED BY A FINAL ORDER OF A COURT OF COMPETENT JURISDICTION, AND IN ALL RESPECTS SHALL BE ENTITLED TO RELY REASONABLY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE COMBINED PLAN AND DISCLOSURE STATEMENT.

THE FOREGOING PARAGRAPH SHALL APPLY TO ATTORNEYS AND LAWYERS TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE BAR RULES AND CASE LAW BUT SHALL NOT BE DEEMED TO RELEASE, AFFECT, OR LIMIT ANY OF THE RIGHTS AND OBLIGATIONS OF THE EXCULPATED PARTIES FROM, OR EXCULPATE THE EXCULPATED PARTIES WITH RESPECT TO, ANY OF THE EXCULPATED PARTIES' OBLIGATIONS OR

COVENANTS ARISING PURSUANT TO THIS COMBINED PLAN AND DISCLOSURE STATEMENT OR THE CONFIRMATION ORDER.

C. Releases and Limitation of Liability

ON THE EFFECTIVE DATE, THE RELEASED PARTIES SHALL BE FULLY RELEASED AND DISCHARGED BY THE DEBTORS AND THEIR ESTATES FROM ANY AND ALL ~~LIABILITIES~~LIABILITIES OF THE DEBTORS ~~AND ALL~~AND ALL CLAIMS OR CAUSES OF ACTION WHICH COULD BE PURSUED BY OR ON BEHALF OF THE DEBTORS, THEIR ESTATES, OR THE LIQUIDATING TRUSTEE PURSUANT TO THIS COMBINED PLAN AND DISCLOSURE STATEMENT.

~~Except as expressly stated herein, this Combined Plan and Disclosure Statement does not otherwise limit or release any other current or former member of the Board or Officers of the Debtors not included in the Released Parties (the "Potential Defendants"). For the avoidance of doubt, all cross claims, counterclaims, defenses, and offsets of the Potential Defendants discussed in this provision remain and are not waived by the Potential Defendants.~~

Notwithstanding any language to the contrary in the Combined Plan and Disclosure Statement and/or Confirmation Order, nothing herein shall release any party from the Retained Avoidance Actions.

XII. Retention of Jurisdiction

Following the Confirmation Date and the Effective Date, the Bankruptcy Court shall retain jurisdiction for the following purposes:

(1) to hear and determine any objections to Claims and to address any issues relating to Disputed Claims;

(2) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

(3) to issue such orders in aid of execution and consummation of the Combined Plan and Disclosure Statement, to the extent authorized by Bankruptcy Code section 1142;

(4) to consider any amendments to or modifications of the Combined Plan and Disclosure Statement, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(5) to hear and determine all requests for compensation and reimbursement of expenses to the extent allowed by the Bankruptcy Court under Bankruptcy Code sections 330 or 503;

(6) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Combined Plan and Disclosure Statement;

(7) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Sale Orders;

(8) to hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code sections 346, 505, and 1146;

(9) to hear any other matter as to which the Bankruptcy Court has jurisdiction;

(10) to enter the Final Decree;

(11) to ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Combined Plan and Disclosure Statement;

(12) to decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters and grant or deny any applications involving the Debtors that may be pending on the Effective Date;

(13) to issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Combined Plan and Disclosure Statement, except as otherwise provided herein;

(14) to determine any other matters that may arise in connection with or related to the Combined Plan and Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Combined Plan and Disclosure Statement;

(15) to determine any other matters that may arise in connection with or related to the Sale Orders or any contract, instrument, release, indenture, or other agreement or document created or implemented in connection with the Sale Orders;

(16) to enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, exculpations, and rulings entered in connection with the Chapter 11 Cases (whether or not the Chapter 11 Cases have been closed);

(17) to resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof; and

(18) to resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Cases, the General Bar Date, the administrative claim bar date set forth in the Bar Date Order, the Governmental Bar Date, or the Confirmation Hearing for the purpose of determining whether a Claim or Interest is released or enjoined hereunder, or for any other purpose.

XIII. Miscellaneous Provisions

A. Amendment or Modification of the Combined Plan and Disclosure Statement

The Debtors may amend or modify the Combined Plan and Disclosure Statement at any time prior to entry of the Confirmation Order in accordance with the Bankruptcy Code and the Bankruptcy Rules, or after Confirmation and before substantial consummation, provided that the Combined Plan and Disclosure Statement, as modified, meets the requirements of Bankruptcy Code sections 1122 and 1123 and the circumstances warrant such modifications and any such modifications are in compliance with section 1127(b) of the Bankruptcy Code and Bankruptcy Rule 3019 (b). A Holder of a Claim that has accepted the Combined Plan and Disclosure Statement shall be deemed to have accepted such Combined Plan and Disclosure Statement as modified if the proposed alteration, amendment, or modification does not materially and adversely change the treatment of the Claim of such Holder.

B. Closing of Certain Debtor Cases upon the Effective Date

~~Upon and as of the Effective Date, without the need for further order of the Bankruptcy Court or motion of, or notice from, the Debtors or the Liquidating Trustee, the Chapter 11 Cases of each of the Debtors shall be deemed closed without prejudice to the rights of any party in interest to seek to reopen any such Chapter 11 Case under section 350(b) of the Bankruptcy Code.~~ Following the Effective Date, the ~~Debtors or~~ Liquidating Trustee may file a motion and submit proposed orders for the entry by the Bankruptcy Court to ~~memorialize~~effectuate the closing of each of the Chapter 11 Cases of the Debtors.

C. Plan Supplement

The Debtors will file the Plan Supplement no later than seven (7) days prior to the Voting Deadline. The Plan Supplement will contain, among other things: (a) Liquidation Analysis; (b) the Liquidating Trust Agreement; (c) identification of the Liquidating Trustee; (d) a schedule of Causes of Action; and (e) any other disclosures as required by the Bankruptcy Court.

D. Filing of Additional Documents

On or before substantial consummation of the Combined Plan and Disclosure Statement, the Liquidating Trustee shall file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement.

E. Entire Agreement

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

F. Binding Effect of Plan

The Combined Plan and Disclosure Statement shall be binding upon and inure to the benefit of the Debtors, the Holders of Claims, the Holders of Interests, other parties-in-interest and their respective successors, assigns and heirs. Notwithstanding anything to the contrary herein, nothing in the Combined Plan and Disclosure Statement modifies, alters, or amends the respective rights and obligations of the Debtors or Purchaser under the Sale Orders or any other document governing the Texas and California Sales.

G. Application of Bankruptcy Rule 7068

The Debtors, before the Effective Date, and the Liquidating Trustee following the Effective Date, are authorized to serve upon a Holder of Disputed Claim an offer to allow judgment to be taken on account of such Disputed Claim, and, pursuant to Bankruptcy Rule 7068 and 9014, Federal Rule of Civil Procedure 68 shall apply to such offer of judgment. To the extent the Holder of a Disputed Claim must pay the costs incurred by the Debtors or the Liquidating Trustee after the making of such offer, the Debtors and the Liquidating Trustee are entitled to set off such amounts against the amount of any Distribution to be paid to such Holder without any further notice to or action, order, or approval of the Bankruptcy Court.

H. Governing Law

Except as required by the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules, the rights and obligations arising under the Combined Plan and Disclosure Statement shall be governed by, and construed and enforced in accordance with the laws of the State of Delaware.

I. Time

To the extent that any time for the occurrence or happening of an event as set forth in the Combined Plan and Disclosure Statement falls on a day that is not a Business Day, the time for the next occurrence or happening of said event shall be extended to the next Business Day.

J. Severability

Should any provision of the Combined Plan and Disclosure Statement be deemed unenforceable after the Effective Date, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Combined Plan and Disclosure Statement.

K. Revocation

The Debtors reserve the right to revoke and withdraw the Combined Plan and Disclosure Statement prior to the entry of the Confirmation Order. If the Debtors revoke or withdraw the Combined Plan and Disclosure Statement, the Combined Plan and Disclosure Statement shall be deemed null and void, and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other Person, or to prejudice in any manner the rights of such parties in any further proceedings involving the Debtors.

L. Claims and Noticing Agent

The Claims and Noticing Agent, shall be relieved of such duties on the date of the entry of the Final Decree or upon written notice by the Debtors or Liquidating Trustee, and subject to approval by the Bankruptcy Court.

M. Inconsistency

To the extent that the Combined Plan and Disclosure Statement conflicts with or is inconsistent with any agreement related to the Combined Plan and Disclosure Statement, the provisions of the Combined Plan and Disclosure Statement shall control; *provided*, *however*, that nothing in the Combined Plan and Disclosure Statement shall be deemed to supersede, amend, or modify the provisions of the Sale Orders or the Final DIP Order. In the event of any inconsistency between any provision of any of the foregoing documents, and any provision of the Confirmation Order, the Confirmation Order shall control and take precedence.

N. No Admissions

Notwithstanding anything herein to the contrary, nothing contained in the Combined Plan and Disclosure Statement shall be deemed an admission by any Entity or Person with respect to any matter set forth herein.

O. Successors and Assigns

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

P. Post-Effective Date Limitation of Notice

After the Effective Date, in order to continue receiving documents pursuant to Bankruptcy Rule 2002, Persons and Entities must file with the Bankruptcy Court a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of Persons and Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Persons and Entities that have filed with the Bankruptcy Court such a renewed request *provided, however*, that parties in interest shall also

serve those parties directly affected by, or having a direct interest in, the particular filing in accordance with Local Bankruptcy Rule 2002-1(b).

Q. Post-Confirmation Reporting

After the Effective Date, in accordance with the Guidelines established by the U.S. Trustee, the Liquidating Trustee will file quarterly operating reports with the Bankruptcy Court.

R. Substantial Consummation of the Plan

On the Effective Date, the Combined Plan and Disclosure Statement shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

S. Reservation of Rights

Except as expressly set forth herein, the Combined Plan and Disclosure Statement shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Combined Plan and Disclosure Statement, any statement or provision contained herein, or the taking of any action by the Debtors with respect to the Combined Plan and Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors, Holders of Claims, or Holders of Interests before the Effective Date.

T. No Discharge

As set forth in Bankruptcy Code section 1141(d)(3), the Combined Plan and Disclosure Statement does not grant the Debtors a discharge.

U. Term of Injunction or Stays

Unless otherwise provided in the Combined Plan and Disclosure Statement or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and existing on the Confirmation Date (excluding any injunctions or stays contained in the Combined Plan and Disclosure Statement or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Combined Plan and Disclosure Statement or the Confirmation Order shall remain in full force and effect in accordance with their terms.

V. Notices

To be effective, all notices, requests and demands to or upon the Debtors shall be in writing (which may be by E-mail, if available), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by E-mail, when received and telephonically confirmed, addressed to the following:

If to the Debtors:

Aurora Management Partners, Inc.
Attn: Timothy Turek and David Baker
112 South Tyron St.
Suite 1770
Charlotte, North Carolina 28284

With a copy (which shall not serve as notice) to:

Potter Anderson & Corroon LLP
Attn: Jeremy W. Ryan and L. Katherine Good
1313 North Market Street
6th Floor
Wilmington, Delaware 19801
jryan@pottteranderson.com
kgood@potteranderson.com

If to the Office of the United States Trustee:

U.S. Department of Justice
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 King Street, Suite 2207, Lockbox 35
Attn: Linda J. Casey, Esq.
Wilmington, DE 19801
Linda.casey@usdoj.gov

XIV. Recommendation

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

Dated: ~~June 24~~August [], 2024
Wilmington, Delaware

/s/ Timothy Turek
Timothy Turek
Chief Restructuring Officer of the Debtors